

171 FERC ¶ 61,222  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Richard Glick, Bernard L. McNamee,  
and James P. Danly.

LS Power Grid California, LLC

Docket No. EL20-29-000

ORDER GRANTING PETITION FOR DECLARATORY ORDER

(Issued June 18, 2020)

1. On March 4, 2020, LS Power Grid California, LLC (LS Power Grid) filed a petition for declaratory order (Petition) seeking certain transmission rate incentives pursuant to section 219 of the Federal Power Act (FPA),<sup>1</sup> Order No. 679,<sup>2</sup> and the Commission's November 15, 2012 policy statement on transmission incentives.<sup>3</sup> LS Power Grid seeks transmission rate incentives for its investment in two projects: the Gates 500 kV Dynamic Reactive Support Project (Gates Project) and the Round Mountain 500 kV Area Dynamic Reactive Support Project (Round Mountain Project) (collectively, the Projects). LS Power Grid requests that the Commission grant it: (1) a regulatory asset incentive; (2) the abandonment incentive; (3) use of a hypothetical capital structure and (4) a 50 basis point regional transmission organization (RTO) participation adder. In this order, we grant LS Power Grid's request for transmission rate incentives, as discussed below.

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<sup>1</sup> 16 U.S.C. § 824s (2018).

<sup>2</sup> *Promoting Transmission Investment through Pricing Reform*, Order No. 679, 116 FERC ¶ 61,057, *order on reh'g*, Order No. 679-A, 117 FERC ¶ 61,345 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

<sup>3</sup> *Promoting Transmission Investment Through Pricing Reform*, 141 FERC ¶ 61,129 (2012) (2012 Incentives Policy Statement).

## I. Background

2. LS Power Grid<sup>4</sup> was selected to develop both the Gates and Round Mountain Projects, which were identified and included in the California Independent System Operator Corporation (CAISO) 2018-2019 Transmission Plan.<sup>5</sup> The Gates Project is a 500 kV dynamic reactive power support installation, which includes an approximately 850 MVAR dynamic reactive device to be installed in two equally sized blocks independently connected to the 500 kV bus at the Pacific Gas and Electric Company (PG&E)-owned Gates Substation.<sup>6</sup> The Round Mountain Project is a 500 kV dynamic reactive power support installation, which includes an approximately 530 MVAR dynamic reactive device to be installed in two equally-sized blocks independently connected to each of the existing PG&E Round Mountain to Table Mountain 500 kV transmission lines at a new switching station located south of the Round Mountain substation.<sup>7</sup>

3. LS Power Grid states that CAISO identified the need for the Projects as part of its 2018-2019 reliability and other planning assessments for the PG&E bulk transmission system.<sup>8</sup> For the southern portion of the system, CAISO identified expected high voltages on the Diablo and Gates 500 kV buses after the retirement of the Diablo Canyon Power Plant, and a large loss of load due to stalling and tripping of induction motors with three-phase faults in the Fresno area, especially with faults close to the Gates and Midway 500 kV substations.<sup>9</sup> According to LS Power Grid, CAISO concluded that additional reactive support was required at the Gates 500 kV substation, preferably

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<sup>4</sup> LS Power Grid is indirectly wholly-owned by LS Power Associates, L.P., a Delaware limited partnership. LS Power Development, LLC, is the general partner and manager of LS Power. Through various subsidiaries, LS Power Grid develops, owns and operates electric transmission and independent power projects throughout the United States. LS Power Grid Petition at 2.

<sup>5</sup> *Id.* at 4 (citing 2018-2019 ISO Transmission Plan, [www.caiso.com/Documents/ISO\\_BoardApproved-2018-2019\\_Transmission\\_Plan.pdf](http://www.caiso.com/Documents/ISO_BoardApproved-2018-2019_Transmission_Plan.pdf)) (2018-2019 ISO Transmission Plan).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 7.

<sup>8</sup> *Id.* at 4.

<sup>9</sup> *Id.*

dynamic reactive support, to both absorb reactive power<sup>10</sup> under normal system conditions and supply reactive power with contingencies as needed.

