133 FERC ¶ 61,269
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Southern California Edison Company | Docket No. ER11-1952-000

ORDER ACCEPTING AND SUSPENDING PROPOSED RATES AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEEDINGS

(Issued December 29, 2010)

1. On October 29, 2010, Southern California Edison Company (SoCal Edison) filed revisions to its Transmission Owner Tariff (TO Tariff)[1] to reflect proposed changes to its transmission revenue requirement and transmission rates implementing Construction Work in Progress (CWIP) previously granted by the Commission.[2] These proposed rate changes relate to the construction of two transmission projects, the Devers Colorado River Project I[3] and the Tehachapi transmission project.[4] In this order, the Commission accepts SoCal Edison's proposed tariff revisions, as modified herein, and suspends them for a nominal period to be effective January 1, 2011, subject to refund. Further, based upon the submissions in this proceeding, the Commission establishes a base return on

[1] FERC Electric Tariff, Second Revised Vol. No. 6.

[2] *Southern California Edison Co*., 121 FERC ¶ 61,168 (2007) (Incentives Order).

[3] The Devers Colorado River Project I is the California portion of the Devers-Palo Verde II Project. In keeping with the terms of the settlement approved by the Commission in *Southern California Edison Co*., 132 FERC ¶ 61,213 (2010), the Arizona portion of the Devers-Palo Verde II Project, and its related costs and expenditures, are not included in this filing. SoCal Edison Transmittal at 5.

[4] This filing includes the costs and expenses associated with the Tehachapi segments 3B, 3C and 4-11 (Tehachapi Project). Because the Tehachapi segments 1, 2 and 3A have gone into service, these costs are not included in this filing. SoCal Edison Transmittal at 6.

equity (ROE) and directs a compliance filing. The Commission also establishes hearing and settlement judge procedures on all issues except those related to the base ROE.

I. Background

2. In the Energy Policy Act of 2005 (EPAct 2005), Congress added a new section 219[5] to the Federal Power Act (FPA) directing the Commission to establish, by rule, incentive-based (including performance-based) rate treatments for electric transmission. The Commission issued Order No. 679,[6] which set forth processes by which a public utility could seek transmission rate incentives pursuant to section 219 of the FPA.

3. In accordance with Order No. 679, on May 18, 2007, and as amended on August 16, 2007, SoCal Edison filed a petition for declaratory order seeking incentive rate treatment for its transmission projects, with capital expenditures totaling $2.5 billion. On November 16, 2007, the Commission issued the Incentives Order granting SoCal Edison's request for transmission rate incentives for the transmission projects.[7] Subsequently, on June 23, 2008, the Commission issued an order denying rehearing of the Incentives Order.[8]

4. On December 2, 2007, SoCal Edison filed revised tariff sheets in Docket No. ER08-375-000 to implement the portion of the Commission's Incentives Order authorizing SoCal Edison to recover in its transmission rate base 100 percent of CWIP for three of its major transmission projects[9] through a stand-alone balancing account mechanism. Specifically, SoCal Edison proposed a single-issue rate adjustment to its currently authorized Base Transmission Revenue Requirement (Base TRR). SoCal Edison's proposed CWIP ratemaking mechanism established a formula rate that will be

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[5] Pub. L. No. 109-58, § 1241, 119 Stat. 594, 961, *to be codified at* 16 U.S.C. § 824s (2006).

[6] *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

[7] Incentives Order, 121 FERC ¶ 61,168.

[8] *Southern California Edison Co*., 123 FERC ¶ 61,293 (2008).

[9] In addition to the Devers-Palo Verde II and Tehachapi Projects, the Incentives Order included rate incentives for SoCal Edison's Rancho Vista transmission substation project. This third project has been built and is in service. Accordingly, its costs are not included in this filing. SoCal Edison Transmittal at 6.

used to calculate an incremental CWIP revenue requirement associated with expenditures on facilities and land acquired for the projects during the construction period. SoCal Edison also proposed that the resulting incremental CWIP transmission revenue requirement (CWIP TRR) be added to its existing Base TRR. SoCal Edison explained that each year it would submit a section 205 filing to establish the following year's rates, which will be based on SoCal Edison's projected CWIP revenue requirement for that upcoming year. The projected CWIP revenue requirement for the following year's rates will be trued-up on an annual basis to reflect actual recorded costs using a balancing account and subsequent rate filings.

