

153 FERC ¶ 61,359  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

California Power Exchange Corporation

Docket No. ER16-219-000

ORDER ACCEPTING PROPOSED RATE SCHEDULE

(Issued December 30, 2015)

1. On November 2, 2015, the California Power Exchange Corporation (CalPX) filed amendments to its Rate Schedule No. 1 in order to recover projected expenses for the period January 1, 2016 through June 30, 2016 (Rate Period 28). CalPX makes this filing pursuant to the terms of a settlement agreement, which was approved by the Commission on October 11, 2005,<sup>1</sup> and approved by the bankruptcy court on October 19, 2005.<sup>2</sup> In this order, we accept the proposed Rate Schedule No. 1, effective January 1, 2016, as requested.

**I. Background**

2. The Rate Case Settlement Agreement became effective on November 1, 2005, and it was originally set to expire on December 31, 2007. On July 2, 2007, the Commission approved CalPX's petition to extend the Rate Case Settlement Agreement through December 31, 2010. CalPX has since filed two additional petitions to extend the Rate Case Settlement Agreement: one on March 8, 2010 to extend the Rate Case Settlement Agreement through December 31, 2013; and one on April 3, 2013 to extend the Rate Case Settlement Agreement through December 31, 2016. The Commission approved the petitions on May 3, 2010 and August 30, 2013, respectively.<sup>3</sup>

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<sup>1</sup> See *Cal. Power Exchange Corp.*, 113 FERC ¶ 61,017 (2005). The settlement agreement itself was filed on September 1, 2005 in Docket No. ER05-167-000, *et al.* (Rate Case Settlement Agreement).

<sup>2</sup> United States Bankruptcy Court for the Central District of California approved the settlement in Case No. LA01-16577-ES.

<sup>3</sup> CalPX Transmittal Letter at 2-3. See *Cal. Power Exchange Corp.*, 131 FERC

(continued...)

3. Under the Rate Case Settlement Agreement, CalPX's costs and expenses are categorized as Historical Costs (from December 5, 2001 through December 31, 2004) and Going Forward Costs (from January 1, 2005). CalPX states that under section 9 of the Rate Case Settlement Agreement, which is entitled Cost Control for Going Forward Costs, it shall continue to make filings with the Commission every six months in order to recover its Going Forward Costs.<sup>4</sup>

4. In the instant filing, CalPX submits amendments to its Rate Schedule No. 1 in order to recover projected expenses for Rate Period 28 (January 1, 2016 through June 30, 2016). CalPX also requests, pursuant to section 9 of the Rate Case Settlement Agreement, to increase the Rate Period 26 (January 1, 2015 through June 30, 2015) budget for the budget category Other-Legal by \$114,451.09. CalPX states that this requested increase will fund a budget overrun arising out of litigation in the Pacific Gas and Electric Company (PG&E) bankruptcy proceedings, and will allow CalPX to pay the remainder of the expenses that were incurred in this budget category during the latter part of Rate Period 26.<sup>5</sup>

5. CalPX states that it had \$1,694,357 in cash available as of September 30, 2015, that its projected wind-up expenses for operations during Rate Period 28 are \$2,173,937, and the projected budget for the remainder of Rate Period 27 (October 1, 2015 through December 31, 2015) is \$1,413,357. According to CalPX, the total cash shortfall for Rate Period 28 is \$1,892,936, which is inclusive of the requested \$114,451.09 overrun, and which will be billed to participants under the Rate Case Settlement Agreement.<sup>6</sup>

6. CalPX states that it incurred legal fees and expenses in the Other-Legal category in connection with the litigation regarding the disposition of the Class 6 Escrow established in PG&E's bankruptcy proceedings in 2003.<sup>7</sup> According to CalPX, the Class 6 Escrow was established expressly to secure PG&E's obligations to its Class 6

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¶ 61,099 (2010); *Cal. Power Exchange Corp.*, 144 FERC ¶ 61,173 (2013).

<sup>4</sup> CalPX Transmittal Letter at 3.

<sup>5</sup> *Id.* at 2.

<sup>6</sup> We note that CalPX's calculations appear to be \$1 off.

