

107 FERC ¶ 61,179
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Cities of Azusa, Banning, Colton,
and Riverside, California

Docket No. EL03-228-000

Southern California Edison Company

Docket No. ER04-667-000

ORDER REJECTING FACILITIES AGREEMENT, ACCEPTING FOR FILING AND
SUSPENDING PROPOSED RATES, CONDITIONALLY ACCEPTING AND
SUSPENDING SERVICE AGREEMENT, ESTABLISHING HEARING AND
SETTLEMENT JUDGE PROCEDURES, PARTIALLY GRANTING PETITION FOR
DECLARATORY ORDER, AND DENYING MOTIONS FOR CONSOLIDATION

(Issued May 21, 2004)

1. In Docket No. ER04-667-000, we reject an unexecuted Facilities Agreement (Facilities Agreement or Kirkwall Substation Agreement), accept and suspend proposed rates for service under the Kirkwall Substation Agreement, and conditionally accept and suspend a revised Service Agreement for Wholesale Distribution Service (Service Agreement)¹ between Southern California Edison Company (SoCal Edison) and the City of Azusa (Azusa), to be effective March 23, 2004, subject to refund, and direct SoCal Edison to make a compliance filing.

2. In Docket No. EL03-228-000, we partially grant the Cities of Azusa, Banning, Colton and Riverside, California's (Cities) petition for declaratory order (Petition) and deny the Cities' motion to consolidate this docket with Docket No. ER03-549-000. We find that SoCal Edison, which provides the Cities with transmission service pursuant to its Wholesale Distribution Access Tariff (WDAT), is required, under the WDAT, to provide metering that is compliant with the metering requirements of the California Independent System Operator Corporation (CAISO). This order benefits customers because it will clarify terms and conditions of SoCal Edison's WDAT and ensure that the service agreements thereunder contain terms and conditions that are consistent with those of the WDAT.

¹ The revised Service Agreement is designated as Second Revised Service Agreement No. 2 under FERC Electric Tariff, First Revised Volume No. 5.

I. Background

3. Since the inception of the CAISO in April 1998, SoCal Edison has provided transmission service to the Cities under individual service agreements under the WDAT, in order to deliver power and energy from the CAISO Controlled Grid. The rates charged to each of the Cities for this service were frozen in April 1998 pursuant to transitional rate moratoriums that terminated on January 1, 2003. In Southern California Edison Company (Docket No. ER03-549-000), the Commission accepted, suspended and made effective subject to refund, revised rates and amended service agreements between SoCal Edison and the Cities.²

4. The Cities' Petition, filed September 12, 2003, in Docket No. EL03-228-000, seeks a declaratory order stating that: (1) under the terms and conditions of the WDAT, SoCal Edison is required to install CAISO-compliant meters for the Cities; (2) the WDAT requires SoCal Edison to provide the Kirkwall facilities upgrades that Azusa has requested; and (3) the Cities are not required, for the metering and facilities upgrades, to enter into agreements that contain terms and conditions inconsistent with the WDAT. Additionally, the Cities request consolidation of the Petition with Docket No. ER03-549-000, and seek a waiver of the Commission's filing fee for filing a petition for declaratory order.

5. On March 22, 2004, in Docket No. ER04-667-000, SoCal Edison filed an unexecuted Kirkwall Substation Agreement and a revised Service Agreement to accommodate Azusa's application for 28 MW of Wholesale Distribution Service to a proposed new second point of delivery between Azusa and SoCal Edison, the Kirkwall Substation.³ Azusa states that the Kirkwall Substation is needed in order to accommodate load growth in the city and to ensure the continued reliability of electric service to existing customers. Accordingly, Azusa states that it intends to transfer a portion of the existing Wholesale Distribution Load service from the Azusa Substation point of delivery to the new Kirkwall Substation. Azusa argues that under the terms of the WDAT, SoCal Edison is required to engineer, design, construct, own, operate, and maintain substation and associated metering facilities.

² Southern California Edison Company, 103 FERC ¶ 61,190 (2003) (SoCal Edison). The Commission also set certain contested issues for hearing and settlement judge procedures. The settlement judge certified an uncontested offer of settlement between SoCal Edison and Southern California Water Company to the Commission on February 25, 2004 and on March 26, 2004, the Commission approved the settlement. Southern California Edison Company, 106 FERC ¶ 61,308 (2004).

³ On August 6, 2003, in Docket No. ER03-950-000, the Commission accepted an interim Engineering and Design Agreement between Azusa and SoCal Edison, under which SoCal Edison obtained California Public Utilities Commission (CPUC) approval and commenced the engineering, design, procurement of equipment and material and construction of the facilities required to provide the requested service (Letter Agreement).

6. SoCal Edison states that, because the parties were not able to reach consensus on certain disputed issues, Azusa requested that the Kirkwall Substation Agreement be filed in unexecuted form. Further, pursuant to section 35.11 of the Commission's regulations,⁴ SoCal Edison requests waiver of the Commission's 60-day prior notice requirements⁵ to permit an effective date of March 23, 2004 for the Kirkwall Substation Agreement and revised Service Agreement with Azusa.

