

129 FERC ¶ 61,304  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Southern California Edison Company

Docket Nos. ER10-160-000  
ER09-187-002

ORDER ACCEPTING AND SUSPENDING PROPOSED RATES, ESTABLISHING  
HEARING AND SETTLEMENT JUDGE PROCEDURES, CONSOLIDATING  
PROCEEDINGS AND ON REQUESTS FOR REHEARING

(Issued December 31, 2009)

1. On October 30, 2009, Southern California Edison Company (SoCal Edison) filed revisions to its Transmission Owner Tariff (TO Tariff)<sup>1</sup> in Docket No. ER10-160-000 to reflect proposed changes to its transmission revenue requirement and transmission rates implementing Construction Work in Progress (CWIP) rate incentives for the calendar year 2010 (2010 CWIP Update). In this order, the Commission accepts SoCal Edison's proposed tariff revisions, suspends them for five months, subject to refund, to be effective June 1, 2010, and establishes hearing and settlement judge procedures on all issues except for those related to the Return on Equity (ROE). This order also grants requests for rehearing in Docket No. ER09-187-002 and makes the ROE issue raised in Docket Nos. ER10-160-000 and ER09-187-000 subject to the Commission's determinations in the paper hearing previously established in Docket No. ER08-375-000.<sup>2</sup> Finally, with respect to the issues related to development of the ROE in both of these proceedings, this order consolidates Docket No. ER10-160-000 with Docket No. ER09-187-000, and establishes a paper hearing.

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<sup>1</sup> FERC Electric Tariff, Second Revised Vol. No. 6.

<sup>2</sup> *Southern California Edison Co.*, 122 FERC ¶ 61,187 (2008).

## I. Background

### A. Section 219 Requirement

2. In the Energy Policy Act of 2005, Congress added a new section 219 to the FPA directing the Commission to establish, by rule, incentive-based (including performance-based) rate treatments for electric transmission.<sup>3</sup> Thereafter, the Commission issued Order No. 679, which set forth processes by which a public utility could seek transmission rate incentives, pursuant to section 219.<sup>4</sup> 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 three of its major projects, which have capital expenditures totaling \$2.5 billion. On November 16, 2007, the Commission granted SoCal Edison's request for transmission rate incentives for the three transmission projects and approved the creation of a stand-alone balancing account mechanism for these rate incentives.<sup>5</sup>

3. In the *Incentives Order*, the Commission found that, consistent with Order No. 679, SoCal Edison's proposals for the construction of three transmission projects, the Devers-Palo Verde II Project (DPV2 Project), the Tehachapi Transmission Project (Tehachapi Project) and the Rancho Vista transmission substation project (Rancho Vista Project) (collectively, Projects) would significantly improve the reliability of the California Independent System Operator Corporation's (CAISO) bulk power transmission system, and reduce the cost of power to customers by reducing transmission congestion on the CAISO-controlled transmission grid.<sup>6</sup> Accordingly, the Commission granted rate incentives to SoCal Edison.

4. Further, the Commission directed SoCal Edison to submit a section 205 filing to implement a stand-alone balancing account mechanism for the recovery of the CWIP revenue requirement. The Commission required SoCal Edison to provide a detailed explanation of its accounting methods and procedures to (1) implement the stand-alone

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<sup>3</sup> Energy Policy Act of 2005, Pub. L. No. 109-58, §§ 1261 *et seq.*, 119 Stat. 594 (2005).

<sup>4</sup> *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).

<sup>5</sup> *Southern California Edison Co.*, 121 FERC ¶ 61,168 (2007) (*Incentives Order*).

<sup>6</sup> *Id.* P 3.

balancing account; (2) comply with 18 C.F.R. § 35.13(h)(38) and § 35.25 (2007); and (3) maintain comparability of financial information.<sup>7</sup>

**B. CWIP Ratemaking Mechanism – Docket No. ER08-375-000**

5. In Docket No. ER08-375-000, SoCal Edison sought 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 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 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 revenue requirement (CWIP TRR) be added to its existing Base TRR. SoCal Edison also explained that each year it will 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 true-up on an annual basis to reflect actual recorded costs using a balancing account and subsequent rate filings.

