

137 FERC ¶ 61,016
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southern California Edison Company

Docket Nos. ER08-375-004
ER11-1952-002
ER11-3697-002

ORDER ON REHEARING AND CLARIFICATION

(Issued October 6, 2011)

1. On April 15, 2010, the Commission issued an order in Docket Nos. ER08-375-000 and ER08-375-001 approving a base Return on Equity (ROE) for three of Southern California Edison Company's (SoCal Edison) transmission projects.¹ On May 17, 2010, SoCal Edison filed a request for rehearing of the Paper Hearing Order. On May 17, 2010, the California Department of Water Resources State Water Project, (SWP), the M-S-R Public Power Agency (M-S-R) and Six Cities² filed requests for clarification or, in the alternative, rehearing of the Paper Hearing Order. As discussed below, in this order, the Commission denies SoCal Edison's request for rehearing, grants the requests for clarification, and directs SoCal Edison to submit a refund report.

2. Subsequently, on December 29, 2010, the Commission issued an order in Docket No. ER11-1952-000³ accepting SoCal Edison's third update to its Construction Work in Progress (CWIP) transmission revenue requirement (CWIP TRR), which reflects SoCal Edison's CWIP expenditures for calendar year 2011. The order directed modifications to SoCal Edison's proposed tariff revisions, and suspended them for a nominal period to be effective January 1, 2011, subject to refund. Further, based upon the submissions in the

¹ *Southern California Edison Co.*, 131 FERC ¶ 61,020 (2010) (Paper Hearing Order).

² The Six Cities include the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California.

³ *Southern California Edison Co.*, 133 FERC ¶ 61,269 (2010).

proceeding, the Commission established a base ROE and directed a compliance filing.⁴ The Commission also established hearing and settlement judge procedures on all issues except those related to the base ROE. On January 28, 2011, in Docket No. ER11-1952-002, SoCal Edison filed a request for rehearing of the Commission's use of the median for setting the base ROE in the Commission's December 29, 2010 order based upon the same arguments it set forth in its rehearing request in Docket No. ER08-375-004. As discussed below, the Commission denies SoCal Edison's request for hearing of this issue in Docket No. ER11-1952-002.

3. Finally, on August 2, 2011, the Commission issued an order in Docket No. ER11-3697-000⁵ accepting SoCal Edison's revisions to its Transmission Owner Tariff (TO Tariff) to implement a formula rate for the costs associated with its transmission facilities. The order suspended the tariff revision, to be effective January 1, 2011, subject to refund. The Commission also determined that SoCal Edison's use of the midpoint for setting the base ROE did not comply with Commission precedent. Accordingly, the Commission directed SoCal Edison to use the median to establish the base ROE,⁶ and established hearing and settlement judge procedures. As discussed below, the Commission denies SoCal Edison's request for hearing of this issue in Docket No. ER11-3697-002.

I. Background

4. In accordance with Order No. 679,⁷ on May 18, 2007, and as amended on August 16, 2007, SoCal Edison filed a petition for declaratory order seeking incentive rate treatment for the construction of three transmission proposed projects, the Devers Palo II Project (DPV2 Project), the Tehachapi Transmission Project (Tehachapi Project) and the Rancho Vista Project (Rancho Vista) (collectively, the Transmission Projects or Projects). On November 16, 2007, the Commission issued an order finding that,

⁴ On January 18, 2011, SoCal Edison submitted a compliance filing in Docket No. ER11-1952-001. The Commission accepted the compliance filing by delegated order on February 14, 2011.

⁵ *Southern California Edison Co.*, 136 FERC ¶ 61,074 (2011).

⁶ The Commission directed SoCal Edison to submit a compliance filing revising its base ROE to reflect the use of the median. *Id.* P 30.

⁷ *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).

consistent with Order No. 679, SoCal Edison's proposals for the Projects would significantly improve the reliability of the California Independent System Operator's (CAISO) bulk power transmission system and would reduce the cost of delivered power to customers by reducing transmission congestion on the CAISO-controlled transmission grid.⁸ Accordingly, the Commission granted SoCal Edison rate incentives, including:

(1) ROE Project adders of 125 basis points for the DPV2 and Tehachapi Projects, and 75 basis points for the Rancho Vista Project;

(2) Recovery of 100 percent of any prudently-incurred abandonment costs for the DPV2 and Tehachapi Projects, if these projects, or any portion of thereof, are cancelled due to factors beyond SoCal Edison's control;

(3) Recovery in the transmission rate base of 100 percent of CWIP during the construction of these Projects; and

(4) ROE adder of 50 basis points to SoCal Edison's overall ROE based on its participation in CAISO.

5. On December 21, 2007, SoCal Edison filed revisions to its Transmission Owner Tariff (TO Tariff) to reflect proposed changes to its transmission revenue requirement and transmission rates to implement CWIP rate incentives granted by the Commission in the Incentives Order (December filing). SoCal Edison also proposed to establish a base ROE following the Discounted Cash Flow (DCF) methodology.⁹ For its calculation, SoCal Edison used a national proxy group, screened for a range of risk factors and applied the midpoint to the resultant group to support its proposed base ROE of 11.5 percent. As a result, SoCal Edison sought an overall ROE that includes the incentive adders approved in the Incentives Order of 12.75 percent for the Rancho Vista Project and 13.25 percent for the DPV2 and Tehachapi Projects.

