

have not been shown to be “consistent with or superior to” the *pro forma* SGIP or SGIA. We also reject, without prejudice, the proposed editorial changes, determining that these types of changes to the *pro forma* SGIP and SGIA are more appropriately raised and addressed in the rulemaking proceeding. We do accept some of San Diego’s proposed changes on the basis that we have previously allowed similar revisions in the Order No. 2003 proceedings.³ Finally, for other proposed changes, we establish hearing and settlement judge procedures and consolidate this proceeding with the Pacific Gas and Electric Company (PG&E) proceeding in Docket No. ER05-1319-000, which shares similar issues of law and fact.

II. Background to Order No. 2006

2. Order No. 2006 required all public utilities⁴ to adopt standard rules for interconnecting new sources of electricity no larger than 20 megawatts. It continued the process begun in Order No. 2003 of standardizing the terms and conditions of interconnection service for interconnection customers of all sizes. The *pro forma* SGIP and SGIA of Order No. 2006 were developed to reduce interconnection time and costs for interconnection customers and transmission providers, preserve reliability, increase energy supply, lower wholesale prices for customers by increasing the number and types of new generation that will compete in the wholesale electricity market, facilitate development of non-polluting alternative energy sources, and help remedy undue discrimination, as sections 205 and 206 of the Federal Power Act (FPA) require.⁵

³ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh’g*, Order No. 2003-A, 69 Fed. Reg. 15,932 (Mar. 26, 2004), FERC Stats. & Regs. ¶ 31,160 (2004), *order on reh’g*, Order No. 2003-B, 70 Fed. Reg. 265 (Jan. 4, 2005), FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh’g*, Order No. 2003-C, 70 Fed. Reg. 37,662 (June 30, 2005), FERC Stats. & Regs. ¶ 31,190 (2005). *See also Notice Clarifying Compliance Procedures*, 106 FERC ¶ 61,009 (2004). The Order No. 2003 Large Generator Interconnection Agreement and Large Generator Interconnection Procedures, as amended by Order Nos. 2003-A, 2003-B, and 2003-C, are referred to herein as the LGIA and the LGIP, respectively.

⁴ A public utility is a utility that owns, controls, or operates facilities used for transmitting electric energy in interstate commerce, as defined by the Federal Power Act. 16 U.S.C. § 824(e) (2000).

⁵ 16 U.S.C. §§ 824d, 824e (2000).

3. Order No. 2006 required all public utilities to adopt the *pro forma* SGIP and SGIA as part of their open access transmission service. In Order No. 2006, the Commission deemed that the OATTs of all non-independent transmission providers were revised to include the *pro forma* SGIP and SGIA.⁶ The Commission did not require a formal amendment until compliance is due in the Commission's rulemaking on Electronic Tariff Filings.⁷ Accordingly, a non-independent transmission provider that intended to adopt the *pro forma* SGIP and SGIA (without variations) into its OATT need not formally add the documents to its OATT until it submits a compliance filing in response to the Commission's pending Electronic Tariff Filings rulemaking. However, the compliance obligation is different for non-independent transmission providers that seek variations from Order No. 2006, as discussed below.

4. In Order No. 2006, the Commission stated that, as in Order No. 2003,⁸ it would consider two categories of variations from Order No. 2006 submitted by a non-independent transmission provider.⁹ Variations based upon regional reliability criteria, referred to as "regional reliability variations," which track established reliability requirements (*i.e.*, requirements approved by the applicable regional reliability council), must be supported by references to established reliability requirements.¹⁰ Further, the text of the reliability requirements must be provided in support of the variation. Requests for regional reliability variations were due on the effective date of Order No. 2006.

5. The Commission also stated that if the variation is for any other reason, the non-independent transmission provider must demonstrate that the variation is "consistent with or superior to" the Order No. 2006 provision. Blanket statements that a variation meets the standard or clarifies Order No. 2006 are not sufficient. Any request for application of this standard will be considered under FPA section 205, and must be supported by

⁶ Order No. 2006 at P 544.

⁷ See *id.* See also *Electronic Tariff Filings, Notice of Proposed Rulemaking*, 69 Fed. Reg. 43,929 (July 23, 2004), FERC Stats. & Regs. ¶ 32,575 (2004).