II. Notice of Filing and Interventions

7. Notice of the Cities' filing in Docket No. EL03-228-000 was published in the Federal Register, 68 Fed. Reg. 56,281 (2003), with comments, protests and motions to intervene due on or before October 14, 2003. Southern California Water Company (SCWC) filed a timely motion to intervene and a motion to consolidate the Petition with Docket No. ER03-549-000. SoCal Edison filed a timely motion to intervene and protest. San Diego Gas & Electric Company (SDG&E) filed an untimely motion to intervene.

8. On October 29, 2003, the Cities filed an answer to SoCal Edison's protest (Cities' EL03-228 Answer). On November 19, 2003, SoCal Edison filed an answer to the Cities' Answer (SoCal Edison EL03-228 Answer).

9. Notice of SoCal Edison's filing in Docket No. ER04-667-000 was published in the Federal Register, 69 Fed. Reg. 17,139 (2004), with comments, protests, or interventions due on or before April 12, 2004. Azusa filed a timely motion to intervene and protest.

10. On April 27, 2004, SoCal Edison filed an answer to Azusa's protest (SoCal Edison ER04-667 Answer). On May 12, 2004, Azusa filed an answer to SoCal Edison's Answer (Azusa ER04-667 Answer).

III. Discussion

A. Procedural Matters

11. Pursuant to rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will grant SDG&E's late motion to intervene, given its interest in this proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay.

⁴ 18 C.F.R. § 35.11 (2003).

⁵ 18 C.F.R. § 35.3 (2003).

12. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 CFR § 385.213 (a)(2) (2003), prohibits an answer to a protest or answer, unless otherwise ordered by the decisional authority. We will accept the Cities' EL03-228 Answer, both of SoCal Edison's Answers, and Azusa's EL04-667-000 Answer because they have provided information that assisted us in our decision-making process.

B. Docket No. ER04-667-000, Distribution Service to the City of Azusa

13. SoCal Edison has filed both the Kirkwall Substation Agreement and a revised Service Agreement for Wholesale Distribution Service to Azusa under its WDAT. Specifically, the Kirkwall Substation Agreement specifies the terms and conditions under which SoCal Edison will provide the substation and metering facilities between SoCal Edison and Azusa at the Kirkwall Substation. The Substation Facilities are those facilities necessary to provide Azusa a second point of delivery to SoCal Edison's Distribution System. The Metering Facilities are the CAISO certified metering and communication facilities to be installed at the Kirkwall Substation.

14. The Kirkwall Substation Agreement provides that Azusa is responsible for a Substation Facilities Payment for the capital costs of the substation, which Azusa has already paid to SoCal Edison. Additionally, Azusa will pay SoCal Edison a Substation Facilities Charge for the on-going O&M expenses, etc., of the Kirkwall facilities and a monthly Metering Facilities Charge.

15. The revised Service Agreement sets forth the specifications for Distribution Service including the revised points of receipt, the appropriate loss factor⁶ and the charges Azusa is responsible for under the WDAT. SoCal Edison states that its proposed changes to the Service Agreement conform the currently effective Service Agreement with Azusa to the currently effective pro forma Service Agreement included in the WDAT.⁷

1. Requirement for Separate Facilities Agreement

16. SoCal Edison explains that since the WDAT became effective on April 1, 1998, it has provided new service to several entities that required the entity to execute an interconnection facilities agreement. SoCal Edison explains that while it does not have a standard form of interconnection facilities agreement for Wholesale Distribution Loads, such as Azusa's End-Use Customers' loads to be served from the new Kirkwall Substation, SoCal Edison has filed, and the Commission has accepted, interconnection

⁶ Support for SoCal Edison's loss factor is provided in Attachment A to SoCal Edison's filing.

⁷ SoCal Edison Filing at 6-7.

facilities agreements with many customers taking service under the WDAT, all of which contain terms and conditions that are similar to the terms and conditions contained in the Kirkwall Substation Agreement.⁸

a. Protest and Answers

17. In its protest, Azusa argues that the Commission should reject the Kirkwall Substation Agreement and requests that the Commission determine that service to Azusa under the Kirkwall Substation is subject to the terms and conditions of SoCal Edison's WDAT. In support of this request for rejection, Azusa cites sections 12.1, 12.5 and 21.2.1 of the WDAT.

18. In its answer SoCal Edison states that the Kirkwall Substation Agreement is just and reasonable, properly governs the terms and conditions for the design and construction of the substation and metering facilities, and is not inconsistent with the terms of the WDAT. SoCal Edison states that the WDAT's pro forma Service Agreement governs wholesale Distribution Service and SoCal Edison's general obligation to construct facilities that it deems necessary for delivering energy under the WDAT. However, SoCal Edison asserts that the pro forma Service Agreement was not intended to set forth the terms and conditions associated with the construction and design of sole-use facilities, which are not necessary to provide reliable service.

