

125 FERC ¶ 61,329
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southern California Edison Company	Docket Nos. ER09-187-000 ER09-187-001
Southern California Edison Company	ER08-1343-000 ER08-1353-000
Southern California Edison Company	EL09-19-000

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

(Issued December 19, 2008)

1. On October 31, 2008, and as amended on December 5, 2008, Southern California Edison Company (SoCal Edison) filed revisions to its Transmission Owner Tariff (TO Tariff)¹ to reflect proposed changes to its transmission revenue requirement and transmission rates to implement Construction Work in Progress (CWIP) rate incentives.² The CWIP rate incentives were granted by the Commission's Order Granting Petition for Declaratory Order,³ which also approved the creation of a stand-alone balancing account mechanism for these rate incentives. In this order, the Commission accepts SoCal Edison's proposed tariff revisions, suspends them for a nominal period, subject to refund, to be effective January 1, 2009, and establishes hearing and settlement judge procedures. Also, because SoCal Edison is proposing a rate reduction and a further decrease in rates may be warranted, we are instituting an investigation pursuant to section 206 of the Federal Power Act (FPA)⁴ in Docket No. EL09-19-000 to determine whether SoCal

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

² On December 5, 2008, SoCal Edison submitted an amended filing to reflect the omission of Tariff Sheet No. 117.

³*Southern California Edison Co.*, 121 FERC ¶ 61,168 (2007) (*Incentives Order*).

⁴ 16 U.S.C. § 824e (2006).

Edison's proposed rate reduction is just and reasonable. This order consolidates the CWIP rate incentives included in this proceeding and the section 206 investigation with the ongoing proceeding in Docket Nos. ER08-1343-000 and ER08-1353-000. This order also makes the Return on Equity (ROE) issue raised herein subject to the outcome of the paper hearing previously established in Docket No. ER08-375-000.⁵

Background

Section 219 Requirement

2. In Energy Policy Act of 2005 (EPA 2005), Congress added a new section 219⁶ to the Federal Power Act (FPA) directing the Commission to establish, by rule, incentive-based (including performance-based) rate treatments for electric transmission. The Commission issued Order No. 679,⁷ which set forth processes by which a public utility could seek transmission rate incentives pursuant to section 219. 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 issued the *Incentives Order* granting SoCal Edison's request for transmission rate incentives for the three transmission projects.

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 (CAISO)'s bulk power transmission system, and reduce the cost of power to customers by reducing transmission congestion on the CAISO-controlled transmission grid.⁸

4. The *Incentives Order* granted rate incentives to SoCal Edison, including

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

⁵ *Southern California Edison Co.*, 122 FERC ¶ 61,187 (2008) (February Order).

⁶ Pub L. No. 109-58, § 1241, 119 Stat 594, 961, *to be codified at* 16 U.S.C. § 824s.

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).

⁸ *Incentives Order*, 121 FERC ¶ 61,168 at P 3.

- (2) ROE adders of 50 basis points based on SoCal Edison's participation in CAISO;
- (3) Recovery of 100 percent of any prudently-incurred abandonment costs for the DPV2 and Tehachapi Projects, if these projects, or any portion thereof, are cancelled due to factors beyond SoCal Edison's control; and
- (4) Recovery in the transmission rate base of 100 percent of CWIP during the construction of these Projects.

5. In the *Incentives Order*, 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 explained that SoCal Edison was to provide a detailed explanation of its accounting methods and procedures to (1) implement the stand-alone balancing account; (2) comply with 18 C.F.R. § 35.13(h)(38) and § 35.25 (2007); and (3) maintain comparability of financial information.⁹

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

6. 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 explained that under this proposed accounting mechanism, the new Base TRR would include the CWIP TRR and SoCal Edison's current Base TRR.¹⁰ SoCal Edison also explained that, consistent with the Commission's approval of a stand-alone rate mechanism in the *Incentives Order*, it was not proposing to change other elements of the Base TRR.

