

114 FERC ¶ 61,018
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeem G. Kelly.

Southern California Edison Company

Docket No. ER06-186-000

ORDER ACCEPTING AND SUSPENDING TARIFF REVISIONS AND
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued January 9, 2006)

1. In this order, we accept for filing proposed revisions to Southern California Edison Company's (Edison or SCE) Transmission Owner Tariff (TO Tariff), suspend the requested changes for five months, to become effective June 10, 2006, subject to refund. We also establish hearing and settlement judge procedures.

Background

2. In March 1997, Edison filed its original TO Tariff for utility-specific rates for transmission service on its facilities under the operational control of the California Independent System Operator Corporation (ISO). In December of that year, the Commission accepted Edison's TO Tariff for filing, suspended it, and permitted it to become effective, subject to refund, on the date the ISO began operation (which occurred on April 1, 1998).¹ In January 2002, 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.²

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

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

The Filing

3. On November 10, 2005, Edison filed its second proposed revisions to its TO Tariff, reflecting proposed changes to its transmission revenue requirement (TRR)³ and transmission rates for customers taking service, pursuant to the ISO's and Edison's TO Tariffs, over its transmission facilities. Specifically, Edison proposes to revise its TO Tariff to reflect, among other things: (1) "an increase in the Base Transmission Revenue Requirement ("TRR")⁴ and the associated Base transmission rate levels applicable to retail and wholesale transmission customers taking service under the California Independent System Operator Corporation ("ISO") and TO Tariffs;"⁵ (2) an increase in the rates of its existing transmission contracts (ETCs) that are subject to the high voltage existing contracts access charge and the low voltage existing contracts access charge; and (3) ETC revenues as a credit to the transmission revenue balancing account adjustment (TRBAA), rather than its current method of treating such revenues (using a forecasted amount) as an offset to its base TRR.⁶ According to Edison, those revisions reflect an increase in its transmission investment and operation and maintenance (O&M) expenses.⁷

³ "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." Edison TO Tariff, Section 3.107.

⁴ See Direct Testimony of James A. Cullier, Ex. Edison-1 at 3:10-17 ("The base TRR reflects the ownership as well as the [O&M] costs of SCE's transmission facilities that are under the [ISO's] Operational control. The base TRR, in combination with the TRBAA (which flows through to customers congestion-related and Wheeling revenues), and Standby Transmission Revenues (used in determining the wholesale TRR), comprise SCE's TRR used to develop ISO transmission rates.").

⁵ Edison at 1 (footnote added). See Direct Testimony of James A. Cullier, Ex. Edison-1 at 3:18-20 ("The base TRR applicable to retail customers is proposed to increase from \$258 million to \$351 million, while the base TRR applicable to wholesale customers is proposed to increase from \$251 million to \$347 million."); *id.* at 4:3-5 ("Since SCE projects retail base TRR revenues of \$286 million at present rates, the overall increase in base revenues under SCE's proposal would be \$65 million or 23%.").

⁶ *Id.* at 4:16-19 ("[T]he ETC revenues SCE expects to receive in 2006 will still flow through to customers and reduce the TRR, albeit through a reduction to the TRBAA, rather than through a base TRR reduction.").

⁷ *Id.* at 4:10-12 ("SCE forecasts gross ISO transmission plant additions approaching \$400 million. . . . O&M expenses have increased over \$30 million since SCE's last base TRR rate case in 2002.").

4. Edison also proposes that the Commission authorize a return on equity (ROE) of 12.39 percent. According to Edison, that amount is composed of: (1) a base ROE of 11.8 percent, which reflects Edison's estimated cost of securing equity capital; (2) an incentive adder to the ROE of 0.5 percent (*i.e.*, 50 basis point adder) in order to compensate Edison for joining and remaining a member of the ISO, which, according to Edison, would be consistent with the Commission's precedent⁸ and section 1241 of the Energy Policy Act of 2005 (EPAAct 2005);⁹ and (3) a 0.09 percent adder to the ROE (*i.e.*, a 100 basis point adder applied to the percentage of the total ISO transmission facilities in service during the relevant test year) in order to compensate Edison for adding new transmission investments, which, Edison argues, would be consistent with the Commission's policy of giving incentives to utilities that construct new transmission facilities that provide congestion relief, increased reliability, and connect new supply to serve western markets¹⁰ and EPAAct 2005's endorsement of such incentives.¹¹

5. Edison requests that the proposed rates be accepted and made effective on January 10, 2006 without further investigation or hearing. However, in the event that the Commission determines that the filing requires further investigation and should be set for hearing, Edison asks that the Commission suspend the proposed rates for a nominal period, rather than the maximum five-month period. Edison also requests that, even if the Commission sets certain issues for hearing, the Commission should summarily accept

⁸ See Edison at 3 (citing *Midwest Indep. Sys. Operator, Inc.*, 100 FERC ¶ 61,292 (2002); *ISO New England*, 106 FERC ¶ 61,280 (2004)).