19. Further, SoCal Edison argues that nothing in section 12.1 of the WDAT requires it to finance sole-use interconnection facilities requested by the Distribution Customer, especially when SoCal Edison's current Distribution System is adequate to provide reliable WDAT service. Instead, SoCal Edison states that under section 21.2.1 of the WDAT, the Distribution Customer is responsible for the cost of Direct Assignment (or sole-use) Facilities.⁹ SoCal Edison argues that the facilities built pursuant to the Kirkwall Substation Agreement meet both the sole-use and sole-benefit requirements of the WDAT and that those facilities are not needed to satisfy SoCal Edison's obligation to provide reliable service under the WDAT, but are necessary only to provide a second point of service for load currently interconnected and served from Azusa's primary Point of Delivery at the Azusa Substation. SoCal Edison explains that while it is willing to build the facilities at Azusa's request, it is not required to finance such facilities under the WDAT.

⁸ In its Petition, SoCal Edison cites Docket Nos. ER03-1093-000, ER03-477-000, and ER02-1524-000 as examples of interconnection facilities whose construction arrangements were created outside of a WDAT Service Agreement.

⁹ SoCal Edison ER04-667 Answer at 7. Under section 2.5 of the WDAT, Direct Assignment Facilities are defined as “[f]acilities or portion of facilities that are constructed by the Distribution Provider for the sole use/benefit of a particular Distribution Customer requesting service under the Tariff.”

20. Thus, SoCal Edison argues that because the pro forma WDAT Service Agreement does not contain terms and conditions concerning the design and construction of these customer-financed interconnection facilities, it is both appropriate and necessary for it to require Azusa to enter into a separate agreement to govern such construction. SoCal Edison states that if the Commission rejects the Kirkwall Substation Agreement, it requests guidance regarding what form of agreement it should use to provide for the engineering, construction, schedule and other requirements associated with the facilities governed by the Kirkwall Substation Agreement, since the WDAT Service Agreement does not contain such terms and conditions.

21. In its answer, Azusa states that SoCal Edison's answer rests upon a fundamental mischaracterization of the WDAT. Azusa states that it does not contest its responsibility for the costs of the Kirkwall facilities to the extent they are used solely to serve Azusa, but, Azusa contests the manner in which SoCal Edison will collect such costs from Azusa. Azusa asserts that, contrary to SoCal Edison's contentions, the WDAT, including the WDAT pricing provisions, cover all facilities used to provide Wholesale Distribution Service, including Direct Assignment Facilities. Azusa states that the WDAT expressly covers Direct Assignment Facilities (section 2.5) and provides that SoCal Edison is obligated to furnish distribution facilities requested by a customer under the terms and conditions of the WDAT, subject to the understanding that the customer is obligated to bear the costs for such facilities. Further, section 21.2.1 of the WDAT, which sets forth the basis for determining WDAT charges, explicitly addresses the development of charges for Direct Assignment Facilities (and does not state that SoCal Edison is entitled to demand advance funding of Direct Assignment Facilities). Thus, Azusa states that the terms of the WDAT contradict SoCal Edison's contentions that Direct Assignment Facilities are not covered by the WDAT and that SoCal Edison may require a separate agreement providing for advance funding of such facilities.

b. Commission Determination

22. Regarding SoCal Edison's reliance on the fact that, from its perspective, the Kirkwall Substation is not needed for reliability and, therefore, distinguishes these facilities from other facilities needed to provide service to Azusa under the WDAT, the Commission notes that the WDAT does not explicitly include this as a distinguishing characteristic. Rather, the WDAT states only that SoCal Edison need not upgrade its existing or planned system in order to furnish a requested service if: (1) doing so would impair system reliability or otherwise impair or degrade existing distribution service;¹⁰ or (2) the request is technically infeasible or does not comply with federal, state, or local requirements for the construction of any such facilities.¹¹ We also note that section 12.1 of the WDAT explicitly states that:

¹⁰ See WDAT section 16.7, Due Diligence in Completing New Facilities.

¹¹ See WDAT Attachment B, Technical and Operational Implementation of the Tariff for Wholesale Distribution Load, section 2.2, Interconnection of Customer's Load.

[t]he Distribution Provider will plan, construct, operate and maintain its Distribution System in accordance with Good Utility Practice in order to provide the Distribution Customer with Distribution Service over the Distribution Provider's Distribution System . . . and shall, consistent with Good Utility Practice, endeavor to construct and place into service sufficient Distribution System facilities to deliver the . . . Distribution Customer's power to serve its Wholesale Distribution Load on a basis comparable to the Distribution Provider's delivery of power . . . to the Distribution Provider's Power Customers.

23. Additionally, as Azusa has noted, section 12.5 of the WDAT explicitly provides that WDAT service is to be provided pursuant to "a standard form Service Agreement" and that SoCal Edison's requirement that Azusa enter into the Kirkwall Substation Agreement, which has terms and conditions different from the terms and conditions of the WDAT, is inconsistent with the express terms of the WDAT and with the principle that wholesale distribution service should be provided pursuant to generally applicable tariff provisions and a standard form of service agreement.¹² Finally, section 2.2 of Attachment B of the WDAT provides that the Distribution Customer shall, among other things, specify any applicable service criteria of the Distribution Customer, including, but not limited to, any redundancy desired in elements available to service Wholesale Distribution Load from the Distribution Provider's Distribution System.

