

134 FERC ¶ 61,097
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

February 11, 2011

In Reply Refer to:
Calpine Corp., *et al.* v.
California Independent System
Operator Corporation
Docket No. EL09-62-000

Alston & Bird
The Atlantic Building
950 F Street, NW
Washington, DC 20004-1404

Attention: Sean A. Atkins
Counsel for California Independent System Operator Corporation

Reference: Calpine Corp., *et al.* v. California Independent System Operator Corp.

Dear Mr. Atkins:

1. On October 1, 2010, you filed, on behalf of the California Independent System Operator Corporation (CAISO) and other Settling Parties, a proposed Offer of Settlement (Settlement) in the above-referenced proceeding. On October 21, 2010, DC Energy, LLC and Commission Trial Staff filed comments. On November 1, 2010, CAISO filed reply comments. The Settlement Judge certified the Settlement to the Commission as an uncontested settlement on November 10, 2010.

2. In its comments, DC Energy states that it does not contest the Settlement, but points to the Settlement's provisions committing CAISO to monitor the justness and reasonableness of the Settlement, and explains that CAISO agreed to review on an ongoing basis whether the revised tariff provisions over-allocate default losses to market participants that engage primarily in the sale and purchase of Congestion Revenue Rights. DC Energy requests that CAISO be required to publicly disclose analysis of the Settlement's impact on market participants and to produce such analysis periodically, such as through the submission of quarterly reports filed with the Commission. In reply,

CAISO objects to DC Energy's request that CAISO make periodic reports to the Commission, and explains that, consistent with the terms of the Settlement, it is committed to reviewing the impacts of the Settlement on market participants.

3. The Settlement resolves all issues set for hearing in *Calpine Corp., et al. v. California Indep. Sys. Operator Corp.*, 128 FERC ¶ 61,271 (2009). Further, the Settlement appears to be fair and reasonable and in the public interest and is hereby approved.¹ Pursuant to its commitment on page 2 of the Settlement, CAISO will submit a compliance filing to revise its tariff to incorporate the Revised Default Allocation Tariff Provisions within 15 days of the Commission's order approving the Settlement. CAISO should make a compliance filing in eTariff format to ensure that any applicable electronic tariff provisions reflect the Commission action in this order.²

4. We find that the Settlement does not include the type of public reporting requirement that DC Energy requests, and therefore conclude that this request is beyond the scope of the Settlement. We note that the Settlement provides a process by which CAISO will commence a stakeholder process to determine whether there is a need to replace or modify the Revised Default Allocation Tariff Provisions.³ In addition, the Settlement includes a provision that addresses the release of aggregated information regarding quarterly default loss allocation percentages to each party in this proceeding that has executed a non-disclosure certificate.⁴ Finally, the Settlement explains the circumstances under which such aggregated information may be publicly released, i.e., a recommendation by the relevant stakeholder working group that such information should be publicly released, as well as approval of such disclosure by CAISO's Governing Board.⁵

5. The Commission's approval of the Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding. Section 4.6 of the Settlement provides that the Settlement will be subject to the just and reasonable standard

¹ In section 2.5 of the Settlement, the Settling Parties request that, as part of an order approving the Settlement, the Commission accept the non-disclosure certificate appended as Attachment 2. In approving the Settlement as fair and reasonable and in the public interest, the Commission is approving the form of non-disclosure certificate appended to the Settlement as Attachment 2.

² See *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008).

³ Settlement at § 2.3.

⁴ *Id.* § 2.5.1.

⁵ *Id.* § 2.5.2.

of review. The Commission retains the right to investigate the rates, terms, and conditions under the just and reasonable and not unduly discriminatory or preferential standard of section 206 of the Federal Power Act, 16 U.S.C. § 824e (2006).

6. This letter terminates Docket No. EL09-62-000.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

cc: All Parties