7. SoCal Edison stated that the incremental CWIP revenue requirement that is being added to the Base TRR is based upon SoCal Edison's projections of its project costs for 2008. It also explained that this rate treatment conforms to the Commission's determination in the *Incentives Order* that all of the Project costs, including costs related

⁹ *Id.* P 61.

¹⁰ The current Base TRR was adopted pursuant to a "black box" settlement in *Southern California Edison Co.*, 116 FERC ¶ 61,010 (2006).

to segments of the Tehachapi Project, are eligible both for incentive and rolled-in rate treatment.¹¹ In accordance with its proposed CWIP ratemaking mechanism (Ratemaking Mechanism), it would calculate its actual CWIP revenue requirement each month and then compare it to the incremental CWIP revenues it receives from all retail transmission customers. The difference between these two amounts would be included in a balancing account, with interest added to the account balances.

8. SoCal Edison also explained that each year SoCal Edison will submit a section 205 filing in order to establish the following year's rates, which will be based upon SoCal Edison's projected CWIP revenue requirement for that year. The projected CWIP revenue requirement for the following year's rates will be trued-up on an annual basis to reflect actual recorded costs through the use of a balancing account and subsequent rate filings.

9. SoCal Edison proposed to use a base ROE plus the ROE adder incentives that the Commission authorized in the *Incentives Order*. For the DPV2 and Tehachapi Projects, SoCal Edison requested an ROE of 13.25 percent, which represented a base ROE of 11.5 percent, plus 125 basis points for the authorized ROE Project adders, and 50 basis points for the authorized ROE incentive for SoCal Edison's participation in the CAISO. For the Rancho Vista Project, SoCal Edison requested an ROE of 12.75 percent, which represented a base ROE of 11.5 percent, plus 75 basis points for the authorized ROE Project adder and 50 basis points for the authorized ROE incentive for SoCal Edison's participation in the CAISO. SoCal Edison argued that its requested base ROE of 11.5 percent was supported by testimony accompanying its filing, and its total ROE requests of 13.25 percent and 12.75 percent were within the zone of reasonableness.

10. By order dated February 29, 2008,¹² 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.¹³ Specifically, the paper hearing was ordered to address only the issues related to the development of the SoCal Edison's overall ROE.¹⁴

¹¹ SoCal Edison December 21, 2007 filing at 4 n.10 *citing to Incentives Order*, 121 FERC ¶ 61,168 at PP 44, 74, 147.

¹² *Southern California Edison Co.*, 122 FERC ¶ 61,187 (2008).

¹³ The paper hearing is currently pending before the Commission.

¹⁴ The paper hearing did not include issues already decided in the *Incentives Order*, such as whether SoCal Edison is entitled to the ROE adders.

Transmission Rate Case - Docket No. ER08-1343-000

11. On August 1, 2008, in Docket No. ER08-1343-000, SoCal Edison filed proposed revisions to its Transmission Owner Tariff (TO Tariff), reflecting changes to its Base TRR 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 proposed to revise its TO Tariff to reflect, among other things: (1) an increase in the TRR and associated transmission rate levels applicable to retail and wholesale transmission customers taking service under SoCal Edison's TO Tariff and the CAISO Tariff; (2) an increase in the rates of certain Existing Transmission Contracts (ETCs) that are currently subject to the High Voltage Existing Contracts Access Charge as set forth in the TO Tariff; and (3) modifications to the TO Tariff and the Transmission Revenue Balancing Account Adjustment (TRBAA) to flow through to transmission customers' transmission service revenues associated with ETCs and to eliminate the ETC Cost Differentials Surcharge for retail and wholesale customers.

