

ClientAlert

Energy, Infrastructure, Project and Asset Finance

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FERC Extends Transmission Rate Incentives to Battery Storage Projects

A January 21, 2010, order of the Federal Energy Regulatory Commission (FERC or Commission) finds that battery storage projects that Western Grid Development, LLC (Western Grid) proposes to operate as transmission facilities are entitled to transmission rate incentives, including a 195 basis-points return on equity (ROE) adder, if they are included in the regional transmission plan of the California Independent System Operator Corporation (CAISO). *Western Grid Development, LLC*, 130 FERC ¶ 61,056 (2010) (*Western Grid*). The application was contested by a number of parties, including CAISO, on the grounds that battery storage has many of the same characteristics as generation and therefore should not be granted transmission rate incentives. Last year, FERC had rejected a proposal to functionalize pumped storage as transmission and many intervenors drew a parallel between the two proposals. FERC made clear that its findings “apply only to the specific Projects already identified by Western Grid” (*id.* at P 2) and only to the extent the storage projects operate as proposed and are not used to participate in energy or ancillary service markets. Nevertheless, the order opens a new funding possibility for similar storage technologies that have both transmission and generation characteristics but are used to enhance transmission by further defining the line between transmission and generation.

What Type of Technology Is It?

Western Grid proposes to install sodium sulfur (NaS) batteries of 10 MW to 50 MW on the CAISO grid and become a Participating Transmission Owner (PTO). Although the batteries could be used for energy storage and to arbitrage in the energy market, Western Grid proposes to operate them only at CAISO’s direction for reliability and argues that they would provide voltage support, not capacity, such that they would function in a manner similar to capacitors. “Western Grid will operate them only to enhance reliability of transmission service and will not provide electricity for commercial sale.” *Id.* at P 18. Western Grid, not CAISO, would be responsible for energizing the devices, so CAISO would not be involved in purchasing or selling energy. The net revenues from Western Grid’s energy purchases and sales (to charge and discharge the batteries) would be credited to Western Grid’s PTO tariff. Thus, Western Grid would recover its costs through the PTO tariff, not through energy sales.



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Parties, including CAISO, argued that the projects would provide services similar to those provided by facilities that have not historically been treated as transmission. *Id.* at P 26 (CAISO arguing the projects provide services similar to those provided by generation, pumped storage and demand response); *id.* at P 28 (intervenor arguing that the projects will provide peak-shaving services that can be provided by non-transmission resources). Comparisons were drawn repeatedly to the Lake Elsinore Advanced Pump Storage Project (LEAPS), which has been the subject of proceedings at the Commission since 2006. The Commission had previously affirmed that the LEAPS project was an “advanced transmission technology” within the meaning of section 1223 of the Energy Policy Act of 2005 (EPAAct 2005), which sought to promote the deployment of such technologies. *Nevada Hydro Co.*, 117 FERC ¶ 61,204 at P 27 (2006). However, the Commission observed that its obligation under section 1223 was to “encourage, as appropriate,” such technologies, which did not necessarily compel granting rate incentives. *Nevada Hydro Co.*, 122 FERC ¶ 61,272 at P 84 (2009) (citing section 1223(b) of EPAAct 2005 (emphasis added)). It denied transmission rate incentives for LEAPS on the basis that it would be “inappropriate for CAISO to assume control of the LEAPS facility,” and that the recovery of LEAPS costs through the CAISO transmission access charge would be inconsistent with the treatment afforded to existing pumped storage on the CAISO system which provided the same benefits. *Id.* at PP 82 – 83.

The Commission found that Western Grid’s “unique” proposal, *Western Grid* at P 43, was distinguishable from the LEAPS proposal, because under the LEAPS operating model, the CAISO would have determined when the project would be charged and discharged, “which could have left the CAISO in the position of being a profit-seeking operator” of generation. *Id.* at P 48. Western Grid’s proposed operations, which include taking responsibility for charging the facility (at retail rates), not bidding the projects into the market, and only operating at the CAISO’s request to support reliability, supported its claim that the projects were appropriately considered transmission.