⁹ See Edison at 4 (citing Pub. L. No. 109-58, § 1241(c), 119 Stat. 594, 962 (2005) (stating that "the Commission shall, to the extent within its jurisdiction, provide for incentives to each transmitting utility or electric utility that joins a Transmission Organization"))).

¹⁰ See Edison at 4 n.4 (citing various cases which, Edison claims, illustrate that the Commission has granted an incentive adder for the construction of new transmission facilities).

¹¹ See Edison at 5 (citing Pub. L. No. 109-58, § 1241(a), 119 Stat. 594, 961 (2005) (the Commission should "establish by rule, incentive-based (including performance-based) rate treatments for the transmission of electric energy in interstate commerce by public utilities for the purpose of benefiting consumers by ensuring reliability and reducing the cost of delivered power by reducing transmission congestion)); Edison at 5 n. 6 (citing Pub. L. No. 109-58, § 1241(b)(2), 119 Stat. 594, 961 (2005) (the Commission should "provide a return on equity that attracts new investment in transmission facilities")); *see also* Direct Testimony of Paul T. Hunt, Ex. Edison-16 at 2:12-23 (describing the components of the proposed ROE).

its proposed incentive adders to the ROE, as those incentive adders are based on Commission policy.

Notice of Filing and Responsive Pleadings

6. Notice of Edison's filing was published in the *Federal Register*, 70 Fed. Reg. 71,822 (2004), with interventions and protests due on or before December 1, 2005. On November 30, 2005, the Commission extended the time to file interventions and protests until on or before December 8, 2005.

7. The City of Vernon, California; the City of Redding, the City of Santa Clara, and the M-S-R Public Power Agency; the City of Los Angeles Department of Water and Power; Trans-Elect NTD Path 15, LLC; Pacific Gas & Electric Company; and San Diego Gas & Electric Company filed timely motions to intervene.

8. The following parties filed timely motions to intervene and protests: Cogeneration Association of California and the Energy Producers and Users Coalition (collectively, the QF Parties); Golden State Water Company (Golden); Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (collectively, Six Cities); Metropolitan Water District of Southern California (Metropolitan); Transmission Agency of Northern California (TANC); the California Department of Water Resources State Water Project (DWR); and Modesto Irrigation District (Modesto).¹² The California Public Utilities Commission (CPUC) filed a notice of intervention and protest.

9. The protestors object to various aspects of Edison's proposal. Among other things, they state that the following proposed revisions to Edison's TO Tariff appear to be unjust and unreasonable: the 11.8 percent base ROE;¹³ the 0.5 percent incentive adder for participating in the ISO;¹⁴ the 0.09 percent incentive adder for transmission investment;¹⁵ the increase in Edison's O&M expenses;¹⁶ the increase in Edison's depreciation rates;¹⁷ the increase in Edison's administrative and general expenses;¹⁸ the

¹² Modesto incorporates by reference TANC's protest.

¹³ See, e.g., Golden at 12; Six Cities at 5; Metropolitan at 2; DWR at 7; CPUC at 4.

¹⁴ See, e.g., Golden at 21; Six Cities at 5; Metropolitan at 3; DWR at 8.

¹⁵ See, e.g., Golden at 25; Six Cities at 5; Metropolitan at 3-4; DWR at 13.

¹⁶ See, e.g., Golden at 5; DWR at 4; CPUC at 5-6.

¹⁷ See, e.g., Golden at 8; Six Cities at 24; CPUC at 5.

increase in Edison's standby rates;¹⁹ and the treatment of ETC revenues as a credit to the TRBAA, rather than as a credit offsetting the base TRR.²⁰ The protestors also maintain that Edison has not justified its proposed incentive adders, because it has not provided a sufficient factual basis for the Commission to make the necessary findings to grant such incentive rates.²¹

10. Since the protestors state that Edison's proposed revisions to its TO Tariff have not been shown to be just and reasonable, they request that the Commission suspend Edison's proposed revisions and establish hearing procedures to review Edison's proposed revisions.²² In addition, the protestors maintain that since Edison's proposed rate increases are likely to be substantially excessive, the Commission should impose, consistent with its policy,²³ the maximum five-month suspension period.²⁴

11. On December 21, 2005, Edison filed an answer to the protests. On January 3, 2006, Golden and the Six Cities both filed answers to Edison's answer.

Discussion

Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the notice 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) (2005), prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept Edison's, Golden's, or Six Cities' answers and, therefore, reject them.