4. Also, LS Power Grid states that as part of the 2018-2019 Transmission Planning Process, CAISO conducted a detailed assessment of the need and requirements of the voltage support in the Round Mountain area.<sup>11</sup> CAISO's assessment identified high voltage issues at the Round Mountain 500 kV substation bus that occur frequently in real-time operation. Further, Round Mountain bus voltage varies significantly on a daily basis with the output of solar generation in California, which results in flow changes on the California-Oregon Intertie on a daily basis. According to LS Power Grid, CAISO recommended the installation of a 500 MVAR dynamic reactive device connecting in the vicinity of the Round Mountain 500 kV substation.<sup>12</sup>

5. LS Power Grid explains that through CAISO's competitive solicitation, it was selected as the approved project sponsor to develop both the Gates and Round Mountain Projects. LS Power Grid explains that its proposals for both Projects included binding cost containment commitments, with caps on return on equity of 9.8%, restrictions on the capital structures to limit equity at 45%, and capital cost caps of \$68.3 million for the Gates Project and \$75.5 million for the Round Mountain Project.<sup>13</sup>

## II. LS Power Grid Filing

6. In its Petition, LS Power Grid requests authorization pursuant to section 219 of the FPA and Order No. 679 for the following incentive rate treatments for the Projects: (1) deferred recovery of prudently incurred pre-commercial costs through creation of a regulatory asset; (2) full recovery of prudently incurred costs if the Projects are abandoned for reasons beyond LS Power Grid's control; (3) use of a hypothetical capital structure consisting of 45% equity and 55% debt until the Projects achieve commercial operation; and (4) a 50 basis point adder to LS Power Grid's return on equity (ROE) for

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<sup>10</sup> Reactive power is a critical component of operating an alternating current electricity system and helps control system voltage within appropriate ranges for efficient and reliable operation of the transmission system, thereby maintaining voltage levels required to reliably supply electricity from generation to load. *Payment for Reactive Power*, Commission Report, April 22, 2014, Docket No. AD14-7 at 4.

<sup>11</sup> LS Power Grid Petition at 7.

<sup>12</sup> *Id.* (citing 2018-2019 ISO Transmission Plan at 81-82).

<sup>13</sup> *Id.* at 6-7, 9-10 (citing Petition, Ex. 1, CAISO Gates Selection Report, *id.* at Ex. 2, Round Mountain Selection Report).

participation in an RTO, not to exceed the ROE cap that LS Power Grid committed to in its competitive solicitation.<sup>14</sup> LS Power Grid asserts that in accordance with Order No. 679 and Commission precedent, its requested incentives, taken together, balance the need to reduce the risks for the Projects sufficiently to allow LS Power Grid to raise capital at a reasonable cost with the need to ensure that rates to consumers remain just and reasonable. LS Power Grid also asserts that in addition to providing a construction cost cap on the overall ROE, it has tailored its requests for incentives to the minimum necessary given the risks and challenges of the Projects.<sup>15</sup>

### **III. Notice of Filing and Responsive Pleadings**

7. Notice of LS Power Grid's filing was published in the *Federal Register*, 85 Fed. Reg. 14,193 (Mar. 11, 2020), with interventions and protests due on or before April 3, 2020. Timely motions to intervene were filed by the City of Santa Clara, California; CAISO; the California Department of Water Resources State Water Project; Northern California Power Agency; the Cities of Anaheim, Azusa, Banning, Colton, Pasadena and Riverside, California; Southern California Edison Company; PG&E; and Modesto Irrigation District. No protests or adverse comments were filed.

### **IV. Discussion**

#### **A. Procedural Matters**

8. Pursuant to Rule 214 of the Commission's Practice and Procedures,<sup>16</sup> the notice of intervention and timely unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

#### **B. Substantive Matters**

##### **1. FPA Section 219 Requirement**

9. In the Energy Policy Act of 2005,<sup>17</sup> Congress added section 219 of the FPA, directing the Commission to establish, by rule, incentive-based rate treatments to promote capital investment in certain transmission infrastructure. The Commission subsequently

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<sup>14</sup> *Id.* at 10-11 (citing Petition, Ex. 1, CAISO Gates Selection Report at 108, *id.* at Ex. 2, Round Mountain Selection Report at 141).

