

155 FERC ¶ 61,312  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;  
Cheryl A. LaFleur, Tony Clark,  
and Colette D. Honorable.

San Diego Gas & Electric Company

Docket No. EL00-95-290

v.

Sellers of Energy and Ancillary Services

Investigation of Practices of the California  
Independent System Operator and the California  
Power Exchange

Docket No. EL00-98-262

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued June 27, 2016)

1. In this order, the Commission approves an uncontested settlement filed on April 14, 2016 by Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SoCal Edison), and San Diego Gas & Electric Company (SDG&E) (collectively, the Parties), as discussed below. The settlement resolves claims relating to events and transactions in the Western energy markets during the period of October 1, 2000 through August 31, 2001 (Settlement Period),<sup>1</sup> as they relate to the Parties. The settlement consists of a “Joint Offer of Settlement,” a “Joint Explanatory Statement,” a “Transmission Owner Revenue Settlement,” and an “ISO Certification of Amounts Owed” (collectively, the Settlement).<sup>2</sup>

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<sup>1</sup> Joint Explanatory Statement at 1.

<sup>2</sup> On March 11, 2011, Commissioner Cheryl A. LaFleur issued a memorandum to the file in sixty dockets, including Docket No. EL00-95-000, documenting her decision, based on a memorandum from the Office of General Counsel’s General and

(continued...)

2. The Parties filed the Settlement pursuant to Rule 602 of the Commission's Rules of Practice and Procedure.<sup>3</sup> The Parties state that the Settlement became binding as of the execution date, but that some provisions are only effective upon the Settlement Effective Date, which is defined as the latest of: (1) the sixth business day following the date on which the Commission issues an order on the Settlement; or (2) the sixth business day following the date on which the PG&E Bankruptcy Court enters the PG&E Bankruptcy Court Settlement Order; or (3) the sixth business day following the date on which the California Power Exchange (CalPX) Bankruptcy Court issues an order confirming that CalPX's actions pursuant to the settlement are authorized.<sup>4</sup> Additionally, the Parties explain that the Settlement will terminate on the date of a final Commission or PG&E Bankruptcy Court order rejecting the Settlement in whole or material part or accepting the Settlement with material conditions or modifications deemed unacceptable to any adversely affected Party, or the final CalPX Bankruptcy Court order declining to confirm that CalPX's settlement-related actions are authorized.<sup>5</sup>

3. The Parties state that the Settlement benefits customers by resolving claims for transmission owner revenue and interest that remain owing to the Parties nearly 15 years after the liabilities arose.<sup>6</sup> The Parties further state that the Settlement benefits customers by resolving liabilities between PG&E and CalPX, and between CalPX and the California Independent System Operator Corporation (CAISO).<sup>7</sup> The Parties assert that approval of the Settlement will avoid further litigation, provide monetary consideration, eliminate regulatory uncertainty, and enhance financial certainty.<sup>8</sup> Finally, the Parties note that the Commission and the United States Court of Appeals for the Ninth Circuit have

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Administrative Law section, dated February 18, 2011, not to recuse herself from considering matters in those dockets.

<sup>3</sup> 18 C.F.R. § 385.602 (2015).

<sup>4</sup> Joint Explanatory Statement at 10-11; Settlement Agreement at §§ 1.37, 2.2.

<sup>5</sup> Joint Explanatory Statement at 11; Settlement Agreement at § 2.3.

<sup>6</sup> Joint Offer of Settlement at 5.

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

<sup>8</sup> *Id.*

encouraged settlements of claims related to transactions in the CAISO and CalPX markets in the 2000 and 2001 time period.<sup>9</sup>

4. As discussed below, the Commission approves the Settlement.

### **Background and Description of the Settlement**

5. In 2000, the Commission instituted formal hearing procedures under the Federal Power Act<sup>10</sup> to investigate, among other things, the justness and reasonableness of public utility sellers' rates in the CAISO and CalPX markets in Docket Nos. EL00-95-000 and EL00-98-000.<sup>11</sup> As part of the process to determine the amounts owed to various market participants, the Commission directed CAISO and CalPX to conduct a preparatory rerun of their settlement and billings systems in order to comply with the Commission-mandated refund methodology for the period of October 2, 2000 through June 20, 2001.<sup>12</sup> The Commission accepted CAISO and CalPX's updated preparatory rerun compliance filings in 2011,<sup>13</sup> including the transmission owner revenue discussed here.<sup>14</sup>