6. By order dated February 29, 2008,<sup>8</sup> 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.<sup>9</sup> Specifically, the Commission ordered the paper hearing to address only the issues related to the development of SoCal Edison's overall ROE.<sup>10</sup>

**C. 2009 CWIP Update Filing – Docket No. ER09-187-000**

7. In Docket No. ER09-187-000, SoCal Edison proposed revisions to its CWIP Transmission Revenue Requirement (TRR) pursuant to the CWIP true-up mechanism conditionally approved in Docket No. ER08-375-000 (2009 CWIP Update), designed to recover CWIP costs for calendar year 2009, which resulted in a rate reduction. The Commission accepted SoCal Edison's 2009 CWIP TRR update subject to refund and

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<sup>7</sup> *Id.* P 61.

<sup>8</sup> *Southern California Edison Co.*, 122 FERC ¶ 61,187 (2008).

<sup>9</sup> The paper hearing is pending before the Commission.

<sup>10</sup> The paper hearing did not include issues already decided in the *Incentives Order*, such as whether SoCal Edison is entitled to the ROE adders.

established hearing and settlement procedures.<sup>11</sup> The December 2008 Order also consolidated, in part, the 2009 CWIP Update with the proceedings in Docket Nos. ER08-1343-000 and ER08-1353-000, and made the proposed ROE in the 2009 CWIP Update docket subject to the outcome of the paper hearing previously established in Docket No. ER08-375-000. On July 1, 2009, the Commission approved a settlement agreement in Docket No. ER08-1343-000, *et al.* that resolved all issues in Docket Nos. ER09-187-000 and ER09-187-001 except for the pending ROE issue.

## **II. Current 2010 CWIP Update Filing – Docket No. ER10-160-000**

8. SoCal Edison's filing in Docket No. ER10-160-000 is its second update to the CWIP TRR, designed to recover CWIP costs for calendar year 2010. SoCal Edison proposes to increase its CWIP TRR applicable to wholesale customers, by \$7.6 million, from \$38.5 million to \$46.1 million, effective January 1, 2010.

9. With respect to SoCal Edison's CWIP revenue requirement, it proposes a base ROE of 12.25 percent, reflecting its estimated costs of security equity capital, plus the ROE incentives the Commission authorized in the *Incentives Order*. SoCal Edison states that the ROE has three components, which should be combined for an ROE of 14.00 percent for DPV2 and Tehachapi. In addition to the base ROE, SoCal Edison includes the incentive adders granted in the *Incentives Order*, consisting of a 50 basis point adder for participation in the CAISO, and an additional adder of 125 basis points for DPV2 and Tehachapi.

10. SoCal Edison's filing also includes updated tariff sheets to be effective March 1, 2010 reflecting its 2010 Base TRR, which the Commission accepted subject to refund and settlement procedures in Docket No. ER09-1534-000, SoCal Edison's latest general transmission rate increase application.<sup>12</sup>

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

11. Notice of the filing in Docket No. ER10-160-000 was published in the *Federal Register*, with interventions and protests due on or before November 20, 2009.<sup>13</sup> The Energy Producers and Users Coalition, Golden State Water Company and the Northern

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<sup>11</sup> *Order Accepting and Suspending Proposed Rates, Establishing Hearing and Settlement Judge Proceedings and Consolidating Proceedings*, 125 FERC ¶ 61,329 (2008) (December 2008 Order).

<sup>12</sup> *Southern California Edison Co.*, 128 FERC ¶ 61,287 (2009).

<sup>13</sup> 74 FR 58270 (2009).

California Power Agency filed timely motions to intervene with no substantive comments.

12. The State Water Contractors (SWC) and the Metropolitan Water District of Southern California (Metropolitan) jointly filed a timely motion to intervene, protest, request for maximum suspension and hearing. The Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (collectively, Six Cities) timely filed an intervention, protest, affidavit and exhibit of J. Bertram Solomon and motion for Commission action on the pending paper hearing in Docket No. ER08-375-000.

