

128 FERC ¶ 61,287  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
and Philip D. Moeller.

Southern California Edison Company

Docket No. ER09-1534-000

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

(Issued September 30, 2009)

1. In this order, the Commission accepts for filing Southern California Edison Company's (SoCal Edison) proposed transmission rates and suspends them for five months, to become effective on March 1, 2010, subject to refund, and establishes hearing and settlement judge procedures.

**I. Background**

2. In March 1997, SoCal Edison filed its original Transmission Owner Tariff (TO Tariff) for utility-specific rates for transmission service on its facilities under the operational control of the California Independent System Operator Corporation (CAISO). In December of that year, the Commission accepted SoCal Edison's TO Tariff for filing, suspended it, and permitted it to become effective, subject to refund, on April 1, 1998, the date the CAISO began operation.<sup>1</sup> In January 2002, SoCal Edison filed its first proposed revisions to its TO Tariff. The revisions were accepted for filing, suspended, subject to refund, and set for hearing and settlement judge procedures.<sup>2</sup> In November 2005, SoCal Edison filed its second proposed revisions to its TO Tariff. Those revisions were accepted for filing, suspended, subject to refund, and set for hearing and settlement judge

---

<sup>1</sup> See *Pac. Gas & Elec. Co.*, 81 FERC ¶ 61,323 (1997), *order on reh'g*, 82 FERC ¶ 61,324 (1998).

<sup>2</sup> See *Southern Cal. Edison Co.*, 99 FERC ¶ 61,032 (2002). The Commission approved SoCal Edison's uncontested Offer of Settlement by Letter Order on December 24, 2002.

procedures.<sup>3</sup> In August 2008, SoCal Edison filed its third proposed revisions to its TO Tariff. Those revisions were accepted for filing, suspended, subject to refund, and set for hearing and settlement judge procedures.<sup>4</sup>

## **II. SoCal Edison Transmission Revenue Requirement Filing in Docket No. ER09-1534-000**

3. On July 31, 2009, SoCal Edison filed proposed revisions to its TO Tariff, reflecting an increase to its TRR<sup>5</sup> and transmission rates for customers taking service, pursuant to the CAISO's Open Access Transmission Tariff (CAISO Tariff) and SoCal Edison's TO Tariff, over SoCal Edison's transmission facilities. Specifically, SoCal Edison proposes to revise its TO Tariff to reflect, among other things, an increase in the transmission revenue requirement (TRR) from \$384 million to \$490 million for wholesale customers, which is an increase of 27.7 percent. SoCal Edison also proposes to increase its 2009 retail TRR from \$394 million to \$501 million, an increase of 27.1 percent. Finally, SoCal Edison proposes an increase in the rates of certain Existing Transmission Contracts (ETCs), as set forth in the TO Tariff.

4. SoCal Edison states that the primary reason for the increase in the Base TRR is the increase in transmission rate base, which is associated with transmission projects that are entering into service in 2009 and 2010.<sup>6</sup> In addition, SoCal Edison states that modification to depreciation rates for transmission and significant increases in transmission operating and maintenance (O&M) and administrative and general (A&G) costs are also reasons for the rate increase. SoCal Edison requests that the Commission authorize a return on equity (ROE) of 13.05 percent, which is composed of (1) a base ROE of 12.25 percent, reflecting SoCal Edison's estimated cost of securing equity capital,

---

<sup>3</sup> See *Southern Cal. Edison Co.*, 114 FERC ¶ 61,108 (2006). The Commission approved SoCal Edison's uncontested Offer of Settlement by Letter Order on July 6, 2006.

<sup>4</sup> See *Southern Cal. Edison Co.*, 124 FERC ¶ 61,308 (2008). The Commission approved an uncontested Offer of Settlement on September 11, 2009. *Southern Cal. Edison Co.*, 128 FERC ¶ 61,237 (2009).

<sup>5</sup> "The TRR is the total annual authorized revenue requirements associated with transmission facilities and Entitlements turned over to the Operational Control of the ISO by the Participating TO." SoCal Edison TO Tariff, section 3.107.

<sup>6</sup> SoCal Edison transmittal at 2-3.