<sup>7</sup> "PG&E bankruptcy proceedings" refers to the proceedings associated with the voluntary bankruptcy petition filed under Chapter 11 of the United States Bankruptcy Code by PG&E on April 6, 2001, in the United States Bankruptcy Court for the Northern District of California, San Francisco Division, designated as Case No. 01-30923 (DM).

creditors, including the CalPX clearinghouse and its participants.<sup>8</sup> CalPX states that it and PG&E are joint parties to the Class 6 Escrow, and that the current litigation in the PG&E bankruptcy proceedings concerning the collateralized funds in the Class 6 Escrow began in July 2014.<sup>9</sup>

7. CalPX explains that an “overrun is defined under section 9 of the Rate Case Settlement Agreement as expenses for any individual line item for legal fees or costs that exceed the budgeted amount by the greater of ten percent or \$50,000 during the six-month rate period.”<sup>10</sup> CalPX adds that a contingency amount is set for each rate period at five percent of the total budget, and CalPX is authorized to use this five percent contingency to fund any budget overrun. According to CalPX, section 9 of the Rate Case Settlement Agreement provides that once an overrun exceeds the budget amount and the five percent contingency, CalPX may make an application to the Commission for approval to increase the budget to fund the excess amount.<sup>11</sup>

8. CalPX states that in July 2014, PG&E filed motions in its bankruptcy proceedings to draw down from the Class 6 Escrow its deemed distributions and interest under the TransAlta<sup>12</sup> and Avista<sup>13</sup> global settlements in Docket No. EL00-95, *et al.*, which were

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*See* Settlement and Release of Claims Agreement at § 1.52. The escrow at issue is generally referred to as the “Class 6 Escrow” and in some documents as the “Disputed Claims Escrow.”

<sup>8</sup> CalPX states that the Class 6 Escrow contains \$279.9 million that collateralizes PG&E’s debit balance in the CalPX markets, and that the litigation concerning the Class 6 Escrow will determine whether the funds therein will be disbursed to PG&E or remain as collateral to the CalPX clearinghouse for PG&E’s outstanding debts. CalPX Transmittal Letter at 18.

<sup>9</sup> CalPX Transmittal Letter at 15.

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

<sup>11</sup> CalPX Transmittal Letter at 15-16. The Commission notes that CalPX requested and received funding for the Other-Legal budget category for overruns in its most recent two rate schedule filings. *See Cal. Power Exchange Corp.*, Docket No. ER15-219-000 (Dec. 15, 2014); *Cal. Power Exchange Corp.*, Docket No. ER15-1610-000 (June 9, 2015) (delegated letter orders).

<sup>12</sup> “TransAlta” refers to TransAlta Energy Marketing (U.S.) Inc. and TransAlta Energy Marketing (California) Inc.

approved by the Commission.<sup>14</sup> CalPX filed briefs in opposition to the drawdown motions because it states PG&E has a significant debit balance in the CalPX clearinghouse, and CalPX believes PG&E now faces more than one billion dollars in damages, fines and penalties arising from the San Bruno natural gas pipeline explosion, as well as other investigations related to its *ex parte* communications with the California Public Utilities Commission. CalPX adds that it also filed a motion requesting that the bankruptcy court direct PG&E to replenish the Class 6 Escrow.<sup>15</sup>

9. CalPX states that the budget for Rate Period 26 (January 1, 2015 through June 30, 2015) was established in October 2014 at \$120,000 and that the contingency amount for Rate Period 26 was \$83,660, for a total of \$203,660 that could be spent on Other-Legal expenses. According to CalPX, it was not until February 2015 that the bankruptcy court granted PG&E's motions to draw down the Class 6 Escrow and denied CalPX's motion to require PG&E to increase the Class 6 Escrow. CalPX states that it filed a motion to stay the court's decision pending appeal on March 6, 2015, and after oral argument on the motion to stay, on March 10, 2015, the court granted CalPX's motion and stayed PG&E's drawdown of the Class 6 Escrow funds pending CalPX's appeal.<sup>16</sup>

10. CalPX explains that on March 17, 2015, it filed its statement of issues on its appeal of both PG&E's drawdown motions and CalPX's replenishment motion. According to CalPX, the United States District Court for the Northern District of California established a briefing schedule, and on June 8, 2015, CalPX filed its appellate briefs, followed by PG&E's responsive briefs on June 26, 2015. The District Court affirmed the bankruptcy court in a December 14, 2015 decision.<sup>17</sup>

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<sup>13</sup> "Avista" refers to Avista Corporation d/b/a Avista Utilities and Avista Energy, Inc.

<sup>14</sup> See *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 147 FERC ¶ 61,154 (2014); *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 147 FERC ¶ 61,153 (2014), respectively.

<sup>15</sup> CalPX Transmittal Letter at 16.

<sup>16</sup> *Id.* at 17-18.

<sup>17</sup> *Reorganized California Exchange Power Corporation v. Pacific Gas and Electric Co.*, No. C 15-01141 WHA, 2015 WL 8614431, (D. Cal. December 14, 2015). The District Court held that there was some ambiguity in the governing documents of the Class 6 Escrow, and that had CalPX made its objections years ago, when PG&E began

(continued...)