13. The California Public Utilities Commission (CPUC) filed a notice of intervention, protest, request for hearing and motion to consolidate the 2010 CWIP Update in Docket No. ER10-160-000 with Docket No. ER09-1534-000. The City of Los Angeles Department of Water and Power (LADWP) filed a timely motion to intervene and comments, and a request for consolidation of the 2010 CWIP Update proceeding with Docket Nos. ER09-1534-000 and ER10-135-000. The California Department of Water Resources State Water Project (SWP) filed a timely motion to intervene, protest, and motion to consolidate the 2010 CWIP Update proceeding with Docket No. ER09-1534-000. The Cities of Santa Clara, California (Santa Clara) and Redding (Redding) (jointly), as well as the Modesto Irrigation District (Modesto), the Transmission Agency of Northern California (TANC), and the M-S-R Public Power Agency (M-S-R) timely filed motions to intervene, protest and request for maximum suspension, consolidation of the 2010 CWIP Update proceeding with Docket No. ER09-1534-000 and hearing. Santa Clara, Redding, Modesto, and TANC adopted M-S-R's protest arguments (collectively, M-S-R Parties). On December 9, 2009, M-S-R filed an amendment to its prepared direct and answering testimony to correct several errors.

14. SoCal Edison filed an answer to motions to consolidate, motion for leave to respond and response to the protests on December 7, 2009. The CPUC filed a conditional motion for leave to answer and answer to the SoCal Edison's answer on December 9, 2009. The M-S-R Parties, together with SWP, Metropolitan and LADWP (Indicated Parties) filed a motion to strike SoCal Edison's answer on December 11, 2009. Six Cities filed a motion for leave to respond and response to SoCal Edison's answer on December 22, 2009.

#### **B. Comments and Protests**

15. The protestors object to several aspects of SoCal Edison's proposal. The CPUC, the M-S-R Parties, Metropolitan, SWC, and SWP argue that SoCal Edison's proposed revisions to its TO Tariff have not been shown to be just and reasonable, and request that the Commission impose the maximum five-month suspension on SoCal Edison's proposed revisions, and establish hearing procedures to review SoCal Edison's proposed revisions. SWP argues that ratepayers should not be required to continue to pay rates based on a proposed ROE that the Commission has not yet approved, and that SoCal

Edison's filing improperly attempts to increase SoCal Edison's base ROE through the CWIP proceeding.

16. The protestors take issue with various elements of SoCal Edison's base ROE methodology, including its proxy group selection, selection of measure of central tendency, and risk and cost of capital determinations.

17. SWP argues that SoCal Edison's filing should not have included in the CWIP rates costs for the DPV2 Project due to the change in status of that Project. Specifically, SWP argues that SoCal Edison has abandoned the DPV2 Project as previously planned, and therefore should pay refunds for any collections associated with DPV2 after May 18, 2009, the date on which SoCal Edison notified the Commission that it was not pursuing the project in its originally proposed form. For the same reason, the M-S-R Parties and the Six Cities argue that SoCal Edison improperly included DPV2 Project costs in its proposed rate. SWP and the M-S-R Parties indicate that SoCal Edison's CWIP filing also may improperly include costs related to Tehachapi Project segments after their in-service dates. The CPUC also argues that some of the costs related to the DPV2 and Tehachapi Projects may be unreasonable and that the CPUC requires discovery to determine whether this is the case.

18. Multiple intervenors request that the Commission suspend the proposed 2010 CWIP Update rates for the maximum five-month period, consolidate the proceedings in Docket Nos. ER10-160-000 and ER09-1534-000 and establish hearing procedures. In addition, LADWP requests that the Commission consolidate the 2010 CWIP Update proceeding with the Transmission Revenue Balancing Account Adjustment (TRBAA) filing in Docket No. ER10-135-000 because both the CWIP and TRBAA have a substantial effect on the High Voltage Existing Contracts Access Charge rate.

19. In support for the motions to consolidate, the intervenors state that SoCal Edison's instant filing and its general transmission rate case in Docket No. ER09-1534-000 (Transmission Rate Case) are interrelated and present common issues of law and fact. For example, the intervenors point out that SoCal Edison is seeking to apply the same ROE to its CWIP rates that it proposed for use in the Transmission Rate Case. Additionally, the M-S-R Parties argue that the interplay between the two filings with respect to the DPV2 and Tehachapi Projects is important because once a project is placed into service, its costs are included within SoCal Edison's general transmission rates. This in turn could make the projected in-service date and the issue of double recovery an important facet in both proceedings, according to the M-S-R Parties. Finally, SWP and the CPUC state that both filings raise concerns about the recovery of costs related to the Tehachapi Project. They state that it appears that SoCal Edison's 2010 CWIP Update may include costs for Tehachapi, notwithstanding that SoCal Edison's Transmission Rate Case states that portions of that Project will go into service in 2009 and therefore will be included in the proposed recovery in that case.