12. SoCal Edison stated that the primary reason for its transmission rate increase is the increase in capital-related costs associated with the large amount of new capital investment SoCal Edison is expecting to place into service and increases in transmission operating and maintenance expenses. SoCal Edison requested that the Commission authorize an ROE of 12.70 percent. According to SoCal Edison, that amount is composed of: (1) a base ROE of 12.0 percent, which reflects SoCal Edison's estimated cost of securing equity capital; (2) a 50 basis point adder in order to compensate SoCal Edison for participation in the CAISO; and (3) a 20 basis point adder associated with certain transmission facilities to be placed into service in 2009 that were granted incentive ROE adders in Docket No. EL07-62-000.¹⁵

13. By order dated September 30, 2008, the Commission accepted SoCal Edison's proposed transmission rates, and suspended them for five months, to become effective on March 1, 2009, subject to refund.¹⁶

Current Filing – Docket No. ER09-187-000

14. In Docket No. ER09-187-000, SoCal Edison proposes revisions (a rate reduction) to its CWIP Transmission Revenue Requirement (TRR) pursuant to the CWIP true-up mechanism conditionally approved in Docket No. ER08-375-000. SoCal Edison states that the purpose of this filing is to update for calendar year 2009, SoCal Edison's CWIP TRR included in its Base TRR, and the associated transmission rates. SoCal Edison states that this update will decrease the currently effective Base TRRs for both wholesale

¹⁵ *Incentives Order*, 121 FERC ¶ 61,168 (2007).

¹⁶ *Southern California Edison Co.*, 124 FERC ¶ 61,308 (2008).

and retail customers by approximately \$6.5 million. However, Edison proposes to increase its Base ROE from the 11.5 percent it filed in Docket No. ER08-375-000 to 12.0 percent, the level of its proposed ROE in Docket No. ER08-1343-000.

15. SoCal Edison explains that its CWIP Ratemaking Mechanism, as approved by the Commission,¹⁷ includes an incremental formula rate that is added to the existing Base TRR. As a result, SoCal Edison's Base TRR is comprised of the CWIP revenue requirement and its current Base TRR, which was adopted pursuant to a "black box" settlement in Docket No. ER06-186.¹⁸ SoCal Edison further explains that all other elements of the Base TRR that were adopted in its last rate case, Docket No. ER06-186-000, are unchanged, which is also consistent with the Commission's approval of a stand-alone rate mechanism the *Incentives Order*¹⁹ and the February Order.²⁰

16. In this filing, SoCal Edison also proposes to revise its TO Tariff to reflect (1) a true-up to reflect actual recorded costs for the Projects through September 30, 2008, (2) a reduction in the Base TRR and the associated Base transmission rate levels applicable to retail and wholesale transmission customers, and (3) a reduction in the rates of certain Existing Transmission Customers that are subject to the High Voltage Existing Contracts Access Charge.

17. With respect to SoCal Edison's CWIP revenue requirement, it proposes a base ROE of 12.00 percent, reflecting its estimated costs of securing 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 13.25 percent for Rancho Vista, and 13.75 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 California Independent System Operator Corporation, and an additional adder of 75 basis points for Rancho Vista and a 125 basis point adder for DPV2 and Tehachapi associated with the new transmission plant that is the subject of the CWIP revenue requirement.

Notice of Filing and Responsive Pleadings

18. Notices of the filings were published in the *Federal Register*, 73 Fed. Reg. 67,500 (2008) and 73 Fed. Reg. 76,626 (2008), with interventions and protests due on or before November 21, 2008 and December 15, 2008, respectively. Timely motions to intervene

¹⁷ February Order, 122 FERC ¶ 61,187 (2008).

¹⁸ *Southern California Edison Co.*, 116 FERC ¶ 61,010 (2006).

¹⁹ 121 FERC ¶ 61,168 (2007).

²⁰ 122 FERC ¶ 61,187 (2008).

were filed by the Metropolitan Water District of Southern California (Metropolitan), the Modesto Irrigation District (Modesto), Golden State Water Company (Golden State) and the Northern California Power Agency (NCPA). A late motion to intervene was filed by San Diego Gas & Electric Company (SDG&E). A notice of intervention, protest and request for hearing was filed by the California Public Utilities Commission (CPUC). Motions to intervene and protest were filed by the California Department of Water Resources State Water Project (SWP), the City of Los Angeles Department of Water and Power (LADWP), the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (collectively, the "Six Cities"), the Cities of Redding (Redding) and Santa Clara, California (Santa Clara), and the M-S-R Public Power Agency, (collectively, "Cities/M-S-R"). SoCal Edison filed a motion for leave to answer and answer to the protests. Finally, in response to SoCal Edison's amended Tariff Sheet No. 117 filing, the Six Cities filed a protest.