⁸ Order No. 2003 at P 824-25.

⁹ Order No. 2006 at P 546-48.

¹⁰ See *New York Independent System Operator, Inc.*, 108 FERC ¶ 61,159, at P 94-95 (2004) (discussing local versus regional reliability rules), *order on reh'g*, 111 FERC ¶ 61,347 (2005).

arguments explaining how each variation meets the standard. Also, requests for “consistent with or superior to” variations could be submitted on or after the effective date of the Final Rule.¹¹

6. On August 12, 2005, San Diego filed a revised SGIP and revised SGIA pursuant to Order No. 2006. It asserts that its proposed variations from the *pro forma* SGIP and SGIA are based upon the “consistent with or superior to” standard of Order No. 2006. San Diego requests an effective date of August 12, 2005.

III. San Diego’s Filing

7. Attachment C of San Diego’s August 12 filing provides a table of San Diego’s proposed revisions to the *pro forma* SGIP along with its explanation of how those revisions are “consistent with or superior to” the *pro forma* SGIP. Attachment D of San Diego’s August 12 filing provides a table of San Diego’s proposed revisions to the *pro forma* SGIA along with its explanation of how those revisions are “consistent with or superior to” the *pro forma* SGIA. In addition, San Diego describes changes made to both the *pro forma* SGIP and the SGIA in its transmittal letter for this compliance filing.

A. Revisions to both the SGIP and SGIA

8. San Diego proposes the following three changes to both the SGIP and the SGIA. First, San Diego proposes to include new provisions in the *pro forma* SGIP and SGIA¹² that require an interconnection customer to comply, both in the design of interconnection facilities and the operation of the generator, with San Diego’s Interconnection Handbook.¹³ San Diego notes that the Commission has allowed Participating Transmission Owners (PTOs) to include such provisions when filing their joint LGIP in

¹¹ The Commission noted that the “consistent with or superior to” standard is difficult to meet because the burden of showing that a variation is “consistent with or superior to” the relevant provision or provisions in the Order No. 2006 document is significant. The Commission also stated that any request for a variation should be accompanied by a request to include the complete SGIP and SGIA into the Transmission Provider’s OATT.

¹² San Diego’s proposed section 4.11 to the *pro forma* SGIP and article 1.5.4 of the *pro forma* SGIA contains references to San Diego’s Interconnection Handbook.

¹³ San Diego states that its Interconnection Handbook is posted on its website.

compliance with Order No. 2003.¹⁴ San Diego notes, further, that the Commission, in the CAISO July 1 Order, recognized that each PTO's transmission system may have certain standards and protocols for the interconnection of new generation that must be followed in order to protect the safety and reliability of those systems. San Diego argues that those same considerations apply to the distribution system.¹⁵

9. Second, San Diego proposes to substitute "Distribution" in place of "Transmission" in all references to the term "Transmission Provider" throughout the *pro forma* SGIP and SGIA. It states that this revision would conform the language in the *pro forma* SGIP and SGIA to the language in its Wholesale Distribution Tariff (WDT). In addition, San Diego proposes to substitute "distribution" in the place of "transmission" throughout the *pro forma* SGIP and SGIA. San Diego points out that these types of revisions were accepted in the SoCal Edison July 6 Order.¹⁶

10. Third, San Diego proposes to revise the definitions for "Good Utility Practice," "Network Upgrades," "Transmission System," and "Upgrades" contained in the Glossary of Terms in both the *pro forma* SGIA and SGIP. It argues that these revisions would conform these definitions to the definitions used in the California Independent System Operator Corporation's (CAISO) Tariff and PTO's Tariffs. San Diego argues, further, that the revised definitions are common usage within California.

11. For example, the *pro forma* SGIA defines "Good Utility Practice" as "Any of the practices, methods, and acts engaged in or approved by a significant portion of the electric industry during the relevant time period.... Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others." San Diego proposes to revise it to state the following: "Any of the practices, methods, and

¹⁴ *California Independent System Operator Corporation*, Order Accepting in Part and Rejecting in Part Order Nos. 2003, 2003-A, and Order No. 2003-B Compliance Filings, 112 FERC ¶ 61,009 at P 167 (2005) (CAISO July 1 Order).