6. On February 29, 2008, the Commission issued an order¹⁰ preliminarily determining that a just and reasonable ROE for SoCal Edison should be based upon a Western Electric Coordinating Council (WECC)-wide proxy group and screening

⁸ *Southern California Edison Co.*, 121 FERC ¶ 61,168 (2007) (Incentives Order).

⁹ SoCal Edison's Transmission Revenue Requirement in effect in December 2007 was adopted pursuant to a "black box" settlement accepted by the Commission in *Southern California Edison Co.*, 116 FERC ¶ 61,010 (2006).

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

parameters that were accepted in *Atlantic Path 15*.¹¹ The Commission found that a reasonable range of return on equity for SoCal Edison appeared to be from 7.97 percent to 13.67 percent, and it concluded that SoCal Edison's proposed overall ROEs for the Projects, inclusive of the incentive adders, were within the upper end of the zone of reasonableness. The Commission accepted SoCal Edison's proposed tariff revisions, and suspended them for a nominal period, to be effective March 1, 2008, subject to refund. Further, because the Commission evaluated the range of reasonableness of SoCal Edison's ROE using a different proxy group and screening criteria than those SoCal Edison proposed in its application, the Commission established a paper hearing to allow parties the opportunity to analyze the Commission's preliminary conclusion.

7. On April 15, 2010, the Commission issued the above-noted order on the paper hearing and established a base ROE of 9.54 percent.¹² This ROE determination was based upon a national proxy group, to which the Commission applied screening factors that it determined to be appropriate to the circumstances of this case and ensured that only companies of comparable risk were included. The Commission determined that the zone of reasonableness for SoCal Edison was between 7.80 percent and 16.19 percent. When the Commission applied the median to this calculation, it determined the base ROE for SoCal Edison to be 10.55 percent. Finally, the Commission updated the base ROE by adjusting for the yields on ten-year constant maturity U.S. Treasury bonds (ten-year bonds), resulting in an adjusted base ROE of 9.54 percent. Combined with the previous Commission-approved incentive adders of 125 basis points for Rancho Vista and 175 points for the DPV2 and Tehachapi Projects, the overall ROE for these projects will be 10.79 percent and 11.29 percent respectively.¹³ The Commission concluded that the overall ROEs were within the zone of reasonableness and were consistent with the just and reasonable requirements of section 205 of the FPA.¹⁴

8. Also as noted above, on May 17, 2010, SoCal Edison filed a request for rehearing of the Commission's Paper Hearing Order, and SWP, M-S-R and Six Cities filed requests for clarification, or, in the alternative, for rehearing.

¹¹ 122 FERC ¶ 61,135 (2008).

¹² Paper Hearing Order, 131 FERC ¶ 61,020 (2010). The ROE established in this docket is for the locked-in period of March 2008 through December 2008. This ROE is superseded by a new ROE that became effective on January 1, 2009. *See Southern California Edison Co.*, 129 FERC ¶ 61,304 (2009).

¹³ *Id.* P 1.

¹⁴ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 93.

II. SoCal Edison's Requests for Rehearing

9. In Docket No. ER08-375-004, SoCal Edison challenges the Commission's policy that it describes as applying the median¹⁵ for setting the base ROE for an individual applicant that is a member of an independent system operator (ISO),¹⁶ but applying the midpoint¹⁷ for a group ISO applicant that seeks an ROE for the entire ISO.¹⁸ SoCal Edison argues that these two different approaches discriminate against ISO members that file individual section 205 ROE applications, and is arbitrary and capricious. Further, SoCal Edison incorporates these challenges to the Commission's use of the median into its requests for rehearing in Docket Nos. ER11-1952-002 and ER11-3697-002. Accordingly, our discussion and determination in this order concerning this issue also apply to SoCal Edison's requests for rehearing in Docket Nos. ER11-1952-002 and ER11-3697-002.

10. Second, in Docket No. ER08-375-004, SoCal Edison asserts in its request for rehearing that the Commission erred in this instance by using its updating policy based on the change in ten-year bond yields. SoCal Edison argues that applying the Commission's updating policy to its ROE calculation was not appropriate during 2008 because the rates for U.S. Treasury bonds did not reflect the rising cost of equity capital required of investors who preferred investing in U.S. Treasuries.¹⁹

III. Procedural Matter

11. In support of its request for rehearing, SoCal Edison includes new testimony from Dr. Hunt to support its arguments regarding its costs of equity during the locked-in period of time to which the rates at issue in Docket No. ER08-375-004 will apply. As the

¹⁵ The median is calculated by sorting the average of the high and low DCF results of each company in the proxy group from lowest value to highest value, and then selecting the central value of the sequence. Where the result is an even number, the median is the average of the two central numbers.

¹⁶ General references in this order to ISOs also apply to regional transmission organizations (RTOs).

¹⁷ The midpoint is the average of the highest and lowest data points in the range of reasonable returns.

¹⁸ SoCal Edison Request for Rehearing at 3-4.

¹⁹ *Id.* at 4-5.