<sup>15</sup> *Id.* at 11.

<sup>16</sup> 18 C.F.R. § 385.214 (2019).

<sup>17</sup> Energy Power Act of 2005, Pub. L. No. 109-58, § 1241, 119 Stat. 594 (2005).

issued Order No. 679, which sets forth processes by which a public utility may seek transmission rate incentives pursuant to section 219, including the incentives requested by LS Power Grid. Additionally, in November 2012, the Commission issued the 2012 Incentives Policy Statement providing additional guidance regarding its evaluation of applications for transmission rate incentives under section 219 and Order No. 679.<sup>18</sup>

10. Pursuant to Order No. 679, an applicant may seek to obtain incentive rate treatment for a transmission infrastructure investment that satisfies the requirements of section 219, i.e., the applicant must show that “the facilities for which it seeks incentives either ensure reliability or reduce the cost of delivered power by reducing transmission congestion.”<sup>19</sup> Order No. 679 established the process for an applicant to demonstrate that it meets this standard, including a rebuttable presumption that the standard is met if: (1) the transmission project results from a fair and open regional planning process that considers and evaluates the project for reliability and/or congestion and is found to be acceptable to the Commission; or (2) a project has received construction approval from an appropriate state commission or state siting authority.<sup>20</sup>

**a. LS Power Grid Filing**

11. LS Power Grid asserts that the Projects meet the rebuttable presumption test of Order No. 679 because the Projects were studied and found to be reliability-driven needs in the 2018-2019 Transmission Plan. LS Power states that the Gates Project was determined to be needed for reliability needs due, in part, to the retirement of the Diablo Canyon Power Plant and a large loss of load from three-phase faults in the Fresno area. LS Power further states that the Round Mountain Project was determined to be necessary because of frequent high voltage issues and significant voltage variations with the output of solar generation resulting in flow changes at the California-Oregon Intertie. LS Power Grid comments that the inclusion of the Projects in the 2018-2019 Transmission Plan was approved by the CAISO Board of Governors on March 27, 2019.<sup>21</sup>

**b. Commission’s Determination**

12. The Commission has previously found that projects approved through a fair and open regional transmission planning process that evaluated whether the identified

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<sup>18</sup> See 2012 Incentives Policy Statement, 141 FERC ¶ 61,129.

<sup>19</sup> Order No. 679, 116 FERC ¶ 61,057 at P 76.

<sup>20</sup> *Id.* P 58.

<sup>21</sup> LS Power Grid Petition at 12 (citing 2018-2019 ISO Transmission Plan).

transmission projects will enhance reliability and/or reduce congestion are entitled to a rebuttable presumption established under Order No. 679.<sup>22</sup> In this case, the CAISO transmission planning process, through which the Projects were approved, evaluated whether transmission projects will ensure reliability and/or reduce transmission congestion, and concluded that both Projects were needed to meet identified reliability needs. Therefore, we find that LS Power Grid is entitled to the rebuttable presumption for these Projects established under FPA section 219.

## 2. Order No. 679 Nexus

13. In addition to satisfying the section 219 requirement of ensuring reliability and/or reducing the cost of delivering power by reducing congestion, Order No. 679 requires an applicant to demonstrate that there is a nexus between the incentive sought and the investment being made.<sup>23</sup> In Order No. 679-A, the Commission clarified that the nexus test is met when an applicant demonstrates that the total package of incentives requested is “tailored to address the demonstrable risks or challenges faced by the applicant.”<sup>24</sup> The Commission requires a project-specific demonstration of the nexus between the requested incentives and the risks and challenges of the project.<sup>25</sup>