¹⁵ San Diego states that, as the Commission directed in Paragraph 168 of the CAISO July 1 Order, it is in the process of reviewing its Interconnection Handbook to identify any sections that may impact rates, terms, and conditions of service. To the extent it discovers sections containing such information, it will submit those provisions to the Commission.

¹⁶ *Southern California Edison Company*, 112 FERC ¶ 61,036 at P 32 (2005) (SoCal Edison July 6 Order).

acts engaged in or approved by a significant portion of the electric *utility* industry during the relevant time period...Good Utility Practice is not intended to be *any one of a number of optimum practices, methods, or acts* to the exclusion of all others.”¹⁷ In addition to revising the “Good Utility Practice” definition in the *pro forma* SGIA, San Diego proposes to include the revised definition in the *pro forma* SGIP. It argues that although the term is used throughout the *pro forma* SGIP and defined in the *pro forma* SGIA, it remains undefined in the *pro forma* SGIP.

12. The *pro forma* SGIP and SGIA define “Network Upgrades” as: “Additions, modifications, and upgrades to the Transmission Provider’s Transmission System required at or beyond the point at which the Small Generating Facility interconnects with the Transmission Provider’s Transmission System to accommodate the interconnection with the Small Generating Facility to the Transmission Provider’s Transmission System.” In the *pro forma* SGIP, San Diego proposes to revise the definition as follows: “Additions, modifications, and upgrades to the *Distribution* Provider’s Transmission System required at or beyond the point at which the *Distribution System connects to the Distribution* Provider’s Transmission System.” In the *pro forma* SGIA, San Diego proposes to revise the definition as follows: “Additions, modifications, and upgrades to the *Distribution* Provider’s Transmission System required at or beyond the point at which the *Distribution System connects to the Distribution Provider’s Transmission System* to accommodate the interconnection of the Small Generating Facility with the *Distribution Provider’s Distribution System*.” San Diego argues that inserting the phrase “Distribution Provider’s Transmission System” eliminates any confusion by describing that these Network Upgrades that may be required are at or beyond the point at which the Distribution System connects to the Transmission System.

13. The *pro forma* SGIA and SGIP define “Transmission System” as: “The facilities owned, controlled, or operated by the Transmission Provider or the Transmission Owner that are used to provide transmission service under the Tariff.” San Diego proposes to revise the definition as follows: “*Those transmission facilities owned by the Distribution Provider that have been placed under the ISO’s operational control and are part of the ISO Grid.*” San Diego argues that this revision recognizes that, in California, the Transmission Owners have transferred control and operation of the transmission system to CAISO.

¹⁷ The Commission will use italics to highlight San Diego’s proposed changes to the *pro forma* SGIP and SGIA in this order. But, when presenting San Diego’s proposed changes, we do not identify the language San Diego proposes to delete from the *pro forma* SGIP and SGIA.

14. The *pro forma* SGIA and SGIP define “Upgrades” as: “The required additions and modifications to the Transmission Provider’s Transmission System at or beyond the Point of Interconnection.” San Diego proposes to revise the definition as follows: “The required additions and modifications to the *Distribution* Provider’s Transmission System *and Distribution System* at or beyond the Point of Interconnection.” San Diego argues that the insertion of “*and Distribution System*” recognizes that Upgrades can involve additions and modifications to both the Transmission System and the Distribution System.

B. SGIP Revisions

15. In addition to revising the definitions in the Glossary of Terms discussed above, San Diego also proposes to modify the *pro forma* SGIP study agreements to include miscellaneous provisions found in the study agreements that the Commission allowed SoCal Edison to adopt in its LGIP and LGIA filing.¹⁸ San Diego states that, in the SoCal Edison July 6 Order, the Commission required SoCal Edison to revise some of the proposed miscellaneous provisions pertaining to dispute resolution, rules of interpretation, and waivers. The Commission accepted the remaining miscellaneous provisions as being consistent with the *pro forma* LGIP and LGIA.

