



1. In this order, the Commission approves a contested settlement filed on December 21, 2010 between the City of Santa Clara d/b/a Silicon Valley Power (Santa Clara) and the California Parties<sup>1</sup> (collectively, the Parties), as discussed below. The settlement resolves claims arising from events and transactions in the western energy markets during the period January 1, 2000 through June 20, 2001 (Settlement Period), as they relate to Santa Clara.<sup>2</sup> The settlement also resolves certain claims arising from and related to bilateral transactions between Santa Clara and PG&E.<sup>3</sup> The settlement consists of a “Joint Offer of Settlement” (Joint Offer of Settlement), a “Joint Explanatory Statement,” and a “Settlement and Release of Claims Agreement” (collectively, Settlement).<sup>4</sup>

2. The Parties filed the Settlement pursuant to Rule 602 of the Commission’s Rules of Practice and Procedure.<sup>5</sup> The Parties state that the Settlement becomes binding as of the execution date, and note that some of the operative provisions become effective only as of, or in relation to, the Settlement Effective Date, which is defined as the date of a Commission order, subject to certain conditions in the event the Commission modifies or conditions its approval of the Settlement and/or Santa Clara files a “Good Faith Motion” in the Los Angeles County Superior Court.<sup>6</sup> Additionally, the Parties explain that the

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<sup>1</sup> The California Parties are Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), Southern California Edison Company (SoCal Edison), the Public Utilities Commission of the State of California (CPUC), the People of the State of California *ex rel.* Kamala D. Harris, Attorney General. For purposes of the Settlement, the California Parties also include the California Department of Water Resources (CERS) (acting solely under authority and powers created by California Assembly Bill 1 of the First Extraordinary Session of 2001-2002, codified in Sections 80000 through 80270 of the California Water Code).

<sup>2</sup> Joint Explanatory Statement at 2.

<sup>3</sup> *Id.*

<sup>4</sup> On March 11, 2011, Commissioner Cheryl A. LaFleur issued a memorandum to the file in sixty dockets, including Docket No. EL00-95, documenting her decision, based on a memorandum from the Office of General Counsel’s General and Administrative Law section, dated February 18, 2011, not to recuse herself from considering matters in those dockets.

<sup>5</sup> 18 C.F.R. § 385.602 (2011).

<sup>6</sup> Joint Explanatory Statement at 12; Settlement and Release of Claims Agreement at §§ 1.41, 1.81, 1.83, 2.1, 2.22, 4.17. Under section 4.17 of the Settlement, Santa Clara may elect to, within 10 business days after the execution date, request authorization from

Settlement will terminate on the date of a final 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.<sup>7</sup> The Parties also state that the Settlement may terminate if the California Parties fail to receive consideration that they are due under the Settlement.<sup>8</sup>

3. The Parties state that the Settlement may be considered to benefit customers by resolving claims for refunds and other remedies as between Santa Clara and the California Parties, and reaches a fair and reasonable resolution of issues between Santa Clara and settling participants.<sup>9</sup> The Parties state that approval of the Settlement will avoid further litigation, provide monetary consideration, eliminate regulatory uncertainty, and enhance financial certainty.<sup>10</sup> In addition, the Parties assert that the Settlement fairly protects the rights of non-settling participants.<sup>11</sup> Finally, the Parties note that the Commission and the United States Court of Appeals for the Ninth Circuit have encouraged settlements of claims related to transactions in the California Independent System Operator Corporation (CAISO) and California Power Exchange (CalPX) markets in the 2000 and 2001 time period.<sup>12</sup>

4. The Settlement states that Santa Clara “disclaims” Commission jurisdiction over any aspect of the Settlement, but that the Parties have agreed to condition the Settlement on securing the Commission’s approval to ensure the release of funds from CAISO

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the Los Angeles Superior Court in *The Electric Refund Cases*, JCCP No. 4512, to file a motion for determination of a good faith settlement under the California Code of Civil Procedure. That provision also explains that Santa Clara shall have the right to waive its right to file the motion, as well as its right to terminate the Settlement if such a motion is denied. *See also* Settlement and Release of Claims Agreement at § 2.2.1.3.