24. We find that the above tariff language supports Azusa's position that the new Kirkwall Substation should be provided pursuant to the terms and conditions of the existing WDAT. SoCal Edison's rebuttal of the cited tariff provision and arguments for the use of separate agreement are not persuasive. SoCal Edison has not argued that the requested additional facilities would impair or degrade existing or planned distribution system services or that the requested interconnection is technically infeasible or would not comply with necessary regulatory requirements. Additionally, while SoCal Edison attempts to distinguish the Azusa Substation from the Kirkwall Substation based on reliability needs, the terms and conditions of the WDAT do not support this distinction that a reliability showing is required. Finally, SoCal Edison's argument that nothing in section 12.1 of the WDAT requires it to finance the Kirkwall Substation and, thus, a separate agreement is necessary because the WDAT Service Agreement does not contain

¹² Specifically, Azusa states that the Kirkwall Substation Agreement provides that Azusa must pay in advance for any facility modifications or additions, including a gross-up charge for taxes on the payment advance, inconsistent with the terms and conditions of the WDAT, which provides in section 21.1 for the payment of monthly charges for distribution service. Azusa asserts that SoCal Edison's filing in Docket No. ER03-549-000 proposes to change the billing demands in the WDAT Service Agreement for Azusa. However, neither the WDAT nor Azusa's Service Agreement as SoCal Edison proposes to revise it permits SoCal Edison to insist upon advance payment for modifications or additions to facilities used to provide WDAT service. Azusa Protest at 9-10.

terms and conditions for customer-financed facilities is circular. That is, SoCal Edison required Azusa to finance the Kirkwall Substation in order to facilitate construction. This requirement for upfront financing by the customer cannot now be used by SoCal Edison to justify the necessity for a separate Facilities Agreement.

25. In addition, the unexecuted Kirkwall Substation Agreement that SoCal Edison filed, is not, in fact, an interconnection agreement like those that the Commission has required. The Commission has required that generators have interconnection agreements, not electrical systems that serve load.¹³ Additionally, notwithstanding that other entities may have voluntarily entered into so-called interconnection facilities agreements with SoCal Edison, a WDAT customer is under no apparent obligation to enter into such an agreement.¹⁴ Accordingly, we will reject the Kirkwall Substation Agreement as being unnecessary.

26. Consistent with this finding that no new Facilities Agreement is necessary, we also find that the rates for the new Kirkwall Substation Facilities should be made part of the existing revised Service Agreement. That is, SoCal Edison requested guidance from the Commission if we found that if the proposed Facilities Agreement was rejected as unnecessary and that service should be provided under the WDAT. We also recognize that Azusa has already paid for the capital costs of the Kirkwall Substation and that the substation and related facilities have been energized. Therefore, SoCal Edison must have a vehicle by which it will recover its costs related to the Kirkwall Substation and related facilities, such as operating and maintenance (O&M) costs and property taxes but that such rate recovery will be separate from the rates that recover the revenue requirement associated with the other facilities providing wheeling service to Azusa since Azusa has already paid the capital costs associated with the substation facilities. Therefore, we find it reasonable for the rates charged to Azusa, including the Substation Facilities Payment for the initial capital costs related to the Kirkwall Substation and related facilities, be made part of SoCal Edison's revised Service Agreement. Accordingly, we will require SoCal Edison to submit a compliance filing effectuating this finding.

¹³ Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs., Regulations Preambles ¶ 31,146 (2003) (Order No. 2003), order on reh'g, Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003-A, 69 Fed. Reg. 15,932 (March 5, 2004), FERC Stats. & Regs., Regulations Preambles ¶ 31,160 (2004) (Order No. 2003-A), reh'g pending.

¹⁴ See Delmarva Power & Light Company, 106 FERC ¶ 61,290 at P 24 (2004) (Delmarva).

2. Costs Under the Kirkwall Substation Agreement

a. Protest and Answer

27. The Kirkwall Substation Agreement provides that Azusa is responsible for a Substation Facilities Payment,¹⁵ estimated to be \$5,626,000, which Azusa has paid to SoCal Edison, pursuant to the terms of an interim Letter Agreement. Following the in-service date of the Substation Facilities, Azusa will also pay SoCal Edison a monthly Substation Facilities Charge,¹⁶ estimated to be approximately \$12,394.80 per month, or \$136,000 annually.¹⁷ Finally, Azusa will pay to SoCal Edison a monthly Metering Facilities Charge, which recovers the on-going revenue requirement for the Metering Facilities which is estimated to be approximately \$450 per month.¹⁸

28. Azusa does not protest the level of the Substation Facilities Charge or the Metering Facilities Charge. However, Azusa argues that the method for developing the Substation Facilities Payment must be consistent with the method used to develop charges under the WDAT. Azusa states that SoCal Edison proposes to calculate the charges to Azusa for lines associated with service to the Kirkwall Substation based on the actual costs for such lines. However, Azusa notes that in Docket No. ER03-549-000, SoCal Edison proposes to calculate costs for existing lines reflected in the WDAT charges to Azusa based on an average system “cost-per-pole-mile” method. Azusa explains that, allowing such inconsistent costing methods to be applied to new versus existing lines will have the effect of forcing Azusa to pay actual, incremental costs for any new lines used to serve Azusa while simultaneously paying a system average “cost per pole mile” (which will reflect new lines installed or upgraded to serve all other distribution level customers) as opposed to the actual or vintaged costs of the existing lines providing service to Azusa, unjustly maximizing charges to Azusa.