Commission previously has explained, the Commission's procedures encourage the timely submission of evidence and, consequently, the Commission adheres to the general rule that the record once closed will not be reopened.²⁰ The Commission also generally does not allow the introduction of new evidence at the rehearing stage of a proceeding.²¹ For these reasons, we reject SoCal Edison's supplement to the record.

IV. Discussion

A. Median v. Midpoint

12. SoCal Edison asserts that the Commission should have used the midpoint and not the median for determining its ROE. SoCal Edison argues that the Paper Hearing Order makes an improper distinction between an individual utility that submits a section 205 application seeking an ROE and a similar application of an ISO-wide group of diverse utilities. SoCal Edison argues that the Commission's method produces one ROE for the individual utility applicant but a different ROE for ISO members who file jointly, even though their risk is unchanged. SoCal Edison asserts that this practice discriminates against individual ISO members that file their ROE requests individually instead of jointly.²²

13. SoCal Edison argues that there is no difference in a company's risk whether the ROE results from the median of the range of comparable groups or from the midpoint of the range. Instead, the difference between the two calculations results from a difference

²⁰ See *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Servs.*, 133 FERC ¶ 61,014, at P 24 (2010), citing *Transwestern Pipeline Co.*, Opinion No. 238, 32 FERC ¶ 61,009 (1985), *reh'g denied*, Opinion No. 238-A, 36 FERC ¶ 61,175, at 61,453 (1986).

²¹ See, e.g., *Ocean State Power II*, 69 FERC ¶ 61,146, at 61,548 and n.64 (1994) (stating that "[t]he Commission generally will not consider new evidence on rehearing, as we cannot resolve issues finally and with any efficiency if parties attempt to have us chase a moving target.") See also *Ark. Power & Light Co.*, 52 FERC ¶ 61,029, at 61,156 & n.14 (1990); *Philadelphia Elec. Co.*, 58 FERC ¶ 61,060, at 61,133 & n.4 (1992); *Cities and Villages of Albany and Hanover v. Interstate Power Co.*, 61 FERC ¶ 61,362, at 62,451 & n.4 (1992); *TransCanada Power Mktg. Ltd. v. ISO New England Inc.*, 123 FERC ¶ 61,149, at P 22 (2008); *Boralex Livermore Falls LP*, 123 FERC ¶ 61,279, at P 23 (2008); *N.Y. Indep. Sys. Operator, Inc.*, 125 FERC ¶ 61,299, at P 34 (2008); *Startrans IO, L.L.C.*, 130 FERC ¶ 61,209, at P 22 (2010).

²² SoCal Edison Request for Rehearing at 9.

in the procedures used by the utilities when they file their rate cases. SoCal Edison argues that the Commission has not offered a rational explanation for why these utilities should receive different ROEs under the differing filing scenarios.²³ SoCal Edison contends that, under any reasonable set of proxy group criteria, each filing utility will receive a substantially lower ROE if they file their ROE requests separately than if they file them together.²⁴ Further, SoCal Edison insists that once the Commission finds that a utility's proposal is just and reasonable, its inquiry is at an end. SoCal Edison argues that the Commission may not refuse to approve a utility's proposal on the basis that an alternative proposal may be superior. Accordingly, SoCal Edison asserts that if the Commission finds that SoCal Edison's request for a base ROE of 11.50 percent is just and reasonable by applying the midpoint of the zone of reasonableness, as SoCal Edison proposed, the Commission cannot approve a different result on the basis that SoCal Edison could have achieved that result through an alternative means.²⁵

14. Further, SoCal Edison asserts that the Commission's explanations do not justify its use of the midpoint for setting the ROE for ISO-wide applicants and its use of the median for individual utilities, even when those individual utilities are members of ISOs.²⁶ Specifically, SoCal Edison contends that, although the Commission stated in the Paper Hearing Order that using the midpoint ensures that the ROE sufficiently supports entities that have joined an ISO, SoCal Edison asserts that this statement is a tacit acknowledgement that the midpoint is likely to produce a higher result than the median. Moreover, SoCal Edison claims that the Commission's use of the median rather than the midpoint ignores the fact that the same ISO member who files as an individual utility will not receive the same support. SoCal Edison asserts that the Commission's goal would be better served by using the midpoint of the proxy group range for all ISO members, regardless of whether it files individually or as an ISO. SoCal Edison argues that to deny this relief based on the procedure used by the filing utility is arbitrary and capricious.²⁷ Additionally, SoCal Edison asserts that while the Commission justifies its treatment on the basis that an ISO-wide filing presents different concerns from an individual utility's filing, this distinction is without a difference, because the Commission engages in the same analytical process for setting the ROE for both types of applicants. SoCal Edison

²³ *Id.* at 10.

²⁴ *Id.* at 11.

²⁵ *Id.*

²⁶ *Id.* at 12.

