Pursuant to Ordering Paragraph D of the Federal Energy Regulatory Commission’s 
(“Commission” or “FERC”) August 20, 2018 Order on Remand, Granting Motion, 
Consolidating Proceedings, and Establishing Briefing Schedule (“Remand Order”),¹ Southern 
California Edison Company (“SCE”) and San Diego Gas & Electric Company (“SDG&E”) 
(collectively, “Joint Utilities”) submit this Reply Brief.

In this Reply Brief, the Joint Utilities respond to the Initial Brief² of the California 
Parties.³ The Joint Utilities organize their response to be consistent with the four questions set 
out in Paragraph 25 of the Remand Order, and also separately respond to the California Parties’

³ The “California Parties” refers to the California Public Utilities Commission (“CPUC”), the Sacramento Municipal Utility District, and the Transmission Agency of Northern California.
arguments concerning the scope of eligibility for the 50 basis point return-on-equity ("ROE")
incentive adder pursuant to Order No. 679.

I. RESPONSE TO CALIFORNIA PARTIES’ INITIAL BRIEF

A. Does California Require PG&E to Participate in CAISO?

1. The Scope of This Commission’s Examination of California Law on Remand Is Proper

The California Parties improperly seek to restrict this Commission’s review on remand by incorrectly asserting that the Ninth Circuit held that state law prevents Pacific Gas & Electric Company’s ("PG&E’s") departure from the California Independent System Operator ("CAISO") without CPUC authorization.4 The Ninth Circuit explicitly stated it did not reach this issue:

FERC argues that even if PG&E is not free to leave the Cal-ISO without CPUC’s consent, ‘that still does not demonstrate that [PG&E] is forbidden from seeking to leave the [Cal-ISO],’ and that PG&E ‘could take steps, with California’s approval, to voluntarily leave the [Cal-ISO].’ PG&E goes a step further and argues that its withdrawal from membership in the Cal-ISO is not subject to CPUC approval. These arguments, even if correct, could not sustain the orders on review, as they do not appear anywhere in those orders. We can only uphold agency action on grounds articulated by the agency in its orders.5

Contrary to California Parties’ assertions, this Commission has not “misconstrued” the scope of issues on remand.6 This Commission is properly examining PG&E’s specific circumstances, including whether state law requires PG&E’s participation in the CAISO, to determine whether PG&E is entitled to the 50 basis point ROE incentive adder.7 As discussed in more detail below,

4 California Parties Initial Brief, at 3.
5 CPUC v. FERC, 879 F.3d 966, at n.5 (9th Cir. 2018) (citations omitted).
6 California Parties Initial Brief, at 2.
7 879 F.3d at 979.
California law does not require PG&E to participate in the CAISO and PG&E is entitled to the 50 basis point ROE incentive adder.

The Commission’s prior orders in these dockets did not require it to examine whether PG&E’s membership was voluntary because the Commission determined that any state mandate would not be relevant. The Ninth Circuit found that “[t]o satisfy Order 679’s case-by-case analysis requirement and to avoid creating a generic adder, FERC needed to inquire into PG&E’s specific circumstances, i.e., whether it could unilaterally leave the Cal-ISO and thus whether an incentive adder could induce it to remain in the Cal-ISO.” The court has now provided the Commission with this opportunity by its remand.

2. The California Parties Fail to Demonstrate That California Law Requires PG&E to Participate in the CAISO

The California Parties assert California law prevents PG&E from voluntarily leaving the CAISO because: (1) *Erie* requires that a federal court must apply a state supreme court’s ruling on the state’s law; (2) California’s Supreme Court has ruled that California Public Utilities Code Section 1709 (“PU Code Section 1709”) establishes that final orders of the CPUC are binding; and (3) the CPUC issued orders in 1995 and 1998 that establish that California Public Utilities Code Section 851 (“PU Code Section 851”) prevents PG&E from leaving the CAISO without CPUC consent. This reasoning is flawed. First, *Erie* does not apply when a matter is governed by acts of Congress, and issues of CAISO operational control and CAISO membership