6. The Parties state that the Settlement provides for the settlement of claims for payments of amounts that are owed to the Parties by CAISO, which reflect transmission services invoiced during the Settlement Period, including transmission revenue requirements, wheeling access charges, transmission access charges, and congestion-

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<sup>9</sup> *Id.* at 5-6 (citing *San Diego Gas & Elec. Co.*, 145 FERC ¶ 61,015, at P 26 (2013); *Pub. Utils. Comm'n of the State of Cal.*, 99 FERC ¶ 61,087, at 61,384 (2002); *Pub. Utils. Comm'n of the State of Cal. v. FERC*, No. 01-71051, slip op. at 3 (9th Cir. Oct. 23, 2006)).

<sup>10</sup> 16 U.S.C. § 791, *et seq.* (2012).

<sup>11</sup> *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 92 FERC ¶ 61,172 (2000).

<sup>12</sup> *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 102 FERC ¶ 61,317 (2003).

<sup>13</sup> *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 136 FERC ¶ 61,036 (2011).

<sup>14</sup> Joint Explanatory Statement at 10; ISO Certification of Amounts Owed at 1. At the Parties' request, CAISO provided a certification of the amounts that CAISO's books and records showed as due to PG&E, SoCal Edison, and SDG&E for certain transmission services during the energy crisis. Joint Explanatory Statement at 4.

related charges.<sup>15</sup> The Parties state that the transmission owner revenue owed pursuant to the Settlement does not relate to the purchase or sale of energy and is separate from the mitigation proceeding in Docket No. EL00-95 and related proceedings.<sup>16</sup>

7. The Parties state that the total value of the consideration under the Settlement is \$256,316,169.21, before final adjustments.<sup>17</sup> According to the Parties, upon the Settlement Effective Date, PG&E will move approximately \$65 million from the Class 6 Escrow maintained in connection with the PG&E Bankruptcy Court proceeding to CalPX.<sup>18</sup> CalPX will then pay the funds to SoCal Edison and SDG&E in accordance with the amounts set forth in the Cover Sheet to the Settlement, adjusted to include interest from January 1, 2016 through the date of disbursement.<sup>19</sup> PG&E will not receive the amount of transmission owner revenue that it is owed in cash, but will instead receive its owed amount, plus adjusted interest, less PG&E's estimated interest shortfall amount, as a deemed distribution.<sup>20</sup> PG&E will also receive a credit equal to the amounts due SoCal Edison and SDG&E for their respective transmission owner revenue shares because those amounts are, in effect, being paid by PG&E from the Class 6 Escrow.<sup>21</sup> The Parties state that this credit will reduce the amounts that PG&E owes to the market.<sup>22</sup>

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<sup>15</sup> Joint Explanatory Statement at 2, 11; Settlement Agreement at §4.1.

<sup>16</sup> Joint Explanatory Statement at 3.

<sup>17</sup> Joint Explanatory Statement at 11; Settlement Agreement, Cover Sheet at Item 4.1.1. The Settlement states that the principal transmission owner revenue amount is \$124,764,470.71, with interest of \$131,551,698.50 as of December 31, 2015, before final interest amount adjustments. Joint Explanatory Statement at 2.

<sup>18</sup> Joint Explanatory Statement at 11-12; Settlement Agreement at § 5.1.2.3.

<sup>19</sup> Joint Explanatory Statement at 5, 12; Settlement Agreement, Cover Sheet at Item 5.3; Settlement Agreement at §§ 4.1.4, 5.3.1, 5.3.2. The Cover Sheet provides that the unadjusted distribution amount to SoCal Edison is \$33,196,219.46, and the unadjusted distribution amount to SDG&E is \$21,752,540.19.