¹⁵ The Substation Facilities Payment generally compensates SoCal Edison for the capitalized costs incurred by SoCal Edison associated with the engineering, design, procurement, construction and installation of the Substation Facilities and the Income Tax Component of Contribution associated with such facilities.

¹⁶ The monthly Substation Facilities Charge recovers the on-going revenue requirement for the Substation Facilities, excluding the Metering Facilities.

¹⁷ SoCal Edison states that the Customer-Financed Monthly Rate is the rate most recently adopted by the CPUC (*i.e.*, 0.36%) for application to SoCal Edison’s retail electric customers for customer-financed added facilities.

¹⁸ The revenue requirement consists of operation and maintenance expenses, administrative and general expenses, property and payroll tax expense, general plant, and telecommunication provider charges

29. Azusa's position in Docket No. ER03-549-000 is that charges for all WDAT service, both for existing and new lines (as well as substation facilities) should be based on the actual costs of the facilities used to serve the Distribution Customer, as required by section 21.2.1 of the WDAT. Azusa argues that if the Commission approves the use of SoCal Edison's proposed average system "cost-per-pole-mile" method for developing line costs in Docket No. ER03-549-000, then the same method must be used to develop any charges for the lines associated with the service to the Kirkwall Substation, and SoCal Edison should be required to refund to Azusa, with interest, all payments that Azusa has made for the Kirkwall Substation facilities that are in excess of the costs developed by that method.

30. Further, Azusa states that SoCal Edison's filing does not contain adequate support for certain of the costs under the Kirkwall Facilities Payment. Specifically, Azusa states that Exhibit D of the Kirkwall Substation Agreement, which purports to set forth a one-line diagram of the facilities installed by SoCal Edison on its side of the Kirkwall interconnection, does not accurately portray the as-built configuration of the facilities. Azusa states that when it initiated the discussions concerning the Kirkwall Substation, it proposed to construct and own a ring-bus interconnection, which SoCal Edison rejected. Azusa argues that SoCal Edison insisted that it install and own an operating-transfer bus type interconnection, as depicted in Exhibit D, and increased its previous \$2.5 million cost estimate for the interconnection facilities to more than \$5.6 million. As a result, Azusa states that SoCal Edison installed a modified ring-bus configuration, presumably at a reduced cost. Azusa requests an investigation to determine whether the costs SoCal Edison proposes to assign to Azusa are reasonable.

31. In addition, Azusa states that the scope of work described in Exhibit A of the Kirkwall Substation Agreement includes replacement of certain lines included by SoCal Edison in the calculation of WDAT charges to Azusa in Docket No. ER03-549-000 based on the average "cost-per-pole-mile" pricing method. Azusa states that SoCal Edison's calculation of costs assignable to Azusa improperly fails to provide any credit for facilities included in the WDAT charges but retired as part of the Kirkwall project. Thus, Azusa states that it should receive credit for any facilities included in the WDAT charges that have been retired in connection with the Kirkwall project.

32. Finally, Azusa states that it does not understand and is unable to verify the proposed 1.59 percent loss factor SoCal Edison has proposed for the Kirkwall Substation and that further documentation and investigation is necessary to determine whether SoCal Edison's loss factor calculations are reasonable.

33. In its answer, SoCal Edison states that its filing in Docket No. ER03-549 does not reflect or include costs associated with the Kirkwall facilities or the costs associated with the line facilities replaced in order to construct the second point of service. SoCal Edison explains that those line facilities could not have been included in the WDAT rates at issue there because the Kirkwall Substation did not exist at the time it filed the proposed rates, and, consequently, Azusa was not assigned any costs associated with

those line facilities.¹⁹ SoCal Edison states that since Azusa has paid for the Kirkwall facilities, the charges that Azusa pays under the WDAT will not include any additional charges for these facilities. Thus, SoCal Edison states that the Commission should reject Azusa's claim for a refund contingent on the outcome of ER03-549, as the outcome of that docket will not impact the charges that Azusa must pay under the Letter Agreement and the Kirkwall Substation Agreement.²⁰

34. With regard to the updated cost support for Exhibit D to the Kirkwall Substation Agreement, SoCal Edison states that it inadvertently neglected to update the description and configuration of the as-built facilities and it commits to update this information with the Commission. SoCal Edison explains that the cost increase was the result of a change of ownership and cost responsibility for the ring-bus. SoCal Edison argues that it clearly communicated to Azusa the changes to the facilities and Azusa assented to both the changes and charges.

b. Commission Determination

35. We find that SoCal Edison's filing raises issues of material fact regarding the just and reasonableness of the proposed charges under the Kirkwall Substation Agreement that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing ordered below. Additionally, issues raised regarding the revised Service Agreement, such as the loss factor for the Kirkwall Substation included in the revised Service Agreement, also presents issues of material fact that requires further investigation. Our preliminary analysis indicates that the proposed charges under the Kirkwall Substation Agreement and the Revised Service Agreement 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 the proposed charges under the Kirkwall Substation Agreement and the revised Service Agreement, suspend them for a nominal period, make them effective March 23, 2004,²¹ as requested, subject to refund, and set them for hearing and settlement judge procedures.

36. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute 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.²² If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the

¹⁹ SoCal Edison ER04-667 Answer at 10-11.

²⁰ Id. at 11.

²¹ Central Hudson Gas & Electric Corporation, 60 FERC ¶ 61,206, reh'g denied, 61 FERC ¶ 61,021 (1992).

²² 18 C.F.R. § 385.603 (2003).

proceeding; otherwise, the Chief Judge will select a judge for this purpose.²³ The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order 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.

37. We will deny Azusa's request that the Commission find that the charges for the Kirkwall Substation facilities and SoCal Edison's underlying rates for distribution service that are currently under investigation in Docket No. ER03-549-000 must be done on a consistent basis of either actual cost of the facilities or average cost of facilities. Azusa has paid the actual cost of the Kirkwall Substation facilities and has now requested a proceeding to verify that the costs charged by SoCal Edison for these facilities have been calculated correctly. An alternative average cost of facilities for the Kirkwall Substation could introduce new issues such as whether the facilities priced as "average" are identical to those facilities provided to Azusa at the Kirkwall Substation. Additionally, we find that the construction of the Kirkwall Substation is not distinguishable from other capital additions potentially needed for the continuation of reliable service to Azusa and that under the Commission's accounting requirements,²⁴ those capital additions would be included in SoCal Edison's distribution rates on an actual basis. Accordingly, while we make the determination that the actual costs of the Kirkwall Substation must be reflected in SoCal Edison's proposed charges on an actual basis, this determination is based on the facts of this proceeding only.

3. Metering Facilities

a. Protest and Answer

38. Azusa states that section 8.6 of the Kirkwall Substation Agreement and section 6 of the revised Service Agreement requiring Azusa to sign a Meter Service Agreement for ISO Metered Entities (MSA) with the CAISO are improper so long as SoCal Edison retains ownership and control of the meters. Azusa states that the CAISO's pro forma MSA would impose on Azusa duties and obligations that Azusa could not perform because SoCal Edison owns and operates the meters that provide service to Azusa pursuant to the terms of the WDAT. Azusa states that, under the WDAT, the obligation to provide ISO-compliant metering rests with SoCal Edison, not Azusa.

²³ 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).

²⁴ Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the FPA, 18 C.F.R. Part 101 (2003).

39. In response, SoCal Edison states that, at Azusa's request, it has offered to install, own and maintain ISO metering for Azusa. However, SoCal Edison states that it is unwilling to accept the potential liabilities or penalties that may be associated with being an ISO Metered Entity under the ISO Tariff. SoCal Edison explains that the ISO has requested that Azusa execute the MSA as the ISO Metered Entity and it has reflected that arrangement in the Kirkwall Substation Agreement. SoCal Edison states that the WDAT does not require SoCal Edison to become an ISO Metered Entity and, thus, it has no obligation to assume such role and the penalties and liabilities which it may entail. SoCal Edison asserts that it has expressed to Azusa that it is willing to permit Azusa to own all Metering Facilities up to the point of interface with SoCal Edison's 66kV facilities, or to allow Azusa to install such metering on the facilities it owns.

b. Commission Determination

40. The WDAT states that data retrieval requirements, procedures, and schedules for metering and communications equipment shall generally be consistent with CAISO requirements.²⁵ The WDAT further states that SoCal Edison shall install, own, and maintain revenue quality meters at the point of interconnection between its system and the Distribution Customer's Wholesale Distribution Load.²⁶ Lastly, the WDAT states that the Distribution Customer shall reimburse SoCal Edison for all expenses incurred by SoCal Edison for any metering and communications equipment, and related hardware and software, including any modifications to existing facilities or software required for SoCal Edison to provide service in accordance with the parties' WDAT service agreement and the WDAT.²⁷ Based on these provisions, we find that updated CAISO compliant meters should be provided by SoCal Edison under the WDAT.

41. However, we agree with SoCal Edison that it should not be responsible for any potential liabilities or penalties associated with the Metering Facilities installed by SoCal Edison on Azusa's behalf. Therefore, such metering service should be provided pursuant to the CAISO MSA. In recognition of Azusa's concerns regarding liability, we also find that to the extent there are material issues of fact regarding Azusa's ability to meet obligations imposed on it by the CAISO, these issues should be addressed in the hearing ordered above. We note that this updated metering equipment is important to facilitate our findings in California Independent System Operator Corporation,²⁸ where

²⁵ See WDAT Attachment B, Technical and Operational Implementation of the Tariff for Wholesale Distribution Load, section 1, Metering and Communications Equipment, p. 44

²⁶ See *id.* at section 1.1, p. 44

²⁷ See *id.* at section 1.4, p. 46

²⁸ 103 FERC ¶ 61,260 (2003).

the Commission found that, in order for the CAISO to operate an efficient and reliable transmission grid effectively, it is essential for parties to comply with metering requirements as described in the California ISO Open Access Transmission Tariff (OATT).