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9 879 F.3d at 979.
10 *Erie R.R. v. Tompkins*, 304 U.S. 64 (1938) (“*Erie*”).
11 California Parties Initial Brief, at 5-16.
as a Participating Transmission Owner, which depends entirely on CAISO operational control over transmission facilities, are solely within this Commission’s jurisdiction as granted by the Federal Power Act (“FPA”) under the law of either field or conflict preemption. Second, even assuming Erie applied, PU Code Section 1709 does not apply here because there is no CPUC order or decision that contains a final, binding order concerning the reacquisition of operational control over property. Finally, even assuming PU Code Sections 1709 and 851 apply and provide the CPUC with authority to review reacquisition of operational control of assets, the California Parties failed to demonstrate that conditioning withdrawal on such regulatory review makes withdrawal involuntary.

a. Operational Control by CAISO Is Subject to the Exclusive Jurisdiction of This Commission

The California Parties’ reliance on Erie is misplaced because whether PG&E must allow the CAISO to retain operational control over its FERC-jurisdictional transmission facilities is solely within this Commission’s jurisdiction, and thus the CPUC’s interpretation of PU Code Section 851, allegedly providing it authority over the very same issue, would be preempted.12

Field preemption applies because the FPA delegates to this Commission the exclusive jurisdiction to regulate the transmission and sale at wholesale of electric energy in interstate commerce.

commerce, and this “exclusive jurisdiction extends over all facilities for such transmission or sale of electric energy.”13 Importantly, when PG&E placed its facilities under CAISO operational control, it did so in conjunction with the unbundling of energy and transmission services by the CPUC. In 1996, through Order No. 888, this Commission ruled that it had exclusive jurisdiction not only over wholesale transmission but also unbundled retail transmission. And, this Commission has confirmed that all transmission service by PG&E would be treated as unbundled once the CAISO was in operation.14 Indeed, it was the CPUC that mandated unbundling.15 Ultimately, the Supreme Court affirmed the Commission’s position on unbundled retail transmission,16 thus limiting the CPUC’s authority over PG&E’s transmission facilities to siting and other matters still reserved to the state by the FPA.

Conflict preemption also applies because allowing the CPUC to overrule the Commission as to whether PG&E’s facilities can be removed from CAISO operational control would result in

13 California ex rel. Lockyer v. Dynegy, Inc., 375 F.3d 831, 849–50 (9th Cir.) (emphasis added), opinion amended on denial of reh’g, 387 F.3d 966 (9th Cir. 2004) (quoting Duke Energy Trading & Mktg., L.L.C. v. Davis, 267 F.3d 1042, 1056 (9th Cir.2001)).

14 E.g., Pac. Gas & Elec. Co., 113 FERC ¶ 61,084 at P 23 (2005) (explaining that while PG&E has been charging standby rates since at least 1993 (when the CPUC set the rates for service to the retail standby customers), those (retail) charges were unbundled when energy charges were separated from transmission charges and the latter became the subject of rate cases before this Commission, citing the first PG&E rate case order).

15 In Re Restructuring California's Elec. Serv. Indus., 69 CPUC 2d 48 (Oct. 25, 1996) (“In D.95-12-063, we recognized the need to unbundle generation, transmission, and distribution services to promote competition and mitigate market power.”).

16 New York v. FERC, 535 U.S. 1 (2002) (“There is no language in the statute limiting FERC’s transmission jurisdiction to the wholesale market, although the statute does limit FERC’s sale jurisdiction to that at wholesale.”).
a situation where compliance with both state and federal law is impossible\(^{17}\) and where the state 

law stands as “an obstacle to accomplishment and execution of the full purposes and objectives of Congress.”\(^{18}\)

The CPUC cannot give itself power it does not otherwise have and cannot, by fiat, 
abolish the application of federal regulations.\(^{19}\) The CPUC has asserted that, through \textit{Erie}, it can 
grant to itself the unassailable authority to regulate the relationship between the CAISO and 
PG&E regarding the CAISO’s operational responsibility over FERC-jurisdictional assets. These arguments would enable the CPUC to compel CAISO to take operational control of facilities that 
do not meet the terms and conditions this Commission adopted in accepting the TCA as just and 
reasonable and to compel PG&E \textit{not} to transfer to the CAISO transmission facilities that meet 
the requisite requirements of integrated transmission as set by this Commission and subject to 
the TCA. Such a regime contradicts this Commission’s jurisdiction and the FPA.