20. In support for the request for maximum suspension, SWC and Metropolitan state that SoCal Edison's filing will result in excessive rates that do not meet the Commission's criterion for a nominal suspension. SWC and Metropolitan argue that a maximum suspension is justified because SoCal Edison filed for cost recovery based on long-rejected ROE rate methodologies. The M-S-R Parties state that their analysis demonstrates that SoCal Edison fails to meet the *West Texas* standard for a one-day suspension.<sup>14</sup> The M-S-R Parties further state that their analysis justifies two reductions (i.e., in the derivation of ROE and removal of certain DPV2 costs) and the proposal exceeds the entire requested increase in the 2010 CWIP Update, which is far in excess of the required 10 percent under a *West Texas* analysis.

21. The Six Cities request that the Commission issue an order on the paper hearing conducted in Docket No. ER08-375-000 and refrain from consolidating the instant filing with the paper hearing in that docket. The Six Cities request a new hearing process for determining a just and reasonable incentive ROE for SoCal Edison's 2010 CWIP TRR.

### C. Discussion

#### 1. Procedural Matters

22. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the notices of intervention 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) (2009) prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept SoCal Edison's answer regarding consolidation of proceedings, in accordance with Rule 213(a)(3) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(3) (2009). We are not persuaded to accept the remainder of SoCal Edison's answer and will, therefore, reject it. Likewise, we will reject the CPUC's and Six Cities' answers to SoCal Edison's answer and the Indicated Parties' motion to strike SoCal Edison's answer.

#### 2. Commission Determination

23. SoCal Edison has proposed to increase the base ROE from 12.00 percent (as requested in Docket No. ER09-187-000) to 12.25 percent, or an increase of .25 percent. Our preliminary analysis indicates that SoCal Edison's proposed changes to its TO Tariff in Docket No. ER10-160-000 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

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<sup>14</sup> M-S-R protest at 33-34, citing *West Texas Utilities Co.*, 18 FERC ¶ 61,189 (1982) (*West Texas*).

where our preliminary analysis indicates that 10 percent or more of the requested increase appears to be excessive.<sup>15</sup> In such instances, the Commission generally will impose a maximum suspension of five months.<sup>16</sup> Because our preliminary analysis of SoCal Edison's proposal indicates that 10 percent or more of the requested increase may be excessive, it is subject to the Commission's five-month suspension. Therefore, we will accept SoCal Edison's proposed changes for filing, suspend them for the maximum five-month period, make them effective June 1, 2010, subject to refund, and set limited issues, discussed below, for hearing and settlement judge procedures.

24. 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 2010 CWIP Update except for the issues related to the development of SoCal Edison's base ROE. With respect to the issues in the 2010 CWIP Update proceeding that relate to SoCal Edison's base ROE, the Commission is establishing a paper hearing, discussed below, that will be subject to the Commission's determinations in SoCal Edison's pending paper hearing proceeding in Docket No. ER08-375-000.

25. 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, 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>17</sup> 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.<sup>18</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.

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<sup>15</sup> *West Texas*, 18 FERC at 61,375.

<sup>16</sup> *West Texas*, 18 FERC at 61,374-75; *accord Tucson Electric Co.*, 76 FERC ¶ 61,235, at 62,147, n.25 (1996); *see also Kentucky Utilities Co. v. FERC*, 125 FERC ¶ 61,242 (2008).

<sup>17</sup> 18 C.F.R. § 385.603 (2009).

<sup>18</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).

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.

26. We deny the motions to consolidate the 2010 CWIP Update proceeding with the ongoing proceeding in Docket No. ER09-1534-000, or the proceeding in Docket No. ER10-135-000. The Commission consolidates matters for hearing only if there are common issues of fact or law, and consolidation will ultimately result in greater administrative efficiency.<sup>19</sup> This standard for consolidation has not been satisfied here. The limited issues we are setting for hearing and settlement procedures in Docket No. ER10-160-000 raise separate and distinct issues of fact and law and thus we do not believe administrative efficiency will be served by consolidating the proceedings in that docket with the proceedings in Docket Nos. ER09-1534-000 or ER10-135-000. For these reasons, we deny the motions for consolidation. On the other hand, we find that the issues related to SoCal Edison's ROE in Docket Nos. ER09-187-000 and ER10-160-000 present common issues of law and fact, and that consolidating these proceedings will result in administrative efficiency. Therefore, we will consolidate these proceedings for paper hearing as discussed herein.

