144 FERC ¶ 61,145
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southern California Edison Company | Docket Nos. ER09-187-003
ER10-160-002

ORDER ON REHEARING

(Issued August 22, 2013)

1. On April 19, 2012, the Commission issued a Consolidated Paper Hearing Order approving base Returns on Equity (ROE) for three of Southern California Edison Company's (SoCal Edison) transmission projects.[1] Consistent with precedent, the Commission used the median of the proxy group to establish the base ROE for the Transmission Projects. On May 21, 2012, SoCal Edison filed a request for rehearing of the Consolidated Paper Hearing Order, arguing that the Commission's decision to use the median discriminates against Independent System Operator (ISO)/Regional Transmission Organization (RTO) members that file their ROE requests on an individual basis. In this order, the Commission denies SoCal Edison's request for rehearing.

I. **Background**

2. On December 19, 2008, the Commission issued an order in Docket No. ER09-187-000 accepting certain Transmission Owner Tariff (TO Tariff) revisions reflecting changes to SoCal Edison's transmission revenue requirement and transmission rates implementing Construction Work in Progress (CWIP) rate incentives approved by the Commission for the Transmission Projects for the calendar year 2009 (2009 CWIP Update).[2] On December 31, 2009, the Commission issued an order in Docket

[1] *Southern California Edison Co*., 139 FERC ¶ 61,042 (2012) (Consolidated Paper Hearing Order). The Devers Palo II Project, the Tehachapi Transmission Project and the Rancho Vista Project are collectively referred to as the Transmission Projects.

[2] *Southern California Edison Co*., 125 FERC ¶ 61,329 (2008) (December 2008 Order).

No. ER10-160-000 accepting certain TO Tariff revisions that similarly reflected changes to SoCal Edison's transmission revenue requirement and transmission rates implementing CWIP rate incentives for the calendar year 2010 (2010 CWIP Update).[3] Also in this December 2009 Order, the Commission established paper hearings for Docket No. ER09-187-000 and Docket No. ER10-160-000 and consolidated them, thereby establishing one consolidated paper hearing proceeding for determining the base ROEs for SoCal Edison's transmission revenue requirement in these dockets.[4] Moreover, the Commission explained that the base ROEs in this consolidated proceeding were to be made subject to the determination of the then-pending paper hearing proceeding in Docket No. ER08-375-000, SoCal Edison's implementation of its initial CWIP incentives in 2008.[5]

3. On April 15, 2010, in Docket Nos. ER08-375-000 and ER08-375-001, the Commission issued an order on the paper hearing on SoCal Edison's initial CWIP filing in 2008 and used the median of the proxy group to establish a base ROE.[6] On May 17, 2010, SoCal Edison filed a request for rehearing of the Commission's 2010 Paper Hearing Order. SoCal Edison challenged the Commission's policy that it described as applying the median[7] for setting the base ROE for an individual applicant that is a

---

[3] *Southern California Edison Co*., 129 FERC ¶ 61,304 (2009) (December 2009 Order).

[4] December 2009 Order, 129 FERC ¶ 61,304 at P 35.

[5] *Id.* P 24. SoCal Edison's CWIP filing in Docket No. ER08-375-000 was initiated when SoCal Edison filed revisions to its TO Tariff to reflect proposed changes to its transmission revenue requirement and transmission rates to implement CWIP rate incentives granted by the Commission. *Southern California Edison Co.*, 121 FERC ¶ 61,168 (2007). On February 29, 2008, the Commission 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 a paper hearing on the range of reasonableness of SoCal Edison's proposed ROE. *Southern California Edison Co.*, 122 FERC ¶ 61,187 (2008).

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

[7] The median is calculated by sorting the average of the high and low Discounted Cash Flow (DCF) results of each company in the proxy group from lowest value to highest value, and then selecting the central value of the sequence. When the number of

(continued…)

member of an ISO,[8] but applying the midpoint[9] for a group of ISO applicants that seek an ROE for the entire ISO.[10] SoCal Edison argued that these two different approaches discriminate against ISO members that file individual section 205 ROE applications and is arbitrary and capricious. The Commission denied SoCal Edison's request for rehearing in an order issued October 6, 2011.[11]

4. On April 19, 2012 in the instant proceeding, the Commission issued the Consolidated Paper Hearing Order, establishing a base ROE of 10.04 percent for the period January 1, 2009 through May 31, 2010, and a base ROE of 10.33 percent for the period June 1, 2010 through December 31, 2010. The Commission found that, consistent with its 2010 Paper Hearing Order and the 2011 Rehearing Order in Docket Nos. ER08-375-000, *et al.*, it would apply the median to set the ROE for individual utilities of average risk.

II. SoCal Edison's Request for Rehearing

5. SoCal Edison seeks rehearing of the Consolidated Paper Hearing Order on the same grounds upon which it sought rehearing of the Commission's 2010 Paper Hearing Order, which the Commission denied. Specifically, SoCal Edison argues that the Commission's use of the median for setting the ROE for an individual ISO/RTO member when it uses the midpoint for a group of ISO/RTO members that submit their section 205 applications jointly discriminates against ISO/RTO members that file their requests on an individual basis.[12]

6. Additionally, SoCal Edison raises a new argument on rehearing that it did not raise in the rehearing of the 2010 Paper Hearing Order. SoCal Edison now contends that the

---

companies in the proxy group is an even number, the median is the average of the two central numbers.