<sup>7</sup> Joint Explanatory Statement at 13; Settlement and Release of Claims Agreement at § 2.3.1.

<sup>8</sup> Joint Explanatory Statement at 13; Settlement and Release of Claims Agreement at § 4.16.

<sup>9</sup> Joint Offer of Settlement at 8.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* (citing *Pub. Utils. Comm’n of Cal.*, 99 FERC ¶ 61,087, at 61,384 (2002) and *Pub. Utils. Comm’n of Cal. v. FERC*, No. 01-71051, slip op. at 3 (9th Cir. Oct. 23, 2006)).

and/or CalPX and to ensure that the Parties' respective claims pending before the Commission are fully resolved.<sup>13</sup>

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

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

6. In 2000, the Commission instituted formal hearing procedures under the Federal Power Act (FPA)<sup>14</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>15</sup> In 2002, the Commission directed its staff to commence a fact-finding investigation into the alleged manipulation of electric and natural gas prices in the West in Docket No. PA02-2-000.<sup>16</sup> In 2003, the Commission directed its staff to investigate anomalous bidding behavior and practices in western energy markets in Docket No. IN03-10-000.<sup>17</sup> On the same day, the Commission issued two orders directing named entities to show cause why they had not participated in certain gaming practices<sup>18</sup> or why their arrangements with other entities did not constitute gaming and/or anomalous bidding behavior.<sup>19</sup>

7. The Parties state that the Settlement resolves claims in the above-captioned proceedings as they relate to Santa Clara and resolves separate claims between Santa Clara and PG&E arising from certain transactions that occurred during the Settlement Period.<sup>20</sup> Any entity that directly sold or purchased energy through CAISO and/or CalPX during the Settlement Period (Participant) may elect to be bound by the terms of

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<sup>13</sup> Joint Explanatory Statement at 13; Settlement and Release of Claims Agreement at § 2.3.

<sup>14</sup> 16 U.S.C. § 791, *et seq.* (2006).

<sup>15</sup> *San Diego Gas & Elec. Co.*, 92 FERC ¶ 61,172 (2000).

<sup>16</sup> *Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices*, 98 FERC ¶ 61,165 (2002).

<sup>17</sup> *Investigation of Anomalous Bidding Behavior and Practices in the Western Markets*, 103 FERC ¶ 61,347 (2003).

<sup>18</sup> *American Elec. Power Serv. Corp.*, 103 FERC ¶ 61,345 (2003).

<sup>19</sup> *Enron Power Mktg., Inc.*, 103 FERC ¶ 61,346 (2003).

<sup>20</sup> Joint Explanatory Statement at 2.

the Settlement as an “Additional Settling Participant.”<sup>21</sup> To opt into the Settlement, a Participant must provide notice to the Commission, as well as serve notice to parties on the ListServs established for the Docket No. EL00-95 proceeding and in Docket No. EL03-137, *et al.*, no later than five business days following the Settlement Effective Date.<sup>22</sup> The Parties state that the rights of Participants that do not wish to opt into the Settlement will be unaffected by the Settlement, and that such Non-Settling Participants will not be guaranteed the benefits of the Settlement, but will still be paid refunds, if any, to which they are ultimately determined to be due through continued litigation.<sup>23</sup>

8. The Settlement’s monetary consideration includes Santa Clara’s CAISO and CalPX receivables estimated to be \$435,712, as well as the estimated interest on receivables in the amount of \$323,126 estimated through December 31, 2010, to be updated through the projected date of distribution.<sup>24</sup> Under the Settlement, CalPX will retain Santa Clara receivables in the amount of \$756,593 as the Santa Clara Interest Shortfall Estimate.<sup>25</sup> The remaining receivables are assigned under the Settlement to the California Parties and will be adjusted for interest from January 1, 2011 until the date of transfer to the California Parties.<sup>26</sup> The remaining receivables shall be transferred to the “Settling Supplier Refund Escrow,” subject to withholding certain amounts, including for any Deemed Distributions.<sup>27</sup> Santa Clara assigns to the California Parties its entitlement

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<sup>21</sup> Joint Explanatory Statement at 13; Settlement and Release of Claims Agreement at §§ 1.2, 1.52, 8.1.