²⁷ *Id.*

argues that this does not justify using different methods for selecting the point within the range of reasonableness. In either instance, SoCal Edison argues that the Commission's goal is to select the ROE within the range of reasonableness that most represents the cost of equity.²⁸

15. SoCal Edison challenges the Commission's statement in the Paper Hearing Order that the use of the midpoint is important because it considers the wide range of returns, whereas when determining the ROE for a single utility, the Commission is more concerned with seeking the most refined measure of central tendency. SoCal Edison asserts that both the midpoint and the median consider the range of returns and both achieve their status due to the other returns that comprise the group.²⁹ SoCal Edison also argues that in both cases the Commission is concerned with selecting the most representative point within that range. SoCal Edison thus concludes that the Commission has not justified using different measures to select the most representative point within the range to set the ROE for an individual utility as compared with an ISO.³⁰

16. SoCal Edison also challenges the Commission's assertion that it is less concerned about distortions due to using the midpoint when setting an ROE for members of an ISO than for an individual utility. SoCal Edison argues that the Commission does not explain why it is less concerned about distortions due to using the midpoint affecting an entire group of companies in the ISO rather than only one company.³¹

Commission Determination

17. We are not persuaded that the Commission improperly applied the median to the DCF analysis for determining SoCal Edison's ROE. Indeed, this approach recognizes important differences in the purpose of the analysis that the Commission conducts when it sets an ROE for an individual utility rather than for a group comprising all of the utilities within an ISO. Moreover, this approach is consistent with Commission precedent. Therefore, the Commission denies the requests for rehearing of this issue in Docket Nos. ER08-375-004, ER11-1952-002 and ER11-3697-002.

18. When the Commission sets an ROE for an individual utility, the Commission's analysis is designed to address the risks of the individual utility. As the Commission

²⁸ *Id.* at 13.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

explained in the Paper Hearing Order, the Commission applies the median in the context of setting an ROE for an individual applicant of average risk because the median is the most accurate measure of central tendency.³² By applying the median, rather than the midpoint, the Commission gives “consideration to more of the companies in the proxy group, rather than only those at the top and bottom. This will lessen the impact of any single proxy company whose ROE is atypically high or low.”³³ We reaffirm here our finding that by using the median and lessening the impact of atypically high or low ROEs, the Commission establishes an ROE that accurately reflects the risk for an individual utility applicant.

19. As we explained in the Paper Hearing Order, the Commission’s precedent for using the median in setting an ROE for an individual utility applicant is well established. For example, in *Transcontinental Gas*, the Commission explained that for a company of average risk, the ROE should be set “at the point in the zone of reasonableness where one-half of the returns have higher value and one-half have a lower value.”³⁴ In *Northwest Pipeline*,³⁵ the Commission explained that the median is preferable to applying the midpoint or mean³⁶ because it aids the Commission in its effort to treat all companies that face average risk equally. Additionally, the Commission stated:

The laws of statistics support the Commission’s use of the median in setting ROE for a company facing average risk because it has important advantages over the mean or midpoint approaches in determining central tendency.

³² Paper Hearing Order, 131 FERC ¶ 61,020 at P 93.

³³ *Id.* at P 85, quoting *Transcontinental Gas Pipe Line Corp.*, 84 FERC ¶ 61,084, at 61,427 (1998) Opinion No. 414-A, *aff’d* Opinion No. 414-B, 85 FERC ¶ 61,323 (1998) (*Transcontinental Gas*), petition for review denied, *N.C. Util. Comm’n v. FERC* 203 F.3d 53 (D.C. Cir. 2000); see also *Williston Basin Interstate Pipeline Co.*, 84 FERC ¶ 61,081 (1998) (relying on *Transcontinental Gas* and stating that the median is preferable to the midpoint in setting ROE because it lessens the impact of atypical outliers in the proxy group).

³⁴ *Transcontinental Gas*, 84 FERC ¶ 61,084, at 61,427.

³⁵ *Northwest Pipeline Corporation*, 99 FERC ¶ 61,305 (2002) (*Northwest Pipeline*).

³⁶ The mean is the average of all the numbers in the data set.

The median best represents central tendency in a skewed distribution over the mean because the latter is drawn in the direction of the skew more than the median. That is, in a very positively skewed distribution, the mean will be higher than the median. In a very negatively skewed distribution, the mean will be lower than the median. These statistical facts make the median an appropriate average to use to represent the typical observation in a skewed distribution because it is less affected by extreme numbers than the mean. Similarly, the median is also less affected by extreme numbers than the midpoint in a skewed distribution. Since the midpoint is the average of the highest and lowest numbers in the group, it is clearly subject to distortion by extremely high or low values.³⁷

20. Consistent with this longstanding precedent, the Paper Hearing Order applies the median for determining an ROE for an individual utility. Specifically, the Commission's procedures for establishing an ROE for an individual utility of average risk applies the median, and not the midpoint or the mean, because the median "aids the Commission in its effort to treat all companies that face average risk equally."³⁸ We are not persuaded that our established procedures for determining an ROE for a utility of average risk are not just and reasonable for setting SoCal Edison's ROE.

21. SoCal Edison is correct that when the Commission sets an ROE for a group comprising all of the utilities within an ISO, the Commission's analysis applies the midpoint rather than the median. Because there are important differences in the purpose of the analysis that the Commission conducts when it sets an ROE for such a group rather than for an individual utility, we find that these different approaches are appropriate and do not, as SoCal Edison alleges, constitute undue discrimination.