5. By order dated February 29, 2008,[10] the Commission accepted SoCal Edison's proposed tariff revision and directed a paper hearing to address only the issues related to the development of SoCal Edison's ROE.

6. As a result of the record developed in the paper hearing, the Commission issued on order establishing a base ROE for SoCal Edison. In that order, the Commission concluded that it is reasonable to establish a base ROE for SoCal Edison to which the previously granted incentives would be added.[11] The base ROE was determined using a national proxy group, to which the Commission applied screening factors for identifying companies of comparable risk. On the basis of this analysis, the Commission determined a zone of reasonableness between 7.80 percent and 16.19 percent. The Commission also confirmed that in cases that involve a single utility of average risk, the best measure of central tendency is the median.[12] Thus, when the Commission applied the median to the range of reasonableness, it produced a base ROE for SoCal Edison of 10.55 percent. After updating the base ROE by adjusting for the yields on 10-year constant maturity U.S. Treasury bonds, the Commission set the base ROE at 9.54 percent. Finally, the Commission added to the base ROE the Commission's previously-approved incentive adders of 125 basis points for Rancho Vista, and 175 basis points for the Devers-Palo

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[10] *Southern California Edison Co*., 122 FERC ¶ 61,187 (2008) (February 2008 Order).

[11] *Southern California Edison Co*., 131 FERC ¶ 61,020, at P 16 (2010) (Paper Hearing Order).

[12] *Id.* P 84-93 (citing *Transcontinental Gas Pipe Line, Corp*., 84 FERC ¶ 61,084 (1998) Opinion No. 414-A, *aff'd* Opinion No. 414-B, 85 FERC ¶ 61,323 (1998), *petition for review denied, N.C. Util. Comm'n v. FERC,* 203 F.3d 53 (D.C. Cir. 2000); *Northwest Pipeline Corp*., 99 FERC ¶ 61,305, at 62,276 (2002); *Golden Spread Eagle Cooperative v. Southwest Public Service Co.*, 123 FERC ¶ 61,047 (2008) (*Golden Spread*)).

Verde II and Tehachapi Projects, resulting in overall ROEs for these projects of 10.79 percent and 11.29 percent respectively.[13]

II. 2011 CWIP Update Filing

7. SoCal Edison's filing in Docket No. ER11-1952-000 is its third update to the CWIP TRR and reflects SoCal Edison's CWIP expenditures for calendar year 2011, with a proposed effective date of January 1, 2011. In this 2011 CWIP update, SoCal Edison filed a base ROE of 11.5 percent for its CWIP ratemaking mechanism. SoCal Edison utilized a Discounted Cash Flow (DCF) analysis, including a six-month data set ending September 2010, and a national proxy group of companies screened for comparable risk. SoCal Edison's analysis results in a DCF range of reasonable returns from 7.33 percent to 15.67 percent. When SoCal Edison applies its midpoint to the range, the analysis results in an 11.5 percent base ROE. At the same time, SoCal Edison recognizes that the Commission has previously ruled in favor of using the median rather than the midpoint and notes that the median of its DCF analysis results in a 10.30 percent base ROE.

8. In addition to applying the DCF analysis to support its base ROE, SoCal Edison argues that its proposed 11.5 percent base ROE is appropriate due to regulatory and market uncertainty. Specifically, SoCal Edison argues that its transmission assets are financed with securities subject to its business-wide risks, and therefore a risk assessment should consider all of its business risks. Further, SoCal Edison argues that uncertainties related to deregulation of transmission generally, and to new CAISO market features specifically, should be factored into the risk assessment. SoCal Edison also asserts that it is facing demands for substantial investment in its infrastructure. All of these considerations, SoCal Edison asserts, should be taken into consideration when analyzing risk.[14]

9. Finally, in this filing, SoCal Edison adds to the base ROE of 11.5 percent the specific ROE incentives authorized by the Commission in the Incentives Order. SoCal Edison states that these incentives include a 50 basis point adder for SoCal Edison's membership in the CAISO, and specific adders of 1.25 percent for the Tehachapi Project and 1.0 percent for the Devers Colorado River Project I associated with the new transmission plant that is the subject of the CWIP revenue requirement.[15] The overall ROE, consisting of the base ROE to which SoCal Edison adds the Commission-

[13] *Id*. P 117.

[14] SCE Exhibit 7, Testimony of Dr. Hunt at 8-18.