16. Section 3.4.9 of the *pro forma* SGIP discusses procedures related to conducting the System Impact Study. Specifically, it states that “the Interconnection Customer may apply to the nearest Transmission Provider (Transmission Owner, Regional Transmission Operator, or Independent Transmission Provider)...” San Diego proposes to place “Transmission Provider” and “Transmission Owner” in lower case because these terms are in reference to other entities that are not parties to the SGIA or the study process contemplated by the study agreements and as such are not defined terms in the SGIP or SGIA.¹⁹

¹⁸ SoCal Edison July 6 Order at P 27.

¹⁹ The Commission notes that San Diego uses the term “SGIA” in its table of proposed revisions in SGIP in its justification for proposed revision to section 3.4.9. The Commission believes that San Diego intended to use the term “SGIP.”

17. The *pro forma* SGIP defines “Business Day” as “Monday through Friday, excluding Federal Holidays.” San Diego proposes to revise it as follows: “Monday through Friday, excluding *federal holidays and the day after Thanksgiving Day.*”²⁰

C. SGIA Revisions

18. Article 1.3 of the *pro forma* SGIA discusses the scope and limitations of the interconnection agreement. It states that “The Interconnection Customer will be responsible for separately making all necessary arrangements (including scheduling) for delivery of electricity with the applicable Transmission Provider.” San Diego proposes to revise it as follows: “The Interconnection Customer will be responsible for separately making all necessary arrangements (including scheduling) for delivery of electricity with the applicable *Distribution Provider and the ISO in accordance with the ISO Tariff.*” San Diego contends that the additional language reflects the role of CAISO as the transmission provider.

19. Article 1.5.3 describes the responsibilities of the parties to the agreement. It states: “The Transmission Provider shall construct, operate, and maintain its Transmission System and Interconnection Facilities in accordance with” San Diego proposes to revise it as follows: “The Transmission Provider shall construct, operate, and maintain its *Distribution System, Transmission System and Interconnection Facilities, Distribution Upgrades, and Network Upgrades* in accordance with”, San Diego argues that the proposed revision recognizes that the Distribution Providers obligations under the SGIA extend not only to the Transmission System and Interconnection Facilities, but also to the Distribution System, Upgrades, and Network Upgrades.

20. Article 1.5.5 describes the responsibilities of the parties to the agreement. It states that “The Transmission Provider and the Interconnection Customer, as appropriate, shall provide Interconnection Facilities that adequately protect the Transmission Provider’s Transmission System, personnel, and other persons from damage and injury.” San Diego proposes to revise it as follows: “The *Distribution* Provider and the Interconnection Customer, as appropriate, shall provide Interconnection Facilities that adequately protect the *Distribution* Provider’s Transmission System, *Distribution System* personnel, and other persons from damage and injury.” San Diego contends that this revision defines the affected personnel as the Distribution System Personnel.

²⁰ San Diego does not propose to revise the *pro forma* definition in the SGIA.

21. Article 3.4.5 describes the process parties must undertake when modifying the small generating facility. It states that “The Interconnection Customer must receive written authorization from the Transmission Provider before making any change to the Small Generating Facility that may have a material impact on the safety or reliability of the Transmission System.” San Diego proposes to revise it as follows: “The Interconnection Customer must receive written authorization from the *Distribution* Provider before making any change to the Small Generating Facility that may have a material impact on the safety or reliability of the *Distribution System and the Transmission System.*” San Diego argues that the revision recognizes that modifications can affect the safety or reliability of both the Transmission System and Distribution System.

22. Article 3.4.6 describes the parties’ responsibilities when attempting a reconnection. It states that “The Parties shall cooperate with each other to restore the Small Generating Facility, Interconnection Facilities, and the Transmission Provider’s Transmission System to their normal operating state as soon as reasonably practicable following a temporary disconnection.” San Diego proposes to revise it as follows: “The Parties shall cooperate with each other to restore the Small Generating Facility, Interconnection Facilities, and the *Distribution* Provider’s *Distribution System and Transmission System* to their normal operating state as soon as reasonably practicable following a temporary disconnection.” San Diego argues that this revision recognizes that reconnection of the Small Generating Facility can effect both the Distribution System and the Transmission System.