Determination on Incentives

As required by section 219 of the Federal Power Act (FPA), a prerequisite for receipt of any transmission incentive is a showing that the proposed project will ensure reliability or reduce the cost of delivered power by reducing transmission congestion. In Order No. 679, FERC “established a rebuttable presumption that a project is eligible for incentives under FPA section 219 if [the project]: (1) results from a fair and open regional planning

process that considers and evaluates projects for reliability and/or congestion and is found to be acceptable to the Commission or (2) has received construction approval from an appropriate state commission or state siting authority.” *Id.* at P 57.

Western Grid’s proposal is not yet part of any regional plan. Western Grid explained that it is seeking CAISO approval to include the projects in the CAISO transmission plan as economic projects. However, it also identified the following reliability benefits from its proposed projects: “(1) mitigating normal transmission overload; (2) addressing transmission line trips; (3) responding to transmission lines taken off for maintenance and/or (4) reacting to voltage dips on transmission line segments on the CAISO system.” *Id.* at P 4.

FERC found that the projects neither satisfied the terms of the rebuttable presumption nor had they independently demonstrated the required FPA section 219 showing. Therefore, the Commission conditioned receipt of any incentive on the projects’ inclusion in the CAISO regional plan.

The Commission granted all but one of the incentives requested by Western Grid. Notably, it withheld approval of Western Grid’s request to recover 100 percent of its prudently incurred abandoned plant costs if the projects are abandoned for reasons outside of its control. Although the Commission has previously granted abandoned plant cost recovery for projects in the early stages of development conditional on their subsequent inclusion in a regional plan, here FERC found “that Western Grid has failed to adequately demonstrate that it faces adequate risk factors beyond its control that would endanger the completion of the Projects.” *Id.* at P 87.

The Commission commented on three arguments that Western Grid offered in support of abandoned plant recovery. It rejected the argument that the projects might be impacted by other location-constrained projects, finding that Western Grid had not shown that its projects are dependent on the status of other projects. Although the abandoned plant incentive is often granted to ameliorate regulatory risk, here the Commission pointed to the applicants’ “acknowledge[ment] that the advanced technology in the Projects ‘does not require Federal/state permits.’” *Id.* at P 89 (citation omitted). Lastly, and most pertinent to other applicants, it rejected Western Grid’s argument that the risk of federal tax policy justified its request. “Potential tax changes are also not the type of risk the Commission considered in Order No. 679 or in any other proceeding addressing abandoned cost recovery requests.” *Id.*

FERC found that Western Grid had demonstrated the necessary nexus between its risks and the remainder of the requested incentives, namely, inclusion of 100 percent of construction work in progress in rate base, deferred cost recovery of precommercial expenses, a hypothetical 50/50 capital structure for use during the development and construction of the projects and three ROE adders totaling 195 basis points: 50 basis points for its commitment to participate in an RTO by becoming a PTO under the CAISO tariff, 100 basis points because it is an independent transmission company and 45 basis points for incorporation of an advanced technology. Each of these incentives was explicitly conditioned on a future rate filing under FPA section 205 in which the specific costs would be reviewed (other than the 50/50 capital structure, which implicitly has no effect until it is incorporated into a section 205 filing but otherwise requires no further review). The Commission further cautioned that the ROE adders were “subject to Western Grid’s overall ROE being within the zone of reasonable returns, which will be determined when it makes its future FPA section 205 filing.” *Id.* at P 98; *see id.* at PP 95, 96.

Western Grid also requested the Commission’s “insight on perceived barriers that could prevent the CAISO from considering the Projects on an equal footing with other proposed transmission alternatives to solve reliability problems,” which the Commission declined on the premise that it does not issue advisory opinions, and Western Grid had not identified a specific issue for comment. *Id.* at PP 7, 111.

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