[15] SoCal Edison Transmittal at 7.

authorized incentives, results in an overall ROE of 13.0 percent for the Devers Colorado River Project I, and 13.25 percent for the Tehachapi Project.

10. Further, in this filing SoCal Edison forecasts an approximately $110 million increase from its 2010 CWIP costs in projected investment in plant. Also, SoCal Edison explains that this filing comports with the 2010 Settlement provisions by including in the 2011 CWIP forecast only the costs and expenditures for segments of the Tehachapi Project and the Devers Colorado River I Project. For similar reasons, SoCal Edison states that this CWIP update does not include in the CWIP balancing account as of June 1, 2010 any costs and expenditures associated with the Arizona portion of the Devers-Palo Verde II Project. Also in keeping with the 2010 Settlement, SoCal Edison explains that the 2011 CWIP update provides for a reduction, under certain circumstances, of the project specific adder for the Devers Colorado River Project I from 125 basis point adder to 100 basis points effective June 1, 2010.[16]

III. Notice of Filing and Responsive Pleadings

11. Notice of the filing in Docket No. ER11-1952-000 was published in the Federal Register, with interventions and protests due on or before November 19, 2010.[17] The City of Los Angeles Department of Water and Power (LADWP) and the Metropolitan Water District of Southern California and the State Water Contractors (collectively, Metropolitan and State Water Contractors) filed timely motions to intervene with no substantive comments.

12. The Public Utilities Commission of the State of California (CPUC) filed a notice of intervention, protest and request for a hearing. Timely motions to intervene, protest and request a hearing were filed by the California Department of Water Resources State Water Project (SWP), the City of Redding, California, the City of Santa Clara, California and the M-S-R Public Power Agency (collectively, Cities/M-S-R), and the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (Six Cities). Modesto Irrigation District (Modesto) filed a timely motion to intervene and protest and adopted the protests submitted by the Cities/M-S-R and incorporated their arguments. Similarly, the Transmission Agency of Northern California (TANC) filed a timely motion to intervene and protest and adopted and incorporated by reference the arguments submitted by Cities/M-S-R. SoCal Edison filed a motion for leave to respond and a response. Six Cities and Cities/M-S-R filed motions for leave to answer and answers to SoCal Edison's response.

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[16] SoCal Edison Transmittal at 5-6.

[17] 75 Fed. Reg. 70,737 (2010).

IV. Discussion

A. Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the notices of interventions and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010) prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept SoCal Edison's, Six Cities' and Cities/M-S-R's answers and will, therefore, reject them.

B. Comments and Protests

14. The CPUC, Cities/M-S-R, and SWP raise objections to SoCal Edison's calculation of its proposed base ROE. Also, protestors assert that SoCal Edison's overall ROE is unnecessary to attract capital and that its forecasted increase in its CWIP TRR may be unreasonable. Protestors request that the Commission impose the maximum five-month suspension on SoCal Edison's proposed revisions, and establish hearing procedures to review this proposal.[18]

1. Base Return on Equity Analysis

15. The CPUC, Six Cities, and SWP argue that SoCal Edison's proposed base ROE is not just and reasonable because the DCF analysis employed by SoCal Edison improperly uses the midpoint, contrary to Commission precedent, resulting in a proposed base ROE that is inflated.[19] Moreover, the CPUC, Six Cities, and SWP argue that the midpoint excludes relevant data because it ignores all data points except the highest and the lowest and by focusing on these two points at the extremes, the calculation ignores the reasonable range of returns.[20] The CPUC and SWP also assert that the midpoint is susceptible to considerable distortion when the distribution is positively skewed and that

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[18] We note that the intervenors have not raised any objections to the composition of SoCal Edison's proxy group.

[19] CPUC Protest at 4, Six Cities Protest at 20-21, SWP Protest at 8-10 (citing *Golden Spread*, 123 FERC ¶ 61,047 at P 63; *Midwest ISO*, 106 FERC ¶ 61,302, at P 10 (2005)).

[20] CPUC Protest at 5, Six Cities Protest at 7, SWP Protest at 10.