23. Article 12 addresses miscellaneous issues pertaining to Governing Law, Regulatory Authority and Rules. It states: “The validity, interpretation and enforcement of this Agreement and each of its provisions shall be governed by the laws of the state of _____.” San Diego proposes to insert “California” in the blank. San Diego contends that this is necessary because the SGIA will be governed by the laws of the State of California, where the point of interconnection is located.

24. Article 12.9 addresses the issue of security arrangements. It states: “Infrastructure security of electric system equipment...is essential to ensure day-to-day reliability and operational security. FERC expects all Transmission Providers, market participants, and Interconnection Customers interconnected to electric systems to comply...” San Diego proposes to replace both the “T” and the “P” in Transmission Providers with “t” and “p”, respectively. It also proposes to replace the “I” and “C” in Interconnection Customers with “i” and “c,” respectively. San Diego asserts that this revision is necessary because these terms are in reference to other entities that are not parties to the SGIA, and as such, are not defined terms in the SGIA.

25. Attachment 1 of the *pro forma* SGIA is the Glossary of Terms. San Diego proposes to revise the definitions of “Material Modification,” “Operating Requirements,” and “Tariff.”

26. The *pro forma* SGIA defines “Material Modification” as: “A modification that has a material impact on the cost or timing of any Interconnection Request with a later queue priority date.” San Diego proposes to revise it to state the following: “A modification that has a material impact on the cost or timing of any Interconnection Request *or any other valid interconnection request* with a later queue priority date.” San Diego argues that this revision would recognize that other valid interconnection requests may be affected by a Material Modification.

27. The *pro forma* SGIA defines “Operating Requirements” as: “Any operating and technical requirements that may be applicable due to ... Independent System Operator” San Diego proposes to revise it to state the following: “Any operating and technical requirements that may be applicable due to ... *California* Independent System Operator *Corporation*” San Diego argues that this revision would recognize the correct legal name for the ISO that operates the ISO controlled grid in California.

28. The *pro forma* SGIA defines “Tariff” as: “The Transmission Provider’s or Affected System’s Tariff through which open access transmission service and Interconnection Service are offered” San Diego proposes to revise it as follows: “The *Distribution* Provider’s *Wholesale Distribution Access* Tariff through which open access *distribution* service and Interconnection Service are offered” San Diego argues that this revision would recognize that San Diego’s applicable tariff is denominated as the Wholesale Distribution Access Tariff.

D. Miscellaneous Revision to San Diego’s Tariff

29. San Diego also proposes to revise section 15 of its tariff to clarify that generator interconnection service is set forth in the *pro forma* SGIP and SGIA. In addition, San Diego states that the pagination footer in the *pro forma* SGIP and SGIA was deleted in the process of correctly designating the tariff sheets.

IV. Notice and Responsive Pleadings

30. Notice of San Diego’s filing was published in the *Federal Register*, 70 Fed. Reg. 48,946 (2005), with motions to intervene and protests due on or before September 2, 2005. Southern California Edison Company filed a timely motion to intervene.

V. Discussion

A. Procedural Matters

31. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motion to intervene of Southern California Edison Company serves to make it a party to this proceeding.

B. Proposed Revisions

32. As discussed below, the Commission accepts certain proposed modifications to the *pro forma* SGIP and SGIA because the Commission previously has accepted similar modifications.²¹ The Commission rejects the proposed modifications that seek to make generally applicable typographical or editorial clarifications or corrections that are more appropriately addressed in the rulemaking proceeding, without prejudice to the outcome of the order on rehearing of Order No. 2006. The Commission will set for hearing and settlement judge procedures the proposed changes made to reflect the fact that San Diego owns and operates its Distribution System within CAISO's controlled grid because the changes raise issues of material fact that cannot be resolved based on the record before us. The Commission will consolidate this proceeding with the Pacific Gas and Electric proceeding in Docket No. ER05-1319-000. Finally, the Commission rejects any remaining proposed changes as not "consistent with or superior to" the *pro forma* SGIP and SGIA.