### a. LS Power Grid Filing

14. LS Power Grid states that it has specifically tailored the incentives it requests to the risks and challenges of developing the Projects. LS Power Grid asserts that the Projects face a variety of financial and regulatory risks and challenges as well as construction risks and challenges. LS Power Grid states that these financial risks stem from not having a rate base or revenue. LS Power Grid comments that its initial investments in the development and construction of the Projects will represent a negative cash flow, and that its cash flow risks may be compounded by a long lead-time prior to the facilities being placed into rate base. LS Power Grid asserts that the Commission has

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<sup>22</sup> *Cal. Indep. Sys. Operator Corp.*, 143 FERC ¶ 61,057 (2013), *order on clarification and compliance*, 146 FERC ¶ 61,198, *order on reh’g and compliance*, 149 FERC ¶ 61,249 (2014). *See Republic Transmission, LLC*, 161 FERC ¶ 61,036 (2017) (*Republic Transmission*); *Pac. Gas & Elec. Co.*, 160 FERC ¶ 61,018 (2017).

<sup>23</sup> Order No. 679, 116 FERC ¶ 61,057 at P 48.

<sup>24</sup> Order No. 679-A, 117 FERC ¶ 61,345 at P 27.

<sup>25</sup> *See* 18 C.F.R. § 35.35(d) (2019).

recognized these financial challenges as risks inherent in transmission development.<sup>26</sup> Further, LS Power Grid asserts that regulatory risks can affect financial stability and result in higher capital costs. LS Power Grid explains that it expects to face competition from other projects seeking financing and that its own commitment to cost containment for the Projects can make this competition for financing even greater, especially where other transmission projects are not subject to this limitation. Finally, LS Power Grid explains that the Projects are within the PG&E footprint and will interconnect with PG&E. LS Power Grid asserts that because PG&E is currently under bankruptcy protection, the Projects may experience additional risks and challenges not normally faced by development projects.<sup>27</sup>

15. LS Power Grid asserts that, for a variety of reasons, the Projects could face the possibility of being cancelled by CAISO. As an example, LS Power Grid asserts that in the event there are significant changes to the CAISO system, there is the possibility of the Projects being cancelled.<sup>28</sup> Further, LS Power Grid states that the Projects are subject to additional regulatory review requiring permits and approvals at the federal, state and local government levels. Also, LS Power Grid acknowledges that, while siting risks may appear to be relatively low, siting obstacles have caused significant delays for other CAISO-approved projects and, according to LS Power Grid, could increase the risk of the Projects being cancelled.<sup>29</sup>

16. LS Power Grid asserts that additional factors that could lead to abandonment include environmental events that are specific to California or challenges related to securing the equipment required for the Projects. LS Power Grid states that there are no domestic manufacturers of the major component for the Projects, a static synchronous compensator (STATCOM). Consequently, LS Power Grid contends, the major components and equipment will need to be sourced from outside the United States. LS Power Grid asserts that the Projects are advanced technologies under section 1223(a) of the Energy Policy Act of 2005, and the implementation of such advanced technologies increases the overall risk associated with the Projects.<sup>30</sup>

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<sup>26</sup> LS Power Grid Petition at 13 (citing 2012 Policy Statement, 141 FERC ¶ 61,129 at P 12).

<sup>27</sup> *Id.* at 13-14.

<sup>28</sup> *Id.* at 14.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 16-17.

**b. Commission Determination**

17. We consider below whether the total package of incentives requested satisfies the nexus test. In applying the nexus test, we find that LS Power Grid has sufficiently demonstrated that there is a nexus between the incentives it seeks and the risks and challenges it faces developing and constructing the Projects that are described above. We also find that LS Power Grid's total package of requested incentives is tailored to address the demonstrated risks and challenges presented by the Projects.

**C. Individual Transmission Incentives**

18. LS Power Grid's package of requested incentives includes four transmission rate incentives, a regulatory asset incentive, abandoned plant recovery, a hypothetical capital structure and an RTO membership ROE adder. We evaluate each of these requested incentives below.