22. As we explained in the Paper Hearing Order, the Commission addressed the above-noted use of the midpoint in a series of orders where the Commission determined a generic ROE to be applied on behalf of a diverse group of electric transmission owners

³⁷ Paper Hearing Order, 131 FERC ¶ 61,020 at P 86, *quoting Northwest Pipeline*, 99 FERC ¶ 61,305 at 62,276 (citation omitted).

³⁸ Paper Hearing Order, 131 FERC ¶ 61,020 at P 86; *see also Potomac-Appalachian Transmission Highline, L.L.C.*, 133 FERC ¶ 61,152, at P 65 (2010); *Pioneer Transmission, LLC*, 126 FERC ¶ 61,281, at P 95 (2009), *order on reh'g*, 130 FERC ¶ 61,044, P 40 (2010), citing *Golden Spread Elec. Coop. Inc.*, 123 FERC ¶ 61,047, at P 62-63 (2008) and *Va. Elec. and Power Co.*, 123 FERC ¶ 61,098, at P 66 (2008).

comprising the Midwest Independent Transmission System Operator (Midwest ISO).³⁹ In those orders, the Commission stated that because the ROE would apply across-the-board to all Midwest ISO Transmission Owners rather than only to a single company of average risk, the Commission must consider the full range of risks and business profiles of all the companies within the ISO. With this goal in mind, the Commission stated:

[W]e are dealing with a group of utilities with differing risks and business rankings. In our view, the differing ROEs in this group fairly brackets the range of reasonableness for all Midwest ISO TOs. We believe it is important to note that the highest and lowest values should be included in this range of reasonableness as likely representative of other Midwest ISO members that, because they are non-publicly traded companies, could not be included in the group analysis. Because the ROE in this case will apply to a diverse group of companies, the entire range of results yielded by the subset is relevant here. Thus, we find that using the midpoint is the most appropriate measure for determining a single ROE for all Midwest ISO TOs, since it fully considers that range.⁴⁰

23. The Commission also explained in those orders that its goal in setting an ROE for a group comprising all members of an RTO is not to select the most refined measure of central tendency, as is the case when the Commission is setting an ROE for a single utility of average risk. Rather, the Commission stated that it “must use the measure that produces the most just and reasonable ROE for all of the Midwest ISO TOs” and that it was “not as concerned here that the high or low results represent different risks from the single company because the range encompasses only publicly traded Midwest ISO TOs.”⁴¹ In light of these important differences, which the Commission continues to find relevant, we reject SoCal Edison’s argument that application of the median or the midpoint in distinct circumstances constitutes undue discrimination.

24. Moreover, it is noteworthy that in establishing a single ROE for the Midwest ISO Transmission Owners, the Commission specifically stated that “the primary question to

³⁹ Paper Hearing Order, 131 FERC ¶ 61,020 at P 90-91, citing *Midwest Indep. Transmission Sys. Operator*, 106 FERC ¶ 61,302 (2004), *aff’d in relevant part sub nom. Pub. Serv. Comm’n of Ky. v. FERC*, 397 F.3d 1004, 1010-1011 (D.C. Cir. 2005) (Midwest ISO Order on Remand).

⁴⁰ Midwest ISO Order on Remand, 106 FERC ¶ 61,302 at P 9-10.

⁴¹ *Id.* P 10.

be considered here is not what constitutes the best overall method for determining ROE generically (i.e., the midpoint versus the median or mean).”⁴² Instead, the Commission found that the facts presented in that case presented “a unique set of circumstances that are relevant to our determination that the midpoint is the most appropriate measure.”⁴³ SoCal Edison has not sufficiently supported its argument for why a policy adopted to address a specific set of circumstances involving the establishment of a single ROE for a diverse group of utilities should be expanded to all of the Commission’s ROE determinations.

25. For all of these reasons, we conclude that application of the median rather than the midpoint for determining an ROE for SoCal Edison, as a single utility of average risk, is appropriate and consistent with Commission precedent. Therefore, we deny rehearing on this issue.

B. Updating of Financial Data

26. In its request for rehearing, SoCal Edison asserts that the Commission’s updating of SoCal Edison’s ROE using the rate of ten-year bonds in 2008 was inappropriate in view of the credit environment at that time. As a result of this economic condition, SoCal Edison argues that the Commission should forgo updating the ROE in this proceeding.⁴⁴ In support of its argument opposing the Commission’s updating, which resulted in a reduction of the base ROE, SoCal Edison restates that the private capital market was experiencing a “flight to quality”⁴⁵ that continued as the year progressed, after the close of the paper hearing briefing schedule.

27. SoCal Edison argues that events during this period were so unique that applying the Commission’s updating policy is arbitrary and capricious. SoCal Edison states that the purpose of updating the DCF data set is to reflect the change in the utility’s cost of equity between the DCF data set period and the rate effectiveness period, thereby

⁴² *Id.* P 8.

⁴³ *Id.*

⁴⁴ SoCal Edison’s Request for Rehearing at 4-7, 15-29. In support of its request to exclude its ROE from the Commission’s updating process, SoCal Edison cites *Montaup Elec. Co.*, 38 FERC ¶ 61,252 (1987), as a case in which the Commission did not update an ROE.