The CPUC has previously asserted that the FPA cannot preempt CPUC decisions on California law relating to PG&E participation in the CAISO because of the Supreme Court’s 
70+-year old notation that the legislative history of the FPA indicates that the Act “takes no 
authority from State commissions.”\(^{20}\) This notation does not dictate a different outcome because

preemption where “compliance with both federal and state regulations is a physical 
impossibility.”).


\(^{19}\) \textit{CALIFORNIA GOVERNMENT CODE} §11342.1 (a regulation “to be effective, shall be within the 
scope of [the] authority conferred” by the statute that it implements).

\(^{20}\) \textit{Request for Rehearing of the California Public Utilities Commission and the Transmission 
Agency of Northern California} at 40, Dkt. No. ER18-169 (Jan. 29, 2018) (citing \textit{Conn. Light
the issues at hand, treatment of wholesale transmission and unbundled retail transmission, were never under state authority. As discussed earlier, the concept of retail unbundling, which emerged in the 1990s, resulted in a new product, “unbundled retail transmission,” which did not exist when the FPA was debated, drafted, and enacted. The Supreme Court explained in *New York v. FERC* that “the landscape of the electric industry has changed since the enactment of the FPA.”21 The Commission asserting jurisdiction over transmission facilities used for unbundled retail transmission (in addition to clear authority over wholesale transmission), thus encompassing all uses of PG&E’s transmission facilities, did not take any authority from the state because the state never had jurisdiction over unbundled retail transmission service for the reason that once the service came into existence, long after the FPA was enacted, that service was always under the jurisdiction of this Commission. Indeed, the very concept of interstate commerce changed during the history of the FPA, thus expanding this Commission’s jurisdiction.22

b. **No CPUC Decision Addresses Reacquisition of Operational Control**

The California Parties assert PG&E cannot voluntarily withdraw from the CAISO because “PG&E must obtain CPUC approval before it can withdraw transmission assets from the CAISO’s control.”23 Specifically, the California Parties claim that CPUC Decision 95-12-063

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21 535 U.S. at 16.


23 California Parties Brief, at p. 16.
and CPUC Decision 98-01-053 are final decisions binding pursuant to PU Code Section 1709, and these decisions require PG&E to receive regulatory approval from the CPUC to reacquire operational control of assets from the CAISO prior to withdrawing. The California Parties reliance on these decisions is misplaced because these decisions, to the extent they have not been preempted by the regulatory landscape in any case, do not have binding force or effect concerning *reacquisition* of operational control of assets.24

The California Supreme Court, applying PU Code Section 1709, has held that decisions of the CPUC are final and conclusive only “as to the issues involved.”25 PU Code Section 1705 provides that a CPUC decision “shall contain, separately stated, findings of fact and conclusions of law by the commission on all issues material to the order or decision.”26 The California Supreme Court has explained this statute requires separately stated findings on all material issues27 and such findings are critical to ensure a rational basis for judicial review.28 Thus,

24 The California Parties also cite to a 1999 CPUC decision for the proposition that it “uphold[s] interpretation of California Public Utilities Code § 851 set forth in D.98-01-053.” California Parties Initial Brief, at 17 (citing CPUC Decision 99-10-066). However, this decision’s material issues, findings and conclusions do not address reacquisition of operational control of an asset. Rather, the decision concerned the CPUC’s denial of SCE’s Petition for Declaratory Order for a determination that it does not need PU Code Section 851 approval for authority to sell certain metering facilities. CPUC Decision 99-10-066, 1999 WL 33588617 (1999).

25 *People v. Western Airlines, Inc.*, 42 Cal.2d 621, 630 (1954).