**1. Regulatory Asset Incentive**

**a. LS Power Grid Filing**

19. LS Power Grid requests authorization to defer recovery of all prudently incurred pre-commercial costs for the Projects, incurred to date and going forward, that cannot be capitalized and would otherwise be expensed. LS Power Grid asserts that as a nonincumbent transmission developer, it does not have a transmission tariff and, therefore, it currently does not have the ability to recover its prudently incurred development costs through CAISO. LS Power Grid comments that by authorizing it to establish a regulatory asset, it will promote up-front regulatory certainty regarding the recovery of prudently incurred development costs for investors, thereby facilitating financing for the Projects.<sup>31</sup> The development costs will be booked as a regulatory asset for subsequent recovery. LS Power Grid asserts that because the Projects were approved by CAISO as critical reliability projects in its 2018-2019 Transmission Plan, it is appropriate that all prudently incurred pre-commercial expenses for the Projects be allowed for recovery, including those expenses LS Power Grid incurred during the regional planning process prior to receiving approval for the Projects.<sup>32</sup>

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<sup>31</sup> *Id.* at 18-19.

<sup>32</sup> *Id.* at 18 (citing *PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,097, at P 41 (2016) (*PJM*); *TransCanyon DCR, LLC*, 152 FERC ¶ 61,017, at P 30 (2015) (*TransCanyon*)).

20. For each Project, LS Power Grid proposes carrying charges on the unamortized balance of the regulatory asset for deferred pre-commercial expenses, from the effective date of the asset until such time as it is included in rate base, at which time LS Power Grid proposes to amortize each asset over a five-year period by debiting Account 566, Miscellaneous Transmission Expenses, and crediting Account 182.3, Other Regulatory Assets.<sup>33</sup> LS Power Grid also proposes to record such carrying charges by debiting Account 182.3 and crediting Account 421, Miscellaneous Non-operating Income. Further, it commits to restricting the compounding of interest to ensure that it does not result in a higher amount of interest than is allowed for Allowance for Funds Used During Construction (AFUDC).<sup>34</sup> LS Power Grid acknowledges that any deferred cost recovery will be subject to a subsequent filing pursuant to section 205 of the FPA for establishing its transmission revenue requirement.<sup>35</sup>

**b. Commission Determination**

21. We grant LS Power Grid's request for the regulatory asset incentive. This incentive will allow LS Power Grid, as a nonincumbent transmission developer, to defer recovery of pre-commercial costs, as well as start-up and development costs, and recover them later. We find that this incentive appropriately addresses the risks and challenges of the Projects because it will provide LS Power Grid with added upfront regulatory certainty and can reduce interest expenses.<sup>36</sup> The regulatory asset incentive will also facilitate the financing of the Projects on reasonable terms.<sup>37</sup> Moreover, establishing a regulatory asset to provide certainty that LS Power Grid will be able to recover these costs is consistent with the goals articulated by the Commission in Order No. 679.<sup>38</sup>

22. We also grant LS Power's request for authorization to accrue a carrying charge from the effective date of the asset until the asset is included in rate base. Further, we grant LS Power Grid's request for authorization to amortize the regulatory asset over

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<sup>33</sup> *Id.* (citing *DCR Transmission, LLC*, 153 FERC ¶ 61,295, at P 37 (2015) (*DCR Transmission*)).

<sup>34</sup> *Id.* (citing *PJM*, 155 FERC ¶ 61,097 at P 43).

<sup>35</sup> *Id.* at 19 (citing *PJM*, 155 FERC ¶ 61,097 at P 43; *DCR Transmission*, 153 FERC ¶ 61,295 at P 38).

<sup>36</sup> *DesertLink, LLC*, 156 FERC ¶ 61,118, at P 21 (2016) (*DesertLink*).

<sup>37</sup> *See, e.g., Republic Transmission*, 161 FERC ¶ 61,036 at P 21.