<sup>22</sup> Joint Explanatory Statement at 13; Settlement and Release of Claims Agreement at § 8.1.

<sup>23</sup> Joint Explanatory Statement at 13-14; Settlement and Release of Claims Agreement at §§ 1.46, 3.2, 8.1.

<sup>24</sup> Joint Explanatory Statement at 14; Settlement and Release of Claims Agreement at §§ 4.1, 4.6.2.

<sup>25</sup> Joint Explanatory Statement at 14; Settlement and Release of Claims Agreement at § 4.3. “Interest Shortfall” is defined as the difference between the interest actually earned on funds held by CalPX or CAISO and the interest that would be earned through application of the FERC interest rate, as set forth 18 C.F.R. § 35.19a(a)(2)(iii). Settlement and Release of Claims Agreement at §1.43.

<sup>26</sup> Joint Explanatory Statement at 14; Settlement and Release of Claims Agreement at § 4.2.

<sup>27</sup> Joint Explanatory Statement at 14; Settlement and Release of Claims Agreement at § 4.6.

to refunds on certain purchases made in the California markets.<sup>28</sup> In addition, Santa Clara is required to make a cash payment of \$7,601,162 (plus interest), a portion of which will be paid to PG&E pursuant to the settlement of the Emergency Energy Transactions.<sup>29</sup>

9. The Settlement provides that certain of the California Parties (PG&E, SDG&E, SoCal Edison, and CERS) will, subject to specified limitations, assume responsibility for the obligation for: (1) true-ups of Santa Clara's receivables and associated interest related to Santa Clara's sales in the CAISO and CalPX markets from May 1, 2000 through June 20, 2001; (2) any refund amounts that the Commission determines that Santa Clara owes to Non-Settling Participants in certain proceedings attributable to Santa Clara sales in the CAISO and CalPX markets from May 1, 2000 through June 20, 2001; (3) any third-party refund offsets (Fuel Cost Allowance, Emissions Offset, and Cost Offset) attributable to Santa Clara sales to CAISO and CalPX from May 1, 2000 through June 20, 2001 that the Commission or a court determines that Santa Clara owes; (4) CalPX wind-up charges attributable to Santa Clara for certain CalPX rate periods; and (5) Santa Clara's share of the Interest Shortfall attributable to Santa Clara sales to CAISO and CalPX from May 1, 2000 through June 20, 2001.<sup>30</sup> The California Parties' obligation to make payments on behalf of Santa Clara shall not exceed the total amount allocated and actually paid to the California Parties pursuant to the Settlement.<sup>31</sup>

10. The Settlement includes an allocation matrix that allocates the Settlement proceeds among participants.<sup>32</sup> The proceeds will be distributed from the Settling Supplier Refund Escrow to each of the Settling Participants and/or, in the case of amounts allocated to any Non-Settling Participants, transferred to the California Parties in accordance with sections 5.2 and 5.5 of the Settlement.<sup>33</sup> In addition, certain specified Participants are

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<sup>28</sup> Joint Explanatory Statement at 14; Settlement and Release of Claims Agreement at §§ 4.11, 4.12, 4.14.

<sup>29</sup> Joint Explanatory Statement at 14; Settlement and Release of Claims Agreement at §§ 4.6.2, 9.1. *See also infra* P 14.