SoCal Edison continues to apply the midpoint because it yields the highest ROE.[21] Additionally, Cities/M-R-S argue that applying the median to SoCal Edison's resulting proxy group from its DCF analysis results in a base ROE of 10.30 percent, reducing SoCal Edison's CWIP TRR by $12.25 million.[22]

16. Six Cities also argue that any additional adjustments to the 2011 CWIP TRR should allow for an updated DCF analysis to include financial data through October 2010 because an additional month of data has become available since SoCal Edison's filing. Six Cities assert that including an additional month of data would result in a modification of the proxy group and a reduction of the base ROE calculation.[23]

17. The CPUC and Cities/M-S-R argue that SoCal Edison overstates its business risk and, as a result, proposes a rate of return that is higher than is needed to attract capital.[24] The CPUC and Cities/M-S-R argue that SoCal Edison has a strong credit rating and that California regulatory requirements reduce risk for investors. Further, Cities/M-S-R argue that although SoCal Edison alleges numerous sources of risk, many of these sources are not substantiated and the Commission's granting to SoCal Edison the ability to collect CWIP on its projects mitigates some of SoCal Edison's claimed risk.[25]

18. Finally, both SWP and the CPUC argue that SoCal Edison's filing has not been shown to be just and reasonable, and would impose excessive and unsupported rates. The CPUC and SWP argue that a full five month suspension is necessary to allow for an appropriate examination of SoCal Edison's proposal.[26]

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[21] CPUC Protest at 5, M-S-R Protest at 10, 12-13.

[22] Cities/M-S-R Protest at 21.

[23] Six Cities Protest at 8-9.

[24] CPUC Protest at 6-11, Cities/M-S-R Protest at 13-20.

[25] Cities/M-S-R Protest at 16-19.

[26] CPUC Protest at 2 (citing *New England Power Co.*, 70 FERC ¶ 61,152 at 61,455-56 (1995), *reh'g denied*, 71 FERC ¶ 61,222 (1995); *see also Southern California Edison Co.*, 128 FERC ¶ 61,287, at 17 (2009), *Southern California Edison Co.*, 129 FERC ¶ 61,304, at P 23 (2009)); SWP Protest at 11-12 (citing *West Texas Utilities Co.*,18 FERC ¶ 61,189, at 61,374 (1982)).

Commission Determination

19. In Order No. 679 the Commission explained that it would "attempt to render a decision based on the paper submissions whenever possible" to facilitate its goals of providing incentive based rate treatment.[27] This type of up-front determination is sanctioned by federal courts that have held that a formal, trial-type hearing is unnecessary where there are no material facts in dispute.[28]

20. The Commission recently clarified that its decision to make an up-front ROE determination will depend on the facts and circumstances of each individual case and affirmed that the Commission retains discretion to make up-front ROE determinations if the record before it is sufficient to make such a summary finding.[29] In this proceeding, our analysis of the paper submissions indicates that SoCal Edison has followed the specific DCF guidelines established in the Paper Hearing Order for developing its proposed base ROE, except for the use of the midpoint rather than the median. Moreover, we conclude that no party in this proceeding has raised any issues of material fact that requires a hearing. Consequently, we find that the written record before us is sufficient for making a base ROE determination.

21. Therefore, on the basis of the record compiled in this proceeding, we find that SoCal Edison has properly applied the DCF guidelines established by the Commission in the Paper Hearing Order up through and including the development of a proxy group of comparable risk, and we accept its resulting range of reasonable returns of 7.33 percent to 15.67 percent. However, SoCal Edison applies the midpoint of this range to set its proposed base ROE of 11.5 percent. As we explained in the Paper Hearing Order and

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[27] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 79.

[28] *Pioneer Transmission, LLC*, 130 FERC ¶ 61,044, n.73 (2010) (*Pioneer Transmission*) (citing *Cerro Wire and Cable Company v. FERC*, 677 F.2d 124, 129 (D.C. Cir. 1982). The Commission is only required to provide a trial-type hearing if the material facts in dispute cannot be resolved on the basis of written submissions in the record. *Consumers Power Co*., 58 FERC ¶ 61,323, at 62,045 (1992) (citing *Southern California Edison Co*., 27 FERC ¶ 61,105, at 61,199 (1984); *Municipal Light Boards of Reading and Wakefield v. Federal Power Commission*, 450 F.2d 1341, 1345 (D.C. Cir. 1971), *cert. denied*, 405 U.S. 989 (1972))).