Comments and Protests

19. The protestors object to several aspects of SoCal Edison's proposal. The CPUC, SWP, LADWP, Six Cities, and Cities/M-S-R argue that SoCal Edison's proposed ROE is excessive and unreasonable. Additionally, the CPUC and Six Cities state that SoCal Edison's proposed CWIP costs are not justified and do not include sufficient information to determine whether the CWIP TRR is reasonable. Several protestors 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 suspend SoCal Edison's proposed revisions, and establish hearing procedures to review SoCal Edison's proposed revisions.

20. The CPUC also requests that the Commission consolidate this proceeding with SoCal Edison's Transmission Rate Case in Docket Nos. ER08-1343-000 and ER08-1353-000 (Transmission Rate Case). The CPUC states that because SoCal Edison's proposed ROE is being litigated in the Transmission Rate Case, it makes sense to consolidate the proceedings. The CPUC also states that because SoCal Edison is forecasting costs for the Tehachapi and Rancho Vista projects in both this proceeding and the Transmission Rate Case, the rates will either be collected through the CWIP account or through the base revenue requirement set in the Transmission Rate Case. Therefore, because both cases include projected 2009 costs, and parties are already reviewing such costs in the Transmission Rate Case, the CPUC asserts that the proceedings should be consolidated.

21. LADWP requests that the Commission allow SoCal Edison's CWIP rate reduction to take effect on January 1, 2009, as proposed, but make the ROE component of the filing subject to the outcome of the Transmission Rate Case proceedings.

22. Cities/M-S-R request that the Commission reject the aspects of SoCal Edison's filing that seek to modify the previously proposed ROE, and require SoCal Edison to

recalculate the CWIP adjustment using the previously filed Base ROE for CWIP (11.5 percent), subject to future adjustment based on the Commission's ultimate determination regarding a just and reasonable ROE.

23. In response to SoCal Edison's submission of its omitted tariff sheet, on December 15, 2006, Six Cities filed a renewed protest in which it reiterated its opposition to SoCal Edison's proposed revisions to the cost of capital components of the CWIP TRR formula.

Discussion

A. Procedural Matters

24. 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 the entities that filed them parties to this proceeding. Also, pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2008), we will grant SDG&E's motion to intervene out of time given its interest in this proceeding, the early stage of this proceeding, and the absence of any undue prejudice or delay. However, Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008) prohibits an answer to a protest unless otherwise ordered by the decisional authority. Because SoCal Edison's Answer repeats information it previously provided in this proceeding, we do not find that it assists us in our decision-making process. As a result, we are not persuaded to accept SoCal Edison's answer and will, therefore, reject it.

B. Commission Determination

25. In the instant filing, SoCal Edison is forecasting costs for the Tehachapi and Rancho Vista projects, which also are included in Docket No. ER08-1343-000, SoCal Edison's Transmission Rate Case. The resulting rates will be collected either through the CWIP account, as proposed in the instant filing, or through the base revenue requirement proposed in the Transmission Rate Case, Docket No. ER08-1343-000. Therefore, because both cases include projected 2009 CWIP related costs and involve common issues of fact and law, we grant the CPUC's motion to consolidate, in part, the instant proceeding with the ongoing hearing and settlement judge proceedings established in Docket Nos. ER08-1343-000 and ER08-1353-000. However, this is a limited consolidation. With respect to the issues in the instant proceeding that relate to SoCal Edison's proposed ROE, we are not consolidating the instant proceeding with Docket No. ER08-1343-000. The overall ROE related to SoCal Edison's CWIP revenue requirement is under review in Docket No. ER08-375-000. Therefore, the Commission's determination of the ROE submitted in this filing will be subject to the outcome of SoCal Edison's pending paper hearing proceeding in Docket No. ER08-375-000. While we are

setting this matter for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes, and encourage the parties to participate in any settlement proceedings conducted in Docket Nos. ER08-1343-000 and ER08-1353-000.