<sup>30</sup> Joint Explanatory Statement at 15; Settlement and Release of Claims Agreement at §§ 3.2., 4.13, 4.3, 5.5, 5.6.

<sup>31</sup> Joint Explanatory Statement at 15; Settlement and Release of Claims Agreement at § 5.8.

<sup>32</sup> Joint Explanatory Statement at 16; Settlement and Release of Claims Agreement at Ex. A.

<sup>33</sup> Joint Explanatory Statement at 16; Settlement and Release of Claims Agreement

designated as “Deemed Distribution Participants,”<sup>34</sup> which, according to the terms of the Settlement, are entities that have a net amount outstanding and payable to CAISO or CalPX and accordingly will receive an offset against amounts owed by the Deemed Distribution Participant to CAISO and/or CalPX for purposes of the Settlement.<sup>35</sup> The Settlement states that the Commission’s approval of the Settlement will allow CalPX to release Santa Clara’s receivables and estimated interest and will authorize CAISO and CalPX to conform their books and records to reflect the distributions.<sup>36</sup>

11. The Parties state that, in return for the specified consideration and subject to specified limitations, the Settlement resolves all claims between the California Parties and Santa Clara relating to transactions in the western energy markets during the Settlement Period for refunds, disgorgement of profits, or other monetary or non-monetary remedies, subject to specified limitations.<sup>37</sup> The Parties state that Santa Clara and the California Parties mutually release and discharge each other as of the Settlement Effective Date from all existing and future claims before the Commission and/or under the FPA for the Settlement Period relating to payments or unlawful rates for electric capacity, energy and/or ancillary services, transmission congestion or line loss charges, or market manipulation.<sup>38</sup>

12. In addition, the Parties state that Santa Clara and the California Parties mutually release each other from all past, existing, and future claims for civil damages and/or equitable relief concerning, pertaining to, or arising from allegations that: (1) Santa Clara or any California Party collected or charged unjust, unreasonable, or otherwise unlawful rates, terms, or conditions for capacity, energy, ancillary services, or transmission congestion during the Settlement Period; (2) Santa Clara or any California Party engaged in market manipulation in the western energy markets during the Settlement Period; (3) Santa Clara or any California Party was unjustly enriched by the released claims or otherwise violated any applicable tariff, regulation, law, rule, or order relating to

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at §§ 5.2, 5.5.

<sup>34</sup> Settlement and Release of Claims Agreement, Ex. B.

<sup>35</sup> Settlement and Release of Claims Agreement at §§ 1.19, 1.20.

<sup>36</sup> Joint Explanatory Statement at 17; Settlement and Release of Claims Agreement at § 6.1.

<sup>37</sup> Joint Explanatory Statement at 17; Settlement and Release of Claims Agreement at § 7.1.1.

<sup>38</sup> Joint Explanatory Statement at 17; Settlement and Release of Claims Agreement at § 7.2.1.

transactions in the western energy markets during the Settlement Period; or (4) any California Party is liable for payments to Santa Clara for congestion charges, transmission line losses, energy, capacity, or ancillary services during the Settlement period.<sup>39</sup>

13. Subject to specified limitations and exclusions, Additional Settling Participants are deemed to provide and receive from Santa Clara the releases that the California Parties provide and receive.<sup>40</sup>

14. In addition, the Settlement resolves claims between Santa Clara and PG&E related to Emergency Energy Transactions. The Parties characterize these transactions as ones in which Santa Clara sold reserves or other excess energy on an emergency basis that PG&E, in its role as Scheduling Coordinator for Santa Clara, facilitated.<sup>41</sup> The Settlement provides that PG&E and Santa Clara shall, as of the Settlement Effective Date, be deemed to have forever released the other from all past, existing, and future claims concerning, pertaining to, or arising from transactions pursuant to the Emergency Energy Transactions.<sup>42</sup> The Settlement also provides for the resolution of certain claims in specified PG&E bankruptcy proceedings.<sup>43</sup>

15. 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>44</sup>

### **Procedural Matters**

16. As noted above, the Parties filed the Settlement pursuant to Rule 602 of the Commission's Rules of Practice and Procedure.<sup>45</sup> For the reasons described in the Joint

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<sup>39</sup> Joint Explanatory Statement at 18; Settlement and Release of Claims Agreement at § 7.3.1.