(2) an adder to the base ROE of 0.5 percent (i.e., a 50 basis point adder) to compensate SoCal Edison for participation in the CAISO, and (3) a 0.3 percent adder to the base ROE associated with certain transmission facilities to be placed into service that were granted incentive ROE adders in Docket No. EL07-62-000.<sup>7</sup>

5. SoCal Edison requests that the Commission accept the proposed transmission rates to become effective on October 1, 2009, without further investigation or hearing.<sup>8</sup> In the event that the Commission determines that the filing requires further investigation and should be set for hearing, SoCal Edison asks that the Commission suspend the proposed rates for a nominal period, rather than the maximum five-month period. SoCal Edison recognizes the principles set forth in *West Texas Utilities Company*.<sup>9</sup> However, SoCal Edison asserts that *West Texas* permits the Commission flexibility to take into account the facts and circumstances present in each case in making its suspension decision, and requires the Commission to state the reasons for the length of its suspension.<sup>10</sup> SoCal Edison argues that, while the Commission will normally impose a five-month suspension when its preliminary analysis suggests that a rate increase is excessive by ten percent or more, that policy is not etched in stone, and should not be followed when it will lead to harsh and inequitable results.<sup>11</sup> SoCal Edison further asserts that since the Commission adopted its *West Texas* policy in a policy statement rather than in a notice and comment rulemaking, the Commission must support the policy just as if the policy statement had never been issued when it seeks to apply the policy to a particular situation.<sup>12</sup> Therefore, SoCal Edison concludes that the suspension decision is not simply a mathematical exercise, but a qualitative assessment of the appropriate result under the circumstances.

6. Under this approach, SoCal Edison argues that the circumstances in this proceeding warrant a nominal suspension. SoCal Edison states that it is engaged in a substantial transmission construction program to increase reliability, reduce congestion,

---

<sup>7</sup> *Southern Cal. Edison Co.*, 121 FERC ¶ 61,168 (2007) (Incentive Order).

<sup>8</sup> SoCal transmittal at 13.

<sup>9</sup> *W. Tex. Util. Co.*, 18 FERC ¶ 61,189, at 61,373 (1982) (*West Texas*).

<sup>10</sup> SoCal transmittal at 14, *citing West Texas*, 18 FERC at 61,374-75.

<sup>11</sup> SoCal transmittal at 14.

<sup>12</sup> *Id. citing Pac. Gas & Elec. Co. v. Fed. Power Comm'n*, 506 F.2d 33, 38 (D.C. Cir. 1974).

and interconnect new generation and that the Commission has awarded incentives to SoCal Edison for this transmission construction, consistent with the Commission's new incentive policies.<sup>13</sup> Further, SoCal Edison argues that it is important that the Commission ensure that these incentives are given full effect in order to incentivize the conduct the Commission seeks to encourage. SoCal Edison concludes that these incentives will not take effect if a five-month suspension is imposed because lost revenues would be approximately four times the additional revenues that SoCal Edison would receive from the ROE incentives reflected in this filing. SoCal Edison therefore concludes that delays of this nature create a disincentive for all transmission providers to construct new transmission infrastructure by forcing the provider to carry the cost of the improvements without any compensation.<sup>14</sup>

7. Additionally, SoCal Edison argues that the Commission's incentive policies are running headlong into the Commission's 1980's suspension policies.<sup>15</sup> The Commission's suspension policies were adopted when the Commission's primary objective was restraining price increases rather than spurring new construction. SoCal Edison asserts that, in contrast, today utilities are facing transmission capacity constraints and the primary focus of the Commission and Congress is encouraging new transmission construction to maintain system reliability and to encourage new renewable generation. Thus, SoCal Edison argues that the Commission needs to consider the disincentive that its five-month suspension policy creates for a utility, such as SoCal Edison, that is engaged in a large construction program. SoCal Edison concludes that a five-month suspension would penalize it for the speed with which it adds infrastructure, which is the opposite of the objectives of Congress and the Commission.<sup>16</sup>

8. Finally, SoCal Edison argues that a five-month suspension is not necessary to protect customers since the entire amount of the rate increase will be collected subject to refund.<sup>17</sup> Therefore, imposing a nominal suspension would protect SoCal Edison customers from excessive rates while simultaneously encouraging SoCal Edison to build new transmission infrastructure. In contrast, SoCal Edison asserts that a five-month

---

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 15.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 16.