### **III. Request for Clarification or, in the Alternative, Request for Rehearing Docket No. ER09-187-002**

#### **A. Background**

27. On October 31, 2008, in Docket No. ER09-187-000, 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 for calendar year 2009 (2009 CWIP Update). As part of that filing, SoCal Edison proposed to revise the base ROE from the 11.5 percent it proposed in the paper hearing proceeding in Docket No. ER08-375-000 to 12.0 percent. On December 19, 2008, the Commission accepted SoCal Edison's proposed tariff revisions in Docket Nos. ER09-187-000 and ER09-187-001, suspended them for a nominal period, subject to refund, to be effective January 1, 2009,

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<sup>19</sup> See, e.g., *California Independent System Operator Corp.*, 125 FERC ¶ 61,153, at P 45 (2008) citing *Southwest Power Pool, Inc.*, 125 FERC ¶ 61,001, at P 25 (2008) (consolidating proceedings because of common issues of fact and law); *Ameren Services Co., et al.*, 121 FERC ¶61,205, at P 22-23 (2007) (consolidating proceedings with common issues of law and fact and denying consolidation for proceedings where the focus of the issues differs); *Midcontinent Express Pipeline LLC*, 124 FERC ¶ 61,089, at P 27 (2008) (denying consolidation of cases involving different questions of law and fact and different parties because it would not result in administrative efficiency).

and established hearing and settlement judge procedures.<sup>20</sup> In addition, the Commission consolidated all issues related to SoCal Edison's projected 2009 CWIP Update, but for the proposed ROE, with the ongoing proceedings in SoCal Edison's Transmission Rate Case in Docket Nos. ER08-1343-000, *et al.*<sup>21</sup> However, the Commission noted that it would not consolidate the issues in the 2009 CWIP Update that relate to SoCal Edison's proposed ROE with the Transmission Rate Case. Rather, the Commission stated that, because the overall ROE for SoCal Edison's CWIP revenue requirement is under review in the paper hearing proceeding, the Commission's determination of the ROE submitted in the 2009 CWIP Update would be subject to the outcome of the pending paper hearing proceeding in Docket No. ER08-375-000.

28. In its 2009 CWIP Update, SoCal Edison stated that its proposed base ROE of 12.0 percent is fully supported by its Discounted Cash Flow (DCF) analysis as of September 2008. As in its original filing in the paper hearing proceeding, SoCal Edison used a national proxy group of companies categorized as electric utilities by Value Line Investment Survey. From this group, SoCal Edison selected companies with Standard and Poor's issuer credit rating of A-, BBB+ or BBB. Further, SoCal Edison selected companies having annual electric revenues of at least \$1 billion, were paying a stock dividend as of the time of this analysis, and each company's dividend payments were expected to continue. Finally, none of these companies was involved in merger activity or major restructuring during the period of analysis. SoCal Edison adjusted the resulting DCF range to exclude results for companies whose low-end DCF results were less than 100 basis points above the yields for A and Baa utility bonds, as well as high-end DCF results above 17.7 percent, consistent with *ISO New England Inc.*<sup>22</sup> SoCal Edison argues that, based on the resulting DCF range of 8.03 percent to 16.28 percent, with a midpoint of 12.15 percent, its analysis supports the proposed base ROE of 12.0 percent.<sup>23</sup>

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<sup>20</sup> *December 2008 Order*, 125 FERC ¶ 61,329.

<sup>21</sup> In Docket No. ER08-1343-000, SoCal Edison filed proposed revisions to its Transmission Owner Tariff, reflecting changes to its transmission revenue requirement and transmission rates for customers taking service pursuant to the CAISO's Open Access Transmission Tariff and SoCal Edison's Transmission Owner Tariff, over SoCal Edison's transmission facilities (Transmission Rate Case). Thereafter, the parties to these consolidated proceedings reached an uncontested settlement that was approved by the Commission. *Southern California Edison Co.*, 128 FERC ¶ 61,237 (2009).

<sup>22</sup> 109 FERC ¶ 61,147, at P 205 (2004).

<sup>23</sup> SoCal Edison October 31, 2008 filing, transmittal letter, 6-7, *citing* Exhibit SCE-5, testimony of Dr. Hunt at 33-34.