[8] General references in this order to ISOs also apply to RTOs.

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

[10] SoCal Edison Application for Rehearing, Docket No. ER08-375-004, at 3-4 (filed May 17, 2010).

[11] *Southern California Edison Co.*, 137 FERC ¶ 61,016, at PP 17-25 (2011) (2011 Rehearing Order).

[12] SoCal Edison Rehearing at 3.

Commission incorrectly asserted in the Consolidated Paper Hearing Order that it is the Commission's "longstanding policy to apply the median to set the ROE for individual utilities of average risk."[13] SoCal argues that this assertion is refuted by the Commission's statement in the 2010 Paper Hearing Order that the Commission has traditionally used the midpoint for setting the ROE in electric proceedings. SoCal Edison argues that the Commission's policy in favor of the midpoint remained until 2008, when the Commission adopted the median for single utility applicants, while retaining the midpoint for a group of applicants. Thus, SoCal Edison argues, the Commission cannot point to a longstanding policy in favor of the median for an individual electric utility of average risk.

III. <u>Commission Determination</u>

7. We deny SoCal Edison's request for rehearing. SoCal Edison has not presented any argument on rehearing that persuades us that our determinations in the Consolidated Paper Hearing Order were in error. Moreover, the D.C. Circuit recently upheld the Commission's decision in Docket No. ER08-375-000, *et al.*, to use the median to calculate the ROE for individual electric utilities of average risk.[14] Given that the underlying issues are the same in this proceeding and Docket No. ER08-375-000, *et al.*, we reject SoCal Edison's claim that the Commission's decision to use the median in the present proceeding discriminates against ISO/RTO members that file their ROE requests on an individual basis.

8. As the Commission has stated previously, using the median 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.[15] Specifically, when the Commission sets an ROE for an individual utility, the Commission's analysis is designed to address the risks of the individual utility.[16] 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. 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 lessens the impact of any single proxy company whose ROE is

[13] *Id.* at 14.

[14] *Southern California Edison Co. v. FERC*, 717 F.3d 177, 179 (D.C. Cir. 2013).

[15] 2011 Rehearing Order, 137 FERC ¶ 61,016 at P 17.

[16] *Id.* P 18.

atypically high or low.[17] Accordingly, 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.[18] The D.C. Circuit upheld the Commission's rationale in its recent decision, stating:

> Contrary to SoCal Edison's position, the Commission did not apply different standards to similarly situated entities and fail to support this disparate treatment with a reasoned explanation and substantial evidence in the record. The Commission instead explained how its different purposes determine its different approaches when setting the ROE for a single electric utility as opposed to a group of utilities with diverse risk profiles.[19]

9. The D.C. Circuit also rejected SoCal Edison's assertion that it and individually filing electric utilities generally are disadvantaged by the Commission's use of the median instead of the midpoint.[20] The D.C. Circuit stated:

> [T]he use of the median does not necessarily disadvantage single filing electric utilities, and it is only by "pure happenstance" that the midpoint is higher than the median here. Hence, SoCal Edison fails to show that the Commission's use of the median for single utilities of average risk and the midpoint when determining a generic ROE for a diverse-risk group of electric utilities necessarily disadvantages single electric utilities or violates the principle that the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks.[21]

10. Consistent with this precedent and the precedent established in Docket No. ER08-375-000, *et al.*, we continue to find it appropriate to use the median to calculate the ROE in this proceeding. 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

---

[17] Paper Hearing Order, 131 FERC ¶ 61,020 at P 85 (internal quotations omitted).

[18] 2011 Rehearing Order, 137 FERC ¶ 61,016 at P 18.

[19] *Southern California Edison Co. v. FERC*, 717 F.3d at 185-186 (internal citations omitted).

[20] *Id.* at 186.

[21] *Id.* (citing *Hope Natural Gas,* 320 U.S. 591, 603, 64 S. Ct. 281, 288 (1944)).

average risk equally."[22] SoCal Edison has not persuaded us in its rehearing request 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 in this proceeding.

11. Although SoCal Edison argues that the Commission incorrectly characterized its use of the median as "longstanding Commission policy," the D.C. Circuit recognized in its recent decision that "[U]nder the Natural Gas Act, the Commission has long used the median to set the ROE."[23] While the Commission acknowledges that it has applied the median for a longer period in cases involving ROEs in the gas industry, and that the Commission first applied this policy to electric utilities in 2008 in *Golden Spread*,[24] the D.C. Circuit affirmed the use of the median for setting an ROE for an individual electric utility of average risk in its May 10, 2013 decision.[25] In consideration of the D.C. Circuit's decision addressing the merits of this policy, we deny SoCal Edison's rehearing request on this point.

The Commission orders:

SoCal Edison's request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

---

[22] 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).

[23] *Southern California Edison Co. v. FERC*, 717 F.3d at 182.

[24] *Golden Spread Elec. Coop. Inc.*, 123 FERC ¶ 61,047, at PP 62-63 (2008), *order on reh'g*, 144 FERC ¶ 61,132 (2013).

[25] *Southern California Edison Co. v. FERC*, 717 F.3d at 179.