28 *City of Los Angeles v. Public Utilities Comm’n*, 7 Cal.3d 331, 337 (“It has been repeatedly emphasized that separate findings are essential to ‘afford a rational basis for judicial review and assist the reviewing court to ascertain the principles relied upon by the commission and to determine whether it acted arbitrarily, as well as assist parties to know why the case was lost and to prepare for rehearing or review, assist others planning activities involving similar

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to identify which material issues are involved and subject to PU Code Section 1709, one must rely upon the Ordering Paragraphs, Findings of Fact and Conclusions of Law listed in a CPUC decision. Here, the 1995 and 1998 decisions relied upon by California Parties fail to offer any findings concerning reacquisition of operational control of assets. Rather, those decisions’ Ordering Paragraphs, Findings of Fact and Conclusions of Law concern only transfer of operational control away from a utility.

The CPUC cites to dicta in CPUC Decision 98-01-053 that states “any future transfer of operational control of the transmission facilities from the ISO will, itself, be subject to review under PU Code Section 851.” However, this unsupported statement is not identified as a Conclusion of Law or an Ordering Paragraph. In fact, it is undermined by the Decision’s Conclusion of Law No. 1, which states the CPUC concludes that PU Code Section 851 applies to a transfer from a utility to the CAISO because it “falls under the prohibition against “otherwise disposing of” utility property that is useful or necessary without the Commission’s questions, and serve to help the commission avoid careless or arbitrary action.”)


prior approval,"\textsuperscript{31} and it is not logical to extend this Conclusion of Law to instances where there
is no disposal, but rather reacquisition of operational control over property.\textsuperscript{32} Accordingly,
this dicta is not a material issue to the decision, and thus not final and conclusive.\textsuperscript{33}

Further, this dicta should be afforded little deference because it is not a reasoned and
consistent view of PU Code Section 851.\textsuperscript{34} The plain meaning of this PU Code Section 851
demonstrates that it only applies when a utility is encumbering or disposing of an asset.\textsuperscript{35}

\textsuperscript{31} CPUC Decision 98-01-053, Conclusion of Law 1, 1998 WL 242747 at *9 (emphasis added).

\textsuperscript{32} In a footnote, the CPUC contemplates the Commission-jurisdictional Transmission Control
Agreement and concludes utility assets operationally controlled by the CAISO remain subject
to PU Code Section 851 because “[CPUC] jurisdiction under PU Code Section 851 is over
utility property, and the subject matter of the Transmission Control Agreement remains utility
property even under the control of the ISO.” CPUC Decision 98-01-053, at n.2. This
statement is similarly unsupported dicta and, to the extent it is asserted to apply to
reacquisition of operational control, it is contradicted and undermined by Conclusion of
Law No. 1.

\textsuperscript{33} This lack of force can also be inferred by the CPUC’s own lack of action. As noted in the
Joint Utilities Initial Brief, SCE has transferred numerous transmission facilities out of the
CAISO’s operational control, as they were no longer integrated. \textit{See, e.g.}, Dkt. Nos.
ER13-1848; EL14-14; ER14-783; ER14-983; ER14-986, ER14-987, ER14-989; ER14-997;
ER14-1000; ER14-1001. SCE did not seek CPUC permission under PU Code Section 851,
or any other state code section, to do so, and the CPUC has never objected to SCE’s actions.

\textsuperscript{34} \textit{Idaho Dept. of Health and Welfare v. U.S. Dept. of Energy}, 959 F.2d 149, 152 (9th Cir. 1992)
(“We recognize that by ruling as we do today, we contradict Idaho’s interpretation of its own
regulations. This court ordinarily grants substantial deference to such interpretations. If an
agency’s interpretation is a reasoned and consistent view of its regulations, we will not
substitute our own interpretation for that of the agency’s. Because we find that Idaho’s
proffered interpretations are neither, we grant no deference here.”) (internal citations omitted).