4. Other Disputed Provisions

42. Azusa argues that if the Commission does not reject the Kirkwall Substation Agreement, then it should require SoCal Edison to eliminate or modify certain provisions that are unjust, unreasonable and unduly discriminatory in violation of the Federal Power Act (FPA).

43. Specifically, Azusa states that sections 4.4, 4.16 and 4.22 of the Kirkwall Substation Agreement require Azusa to pay for various costs as “determined by [SoCal Edison]” to be appropriate for assignment to Azusa, vesting in SoCal Edison unilateral discretion to determine the appropriateness of cost assignments. Azusa argues that the phrase “determined by [SoCal Edison]” should be eliminated from these sections or replaced with “determined by the Commission.” Additionally, Azusa states that the Kirkwall Substation Agreement contains a number of provisions (sections 2.5, 2.6, 2.7, 18.1, 26, and 27) that either assert or are premised upon Azusa’s consent to or acquiescence in the agreement and should be deleted. Finally, section 10.2 of the proposed Kirkwall Substation Agreement allows SoCal Edison a year to decide whether to remove its Kirkwall facilities if they are no longer needed to serve Azusa and an additional two years to complete any such removal. Azusa asserts that such an extended period for removal of unneeded facilities is unnecessary, and it would impose an unreasonable impediment to Azusa’s use of its own land.

44. The Commission finds that these issues are moot in light of our rejection of the proposed Kirkwall Substation Agreement.

5. The Revised Service Agreement

a. Protest

45. Azusa states that there are two aspects of the revised Service Agreement that require clarification. First, Azusa asserts that consistent with section 12.1 of the WDAT, the Commission should make clear that language proposed for the revised Service Agreement does not limit SoCal Edison’s obligation to serve Azusa’s entire Wholesale Distribution Load, including load growth. Second, Azusa states that the Commission should require SoCal Edison to clarify that the billing demand specified in the Service Agreement is the coincidental peak demand for the Azusa Substation and the Kirkwall Substation, as opposed to non-coincident demands. Azusa states that the language should be revised to read:

The metered demand is the hourly demand averaged over 15 or 5-minute intervals, summed by interval to determine the maximum coincident demand in any interval for the meters at Kirkwall and Azusa Substations for a month and expressed in kilowatts.

b. Commission Determination

46. The Commission will require that, consistent with section 12.1 of the WDAT, SoCal Edison must revise section 6 of the revised Service Agreement so that it is clear that this provision does not limit SoCal Edison's obligation to serve Azusa's entire Wholesale Distribution Load, including load growth. We will also require that SoCal Edison revise section 11.2.2 of the revised Service Agreement to state that the metered demand is the hourly demand averaged over 15 or 5-minute intervals, summed by interval to determine the maximum coincident demand in any interval for the meters at Kirkwall and Azusa Substations for a month and expressed in kilowatts. SoCal Edison must submit a compliance filing within 30 days of the date of this order, incorporating such language into the Service Agreement.

6. Request for Consolidation with Docket No. EL03-228-000

47. Azusa requests that the Commission consolidate any proceedings in Docket No. ER04-667-000 with Docket No. EL03-228-000.

48. In its answer SoCal Edison states that the Commission should not consolidate this docket with Docket No. EL03-228-000. SoCal Edison explains that although the issues presented in the two dockets appear similar, the present docket involves only the acceptance of an agreement with a single customer, while the Petition was filed by four separate cities, three of whom are not parties to the instant docket.

49. We will deny Azusa's request. The Commission typically consolidates proceedings only for purposes of hearing and decision.²⁹ As we are not setting Docket No. EL03-228-000 for hearing, there is no need to consolidate that docket with Docket No. ER04-667-000.

²⁹ New York Independent Operator, Inc., 145 FERC ¶ 61,108 (2003); Arizona Public Service Company, 90 FERC ¶ 61,197 (2000).

C. Docket No. EL03-228-000 – The Cities Petition

1. Metering Facilities

a. Petition, Protest and Answers

50. The Cities assert that the CAISO has reported that metering facilities which measure deliveries do not comply with the CAISO's requirements. The Cities claim that they have repeatedly asked SoCal Edison to install CAISO-compliant metering pursuant to the WDAT, but that SoCal Edison has refused to do so. Instead, the Cities say, SoCal Edison insists that the Cities must enter into new metering facilities agreements containing terms and conditions different than those of the WDAT. The Cities claim that SoCal Edison's insistence on separate agreements is inconsistent with the express terms of the WDAT. The Cities request that the Commission require SoCal Edison to provide CAISO-compliant metering facilities pursuant to the WDAT.