<sup>38</sup> Order No. 679, 116 FERC ¶ 61,057 at P 178.

five years, consistent with rate recovery.<sup>39</sup> We grant LS Power Grid's request for authorization to amortize the regulatory asset and related carrying charges associated with the Projects by debiting Account 566, Miscellaneous Transmission Expenses, and crediting Account 182.3, Other Regulatory Assets.<sup>40</sup> Further, the appropriate carrying charge should not result in a higher amount of interest than is allowed for construction expenditures that accrue AFUDC. We restrict the compounding of interest to no more frequently than semi-annually, consistent with the Commission's requirements.<sup>41</sup>

23. While we allow LS Power Grid to record its prudently incurred costs as a regulatory asset, LS Power Grid must make a filing pursuant to section 205 of the FPA<sup>42</sup> to demonstrate that the pre-commercial and general startup costs are just and reasonable before LS Power includes them in rates. In that filing, LS Power Grid must establish that the costs included in the regulatory asset are costs that would otherwise have been chargeable to expense in the period incurred, but were deferred consistent with the authorization granted herein, and parties will be able to challenge the reasonableness of costs at that time.<sup>43</sup>

## 2. Abandoned Plant Incentive

### a. LS Power Grid Filing

24. LS Power Grid seeks authorization to recover 100% of prudently incurred costs, including pre-commercial and construction costs, if the Projects are abandoned due to an event beyond LS Power Grid's control. LS Power Grid explains that, along with its affiliates, it has borne all of the development risks for the Projects to date and that it is now appropriate to shift the risk of future abandonment to the expected beneficiaries of the facilities.<sup>44</sup> Further, LS Power Grid contends that the Projects face substantial

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<sup>39</sup> See, e.g., *GridLiance West Transco LLC*, 160 FERC ¶ 61,003, at P 32 (2017) (*GridLiance West*); *TransCanyon*, 152 FERC ¶ 61,017 at P 32.

<sup>40</sup> See, e.g., *Republic Transmission*, 161 FERC ¶ 61,036 at P 23; *South Central MCN, LLC*, 153 FERC ¶ 61,099, at P 24 (2015).

<sup>41</sup> See, e.g., *GridLiance West*, 160 FERC ¶ 61,003 at P 32.

<sup>42</sup> 16 U.S.C. § 824d.

<sup>43</sup> See, e.g., *NextEra Energy Transmission West*, 162 FERC ¶ 61,195, at P 20 (2018); *GridLiance West*, 160 FERC ¶ 61,003 at P 35.

<sup>44</sup> LS Power Grid Petition at 19-20.

abandonment risks. First, LS Power Grid states that the Projects are subject to additional regulatory review because they will need permits and approvals at the federal, state and local government levels, including permits to construct or certificates of public convenience and necessity and wetland permits from the U.S. Army Corps of Engineers.<sup>45</sup> Delays in permitting add to the risks and challenges of the Projects, and have the potential of increasing the risk that the Projects could be cancelled. Finally, LS Power Grid asserts that the level of permitting risk for projects within the State of California is generally very high.<sup>46</sup>

25. According to LS Power Grid, the environmental factors in California include the risk of earthquakes and wildfires. LS Power Grid also identifies certain challenges securing the required equipment for the Projects. LS Power Grid states that there are no domestic manufacturers of the major component for the Projects, a STATCOM, or for the major equipment required for the Projects, such as transformers and, therefore, the major components and equipment will need to be sourced from outside the United States. Also, according to LS Power Grid, some supplies of raw materials are subject to U.S. import tariffs on steel and aluminum, which could impact the cost and the availability of materials and equipment. LS Power Grid asserts that it would be difficult for it to commit its investors' equity and its own resources to the development of the Projects without assurance from the Commission that it could recover its investment in the event that the Projects were to be cancelled for reasons beyond its control. Finally, LS Power Grid acknowledges that should the Projects be abandoned for reasons beyond its control, it would be required to demonstrate in a filing pursuant to section 205 of the FPA that abandonment was due to events beyond its control and that any costs had been prudently incurred.