\textsuperscript{35} \textit{Cal. Pub. Util. Code § 851} (“A public utility, other than a common carrier by railroad
subject to Part A of the Interstate Commerce Act (49 U.S.C. Sec. 10101 et seq.), shall not sell,
lease, assign, mortgage, or otherwise dispose of, or encumber the whole or any part of its
railroad, street railroad, line, plant, system, or other property necessary or useful in the
performance of its duties to the public, or any franchise or permit or any right thereunder,
or by any means whatsoever, directly or indirectly, merge or consolidate its railroad, street
railroad, line, plant, system, or other property, or franchises or permits or any part thereof,
A decision by PG&E to retake operational control from the CAISO to itself does not encumber or dispose of an asset. The CPUC cannot add to a statute something that is not there.\textsuperscript{36} Accordingly, the CPUC’s interpretation that PU Code Section 851 applies to reacquisition of operational control over property is not a reasoned and consistent view of the statute and should not be accorded deference.

c. Even If California Law Required PG&E to Obtain CPUC Approval to Reacquire Operational Control, PG&E’s Participation in the CAISO Is Voluntary

Even assuming \textit{arguendo} that PU Code Section 851 requires PG&E to seek CPUC approval to reacquire operational control of assets \textit{from} the CAISO, this does not undermine PG&E’s voluntary participation in the CAISO. Conditioning withdrawal on obtaining CPUC regulatory approval, in addition to this Commission’s regulatory approval, does not establish that withdrawal is not voluntary.

The California Parties fail to offer any explanation to support their conclusion that “PG&E’s continuing membership is not voluntary because PG&E cannot leave the CAISO without the CPUC’s authorization.”\textsuperscript{37} In their Initial Brief, the California Parties state that

\begin{quote}
with any other public utility, without first having either secured an order from the commission authorizing it to do so for qualified transactions valued above five million dollars ($5,000,000) . . .”.
\end{quote}

\textsuperscript{36} See, e.g., \textit{California Cosmetology Coalition v. Riley}, 110 F.3d 1454, 1460 (9th Cir. 1997) (“A regulation may not serve to amend a statute nor add to the statute ‘something which is not there’”) (citations omitted); \textit{Lamie v. U.S. Trustee}, 540 U.S. 526, 534 (2004) (“It is well established that ‘when the statute's language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms.’”) (quoting \textit{Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.}, 530 U.S. 1, 6, 120 S.Ct. 1942, 1947, 147 L.Ed.2d 1 (2000)).

\textsuperscript{37} California Parties Initial Brief, at 17.
California law permits PG&E to withdraw its membership if it obtains CPUC approval pursuant to PU Code Section 851.38 They also state that the CPUC can grant such approval pursuant to an appropriate standard of review.39 Given the CPUC cannot act in an arbitrary manner, there is no reason to conclude that a requirement of state regulatory approval renders withdrawal involuntary. Rather, PG&E may choose to withdraw from the CAISO provided PG&E presents facts sufficient to meet certain state regulatory requirements.40

In addition, the Joint Utilities note that the California Parties’ conclusions concerning the impact of a state regulatory approval requirement on the voluntary nature of PG&E’s participation in the CAISO go beyond interpretation of PU Code Section 851 or any California law. Any analysis concerning the impact of a state regulatory approval requirement involving a state agency on eligibility for an incentive adder is dependent on this Commission’s analysis of its own orders and tariffs.41 Given this Commission has recognized that the requirement for its

38 California Parties Initial Brief, at 8, 12, 15.
39 California Parties Initial Brief, at 20.
40 As discussed in more detail in Section I.D, the standard of review for approval under PU Code Section 851 is “whether it is adverse to the public interest, which includes ratepayer interest.” Decision Granting Approval of Lease of Transfer Capability Rights From San Diego Gas & Electric Company to Citizens Energy Corporation, D.11-05-048, Conclusion of Law 1, 2011 WL 2246056 (May 26, 2011). In addition, the CPUC must “ensure that facilities needed to maintain the reliability of the electric supply remain available and operational.” CAL. PUB. UTIL. CODE § 362. Thus, a PU Code Section 851 application will be granted if PG&E can demonstrate that the reacquisition is not adverse to public interest and that any facilities needed to maintain reliability remain available and operational.
41 This Commission owes no deference to the CPUC with regard to such analysis because such analysis concerns federal law.
regulatory approval does not make an ISO departure involuntary, an additional requirement of state regulatory approval does not make a withdrawal involuntary.