<sup>17</sup> *Id.* at 16-17.

suspension would impose harsh and inequitable results by preventing it from recovering a substantial portion of its transmission costs.<sup>18</sup>

#### **IV. Notice of Filing and Responsive Pleadings**

9. Notice of SoCal Edison's Transmission Rate Filing was published in the *Federal Register*, 74 Fed. Reg. 40,175 (2009), with comments, protests, and interventions due on or before August 21, 2009.

10. Timely, unopposed motions to intervene were filed by San Diego Gas & Electric Company (SDG&E); Arizona Electric Power Cooperative, Inc. and Southwest Transmission Cooperative, Inc.; Golden State Water Company; Pacific Gas and Electric Company (PG&E); and Energy Producers & Users Coalition. The CPUC filed a notice of intervention and protest. Timely, unopposed motions to intervene and protests were filed by the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (Six Cities); the California Department of Water Resources State Water Project (CDWR); the City of Los Angeles Department of Water and Power (LADWP); the M-S-R Public Power Agency (M-S-R); Transmission Agency of Northern California (TANC); State Water Contractors and the Metropolitan Water District of Southern California (SWC-Metropolitan); the City of Santa Clara, California (Santa Clara) and the City of Redding, California (Redding); Modesto Irrigation District (Modesto); and Northern California Power Agency (NCPA).<sup>19</sup> On September 4, 2009, SoCal Edison filed an answer to the intervenors' protests. On September 21, 2009, M-S-R and Six Cities filed answers to SoCal Edison's answer.

#### **Comments and Protests**

11. The protestors object to various aspects of SoCal Edison's proposal that they assert appear to be unjust and unreasonable. Among the protested issues are SoCal Edison's proposed 12.25 percent base ROE, the projected transmission capital additions, the increase in O&M expenses, the increase in depreciation rates, the increase in and classification of A&G expenses, the transmission labor allocator, low forecasted retail sales, and concerns related to the gross revenue sharing mechanism. Because the protestors assert that SoCal Edison's proposed revisions to its TO Tariff have not been

---

<sup>18</sup> *Id.*

<sup>19</sup> TANC, Modesto, Santa Clara and Redding adopt and concur with M-S-R's protest. NCPA supports the protests of M-S-R and Six Cities.

shown to be just and reasonable, they request that the Commission suspend SoCal Edison's proposed revisions and establish hearing procedures to review SoCal Edison's proposed revisions.<sup>20</sup>

12. Further, protestors argue that SoCal Edison's proposed rates are substantially excessive and therefore, under the Commission's suspension standard, as explained in *West Texas*,<sup>21</sup> the Commission should suspend these proposed rates for five months. They disagree with SoCal Edison's argument that a five month suspension will undermine the Commission-granted incentive adders. They argue that if the Commission grants SoCal Edison's request for a nominal suspension, the Commission may undermine its policy of encouraging utilities to file "cost justified rates."<sup>22</sup> Further, they note that the Commission has consistently suspended SoCal Edison's proposed rate revisions when the rates are determined to be substantially excessive.<sup>23</sup>

## V. Discussion

### A. Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motions to intervene serve to make those submitting them parties to this proceeding.

14. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits answers to protests and answers to answers unless otherwise ordered by the decisional authority. We are not persuaded to accept answers submitted by SoCal Edison, M-S-R, and Six Cities and will, therefore, reject them.

---

<sup>20</sup> Six Cities also request the Commission to accept the filing subject to refund and suspend for the maximum period pending the outcome of hearing and settlement procedures. *See* Six Cities protest at 2, 4.

<sup>21</sup> *West Texas*, 18 FERC at 61,374-75.

<sup>22</sup> M-S-R protest at 50, *citing West Texas*, 18 FERC at 61,375.

<sup>23</sup> *Southern Cal. Edison Co.*, 99 FERC ¶ 61,032 (2002); *Southern Cal Edison Co.*, 114 FERC ¶ 61,018, at P 14 (2006); *Southern Cal. Edison Co.*, 124 FERC ¶ 61,309 (2008).

**B. Hearing and Settlement Judge Procedures**

15. SoCal Edison's proposed modifications to its TO Tariff 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 arising out of SoCal Edison's proposed TRR.