**b. Commission Determination**

26. We grant LS Power Grid's request for the abandoned plant incentive. In Order No. 679, the Commission determined that the abandoned plant incentive is an effective means of encouraging transmission development by reducing the risk of non-recovery of costs.<sup>47</sup> We agree with LS Power Grid that it faces risks and challenges in the development of the Projects. In particular, LS Power Grid states that it will need to secure a number of siting and permitting approvals for the Projects, including certificates

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<sup>45</sup> *Id.*, Ex. 1 (CAISO Gates Selection Report at 110-111); *id.* at Ex. 2 (CAISO Round Mountain Selection Report at 48).

<sup>46</sup> *Id.* at 15-16.

<sup>47</sup> Order No. 679, 116 FERC ¶ 61,057 at P 163; *see also DCR Transmission*, 153 FERC ¶ 61,295 at P 42; *TransCanyon*, 152 FERC ¶ 61,017 at P 41.

of convenience and necessity and wetland permits from the U.S. Army Corps of Engineers. The abandoned plant incentive will support LS Power Grid's efforts to attract financing for the Projects and protect it should the Projects be abandoned for reasons beyond LS Power Grid's control.

27. We note, however, that if either or both of the Projects are abandoned for reasons beyond LS Power Grid's control, LS Power Grid would be required to make a filing under section 205 of the FPA to demonstrate that the costs were prudently incurred before it can recover any abandoned plant costs.<sup>48</sup> In such a proceeding, abandoned plant cost recovery is available for 100% of prudently-incurred project costs expended on or after the issuance of this order.<sup>49</sup> In the event LS Power Grid seeks abandoned plant recovery for the period of time prior to the issuance of this order, LS Power Grid would be eligible to seek recovery of 50% of its prudently-incurred costs.<sup>50</sup>

### 3. Hypothetical Capital Structure

#### a. LS Power Grid Filing

28. LS Power Grid requests authorization to use a hypothetical capital structure consisting of 45% equity and 55% debt until the Projects are placed in service. Once the Projects become commercially operational, LS Power Grid's hypothetical capital structure will be replaced by its actual capital structure. LS Power Grid states that the hypothetical capital structure mitigates significant financing risks that are present during the permitting and construction phases of the Projects. LS Power Grid asserts that the Commission has recognized that the use of a stable debt-to-equity ratio for ratemaking purposes during construction provides a developer with regulatory certainty and improves its access to capital.<sup>51</sup> LS Power Grid comments that as a non-incumbent transmission

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<sup>48</sup> Order No. 679, 116 FERC ¶ 61,057 at PP 165-166.

<sup>49</sup> See, e.g., *San Diego Gas & Elec. Co.*, 154 FERC ¶ 61,158 (*SDG&E*), order denying reh'g, 157 FERC ¶ 61,056 (2016) (*SDG&E Rehearing Order*), *aff'd*, *San Diego Gas & Elec Co. v. FERC*, 913 F.3d 127 (D.C. Cir. 2019) (*SDG&E v. FERC*); *New England Power Co.*, Opinion No. 295, 42 FERC ¶ 61,016, at 61,075-178, order on reh'g, Opinion No. 295-A, 43 FERC ¶ 61,285 (1988).

<sup>50</sup> See *SDG&E v. FERC*, 913 F.3d at 139; see also *SDG&E Rehearing Order*, 157 FERC ¶ 61,056 at P 15.

<sup>51</sup> LS Power Grid Petition at 21 (citing *Tallgrass Transmission, LLC*, 125 FERC ¶ 61,248, at P 68 (2008)).

developer, it has a particular need for a hypothetical capital structure because it has no existing assets and its capitalization will fluctuate significantly during the development and construction phases of the Projects based upon the amount, timing, and frequency of capital borrowing and equity infusions that are needed to fund construction. Also, LS Power Grid explains that the hypothetical capital structure will be used in the calculation of AFUDC to provide more stable inputs and improve the predictability of the Projects' costs. Finally, LS Power Grid asserts that its proposed hypothetical capital structure has less equity and therefore a lower cost to ratepayers than hypothetical capital structures previously approved by the Commission.<sup>52</sup>