33. The Commission accepts San Diego's proposed revisions that require the interconnection customer to comply with the distribution provider's interconnection handbook when designing, constructing, operating, or maintaining interconnection facilities.²² Previously, the Commission allowed a Participating Transmission Owner to require compliance with its interconnection handbook as consistent with Order No. 2003.²³ We likewise find San Diego's proposed revisions consistent with Order No. 2006. Although the Commission previously has not required than an interconnection

²¹ See SoCal Edison July 6 Order at P 32 (2005).

²² These revisions are in section 4.11 of the SGIP and article 1.5.4 of the SGIA.

²³ *California Independent System Operator Corporation*, 112 FERC ¶ 61,009 at P 167 (2005).

handbook be included in an LGIP or LGIA, we require the filing of any handbook sections that affect rates, terms, and conditions of service.²⁴

34. On the same subject, however, we note that San Diego included a new definition for “Interconnection Handbook” in both the *pro forma* SGIA and SGIP (the Glossary of Terms). It has not explained how this proposed revision is “consistent with or superior to” the *pro forma* SGIP and SGIA. In addition, the proposed definition for “Interconnection Handbook” in the SGIP differs from that proposed for the SGIA. Accordingly, the Commission rejects this modification. Because we are accepting the revision that requires compliance with San Diego’s Interconnection Handbook, we will require San Diego to submit a further compliance filing that contains a single proposed definition for “Interconnection Handbook.”

35. The Commission accepts all but two of San Diego’s proposed revisions to reflect that the transmission provider is actually the distribution provider.²⁵ The Commission accepted these types of revisions in Southern California Edison Company’s Order No. 2003 compliance filings and we will accept San Diego’s proposed revisions here under the same rationale.²⁶

36. We find that section 3 and attachment number 7 of the *pro forma* SGIP become ambiguous when distribution is substituted in place of transmission. For example, section 3.4 of the *pro forma* SGIP discusses procedures related to conducting the System Impact Study. Section 3.4.2 states: “If no transmission system impact study is required, but potential electric power Distribution System adverse system impacts are identified in

²⁴ See, e.g., SoCal Edison July 6 Order at P 22.

²⁵ We note that in Order No. 2003, at paragraph 803, we stated:

“Distribution” is an unfortunately vague term, but it is usually used to refer to lower-voltage lines that are not networked and that carry power in one direction. Some lower-voltage facilities are “local distribution” facilities not under our jurisdiction, but some are used for jurisdictional service such as carrying power to a wholesale power customer for resale and are included in a public utility’s OATT (although in some instances, there is a separate OATT rate for using them, sometimes called a Wholesale Distribution Rate).

²⁶ See SoCal Edison July 6 Order at P 27.

the scoping meeting or shown in the feasibility study, a distribution impact study must be performed.” San Diego proposes to revise it as follows: “If no *distribution* system impact study is required, but potential electric power Distribution System adverse system impacts are identified in the scoping meeting or shown in the feasibility study, a distribution impact study must be performed.”²⁷ We will require San Diego to revise these two sections so that they are not ambiguous.²⁸

37. The Commission finds the following revisions consistent with the *pro forma* SGIP and SGIA: (1) the language concerning the proposed miscellaneous provisions in the study agreements in the SGIP that were accepted in the SoCal Edison July 6 Order, on the basis articulated in the SoCal Edison July 6 Order;²⁹ (2) the revision to section 15 of the WDT, on the basis that the revision identifies the procedure for obtaining interconnection service and distribution service simultaneously, thereby shortening the overall process for obtaining service; and (3) the deletion of the pagination footer from the SGIP and the SGIA. These revisions, therefore, are accepted.