⁴⁵ *Id.* at 5, 18, citing SoCal Edison May 20, 2008 Reply Brief at 20.

reflecting the utility's cost of equity during the rate effectiveness period.⁴⁶ SoCal Edison asserts that this purpose is not achieved if the data used to update the DCF analysis are not rationally related to the change in the cost of equity between the two periods in question.⁴⁷ SoCal Edison comments that the Commission uses ten-year constant maturity U.S. Treasury bonds to update the ROE because, according to the Commission, these bonds are a "good financial indicator of the trends in the market cost of capital."⁴⁸ SoCal Edison comments that it presumes that the Commission also believes that ten-year U.S. Treasury Bonds are a good indicator of trends in the cost of equity for utilities. However, SoCal Edison asserts that the Commission did not address SoCal Edison's contention that the change in the yields on ten-year bonds was not "rationally related" to the higher returns investors demanded on their investments.

28. SoCal Edison argues that the change in the yields on ten-year bonds during this period was not rationally related to the change in debt costs for private investment grade utilities or privately-owned companies. Instead, SoCal Edison argues that during 2008 these two rates were inversely related and, therefore, not rationally related. Consequently, SoCal Edison asserts that the average yield on ten-year bonds, which declined by over 20 percent during this time period, invalidates the use of these bonds as a proxy for the change in SoCal Edison's cost of equity.⁴⁹ SoCal Edison contends that, despite the unique economic condition in 2008, the Commission found "no compelling reason" to deviate from applying its updating policy, without further explanation.⁵⁰

29. SoCal Edison also asserts that because the Commission did not use a rulemaking process to develop its policy of updating ROEs using ten-year bonds, it must allow the affected party to challenge its use.⁵¹ Further, SoCal Edison argues that there is no

⁴⁶ *Id.* at 16.

⁴⁷ *Id.* at 16, 23-24, citing *PPL Wallingford Energy LLC v. FERC*, 419 F.3d 1194, 1198 (D.C. Cir. 2005); *Oxy USA, Inc. v. FERC*, 64 F.3d 679, 693 (D.C. Cir. 1995); *Exxon Co. v. FERC*, 182 F.3d 30, 42 (D.C. Cir. 1999).

⁴⁸ *Id.* at 16, 25-26, quoting *Union Electric Co.*, 40 FERC ¶ 61,046, at 61,138 (1987).

⁴⁹ *Id.* at 20, 22, 25-27.

⁵⁰ *Id.* at 23, 25.

⁵¹ *Id.* at 23, citing *Pac. Gas and Elec. Co. v. FPC*, 506 F.2d 33, 38 (D.C. Cir. 1974).

generally accepted financial theory to support the Commission's assumption that SoCal Edison's cost of equity varies linearly with the yield on ten-year bonds.⁵² Moreover, SoCal Edison argues that not every rate within the zone of reasonableness may be just and reasonable⁵³ and, accordingly, the Commission must address the particular circumstances of this case. Finally, SoCal Edison asserts that not updating SoCal Edison's ROE on the basis of the unique 2008 economic circumstances would be consistent with Commission precedent.⁵⁴

Commission Determination

30. We deny SoCal Edison's request for rehearing regarding the Commission's updating of the base ROE for the ten-month locked-in period. The Commission's well-established policy is to update a base ROE using the average yield on ten-year bonds. In the Paper Hearing Order, we determined that there were no compelling reasons to depart from precedent.⁵⁵ On rehearing, we are not persuaded by SoCal Edison's assertion that the update of the ROE was in error.

31. SoCal Edison argues that the Commission should not follow its updating procedures and, in essence, contends that the base ROE established in the paper hearing is not just and reasonable because the Commission's updating procedures do not reflect SoCal Edison's costs of equity. Because of this alleged disparity, SoCal Edison requests that the Commission exempt its ROE calculation from the updating procedure. However, despite the economic downturn during the ten-month period of 2008 that SoCal Edison's base ROE was in effect, we are not persuaded that SoCal Edison's base ROE calculation should be exempt from the updating procedures we apply in similar ROE proceedings.

32. The Commission's precedent requiring updating ROEs has been applied over the course of more than 25 years,⁵⁶ during which time the U.S. economy has experienced

⁵² *Id.* at 27, citing *Union Electric Co. v. FERC*, 890 F.2d 1193, 1203 (D.C. Cir. 1989).

⁵³ *Id.* at 29, citing *Bangor Hydro-Electric Co.*, 122 FERC ¶ 61,038, at P 11 (2008).

⁵⁴ *Id.* at 29-30.

⁵⁵ Paper Hearing Order, 131 FERC ¶ 61,020 at P 99-102.