B. **Is This Commission Required to Defer to CPUC’s Interpretation of the Relevant California Law(s) in This Case That CPUC Is Charged with Administering When That Interpretation Is Presented in a Pleading Before This Commission?**

The California Parties do not assert that the CPUC’s interpretations, as presented in pleadings, are entitled to any deference. Rather, they assert that the CPUC in its pleadings is merely “recount[ing]” CPUC orders, and those orders (which they allege under *Erie* merit deference) alone should be the basis of this Commission’s analysis. The Joint Utilities have explained why deference should not be provided with regard to the referenced orders in Section I.A. Accordingly, the California Parties do not present arguments in response to this question and the Joint Utilities do not provide a reply.

C. **If the Commission Is Required to Defer to the CPUC’s Interpretation of the Relevant California Law(s) As Presented in Its Pleadings Before This Commission in This Case, What Is the Standard for Such Deference That This Commission Must Apply?**

Please see the Joint Utilities’ response to Question (B) in Section I.B above.

D. **If PG&E Were to Seek CPUC Approval to Withdraw from CAISO and Thus Assume Operational Control of Its Transmission Facilities or Join Another RTO/ISO, What Standard Would CPUC Apply Under the California Public Utility Code in Considering This Matter?**

As explained above, PG&E is not required to seek CPUC approval to withdraw from the CAISO. For purposes of providing a response to this question, the Joint Utilities assume

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42 See Joint Utilities Initial Brief, at 9-10.

43 California Parties Initial Brief, at n. 10.
arguendo, that authorization of PG&E’s withdrawal from the CAISO is dependent upon “CPUC approval [to] withdraw its transmission assets from the CAISO’s control.”

It is odd that the California Parties believe identifying the standard of review for approval under PU Code Section 851 requires the CPUC to “engage in speculation and to pre-judge an issue.”\footnote{California Parties Initial Brief, at 16.} The California Parties have clearly articulated that they think the CPUC’s basis for review prior to PG&E’s CAISO withdrawal is PU Code Section 851 and the CPUC has a long standing standard of review for this section: whether it is adverse to the public interest.\footnote{California Parties Initial Brief, at 20.}

The California Parties repeatedly assert the mistaken conclusion that “[u]nder California law, the decision whether PG&E may leave the CAISO is the CPUC’s, not PG&E’s, to make.”\footnote{California Parties Initial Brief, at 20.} However, based upon the California Parties’ own arguments made in their Initial Brief, the CPUC is not deciding whether PG&E remains a member of the CAISO. Rather, it would be limited solely to deciding whether reacquisition of operational control of assets meets the established standard of review under PU Code Section 851. The CPUC’s decisions must adhere to established legal standards and will be subject to appropriate judicial review. Moreover, because review of reacquisition of assets is distinct from a decision to remain in the CAISO, it is reasonable to conclude that PG&E could present evidence that demonstrates reacquisition of operational control of transmission assets is not adverse to the public interest, and thus meet

\footnote{\textit{Re Universal Marine Corporation}, D. 84-04-102, 1984 Cal. PUC LEXIS 962, *3, 14 CPUC 2d 644 (“[W]e have long held that the relevant inquiry in an application for transfer is whether the transfer will be adverse to the public interest”). In addition, the CPUC must “ensure that facilities needed to maintain the reliability of the electric supply remain available and operational.” \textsc{Cal. Pub. Util. Code} § 362.}

\footnote{California Parties Initial Brief, at 20.}
the CPUC’s articulated PU Code Section 851 standard, but still choose to remain in the CAISO, demonstrating that incentivizing PG&E to remain in the CAISO by retaining the incentive adder is completely warranted.