38. Some of San Diego’s proposed revisions such as (1) inserting the definition for good utility practice in the SGIP, (2) the revision to section 3.4.9 of SGIP, (3) the revision to article 12.9 and (4) the revision to article 1.5.3 are editorial in nature, or they are revisions that should be applied generically to all SGIPs and SGIAs. With respect to San Diego’s editorial revisions, the Commission believes that proposed typographical and other editorial changes are more appropriately addressed in the rulemaking proceeding where they may be considered in a single proceeding and applied generically. Similarly, other revisions that can be applied generically should be presented in that

²⁷ Section 3.4.3 of the *pro forma* SGIP states that “In instances where the feasibility study or the distribution impact study shows potential for transmission system adverse system impacts...the Transmission Provider shall send the Interconnection Customer a transmission impact study agreement...” San Diego proposes to revise it as follows: “In instances where the feasibility study or the distribution impact study shows potential for *distribution* system adverse system impacts...the *Distribution* Provider shall send the Interconnection Customer a *distribution* impact study agreement...” San Diego also proposes similar revisions to sections 3.4.4, 3.4.5, and attachment number 7 (sections 9 and 10).

²⁸ The Commission approved pertinent language in an order being issued concurrently in Docket No. ER05-1319-000.

²⁹ SoCal Edison July 6 Order at P 32.

proceeding as well. The Commission will address such editorial revisions in the Order No. 2006 compliance process as we addressed such revisions in the Order No. 2003 compliance process.³⁰ Accordingly, we reject San Diego's proposed editorial and generically applicable revisions without prejudice to the outcome of the order on rehearing of Order No. 2006.

39. Other than those proposed modifications that we set for hearing below, we will reject the remainder of San Diego's proposed changes. The remainder of the changes have not been shown to be "consistent with or superior to" the *pro forma* SGIP and SGIA. As we stated in Order No. 2006, the "consistent with or superior to" standard is difficult to meet because the burden of showing that a variation is "consistent with or superior to" the relevant provision or provisions in the Final Rule is significant.³¹ Changes that merely clarify a provision do not ordinarily meet this standard.

40. The Commission will require San Diego to submit a further compliance filing that includes the *pro forma* SGIP and SGIA, including the ordered revisions, and those deviations specifically accepted in this order.

VI. Hearing and Settlement Judge Procedures

41. Certain of San Diego's proposed revisions to the *pro forma* SGIP and SGIA, *i.e.*, (1) changes made to conform language to WDT terminology,³² (2) changes made to reflect differences between the nature of service(s) provided under the *pro forma* OATT and WDT, and (3) changes made to be consistent with the CAISO tariff and the provisions of the market within California,³³ raise issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

³⁰ See, e.g., *Arizona Public Service Co.*, 107 FERC ¶ 61,257 (2004).

³¹ Order No. 2006 at P 547.

³² Such as the revised definition of tariff to recognize that the relevant tariff that the SGIP and SGIA are being appended to is the WDT and the inclusion of the revised definition in the study agreements.

³³ Such as the revisions to articles 3.4.5 and 3.4.6.

42. Our preliminary analysis indicates that certain of the proposed revisions to the *pro forma* SGIP and SGIA 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 them for filing, suspend them for a nominal period, and make them effective October 12, 2005, subject to refund. We will set the proposed revisions discussed above for hearing and settlement judge procedures.

43. Given the common issues of law and fact, the Commission shall consolidate Docket No. ER05-1324-000 with Docket No. ER05-1319-000 for purposes of hearing, settlement and decision.

44. 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.³⁴ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.³⁵ 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.

The Commission orders:

(A) San Diego's proposed tariff revisions are hereby accepted in part, and rejected in part. The tariff revisions that strictly comply with Order No. 2006 are effective August 12, 2005. The proposed tariff revisions that contain proposed variations from Order No. 2006 are hereby accepted in part, suspended for a nominal period, to

³⁴ 18 C.F.R. § 385.603 (2005).

³⁵ 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).

become effective October 12, 2005, subject to refund, and rejected in part, as discussed in the body of this order.

(B) San Diego is hereby directed to submit, within 30 days of the date of this order, a compliance filing, as discussed within the body of this order.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred by 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 San Diego's proposed tariff revisions, as discussed in the body of this order. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (D) and (E) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedures, 18 C.F.R. § 385.603 (2005), 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 within five (5) days of the date of this order.

(E) Within sixty (60) day 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.

(F) 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 these proceedings in a hearing room of the 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

Docket Nos. ER05-1324-000 and ER05-1319-000

17

to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(G) Docket Nos. ER05-1324-000 and ER05-1319-000 are hereby consolidated for purposes of hearing, settlement and decision.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.