**b. Commission Determination**

29. We grant LS Power Grid's request to use a hypothetical capital structure of 45% equity and 55% debt until the Projects are placed in service. As a nonincumbent transmission developer, LS Power Grid has no existing assets and its actual capitalization will fluctuate during the development and construction phases of the Projects. We find that the hypothetical capital structure incentive will assist LS Power Grid in raising capital during the construction phase of the Projects, and will assist LS Power Grid in financing the Projects at reasonable rates while its actual debt-to-equity ratio varies.<sup>53</sup>

30. As the Commission previously held in *XEST*<sup>54</sup> and *Xcel Energy Transmission Development, Co. LLC*,<sup>55</sup> nonincumbent transmission developers have a particular need for the hypothetical capital structure incentive because it establishes certain financial principles that incumbent transmission owners currently have in place, but that remain undetermined for nonincumbent transmission developers.<sup>56</sup> We find that a hypothetical capital structure furthers the policy goal of facilitating the participation of nonincumbent

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<sup>52</sup> *Id.* at 21-22 (citing *Xcel Energy Southwest Transmission Co., LLC*, 149 FERC ¶ 61,182, at P 22 (2014) (*XEST*); *Midwest Indep. Transmission Sys. Operator*, 141 FERC ¶ 61,121, at P 51 (2012)).

<sup>53</sup> See *Republic Transmission*, 161 FERC ¶ 61,036 at P 31; *NextEra Transmission West, LLC*, 154 FERC ¶ 61,009, at P 36 (2016) (*NextEra*).

<sup>54</sup> *XEST*, 149 FERC ¶ 61,182 at P 22.

<sup>55</sup> 149 FERC ¶ 61,181, at P 13 (2014).

<sup>56</sup> LS Power Grid Petition at 21-22.

transmission developers in the competitive solicitation process, thereby encouraging competition.<sup>57</sup>

#### 4. **RTO Participation Incentive**

##### a. **LS Power Grid Filing**

31. LS Power Grid requests a 50-basis point ROE adder based upon its membership in CAISO. LS Power Grid explains that in the proposal it submitted to CAISO to develop the Projects, it committed to joining CAISO, executing the Transmission Control Agreement, and turning over operational control of the Projects to CAISO. LS Power Grid asserts that although the ROE adder for RTO participation is not similar to other incentives related to the construction of new transmission facilities, in Order No. 679 the Commission stated that it would approve an ROE adder for RTO participation and LS Power Grid asserts that the Commission should approve it here.<sup>58</sup> LS Power Grid notes that this request is contingent on LS Power Grid's overall ROE being within the zone of reasonableness, inclusive of the RTO participation incentive, and subject to the overall cap on the ROE that LS Power Grid committed to in its proposal to CAISO.<sup>59</sup>

##### b. **Commission Determination**

32. Consistent with previous Commission orders, we grant LS Power Grid's request for a 50-basis point RTO participation incentive for its participation in CAISO.<sup>60</sup> Our approval of this incentive is based on LS Power Grid's commitment to become a member of CAISO and transfer operational control of the Projects to CAISO once the Projects have been placed in service. In addition, consistent with LS Power's statements in its petition in this proceeding, the RTO participation incentive will be bound by the zone of reasonableness and the overall cap on its ROE that LS Power Grid committed to in its proposal to CAISO.

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<sup>57</sup> See, e.g., *NextEra*, 154 FERC ¶ 61,009 at P 37; *ATX Southwest, LLC*, 152 FERC ¶ 61,193, at P 30 (2015).

<sup>58</sup> LS Power Grid Petition at 22-23 (citing Order No. 679, 116 FERC ¶ 61,057 at P 326; Order No. 679-A, 117 FERC ¶ 61,345 at P 86).

<sup>59</sup> *Id.* at 22.

<sup>60</sup> See, e.g., *GridLiance West*, 160 FERC ¶ 61,003 at P 20; *DesertLink*, 156 FERC ¶ 61,118 at P 33; *NextEra*, 154 FERC ¶ 61,009 at P 39.

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The Commission orders:

LS Power Grid's Petition is hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

Document Content(s)

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