11. CalPX asserts that this matter is of great significance for the ultimate financial clearing of the CalPX and the California Independent System Operator Corporation (CAISO) markets at the conclusion of the refund proceeding in Docket No. EL00-95. CalPX adds that the litigation involves complex bankruptcy, regulatory, and appellate issues, and, therefore, CalPX submits this application for approval to increase the budget for Other-Legal in Rate Period 26 by an additional \$114,451.09, so that CalPX may pay the legal fees and expenses incurred on this matter.<sup>18</sup>

## **II. Notice and Responsive Pleadings**

12. Notice of CalPX's filing was published in the *Federal Register*, 80 Fed. Reg. 69,216 (2015), with interventions and protests due on or before November 23, 2015. Timely motions to intervene were filed by Exelon Corporation, Portland General Electric Company, Salt River Project Agricultural Improvement and Power District, Midway Sunset Cogeneration Company, the City of Santa Clara, California, and Southern California Edison Company. PG&E filed a timely motion to intervene and protest. San Diego Gas and Electric Company (SDG&E) filed a timely motion to intervene and comments. IDACORP Energy Services Company and Idaho Power Company (IDACORP) filed a motion to intervene out of time. CalPX filed an answer. On December 16, 2015, PG&E filed a motion to lodge the District Court's opinion affirming the bankruptcy court decision. On December 21, 2015, CalPX filed an answer to PG&E's motion to lodge.

### **A. Protest/Comments**

13. In its protest, PG&E asserts that CalPX is imprudently incurring charges to pursue frivolous litigation in the PG&E bankruptcy proceedings.<sup>19</sup> PG&E also contends that these efforts by CalPX violate the Rate Case Settlement Agreement. According to PG&E, the premise of the Rate Case Settlement Agreement was that the broad CalPX market would no longer be forced to fund CalPX litigation efforts that were better pursued by individual market participants whose money was at stake. PG&E asserts that

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drawing down the Class 6 Escrow due to settlements, the District Court likely would have found in CalPX's favor. However, because CalPX has not objected to this practice of drawdowns over the years, the District Court found that it could not do so now, and affirmed the decision of the bankruptcy court, allowing PG&E to drawdown funds in the Class 6 Escrow. *Id.* \*8-9.

<sup>18</sup> CalPX Transmittal Letter at 18.

<sup>19</sup> PG&E Protest at 2.

the Rate Case Settlement Agreement required CalPX to end its participation in such litigation, unless individual affected market participants agreed to fund that litigation.<sup>20</sup>

14. PG&E disagrees that there is any merit to recent CalPX actions in the PG&E bankruptcy proceedings, and that should any market participants believe those actions have merit, it is those market participants who can and should participate themselves in the PG&E bankruptcy proceedings.<sup>21</sup>

15. PG&E asserts that CalPX spent the \$120,000 it was budgeted, plus a contingency fund of \$83,660, for a total of \$203,660 in the six months of Rate Period 26, and now CalPX is asking for an additional \$114,451 for Rate Period 26 to cover overruns during that period. PG&E contends that the entire amount of the overrun in Rate Period 26 is attributed to the litigation related to the PG&E bankruptcy proceedings. Additionally, PG&E notes CalPX's assertion that its litigation against PG&E may result in legal cost overruns in Rate Period 27, and CalPX is seeking an additional \$90,000 for Rate Period 28 in order to account for any continuing appellate work on the litigation involving the Class 6 Escrow<sup>22</sup> in the PG&E bankruptcy proceedings.<sup>23</sup> PG&E argues that, because the California Parties<sup>24</sup> have, pursuant to various settlements, assumed liability for CalPX wind-up charges allocated to numerous sellers, it is the California Parties who are responsible for paying nearly 80 percent of CalPX expenses – with the largest share of those expenses borne by PG&E.<sup>25</sup>

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<sup>20</sup> PG&E Protest at 2.

<sup>21</sup> *Id.* at 3. In its protest, PG&E added background information regarding the origins and history of its bankruptcy proceedings. PG&E Protest at 4.

<sup>22</sup> According to PG&E, the purpose of the Class 6 Escrow is to backstop PG&E's liability to CalPX and others for unpaid wholesale power purchase invoices. PG&E adds that, as agreed by market participants and CalPX, PG&E funded the Class 6 Escrow with \$1.6 billion. PG&E Protest at 4.

<sup>23</sup> PG&E Protest at 8.

<sup>24</sup> PG&E states that the California Parties are PG&E, SDG&E, Southern California Edison Company, the People of the State of California *ex rel.* Kamala Harris, Attorney General, the Public Utilities Commission of the State of California, and the California Department of Water Resources.

<sup>25</sup> PG&E Protest at 8-9.