16. Consistent with previous Commission orders, the Commission summarily accepts SoCal Edison's use of a 50 basis-point incentive adder for participation in the CAISO.<sup>24</sup> The Commission also accepts the 30 basis-point adder associated with certain transmission facilities to be placed into service that were granted incentive ROE adders in Docket No. EL07-62-000.<sup>25</sup> However, our preliminary analysis indicates 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. It is our policy to suspend a requested rate increase for the maximum period in those cases where our preliminary analysis indicates that ten percent or more of the requested increase appears to be excessive.<sup>26</sup> In such instances, the Commission will generally impose a maximum suspension of five months.<sup>27</sup> Because our preliminary analysis of SoCal Edison's proposal indicates that its rate increase is above ten percent, it is subject to the Commission's five-month suspension.

17. Furthermore, we find that SoCal Edison has not demonstrated that a five-month suspension will produce harsh and inequitable results. Although SoCal Edison asserts that suspending its proposed rates for five months will undermine the benefits of its Commission-approved transmission incentives, SoCal Edison's arguments are at variance with the purpose of *West Texas*, which is to encourage utilities to file rates that are "substantially cost justified."<sup>28</sup> The Commission considered this same issue in its

---

<sup>24</sup> See Incentive Order, 121 FERC ¶ 61,168 at P 158-59.

<sup>25</sup> *Id.* P 143.

<sup>26</sup> *West Texas*, 18 FERC at 61,375.

<sup>27</sup> *West Texas*, 18 FERC at 61,374-75; accord *Tucson Elec. Co.*, 76 FERC ¶ 61,235, at 62,147, n.25 (1996) (*Tucson*); see also *Ky. Util. Co. v. FERC*, 125 FERC ¶ 61,242 (2008).

<sup>28</sup> *Id.* at 61,375.

incentives rulemaking, Order No. 679,<sup>29</sup> when SoCal Edison and others protested that the Commission's suspension policy would hinder transmission investment. In that proceeding, the Commission declined to revise the five-month suspension policy for incentive rate cases. Instead, the Commission concluded that "there are alternative means to ensure the recovery of prudently incurred costs."<sup>30</sup>

18. Additionally, we note that SoCal Edison is in control of when it files to change rates and the magnitude of its proposed rate increase pursuant to FPA section 205. We reaffirm that "the purpose of this suspension policy is to provide consumers with maximum protection"<sup>31</sup> and where our preliminary analysis indicates that the proposed rate increase may be more than ten percent above a just and reasonable rate, the Commission's policy is to impose a suspension for five months and that applies equally to transmission incentive cases. Accordingly, we will accept SoCal Edison's proposed changes for filing, suspend them for the maximum five-month period, make them effective March 1, 2010, subject to refund, and set them for hearing and settlement judge procedures.

19. While we are setting these matters 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 and given the success these parties have had in resolving SoCal Edison's rate increases in the past, 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.<sup>32</sup> If the

---

<sup>29</sup> *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, at P 384; *order on reh'g*, FERC Stats. & Reg. ¶ 31,236 (2006) Order No. 679-A; *order on reh'g*, 119 FERC ¶ 61,062 (2007).

<sup>30</sup> *Id.* P 389. In Order No. 679, the Commission explained: "To the extent that public utilities are concerned that the Commission's suspension policy unnecessarily delays recovery of prudent costs, there are alternative means to ensure such recovery. As mentioned previously, formula rates enhance cost recovery certainty. Further, public utilities that are concerned that a particular rate increase may be deemed 'excessive' under our suspension policy may use our pre-filing process for discussing those concerns." *Id.*

<sup>31</sup> *Tucson*, 76 FERC at 62,147.

<sup>32</sup> 18 C.F.R. § 385.603 (2009).

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.<sup>33</sup> 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 discussions. Based on 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.

The Commission orders:

(A) SoCal Edison's proposed transmission rates are hereby accepted for filing and suspended for five months, to become effective on March 1, 2010, subject to refund, as discussed in the body of this order.

(B) 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 concerning SoCal Edison's proposed transmission rates. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2009), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within (fifteen) 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 (5) days of the date of this order.

(D) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status

---

<sup>33</sup> 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 and a summary of their background and experience ([www.ferc.gov](http://www.ferc.gov) – click on Office of Administrative Law Judges).

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 sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) 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 fifteen (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. Commissioner Moeller dissenting in part with a separate statement to be issued at a later date.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.