⁵⁶ See *Nantahala Power and Light Co.*, Opinion No. 139, 19 FERC ¶ 61,152 (1982); *N. Y. State Elec. and Gas Corp.*, Opinion No. 254, 37 FERC ¶ 61,151 (1986); *Union Elec. Co.*, Opinion No. 279, 40 FERC ¶ 61,046 (1987) (*Union Electric*); *Boston Edison Co.*, Opinion No. 299, 42 FERC ¶ 61,374 (1988).

many fluctuations. As we explained in the Paper Hearing Order, Commission's policy for updating equity allowances in electric rates is based upon the recognition that changes in market conditions can and do occur between the time a utility files its case-in-chief and the date the Commission issues its final decision.⁵⁷ To account for these changes, the Commission "has consistently required the use of updated data in setting a company's ROE."⁵⁸

33. Where the rate under consideration is for a "locked-in" period (that is, the rate has been superseded or is otherwise no longer in effect), the Commission updates the equity allowances for the locked-in period.⁵⁹ Regardless of whether the ten-year bonds perfectly capture every short-term variation in the costs of equity, we continue to find the use of ten-year bonds to be a just and reasonable means of approximating such costs over time. While there may be some short-term positive or negative variations in the ten-year bond yield as compared to the utilities' cost of equity over certain limited periods, over time the ten-year bond index continues to be "a reliable barometer of overall market conditions."⁶⁰ Further, because this updating procedure follows the Commission precedent that generally supports placing the updated ROE within the zone of reasonableness established in the record,⁶¹ we do not agree that we are required to

⁵⁷ Paper Hearing Order, 131 FERC ¶ 61,020 at P 100 and n.207, citing *City of Vernon, Cal.*, 111 FERC ¶ 61,092 (2005) (*City of Vernon*); *Jersey Cent. Power and Light Co.*, Opinion No. 408, 77 FERC ¶ 61,001 (1996) (*Jersey Central*).

⁵⁸ *Bangor Hydro-Electric Co.*, 117 FERC ¶ 61,129, at P 81 (2006), citing *Union Electric Co.*, Opinion No. 279, 40 FERC ¶ 61,046 (1987) (*Union Electric*), *order on reh'g*, Opinion No. 279-A, 41 FERC ¶ 61,343 (1987).

⁵⁹ Additionally, the Commission may adjust the updated base ROE where the ROE is outside the zone of reasonable returns established through the DCF analysis. Here, the updated base ROE was within the zone of reasonableness. *See, e.g., Boston Edison Co. v. FERC*, 885 F.2d 962, 967 (1st Cir. 1989) (*Boston Edison*).

⁶⁰ *Union Electric*, 40 FERC ¶ 61,046 at 61,138.

⁶¹ *See S.C. Generating Co.*, 44 FERC ¶ 61,008, at 61,039 (1988) (The updating methodology "does not take into account changes in company-specific business or financial risk. This is not critical as long as the Commission is operating within the zone of reasonableness established in the record.").

establish a specific, mathematical correlation for the updating adjustment, as asserted by SoCal Edison.⁶²

34. We also find that granting SoCal Edison's request to exclude its ROE calculation from the updating process because of "unique" circumstances would create the potential that any time the economy experiences a short-term anomaly, such as a downward trend, utilities might advance similar arguments of unique circumstances. The Commission would be confronted with having to determine what defines a unique circumstance on a case-by-case basis, a determination that would be highly subjective. We conclude that the effect of not updating the ROE in accordance with our established procedures can undermine the Commission's ability to efficiently apply objective standards for establishing just and reasonable ROEs. As the courts have recognized, the Commission's ratemaking responsibilities involve "complex industry analyses and difficult policy choices."⁶³ For these reasons, we are not persuaded that the paper hearing record supports excluding the calculation of SoCal Edison's ROE from the updating precedent established for setting utilities' ROEs. Therefore, we deny SoCal Edison's request to exclude its base ROE from the Commission's updating process.

35. Moreover, challenges to the Commission's updating procedures, similar to those SoCal Edison raises on rehearing, were addressed in *Boston Edison*⁶⁴ in response to the utility's argument that its investors do not react in precisely the same way as U.S. Treasury bond holders. The U.S. Court of Appeals for the First Circuit denied rehearing and upheld the Commission's updating using ten-year U.S. Treasury bonds. The court explained that "even if we assume, for the sake of argument, that changes in reasonable utility share returns do not exactly track changes in bond interest rates, the Supreme Court has made clear that 'infirmities' in Commission methodology are 'not . . . important,' provided that the 'result reached,' the 'impact of the rate order,' cannot 'be said to be unjust and unreasonable.'"⁶⁵

⁶² *Bangor Hydro*, 122 FERC ¶ 61,265 at P 31. We also reject SoCal Edison's reliance upon a Commission order denying rehearing of a section 206 refund proceeding as being inapposite to the issues herein. See *Bangor Hydro-Electric Co.*, 122 FERC ¶ 61,038 (2008).

⁶³ *Assoc. of Oil Pipe Lines v. FERC*, 83 F.3d 1424, 1431 (D.C. Cir. 1996).

⁶⁴ *Boston Edison*, 885 F.2d 962.

⁶⁵ *Id.* at 967, quoting *Fed. Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 602 (1994).

36. We also do not agree with SoCal Edison's argument that the Commission is required to justify its ROE updating procedures on a case-by-case basis because these updating procedures were not developed through a rulemaking process. Whether the Commission has developed policy through rulemaking procedures or adjudications is within the province of the Commission's authority, and under either approach, the policy is legally-binding.⁶⁶ We therefore deny SoCal Edison's request for rehearing on this issue.