**B. Request for Clarification or, in the Alternative, Request for Rehearing**

29. LADWP, M-S-R and the Cities of Santa Clara and Redding, California filed requests for clarification or, in the alternative requests for rehearing. The CPUC filed a request for rehearing of the December 2008 Order.

30. LADWP, M-S-R and the Cities of Santa Clara and Redding request that the Commission clarify its determination regarding the CWIP ROE of 12.0 percent in the 2009 CWIP Update as being limited to the existing record in the paper hearing proceeding in Docket No. ER08-375-000. Without clarification, the parties are concerned that the Commission could accept evidence submitted in the 2009 CWIP Update into the paper hearing proceeding without providing the intervenors an opportunity to be heard.

31. In the event that the Commission does not grant the requested clarification, LADWP, M-S-R, and the Cities of Santa Clara and Redding ask the Commission to grant rehearing of its decision not to include the proposed CWIP ROE of 12.0 percent in the 2009 CWIP Update in the consolidated proceedings in the Transmission Rate Case. Specifically, LADWP states that the Commission should rule either that: (1) the base ROE issues in the 2009 CWIP Update that are subject to the outcome of this paper hearing will be limited to SoCal Edison's proposed base ROE of 11.5 percent; or (2) parties will be afforded an opportunity to present evidence in the 2009 CWIP Update that the 12.0 percent base ROE proposed by SoCal Edison is excessive. Additionally, LADWP asserts that the December 2008 Order violates due process by denying parties other than SoCal Edison to be heard and present evidence regarding SoCal Edison's proposed increase in base ROE from 11.5 percent to 12.0 percent. Moreover, parties in the 2009 CWIP Update filing that did not intervene in the paper hearing proceeding, including LADWP, M-S-R and the Cities of Santa Clara and Redding, would be harmed because (1) they would be denied any opportunity to challenge SoCal Edison's 2009 CWIP base ROE of 12.0 percent proposal since it was made subject to another proceeding in which they were not parties, and (2) they would be deprived of an opportunity to be heard and present evidence regarding SoCal Edison's proposed base ROE of 12.0 percent.

32. M-S-R states that if the Commission intends to include the 12.0 percent ROE information from the 2009 CWIP Update in the paper hearing record, then fairness requires that the intervenors be permitted to respond to the information submitted in the 2009 CWIP Update. Therefore, M-S-R suggests that the most efficient means for a response is to consolidate the CWIP ROE issue into the consolidated proceedings in the Transmission Rate Case. M-S-R states that the way the 2009 CWIP ROE issue currently stands, parties to the settlement discussions in the Transmission Rate Case proceeding would only be able to address the CWIP issue partially. M-S-R states that the bifurcated CWIP issue may create an unnecessary timing difference between approved ROEs in the ongoing settlement proceeding in the Transmission Rate Case proceeding and the paper

hearing proceeding. M-S-R asserts that this would be less efficient to SoCal Edison, the Commission, and intervenors than a single decision addressing the CWIP issue.

33. The CPUC seeks rehearing asserting that the Commission's decision to determine SoCal Edison's proposed 12.0 percent ROE in the 2009 CWIP Update based on the paper hearing proceeding violates the requirement that the Commission rely on recent market data in determining a just and reasonable ROE.<sup>24</sup> The CPUC argues that, while Commission and judicial precedent support the use of updated data in ROE determinations, the December 2008 Order erroneously holds that SoCal Edison's 2009 CWIP rates should be based on the same rates ordered in the paper hearing proceeding. Additionally, the CPUC states that SoCal Edison's testimony in the Docket No. ER09-187-000 proceeding is different from its testimony in the paper hearing proceeding because it includes a different proxy group and proposed ROE. Thus, the CPUC argues that the Commission improperly based its decision on evidence submitted in the paper hearing proceeding and not on evidence in this proceeding. Finally, the CPUC states that the Commission did not find that SoCal Edison's proposal met the burden of proof and, instead, ruled that the ROE would be the same as that set in the paper hearing proceeding involving different testimony. Therefore, the CPUC states that the Commission did not approve SoCal Edison's analysis in the 2009 CWIP Update or find that SoCal Edison met its burden of proof.