[29] *See Nevada Hydro Co., Inc*., 133 FERC ¶ 61,155, at P 12-15 (2010) (*Nevada Hydro*); *Startrans IO, L.L.C.*, 133 FERC ¶ 61,154, at P 21-24 (2010); *Atlantic Path 15*, 133 FERC ¶ 61,153, at P 20-22 (2010).

subsequently in *Potomac-Appalachian Transmission Highline, L.L.C.* (*PATH*),[30] Commission precedent holds that the median is the most accurate measure of central tendency for a single utility of average risk, such as SoCal Edison.[31] Therefore, the Commission will apply its precedent and require the use of a 10.30 percent base ROE in this proceeding. When we add the incentive adders the Commission previously authorized to this base ROE, the overall ROEs are 12.05 percent and 11.8 percent respectively for the Tehachapi and Devers Colorado River I Projects. Both of these overall ROEs are within the zone of reasonableness.

22. Additionally, SoCal Edison raises, and the intervenors contest, several other non-DCF factors (i.e., regulatory uncertainty) that SoCal Edison asserts the Commission should consider when analyzing its business risk for the purposes of setting the ROE. We do not agree. Risk factors that are not included in the DCF analysis are not applicable when determining a base ROE in this proceeding and, therefore, are beyond the scope of this analysis.[32] As discussed in the Paper Hearing Order, when establishing a base ROE, we determine a reasonable proxy group by utilizing the DCF methodology, and apply appropriate screening factors. Through this process, the Commission develops a reasonable proxy group that has been sufficiently screened for comparable risk.[33]

23. Further, we are not persuaded that SoCal Edison's proposed six month data set should be updated. SoCal Edison's proposed six month data set, ending September 2010, reflects the latest information available to SoCal Edison prior to its submission of the instant filing on October 29, 2010. The Commission's acceptance of the most recent data set available to the applicant up to the time of its filing is in keeping with Commission precedent and we find no reason to depart from this approach.[34] Accordingly, on the basis of the record in this proceeding, we determine that SoCal Edison's ROE analysis is reasonable (other than its use of the midpoint, as described above), and we establish herein a base ROE of 10.30 percent without further procedures. As a result, SoCal

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[30] *PATH*, 133 FERC ¶ 61,152, at P 65 (2010).

[31] Paper Hearing Order, 131 FERC ¶ 61,020 at P 85-87.

[32] *Id*. P 67.

[33] *Id*. P 50-58.

[34] *Pioneer Transmission*, 130 FERC ¶ 61,044 at P 42 ("using any different six-month period other than the latest available at the time of Pioneer's filing could create a continual moving target and would make it difficult to determine the most appropriate six-month period.").

Edison is directed to submit, within 30 days of the issuance of this order, revised tariff provisions to reflect the Commission's establishment of a base ROE of 10.3 percent.

24. We note that SoCal Edison filed a request for rehearing in the Paper Hearing Order in Docket No. ER08-375-004, challenging the Commission's application of the median, rather than the midpoint. Therefore, our establishment of a base ROE of 10.3 percent, which reflects the median of the proxy group range, is conditioned on the outcome of the pending rehearing of the midpoint/median issue in Docket No. ER08-375-004.

2. Projected CWIP Costs and Other Issues

25. The CPUC argues that SoCal Edison is forecasting a $110 million increase in its CWIP TRR for the Devers Colorado River I and Tehachapi Projects. The CPUC asserts that these large cost estimates may be unreasonable.[35] Cities/M-S-R argue that SoCal Edison's 2011 CWIP update does not provide sufficient detail to afford all parties the opportunity to examine the accuracy and prudency, including the timing, of the forecasted costs. Cities/M-S-R assert that SoCal Edison has over-forecasted certain of its costs from the 2010 CWIP update, resulting in customers not receiving a refund of the return paid to SoCal Edison on the un-incurred portion of these costs.[36] Cities/M-S-R also assert that SoCal Edison is overly aggressive in its forecasting for 2011, allowing it to earn an increased return on projected investments, regardless of whether SoCal Edison actually makes the projected investments during the year. Further, Cities/M-S-R assert that SoCal Edison's failure to provide information regarding the precise status of the projects is relevant to assessing the degree of certainty the costs SoCal Edison forecasts actually will be incurred in 2011.[37] Cities/M-S-R also challenge costs billed to Home Office as lacking in documentation, such as receipts for labor and materials.[38]

26. Additionally, Cities/M-S-R assert that because the Commission accepted SoCal Edison's 2010 CWIP update, subject to refund and suspension for five months,[39] SoCal Edison is not entitled to collect its proposed higher rate of return for its 2010 costs until June 1, 2010. However, Cities/M-S-R argue that it is not clear from the instant filing

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[35] CPUC Protest at 11.