26. 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. Therefore, we will accept SoCal Edison's proposed changes for filing, suspend them for a nominal period, make them effective January 1, 2009, subject to refund, and set them for hearing and settlement judge procedures in consolidation, in part, with the proceeding established in ER08-1343-000 and ER08-1353-000.

27. In addition, because SoCal Edison is proposing a rate reduction, and a further rate decrease may be appropriate, we are instituting a section 206 investigation in Docket No. EL09-19-000 with respect to the justness and reasonableness of SoCal Edison's proposed rate reduction. In cases where, as here, the Commission institutes a section 206 investigation on its own motion, section 206(b) of the FPA, as amended by section 1285 of the Energy Policy Act of 2005,²¹ requires that the Commission establish a refund effective date that is no earlier than the date of the publication of the notice of the initiation of the Commission's investigation in the *Federal Register*, and no later than five months after the publication date. Consistent with *Canal Electric Company*,²² we establish a refund effective date to be the earliest date possible in order to provide maximum protection to customers, i.e., the date the notice of the initiation of the investigation in Docket No. EL09-19-000 is published in the *Federal Register*.

28. In addition, section 206 of the FPA requires that, if no final decision has been rendered by the earlier of the refund effective date or the 180-day period commencing upon initiation of a proceeding pursuant to this section, the Commission shall state the reasons why it failed to do so and shall state its best estimate as to when it reasonably expects to make such a decision. Although we do not have the benefit of the presiding judge's decision, based upon our review of the record, we expect that, if this case does not settle, the presiding judge should be able to render a decision within twelve months of the commencement of hearing procedures or, if the case were to go to hearing immediately, by December 31, 2009. We, thus, estimate that if the case were to go to hearing immediately, we would be able to issue our decision within approximately seven months of the filing of briefs on exceptions and briefs opposing exceptions, or by September 30, 2010.

²¹ Energy Policy Act of 2005, Pub. L. No. 109-58, § 1285, 119 Stat. 594, 980-81 (2005).

²² 46 FERC ¶ 61,153, *reh'g denied*, 47 FERC ¶ 61,275 (1989).

The Commission orders:

(A) SoCal Edison's proposed tariff sheets are hereby accepted for filing and suspended for a nominal period and set for hearing, to be effective January 1, 2009, 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 Nos. ER09-187-000 and ER09-187-001 concerning SoCal Edison's proposed transmission rates.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly section 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), an investigation shall be held in Docket No. EL09-19-000 concerning the justness and reasonableness of SoCal Edison's proposed rate reduction and whether a further decrease in rates may be warranted.

(D) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation of section 206 proceedings in Docket No. EL09-19-000, with interventions due within three weeks of publication of the notice.

(E) SoCal Edison's proposed ROE in this filing is subject to the outcome of the paper hearing proceeding in Docket No. ER08-375-000, as discussed in the body of this order.

(F) In Docket Nos. ER09-187-000 and ER09-187-001, all issues related to SoCal Edison's projected CWIP costs, but for the proposed ROE, are consolidated with the ongoing proceedings in the Transmission Rate Case in Docket Nos. ER08-1343-000 and ER08-1353-000, for purposes of settlement, hearing, and discussion, as discussed in the body of this order. Also, the section 206 investigation established in Docket No. EL09-19-000 is consolidated with these ongoing proceedings.

(G) The settlement judge or presiding judge, as appropriate, designated in Docket Nos. ER08-1343-000 and ER08-1353-000 shall determine the procedures best suited to accommodate the consolidation order herein.

(H) The refund effective date, established pursuant to section 206(b) of the FPA, will be the date of publication in the *Federal Register* of the notice discussed in Ordering Paragraph (D) above.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.