¹⁸ See, e.g., Six Cities at 20; CPUC at 6-7.

¹⁹ See, e.g., QF Parties at 3.

²⁰ See, e.g., Six Cities at 25; DWR at 13.

²¹ See, e.g., TANC at 5; Golden at 22.

²² See, e.g., TANC at 7-8; Metropolitan at 4.

²³ See, e.g., *West Texas Utilities Co.*, 18 FERC ¶ 61,189 at 61,374-75 (1982) (*West Texas*); see *infra* note 24.

²⁴ See, e.g., Golden at 26; Six Cities at 26; CPUC at 3.

Hearing and Settlement Judge Procedures

13. Edison's proposed changes to its TO Tariff raise issues of material fact that cannot be resolved based on the record before us, with the exception of the one issue discussed below, and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

14. Our preliminary analysis indicates that 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. In addition, our preliminary analysis indicates that Edison's proposed rate increases may be substantially excessive. In *West Texas*, the Commission explained that when our preliminary analysis indicates that proposed rates may be unjust and unreasonable and substantially excessive, the Commission will generally impose a maximum suspension (*i.e.*, five months).²⁵ Accordingly, although we accept Edison's proposed changes for filing, we also suspend them for the maximum five-month period, make them effective June 10, 2006, subject to refund, and set them for hearing and settlement judge procedures.

15. Edison requests that, even if the Commission sets this proceeding for hearing, the Commission should summarily accept its proposal for a 50 basis point adder for joining and remaining a member of the ISO and a 100 basis point adder for adding transmission facilities to the ISO.²⁶ With respect to Edison's request for the 50 basis point adder, it is true that the Commission has granted an incentive adder to transmission owners for joining a regional transmission organization.²⁷ However, the Commission has stated that that "adder [is] intended as an incentive for transmission owners to turn over the operational control of their transmission facilities to an entity responsible for providing regional transmission service under the terms and conditions of a regional tariff."²⁸ The

²⁵ 18 FERC ¶ 61,189 at 61,374-75 (explaining that the Commission will suspend a proposed rate for the maximum period, five months, if the proposed rate increase is found to be "substantially excessive"); *accord Tucson Elec. Co.*, 76 FERC ¶ 61,235 at 62,147 & nn.25-26 (1996).

²⁶ The Commission has issued a notice of proposed rulemaking, pursuant to the requirements in section 1241 of EPAct 2005, proposing to amend its regulations to establish incentive-based rate treatments. *See Promoting Transmission Investment through Pricing Reform, Notice of Proposed Rulemaking*, 113 FERC ¶ 61,182 (2005) (NOPR). We note that it is premature for us to consider Edison's citation of the NOPR in support for its requested incentive adders before we issue a final rule in that proceeding.

²⁷ *See, e.g., supra* note 8.

²⁸ *ISO New England*, 106 FERC ¶ 61,280 at P 247.

rationale for this incentive is to encourage transmission owners to turn over the operational control of their transmission facilities to a regional transmission organization; therefore, it does not apply to transmission owners who have already done so, as they need no inducement to take such an action. Since Edison turned over its transmission facilities to the ISO almost eight years ago,²⁹ we deny its request for an incentive adder for joining and remaining a member of the ISO. As for Edison's request that the Commission grant it a 100 basis point adder for its recent transmission investment, we find that Edison has not made a sufficient demonstration of why it needs that incentive adder.³⁰ Therefore, we find that request raises issues of material fact that cannot be resolved based on the record before us and is more appropriately addressed in the hearing and settlement judge procedures ordered below.

16. 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 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.³¹ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Administrative Law Judge (Chief Judge) will select a judge for this purpose.³² The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of this order concerning the status of settlement discussions. Based on that 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) Edison's proposed revisions to its TO Tariff, with the exception of its proposal for a 50 basis point adder for joining and remaining a member of the ISO, are

²⁹ See Direct Testimony of Dr. Paul T. Hunt, Ex. Edison-16 at 13:2-3.

³⁰ See, e.g., *PJM Interconnection, L.L.C.*, 104 FERC ¶ 61,124 at P 75 (2003) (stating that a transmission owner must provide "support for why [an incentive adder] is needed to incent investment in transmission facilities").

³¹ 18 C.F.R. § 385.603 (2005).

³² 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 – click on Office of Administrative Law Judges).

hereby accepted for filing and suspended for a five-month period, to become effective June 10, 2006, 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 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 Edison's proposed TO Tariff revisions. 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 (2005), the Chief 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 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 their request to the Chief Judge within five (5) days of the date of this order.

(D) Within thirty (30) days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on that 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, N.E., 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.

(S E A L)

Magalie R. Salas,
Secretary.