51. SoCal Edison responds that the Cities' complaint is primarily a request that the Cities finance the metering upgrades and enter into a separate metering facilities agreement. SoCal Edison states that it has informed the Cities that it will finance the meter upgrades subject to the resolution of "certain contractual issues."³⁰ Accordingly, SoCal Edison states that the Commission does not need to issue a declaratory order regarding the parties' obligations under the WDAT concerning meter upgrades.

b. Commission Determination

52. As stated above, we find that SoCal Edison is required, under the WDAT, to provide metering that is compliant with the metering requirements of the CAISO and that any associated contractual arrangements required to complete these upgrades should be arranged, as required by the WDAT, pursuant to its Metering and Communications protocol.

2. Facility Modifications – Kirkwall Substation

53. We find that the issues raised in this Petition regarding Azusa's Kirkwall Substation have been addressed in Docket No. ER04-667-000 and need not be repeated. The disposition of the issues raised in Docket No. ER04-667-000 render moot the requested action by Azusa in this docket. Additionally, we will deny the Cities' general request that the Commission find that the Cities are not required to enter into separate agreements relating to facilities for Distribution Service because specific facts may dictate different results.

³⁰ SoCal Edison Protest at 3-4. Those contractual issues include identifying who shall execute the California ISO's pro forma Meter Service Agreement, parties' access to metering data and recovery of costs associated with the new facilities.

3. Request for Consolidation with Docket No. ER03-549-000

a. Petition, Protest and Answers

54. The Cities seek to consolidate the Petition with the proceeding in Docket No. ER03-549-000, in which WDAT Service Agreements between SoCal Edison and the Cities were accepted, suspended, made effective subject to refund, and set for hearing. They argue that resolution of the issues in the Petition will affect the principles and methods appropriate for the development of the rates for WDAT service, and that Docket No. ER03-549-000 concerns the rates for WDAT service. They therefore believe that consolidating the proceedings is necessary and appropriate to ensure a fair and complete resolution of the issues raised in the two proceedings.

55. SCWC also filed a motion to consolidate the Petition with Docket No. ER03-549-000, arguing that the proceedings are directly related and inextricably intertwined. SCWC suggests that the Commission's construction and interpretation of the WDAT in this proceeding will affect development of rates in Docket No. ER03-549-000, and that consolidation will serve the interest of economy of effort and assure consistency of results.³¹

56. SoCal Edison opposes consolidating the Petition with Docket No. ER03-549-000. It avers that, because the Petition concerns future facilities, it has no bearing on the proceeding in Docket No. ER03-549-000, in which SoCal Edison seeks cost recovery through the WDAT for existing wholesale distribution facilities. Further, SoCal Edison states that allowing SoCal Edison cost recovery for existing wholesale distribution facilities will not result in double recovery of costs for future facilities. It also states that it would be prejudiced by the delay attendant in consolidating the proceedings.

b. Commission Determination

57. The issues raised in Docket No. EL03-228-000 have either been mooted or addressed in Docket No. ER04-667-000. Additionally, since Docket No. ER04-667-000 involves issues related to service to Azusa, consolidation of that docket with Docket No. ER03-549-000 is inappropriate. Therefore, the request for consolidation is denied.

4. Filing Fee Waiver

58. The Cities request waiver of the filing fee for the Petition. Citing 18 C.F.R. § 381.108 (2003) and Commission precedent, they argue that municipalities are exempt from the fees otherwise required for a petition for declaratory order. SoCal Edison did not protest.

³¹ SCWC Motion to Intervene and Motion to Consolidate at 4.

59. We will grant the Cities' request for waiver of the filing fee. Section 381.108 of the Commission's regulations provides that municipalities are exempt from the filing fees required in Part 381,³² and the Cities explain that they are all municipal utilities organized under the laws of California. The Cities are therefore exempt from the filing fee required for a petition for a declaratory order.

The Commission orders:

(A) SoCal Edison's Kirkwall Substation Agreement is hereby rejected, as discussed in the body of this order.

(B) SoCal Edison's revised Service Agreement is hereby conditionally accepted for filing, suspended for a nominal period, to become effective March 23, 2004, as requested, subject to refund.

(C) SoCal Edison's proposed charges included in the proposed Kirkwall Substation Agreement and revised Service Agreement are accepted for filing, suspended for a nominal period, to become effective March 23, 2004, as requested, subject to refund.

(D) Azusa's motions for consolidation of Docket No. ER04-667-000 with Docket No. EL03-228-000 is hereby denied, as discussed in the body of this order.

(E) 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 the justness and reasonableness of the 2003 Update. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (C) and (D) below.

(F) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2003), 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 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 in writing or by telephone within five (5) days of the date of this order.

³² 18 C.F.R. § 381.108 (2003).

(G) Within sixty (60) 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 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.

(H) 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 conference in these proceedings in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426. Such 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

(I) The Cities' petition for declaratory order is hereby partially granted, as discussed in the body of this order.

(J) The Cities' and SCWC's motions for consolidation of Docket No. EL03-228-000 with Docket No. ER03-549-000 are hereby denied, as discussed in the body of this order.

(K) SoCal Edison is directed to make a compliance filing within thirty (30) days of the date of this order to reflect the incorporation of charges for the Kirkwall Substation and related facilities into the revised Service Agreement.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.