<sup>20</sup> Joint Explanatory Statement at 5, 12; Settlement Agreement at § 5.3.3.2. The Cover Sheet provides that the unadjusted distribution amount to PG&E is \$161,900,900.01.

<sup>21</sup> Joint Explanatory Statement at 5, 12; Settlement Agreement at § 5.3.3.3.

<sup>22</sup> Joint Explanatory Statement at 5-6, 12.

8. Interest on the transmission owner revenue will accrue at the Commission Interest Rate<sup>23</sup> through the date of disbursement and will be distributed, less a holdback for the estimated interest shortfall amount, to SoCal Edison and SDG&E as cash payments with the principal amounts and will be included in the amount of PG&E's deemed distribution.<sup>24</sup> The Settlement states that interest accruals will be included in the ultimate market-wide allocation of the interest shortfall.<sup>25</sup>

9. The Parties explain that the Settlement resolves all claims among the Parties and all claims of the Parties against CAISO for damages, costs and attorneys' fees, or other monetary and non-monetary remedies in the relevant Commission proceedings relating to transmission owner revenue and associated interest.<sup>26</sup> The Settlement states that 25 business days after the Settlement Effective Date, SoCal Edison and SDG&E will withdraw with prejudice their respective claims in the PG&E bankruptcy proceedings.<sup>27</sup> The Settlement provides that SoCal Edison and SDG&E each will have an allowed claim in the PG&E bankruptcy proceedings, and that the allowed claims will be liquidated and distributed as set forth in the Settlement.<sup>28</sup>

10. The Settlement provides that it does not affect claims that are not related to or arising from the transmission owner revenue owed to the parties, or the Parties' rights to pursue claims relating the transmission owner revenue from any other entity than the Parties, CAISO, or CalPX, or the Parties' right to receive mitigation awarded by the Commission.<sup>29</sup>

11. The Settlement states that upon the Settlement Effective Date, the Commission's approval of the Settlement will constitute authorization to CAISO and CalPX to conform their books and records to reflect the distributions, offsets, adjustments, transfers and

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<sup>23</sup> See 18 C.F.R. § 35.19a(a)(2)(iii) (2015).

<sup>24</sup> Joint Explanatory Statement at 12-13; Settlement Agreement at §§ 4.1.4, 5.2.

<sup>25</sup> Joint Explanatory Statement at 13; Settlement Agreement at § 6.1.4.

<sup>26</sup> Joint Explanatory Statement at 13; Settlement Agreement at §§ 3.1, 7.1.

<sup>27</sup> Joint Explanatory Statement at 13; Settlement Agreement at § 7.2. Specifically, SoCal Edison will withdraw the "SCE Bankruptcy Claim" and SDG&E will withdraw the "SDG&E Bankruptcy Claim," as those terms are defined in the Settlement.

<sup>28</sup> Joint Explanatory Statement at 13; Settlement Agreement at § 5.1.

<sup>29</sup> Settlement Agreement at § 7.3.

status of accounts provided for in the Settlement.<sup>30</sup> CalPX will apply the revenue amount plus interest paid to the Parties to reduce amounts owed by CalPX to CAISO.<sup>31</sup>

12. Finally, the Parties state that they would not object to the Commission assuring CAISO and CalPX that they will be held harmless for their actions to implement the Settlement.<sup>32</sup>

### **Procedural Matters**

13. Pursuant to Rule 602(f) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.602(f) (2015), initial comments on the Settlement were to be submitted no later than May 4, 2016, and reply comments were to be submitted no later than May 16, 2016. Initial comments were filed by CAISO, CalPX, and Idaho Power Company and IDACORP Energy Services Company (collectively, IDACORP). Reply comments were filed by the Parties (Joint Reply Comments).