<sup>40</sup> Joint Explanatory Statement at 18; Settlement and Release of Claims Agreement at §§ 7.4, 8.2.

<sup>41</sup> Joint Explanatory Statement at 18-19; Settlement and Release of Claims Agreement at §§ 9.1, 9.2.

<sup>42</sup> Joint Explanatory Statement at 19; Settlement and Release of Claims Agreement at § 9.2.

<sup>43</sup> Joint Explanatory Statement at 19; Settlement and Release of Claims Agreement at § 9.3.

<sup>44</sup> Joint Explanatory Statement at 19.

Offer of Settlement, the Parties request that the Settlement be transmitted directly to the Commission for approval rather than being certified by an administrative law judge.<sup>46</sup>

17. Pursuant to Rule 602(f) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.602(f) (2011), initial comments on the Settlement were to be submitted no later than January 10, 2011, and reply comments were to be submitted no later than January 20, 2011. Initial comments were timely filed by CAISO and CalPX, either in support of or not opposing the Settlement. In addition, initial comments were timely filed by Californians for Renewable Energy (CARE) in opposition to the Settlement. Reply comments were timely filed by Santa Clara and the California Parties (Joint Reply Comments).<sup>47</sup>

18. We agree with the Parties that it is appropriate for the Commission to review this Settlement without certification by an administrative law judge.

### **Substantive Matters**

#### **A. "Hold Harmless" Protection**

19. 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>48</sup> Accordingly, CalPX requests that the following "hold harmless" language be incorporated into any Commission order approving the Settlement:

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<sup>45</sup> 18 C.F.R. § 385.602 (2011).

<sup>46</sup> Joint Offer of Settlement at 3-4 (citing *San Diego Gas & Elec. Co.*, 131 FERC ¶ 61,082, at P 14 (2010); *San Diego Gas & Elec. Co.*, 129 FERC ¶ 61,259, at P 14 (2009)).

<sup>47</sup> We note that initial comments in opposition to the Settlement were timely filed by Sacramento Municipal Utility District (SMUD). However, SMUD indicated that its comments were provisional and would be withdrawn in the event that the Commission approved a settlement between SMUD and the California Parties that was expected to be filed with the Commission in the near future. On February 22, 2011, SMUD and the California Parties filed a settlement resolving all claims among them in these proceedings. The Commission has now approved that settlement. *San Diego Gas & Elec. Co.*, 135 FERC ¶ 61,059 (2011). SMUD subsequently filed a notice of withdrawal of its comments on this Settlement. Accordingly, SMUD no longer opposes the Settlement, and we will therefore not address its comments here.

<sup>48</sup> CAISO Comments at 3-6; CalPX Comments at 2-4.

The Commission recognizes that CalPX will be required to implement this settlement by paying substantial funds from its Settlement Clearing Account at the Commission's direction. 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 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>49</sup>

20. CalPX states that this is the same "hold harmless" provision that the Commission has approved in other orders approving settlements.<sup>50</sup> In their Joint Reply Comments, the Parties reiterate that they do not oppose incorporation of "hold harmless" language in the order approving the Settlement.<sup>51</sup>

### **Commission Determination**

21. The Parties do not oppose a "hold harmless" provision that is similar to the provisions in other settlements involving the California Parties and approved by the Commission.<sup>52</sup> Consistent with the Commission's precedent,<sup>53</sup> the Commission

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<sup>49</sup> CalPX Comments at 4.

<sup>50</sup> *Id.* at 3.

<sup>51</sup> Joint Reply Comments at 10-11.