C. Requests for Clarification or Rehearing of Refund

37. SWP, M-S-R and Six Cities argue that the Paper Hearing Order did not address the issue of SoCal Edison refunding to ratepayers the difference between the rate the Commission initially accepted in the February 2008 Order, which was made subject to refund and the outcome of the paper hearing process, and the rate subsequently established in the Paper Hearing Order.⁶⁷ Because the Commission reduced the proposed base ROE component of SoCal Edison's CWIP TRR rate in the Paper Hearing Order, SWP, M-S-R and Six Cities request that the Commission clarify or grant rehearing to require SoCal Edison to pay refunds, with interest, resulting from its over-collected base ROE to CAISO customers.⁶⁸ In support of this request, SWP and Six Cities assert that in circumstances similar to the instant proceeding, where a refund had been omitted, the Commission has directed utilities to refund ratepayers for over collection.⁶⁹ Six Cities also requests clarification or rehearing regarding refunds due to customers that are parties

⁶⁶ See *Pac. Gas and Elec. v. FPC*, 506 F.2d 33, 38 (1974) ("An administrative agency has available two methods for formulating policy that will have the force of law. An agency may establish binding policy through rulemaking procedures by which it promulgates substantive rules, or through adjudications which constitute binding precedent."). See also *Am. Forest and Paper Ass'n v. FERC*, 550 F.3d 1179, 1183 (D.C. Cir. 2008) (commenting that "we have long held . . . 'the decision whether to proceed by rulemaking or adjudication lies within the [agency's] discretion'" and citing *N.Y. State Comm'n on Cable Television v. FCC*, 749 F.2d 804, 815 (D.C. Cir. 1984)).

⁶⁷ The refund period at issue is March 1, 2008 through December 31, 2008.

⁶⁸ See M-S-R Request for Clarification at 7, citing *Corp. Comm'n of Okla. v. Am. Elec. Power Co.*, 125 FERC ¶ 61,237, at P 33 (2008); *La. Pub. Serv. Comm'n v. FERC*, 174 F.3d 218, 224 (D.C. Cir. 1999).

⁶⁹ SWP Request for Clarification at 4 and Six Cities Request for Clarification at 5, citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 121 FERC ¶ 61,032, at P 2-4 (2007) (Midwest ISO); *Bangor Hydro-Electric Co.*, 120 FERC ¶ 61,093 (2007).

to existing transmission contracts (ETC). These customers pay SoCal Edison's High Voltage Existing Contracts Access Charge, which is based, in part, on SoCal Edison's CWIP TRR.⁷⁰

38. M-S-R requests that the Commission direct SoCal Edison to file a refund report within 60 days of the issuance of the Commission order describing its calculation of refunds to its transmission customers.⁷¹

39. In its Request for Rehearing, SoCal Edison proposes that, in order to reflect the lower base ROE established in the Paper Hearing Order, it will adjust its CWIP balancing account in the next CWIP update filing. This balancing account will include a refund, with interest, to customers for rates effective on January 1, 2011.⁷²

Commission Determination

40. We agree that the Commission's reduction of SoCal Edison's base ROE in the Paper Hearing Order results in a requirement that SoCal Edison pay refunds, with interest calculated pursuant to section 35.19a of the Commission's regulations,⁷³ to CAISO and ETC customers. Therefore, we will grant the requested clarification. In the February 2008 Order, the Commission initially accepted SoCal Edison's proposed tariff revisions, suspended them for a nominal period, to be effective March 1, 2008, subject to refund and subject to the outcome of the paper hearing directed therein.⁷⁴ Subsequently, in the Paper Hearing Order, the Commission found that SoCal Edison's base ROE should be 9.54 percent rather than the 11.5 percent that SoCal Edison originally proposed in the December filing.⁷⁵

41. Further, we direct SoCal Edison to make refund in this proceeding and not, as SoCal Edison proposes, through an adjustment to its CWIP balancing account in a subsequent proceeding. The Commission generally prefers not to consolidate the revenue adjustments related to separate proceedings in the absence of compelling

⁷⁰ Six Cities Request for Clarification at 3.

⁷¹ M-S-R Request for Clarification at 8.

⁷² SoCal Edison Request for Rehearing at n.2.

⁷³ 18 C.F.R. § 35.19a (2011).

⁷⁴ February 2008 Order, 122 FERC ¶ 61,187 at P 1.

⁷⁵ Paper Hearing Order, 131 FERC ¶ 61,020 at P 118 and Ordering Paragraph (A).

circumstances.⁷⁶ Here, we do not find circumstances justifying a departure from our standard practices.

42. Accordingly, we direct SoCal Edison to make refunds, with interest calculated pursuant to section 35.19a of the Commission's regulations, within 30 days of the date of this order.⁷⁷ We also direct SoCal Edison to file a refund report with the Commission within 15 days of the date refunds are made.

The Commission orders:

(A) The Commission denies the requests for rehearing and grants clarification, as discussed above.

(B) SoCal Edison is hereby ordered to make refunds in Docket No. ER08-375-004 within 30 days of the date of issuance of this order and to file a refund report with the Commission within 15 days thereafter, as discussed in the body of this order.

By the Commission. Commissioner Spitzer is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁷⁶ See *San Diego Gas & Elec. Co.*, 93 FERC ¶ 61,333, at 62,133-34 (2000); *Otter Tail Power Co.*, 17 FERC ¶ 61,151 (1981).

⁷⁷ 18 C.F.R. § 35.19a (2011).