II. THIS COMMISSION SHOULD NOT LIMIT ITS EVALUATION REGARDING APPLICABILITY OF AN INCENTIVE ADDER SOLELY TO WHETHER PARTICIPATION IS VOLUNTARY

The California Parties assert two points to claim that PG&E is not eligible for the 50 basis point ROE incentive adder under Order 679: (1) “CAISO membership is not voluntary because PG&E cannot leave the CAISO without the CPUC’s authorization”\textsuperscript{48} and (2) an incentive adder cannot be provided for conduct a utility is otherwise obligated to undertake. As discussed in Sections I.A(1)-(2) above, PG&E may elect to leave the CAISO without any necessary CPUC regulatory review. Critically however, even assuming arguendo that PU Code Section 851 requires PG&E to seek CPUC approval to reacquire operational control of assets from the CAISO, this does not establish that PG&E is obligated to remain in the CAISO. As discussed in Section I.A(3) and I.D above, the CPUC inappropriately conflates authority to review a request for approval under PU Code Section 851 with a request to withdraw from the CAISO. The CPUC is not stepping into the shoes of PG&E and deciding whether and when PG&E will leave the CAISO. Rather, the CPUC would be charged with determining whether the facts presented by PG&E meet the requirements of PU Code Section 851 based upon an established standard of review. And, PG&E may choose to leave the CAISO provided it obtains all necessary regulatory requirements. Thus, PG&E’s participation in the CAISO is not “obligated.”

\textsuperscript{48} California Parties Initial Brief, at 17.
In addition, voluntary conduct is not a necessary condition for 50 basis point ROE eligibility. While the Ninth Circuit did criticize this Commission’s 50 basis point grant to PG&E solely for “ongoing transmission organization membership” amounted to a “generic adder” inconsistent with “FERC’s policy of awarding incentives to induce future voluntary conduct,”\footnote{CPUC v. FERC, 879 F.3d at 978-79.} it remanded for a “case-specific inquiry into the circumstances of PG&E’s membership.”\footnote{Id. at 979.} The Ninth Circuit explained that “Order 679 provides that FERC will approve incentive adder requests ‘when justified’ and will evaluate such requests ‘on a case-by-case basis.’”\footnote{Id. at 978 (quoting Order No. 679 at P 326).} And, the Ninth Circuit noted that lack of voluntary membership, while relevant, did not automatically defeat incentive adder eligibility.\footnote{Id. at 974-975 (“When membership is not voluntary, the incentive is presumably not justified.”).}

Order No. 679 states that “[t]he basis for the incentive is a recognition of the benefits that flow from membership in such organizations and the fact continuing membership is generally voluntary.”\footnote{Order No. 679 at P 331 (“The basis for the incentive is a recognition of the benefits that flow from membership in such organizations and the fact continuing membership is generally voluntary.”).} As outlined in the Joint Utilities Initial Brief, PG&E participation in the CAISO has, in fact, resulted in tangible “benefits that flow from membership,”\footnote{Order No. 679 at P 331.} consistent with the policy expectations outlined by this Commission. The California Parties do not, and cannot, argue that such benefits have not occurred, indeed it is those benefits that this Commission is...
seeking to incent by offering the 50 basis points for a utility to join an organized market. Thus, it is clear that continued membership in the CAISO should support the application of the 50 basis point ROE incentive.

III. CONCLUSION

For the reasons stated above, the Joint Utilities respectfully request that the Commission affirm that PG&E is entitled to continue to receive the 50 basis point ROE incentive.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing **JOINT REPLY BRIEF**

OF SOUTHERN CALIFORNIA EDISON COMPANY AND SAN DIEGO

GAS & ELECTRIC COMPANY IN RESPONSE TO THE COMMISSION'S

AUGUST 20, 2018 ORDER ON REMAND, GRANTING MOTION,

CONSOLIDATING PROCEEDINGS AND ESTABLISHING BRIEFING

SCHEDULE upon each person designated on the official service lists compiled by the

Secretary in this proceeding.

Dated at Rosemead, California, this 10th day of October, 2018.

/s/ Norman Goss
Norman Goss, Legal Administrative Assistant

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