<sup>52</sup> *Id.*; Joint Explanatory Statement at 19.

<sup>53</sup> *See, e.g., San Diego Gas & Elec. Co.*, 133 FERC ¶ 61,249, at P 17 (2010) (incorporating "hold harmless" language from earlier settlements); *San Diego Gas & Elec. Co.*, 128 FERC ¶ 61,242, at P 19 (2009) (same); *San Diego Gas & Elec. Co.*, 128 FERC ¶ 61,002, at P 17 (2009) (same); *San Diego Gas & Elec. Co.*, 128 FERC ¶ 61,004, at P 21 (2009) (same); *San Diego Gas & Elec. Co.*, 126 FERC ¶ 61,007, at P 38 (2009) (same).

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.

**B. CAISO’s Interpretation of Section 6.1.3.6 of the Settlement**

22. In its comments, CAISO states that it interprets section 6.1.3.6 of the Settlement (“Accounting Treatment of Calculations for Non-Settling Participants”) to mean that, although CAISO will continue to include Santa Clara in its refund calculations, at the end of the refund rerun process, CAISO will need to adjust its books to reflect that no refunds will be paid by Santa Clara in these proceedings to parties in the CAISO markets for the Settlement Period, except for those monies that have been paid out under the Settlement. CAISO notes that in proceedings involving other settlements between the California Parties and non-jurisdictional entities, the California Parties had confirmed that CAISO’s interpretations of identical provisions were correct. Thus, CAISO assumes that section 6.1.3.6 of this Settlement should be interpreted in the same manner. CAISO states that, as with other adjustments necessary to implement the Settlement, as well as other settlements entered into by the California Parties in these proceedings, it will work closely with settling parties to make appropriate modifications to its books and records.

**Commission Determination**

23. Consistent with our order approving the settlement between the California Parties and Northern California Power Agency,<sup>54</sup> we find that CAISO’s interpretation of section 6.1.3.6 of the Settlement is reasonable.

**C. CARE’s Arguments in Opposition to the Settlement**

24. CARE opposes the Settlement. While unclear, CARE appears to object to the Settlement because ratepayers were not included in the settlement negotiations and because there was no opportunity for a public hearing, “which is required to provide an opportunity to be heard for the affected ratepayers.”<sup>55</sup> CARE argues that approval of the Settlement “would be an attack on the Court’s jurisdictional authority to hear CARE’s due process claims before it and an attack on CARE’s right to judicial review in order to allow what are clearly Settlement Agreements that benefit only market participants by

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<sup>54</sup> *San Diego Gas & Elec. Co.*, 131 FERC ¶ 61,083, at P 23 (2010) (NCPA Settlement Order).

<sup>55</sup> CARE Comments at 5.

socializing the costs of the energy markets' dysfunction during the 2000-1 energy crisis forward on the backs of the ratepayers.”<sup>56</sup>

25. The Parties respond that nothing in the Settlement affects CARE's right to continue to pursue administrative litigation before the Commission, potentially including a public hearing. The Parties further explain that the Commission has held on a number of occasions that the CPUC has the authority to represent California's ratepayers.

### **Commission Determination**

26. Under our *Trailblazer* standard, the Commission may approve a contested settlement under one or more of the following four approaches: (1) the Commission may make a decision on the merits of each contested issue; (2) the Commission may determine that the settlement provides an overall just and reasonable result; (3) the Commission may determine that the benefits of the settlement outweigh the nature of the objections, and the contesting parties' interests are too attenuated; or (4) the Commission may determine that the contesting parties can be severed.<sup>57</sup> Here, we find that CARE's arguments lack merit.