[36] Cities/M-S-R Protest at 12, 21-25.

[37] M-S-R Protest at 26-27.

[38] *Id*. at 27.

[39] *Southern California Edison Co*., 129 FERC ¶ 61,304, at P 23 (2009).

whether SoCal Edison has properly implemented the five month suspension. Finally, Six Cities and Cities/M-S-R assert that without supporting documentation, it is difficult to verify SoCal Edison's claim that it experienced an under-recovery in CWIP of $5.4 million during the same time period it spent less than forecasted.[40] Moreover, Cities/M-S-R argue that SoCal Edison's assertion of under-recovery raises the issue of whether the calculated under-recovery applies an ROE that is higher than set by the Commission during the suspension period.[41]

27. Finally, SWP states that the Commission's Incentive Order approved SoCal Edison's proposal to file an annual 205 filing for the sole purpose that "the projected CWIP revenue requirement for the following year's rates will be trued up on an annual basis to reflect actual recorded costs through the use of a balancing account and subsequent rate filings." SWP therefore argues that the Commission did not invite or authorize SoCal Edison to propose a change in its base ROE in its annual CWIP update filing.

Commission Determination

28. We reject SWP's assertion that SoCal Edison should not be allowed to change its base ROE in its annual CWIP update filings. The Commission stated in the February 2008 Order that it is entirely appropriate that SoCal Edison propose an ROE for the purpose of recovering CWIP as a single issue filing.[42] Further, while the Commission stated that SoCal Edison would make an annual section 205 filing to true-up its CWIP revenue requirement to actual, the Commission did not state that the filing was "for the sole purpose" of truing up the prior year's revenue requirement.[43] Finally, we find SWP's assertion that SoCal Edison should not be allowed to change its base ROE in this proceeding to be inconsistent with SoCal Edison's rights as a utility to submit a section 205 filing to change a rate at any time, provided the filing is consistent with the utility's right to change rates.

29. With respect to the issues related to the projected CWIP costs and all other issues raised by the intervenors not related to the base ROE, our preliminary analysis indicates

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[40] Six Cities Protest at 9, Cities/M-S-R Protest at 28.

[41] Cities/M-S-R Protest at 24-29.

[42] February 2008 Order, 122 FERC ¶ 61,187 at P 45; *see also* Incentives Order, 121 FERC ¶ 61,168 at P 43.

[43] *Id*. P 8.

that SoCal Edison's proposed changes to its TO Tariff have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept SoCal Edison's proposed changes for filing, suspend them for a nominal period, make them effective January 1, 2011, subject to refund, and set all issues in this proceeding, except those related to the base ROE, for hearing and settlement judge procedures.

30. SoCal Edison's proposed modifications to its TO Tariff related to the projected CWIP costs, and all other issues raised by the intervenors not related to the base ROE, raise issues of material fact that cannot be resolved based on the record before us and that are more appropriately addressed in the hearing and settlement judge procedures ordered below. At the hearing, the presiding judge shall consider the justness and reasonableness of all issues, except those related to the base ROE, arising out of SoCal Edison's proposed 2011 CWIP Update.

31. While we are setting these issues for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.[44] If the parties desire, they may by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.[45] The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge concerning the status of settlement discussion. Based upon this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

<u>The Commission orders</u>:

(A) SoCal Edison's proposed tariff sections are hereby accepted for filing and suspended for a nominal period of time and set for hearing, to become effective January 1, 2011, subject to refund, as discussed in the body of this order.

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[44] 18 C.F.R. § 385.603 (2010).

[45] If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their backgrounds and experience (http://www.ferc.gov/legal/adr/avail-judge.asp).

(B) SoCal Edison is directed to submit a compliance filing, within 30 days from the issuance of this order, revising tariff provisions to reflect the use of a base ROE of 10.3 percent, as discussed in the body of this order.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held in Docket No. ER11-1952 concerning all issues related to SoCal Edison's projected CWIP costs. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (D) and (E) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2010), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within 15 days of the date of this order. Such settlement judge shall have all the powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make the request to the Chief Judge within five days of the date of this order.

(E) Within 30 days of the appointment of the settlement judge, the settlement judge shall file a report wit the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every 60 days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(F) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within 15 days of the date of the presiding judge's designation, convene a prehearing conference in this proceeding in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.