### C. Commission Determination

34. When we originally determined that the proposed CWIP base ROE of 12.0 percent was not to be consolidated with the proceedings in the Transmission Rate Case, but made that issue subject to the outcome of the paper hearing in Docket No. ER08-375-000, the Commission expected that it would apply the results and conclusions of the paper hearing to SoCal Edison's revised ROE proposal in the 2009 CWIP Update. Because the 2009 CWIP Update filing has preceded the resolution of the paper hearing in Docket No. ER08-375-000, and upon further review, we will grant the requests for rehearing. Because SoCal Edison submitted a new proposal in its 2009 CWIP Update, which included new testimony based on more current data,<sup>25</sup> due process requires that the Commission allow all parties in this proceeding the opportunity to present evidence regarding SoCal Edison's proposed base ROE of 12.0 percent. We find that it is necessary for those parties in the 2009 CWIP Update filing that are not parties to the

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<sup>24</sup> CPUC Request for Rehearing at 4, citing *Bangor Hydro Electric Co.*, 117 FERC ¶ 61,129 (2006); *Union Electric Co. v. FERC*, 890 F.2d 1193, 1203 (D.C. Cir. 1989); and *Boston Edison Co. v. FERC*, 885 F.2d 962, 967 (1st Cir. 1989).

<sup>25</sup> SoCal Edison's proposal in Docket No. ER09-187-000 reflects more current financial data than that filed in Docket No. ER08-375-000.

paper hearing proceeding in Docket No. ER08-375-000 to have the opportunity to present evidence in the 2009 CWIP Update proceeding.

35. Therefore, we will grant rehearing and establish a separate paper hearing proceeding for the proposed 12.0 percent base ROE in the 2009 CWIP Update filing, and consolidate the proceeding with the paper hearing proceeding established herein for the 2010 CWIP Update filing. All parties in these proceedings must file initial briefs within 45 days of the issuance of an order in the pending paper hearing proceeding in Docket No. ER08-375-000 presenting evidence regarding SoCal Edison's proposed base ROE of 12.0 percent that became effective January 1, 2009, subject to refund, and SoCal Edison's proposed base ROE of 12.25 percent, which will become effective June 1, 2010, subject to refund. Reply briefs are to be filed within 20 days after the submission of initial briefs. The briefs will be limited to those issues related to development of the proposed base ROE.

The Commission orders:

(A) SoCal Edison's proposed tariff sheets are hereby accepted for filing and suspended for five months and set for hearing, to become effective June 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 in Docket No. ER10-160-000 concerning all issues related to SoCal Edison's projected CWIP costs, but for the proposed ROE. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in 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 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.

(D) Within 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 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.

(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 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 D.C. 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.

(F) SoCal Edison's proposed ROE in Docket No. ER10-160-000 is subject to the Commission's determinations in the pending paper hearing proceeding in Docket No. ER08-375-000, as discussed in the body of this order.

(G) The Commission denies the motions to consolidate Docket No. ER10-160-000 with Docket Nos. ER09-1534-000 and ER10-135-000, as described in the body of the order.

(H) The Commission grants rehearing of the requests to submit comments regarding SoCal Edison's proposed base ROE in Docket No. ER09-187-000, and establishes a separate paper hearing proceeding on that limited issue, also subject to the Commission's determinations in the pending paper hearing proceeding in Docket No. ER08-375-000. Additionally, the Commission consolidates the proceeding with the paper hearing proceeding on SoCal Edison's proposed base ROE in Docket No. ER10-160-000. All parties in these proceedings must file initial briefs within 45 days of the issuance of an order in the pending paper hearing proceeding in Docket No. ER08-375-000 presenting evidence regarding SoCal Edison's proposed base ROE in the consolidated dockets. Reply briefs must be filed within 20 days after the submission of initial briefs.

By the Commission. Commissioner Moeller dissenting in part with a separate statement attached.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Southern California Edison Company

Docket No. ER10-160-000

(December 31, 2009)

MOELLER, Commissioner *dissenting in part*:

I agree with the majority that SCE's proposed transmission rates should be set for hearing and settlement judge procedures to determine their justness and reasonableness under section 205 of the Federal Power Act, subject to refund.<sup>1</sup> However, for the reasons noted in my prior dissent,<sup>2</sup> I disagree with the decision to suspend the rates for the maximum statutory five-month period. Accordingly, I respectfully dissent in part.

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Philip D. Moeller  
Commissioner

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<sup>1</sup> Federal Power Act § 205, 16 U.S.C. 824d (2000).

<sup>2</sup> MOELLER, Commissioner *dissenting in part*, 128 FERC ¶ 61,287 (2009).