27. The Commission may decide the merits of a contested settlement if there is substantial evidence in the record or if there is no genuine issue of material fact.<sup>58</sup> CARE's arguments raise no genuine issues of material fact. With respect to its argument that California ratepayers were not represented during settlement negotiations, we disagree. As we have previously stated, California ratepayers were represented through the participation of the CPUC, which is one of the California Parties.<sup>59</sup> We have explained that state public utility commissions, such as the CPUC, are the “representatives of ultimate consumers in their states.”<sup>60</sup> CARE has not demonstrated otherwise. Thus, we disagree with CARE's allegation that California ratepayers were not represented in settlement negotiations.

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<sup>56</sup> *Id.*

<sup>57</sup> *Trailblazer Pipeline Co.*, 85 FERC ¶ 61,345, at 62,342-44 (1998), *order on reh'g*, 87 FERC ¶ 61,110, *reh'g denied*, 88 FERC ¶ 61,168 (1999) (*Trailblazer*).

<sup>58</sup> *See* 18 C.F.R. § 385.602(h)(1)(i) (2011); *Trailblazer*, 85 FERC at 62,342.

<sup>59</sup> *See, e.g., Duke Energy Trading and Marketing, L.L.C.*, 126 FERC ¶ 61,234, at P 45 (2009).

<sup>60</sup> *Pacific Gas Transmission Co.*, 76 FERC ¶ 61,246, at 62,272-73 (1996).

28. With respect to CARE's argument that the Settlement does not allow an opportunity for a public hearing and that approval of the Settlement would be an attack on CARE's right to judicial review in these proceedings, we find that CARE's claims miss the mark. We agree with the Parties that nothing in the Settlement precludes CARE from fully pursuing its claims in these proceedings. If CARE wants to pursue litigation in these proceedings and such course of action is available, this Settlement (and our approval of it) does not bar such action and it does not foreclose judicial review of CARE's allegations.<sup>61</sup>

29. For these reasons, we conclude that CARE's arguments are without merit and are therefore rejected.<sup>62</sup>

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<sup>61</sup> We are puzzled, as a factual matter, by CARE's comment that the Settlement does not allow an opportunity for a public hearing. In these proceedings, we have in fact set for hearing before administrative law judges a number of issues. With respect to the justness and reasonableness of the Settlement itself, we find that the opportunity for a paper hearing in this proceeding has provided the parties with sufficient opportunity to raise their concerns. *See, e.g., Nevada Power Co. et al. v. Enron Power Marketing, Inc., et al.*, 125 FERC ¶ 61,312, at P 29 and n.67 (2008) (“[T]he Commission is required to reach decisions on the basis of an oral, trial-type evidentiary record only if the material facts in dispute cannot be resolved on the basis of the written record, i.e., where the written submissions do not provide an adequate basis for resolving disputes about material facts.”).

<sup>62</sup> CARE's filing also includes a statement that CARE “participated in these proceedings at its own cost the other parties had sufficient funds to pay for representation,” that “[t]his petition for review includes a request for remand of the FERC order because it refuses to provide funds for the electric and gas ‘end-user’ to gain representation,” and that the Commission's regulations include a provision regarding the rights of participants to present evidence. CARE Comments at 5. Terms such as “petition for review” and “remand” suggest that CARE is repeating arguments it made to an appellate court and it is therefore unclear whether those arguments are intended to apply to CARE's objection to this Settlement. In any event, we find that this issue is beyond the scope of these proceedings, which is limited to the consideration of the Settlement.

**Conclusion**

30. We approve the Settlement as just and reasonable for the reasons described above. The Commission also concludes that Santa Clara's attempt to "disclaim" Commission jurisdiction over the Settlement is not germane in these circumstances.<sup>63</sup> Only the Commission may disclaim its jurisdiction under the FPA.<sup>64</sup>

**The Commission orders:**

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

By the Commission. Commissioner Spitzer is not participating.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>63</sup> *See supra* P 4.

<sup>64</sup> *See, e.g.*, NCPA Settlement Order, 131 FERC ¶ 61,083 at P 42; *San Diego Gas & Elec. Co.*, 119 FERC ¶ 61,092, at P 29 (2007).