### **Settlement Comments**

14. Both CAISO and CalPX note that the circumstances of this Settlement warrant hold harmless treatment for CAISO and CalPX because they, along with their directors, officers, employees, and consultants, will implement a number of the Settlement's provisions.<sup>33</sup> Accordingly, CalPX requests that the following "hold harmless" language be incorporated into any Commission order approving the Settlement:

The Commission recognizes that CalPX will be required to implement this settlement by receiving funds from the Class 6 Escrow maintained pursuant to the PG&E bankruptcy proceeding, and paying such funds to two of the Parties. Therefore, except to the extent caused by their own gross negligence, neither officers, directors, employees nor professionals shall be liable for implementing the settlement including but not limited to cash payouts and accounting entries on CalPX's books, nor shall they or any of them be liable for any resulting shortfall of funds or resulting change

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<sup>30</sup> Joint Explanatory Statement at 14; Settlement Agreement at § 6.1.2.

<sup>31</sup> Joint Explanatory Statement at 14; Settlement Agreement at § 6.1.3.

<sup>32</sup> Joint Explanatory Statement at 13-14.

<sup>33</sup> CAISO Comments at 3-5; CalPX Comments at 2-5.

to credit risk as a result of implementing the settlement. In the event of any subsequent order, rule or judgment by the Commission or any court of competent jurisdiction requiring any adjustment to, or repayment or reversion of, amounts paid out of the Settlement Clearing Account or credited to a participant's account balance pursuant to the settlement, CalPX shall not be responsible for recovering or collecting such funds or amounts represented by such credits.<sup>34</sup>

CalPX states that, except for the provision reflecting that CalPX will be receiving funds from the Class 6 Escrow account, that this is the same "hold harmless" provision that the Commission has approved in other orders approving settlements.<sup>35</sup>

15. In their Joint Reply Comments, the Parties confirm that they do not oppose a "hold harmless" provision that is similar to the provisions in other Commission orders approving similar settlements involving the California Parties.<sup>36</sup>

16. In its comments, IDACORP states that the Settlement Agreement release and waiver language in section 7.3 should be interpreted to mean that:

No claims by entities other than the Parties shall be deemed to be settled or resolved by this Agreement. Nothing in this Agreement releases or affects the right of persons that are not Parties to receive Mitigation awarded by FERC or approved in other Settlement Agreements approved by FERC.<sup>37</sup>

17. In support of its interpretation, IDACORP explains that "there should be no reason why the accounts being used to resolve these claims or the schedule of payments under it, or its implementation affects the rights of a person, such as IDACORP, who is not a Party to" the Settlement.<sup>38</sup> IDACORP notes that it is authorized to state that the Parties concur with this interpretation.

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<sup>34</sup> CalPX Comments at 4.

<sup>35</sup> *Id.*

<sup>36</sup> Joint Reply Comments at 2-3.

<sup>37</sup> IDACORP Comments at 1-2.

<sup>38</sup> *Id.* at 2.

18. In their Joint Reply Comments, the Parties affirm their concurrence with IDACORP's interpretation of section 7.3 of the Settlement.<sup>39</sup>

### **Commission Determination**

19. The Settlement appears to be fair and reasonable and in the public interest, and is hereby approved. The Commission's approval of the Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding. Consistent with the Commission's precedent,<sup>40</sup> the Commission determines that CalPX and CAISO will be held harmless for actions taken to implement this Settlement. Accordingly, this order incorporates the "hold harmless" language set out above, with one modification. Specifically, as incorporated by this order, the language shall be read to apply to both CAISO and CalPX. Finally, we find that IDACORP's interpretation of section 7.3 of the Settlement is reasonable, and note the Parties' concurrence with that interpretation.

#### **The Commission orders:**

The Settlement is hereby approved, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>39</sup> Joint Reply Comments at 3.

<sup>40</sup> See, e.g., *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 153 FERC ¶ 61,018, at P18 (2015) (incorporating "hold harmless" language from earlier settlements); *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 145 FERC ¶ 61,015, at P 25 (2013) (same); *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 133 FERC ¶ 61,249, at P 17 (2010) (same); *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 128 FERC ¶ 61,242, at P 19 (2009) (same); *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 128 FERC ¶ 61,002, at P 17 (2009) (same); *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 128 FERC ¶ 61,004, at P 21 (2009) (same); *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 126 FERC ¶ 61,007, at P 38 (2009) (same).