16. PG&E further asserts that the Rate Case Settlement Agreement governs CalPX's operations and limits its role. PG&E contends that, with respect to the PG&E bankruptcy proceedings, the Rate Case Settlement Agreement demands restraint on the part of CalPX. PG&E argues that the Explanatory Statement for the settlement declares that the settlement provides for the resolution of CalPX's claims against PG&E in its bankruptcy case.<sup>26</sup> PG&E asserts that the Rate Case Settlement Agreement provides that, "[a]s of May 31, 2005, [Cal]PX shall in good faith seek to minimize ... the costs associated with pending claims in the PG&E bankruptcy case...."<sup>27</sup> PG&E requests that the Commission reject funding for the cost overruns, and deny funding for further CalPX litigation in the PG&E bankruptcy proceedings.<sup>28</sup>

17. PG&E asserts that CalPX provides no justification for the amount of nor for incurring the litigation costs that it seeks to recover. PG&E contends that the hundreds of thousands of dollars spent in connection with the bankruptcy litigation seem excessive for legal work that has been performed, particularly because CalPX lost. PG&E argues that it and other market participants have no way to tell, based on CalPX's filing, whether these costs are reasonable, and that CalPX has given no useful information on its costs. Therefore, PG&E argues, CalPX has not met its burden of demonstrating that recovery of those costs is just and reasonable.<sup>29</sup> In its subsequently filed motion to lodge, PG&E states that the District Court's affirmation of the bankruptcy court's decision is proof that CalPX is pursuing "meritless and imprudent litigation."<sup>30</sup>

18. In its comments, SDG&E states that it supports the concerns expressed in the protest of PG&E, i.e., that CalPX's recent litigation activities are not consistent with its limited remaining role. SDG&E contends that CalPX's actions serve no useful purpose and may actually be delaying final resolution of the remaining issues related to the 2000-2001 California energy crisis.<sup>31</sup>

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<sup>26</sup> *Id.* at 12 (citing *California Power Exchange Corp.*, Docket No. ER05-167-000, et al., Appendix 1, (Offer of Settlement Explanatory Statement) at 26 (Sept. 1, 2005)).

<sup>27</sup> PG&E Protest at 12 (citing *California Power Exchange Corp.*, Docket No. ER05-167 et al., Appendix 2, at 3 (Rate Case Settlement section 3-A)).

<sup>28</sup> PG&E Protest at 13.

<sup>29</sup> *Id.* at 9-11.

<sup>30</sup> PG&E December 16 Motion at 1.

<sup>31</sup> SDG&E Comments at 2-3.

19. SDG&E asserts that, in attacking the distribution of funds to PG&E as a result of settlements, CalPX thwarts the settlement process for California crisis claims and injures all California ratepayers. SDG&E states that one of the key benefits of each settlement between the California Parties and particular suppliers is to free up funds that were held up in relation to that supplier, and to return to ratepayers, consistent with California retail ratemaking, the excessive amounts they had paid (or are still paying, under bonds issued to repay the amounts owed for the California energy crisis). SDG&E contends that, if CalPX continues to pursue its efforts to prevent these flows of funds, future supplier settlements related to the California energy crisis are less likely to occur, and the date of final resolution of the remaining crisis issues will be delayed.<sup>32</sup>

### **B. CalPX's Answers**

20. CalPX responds to PG&E's protest and SDG&E's comments by stating that it is authorized by its own bankruptcy reorganization plan to litigate matters with respect to CalPX's claim in the PG&E bankruptcy proceedings. More specifically, CalPX points to section III.D.2 of the plan which states that its board's functions include "controlling, prosecuting, settling and/or pursuing the litigation of the Estate Primary Claims."<sup>33</sup> "Estate Primary Claims," CalPX notes, is defined in the CalPX plan as "any and all claims against PG&E . . . arising from nonpayment of amounts owed to CalPX or from breaches of any contract with CalPX, and including the claims filed by CalPX in the chapter 11 bankruptcy case of PG&E . . . ." <sup>34</sup> CalPX asserts that this section and others<sup>35</sup>

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<sup>32</sup> *Id.* at 3.

<sup>33</sup> CalPX Answer (citing *In re California Power Exchange Corporation*, Order (Revised October 28, 2002) Confirming Official Committee of Participant Creditors' Fifth Amended Chapter 11 Plan, as Modified (Revised October 1, 2002); order entered on November 1, 2—2, Docket No. 1000-1, including *Official Committee of Participant Creditors' Fifth Amended Chapter 11 Plan*, as Modified (Revised October 1, 2002), Central Dist. Bankr., Case no. 01-16577) (CalPX Plan).

<sup>34</sup> CalPX Plan, Definitions.

<sup>35</sup> CalPX asserts that section III.D.5.d, which states CalPX "*shall investigate . . . all claims of the debtor . . .*" is a mandate to pursue claims, and that section III.D.5.a provides for the payment of counsel in pursuance of those claims. CalPX Answer at 5-6 (emphasis added).

prove that it is well within its rights to pursue the litigation in the PG&E bankruptcy proceedings, as well as submit the instant rate filing to compensate for the overrun.<sup>36</sup>

21. CalPX responds to PG&E's argument regarding whether or not it should be able to participate in the PG&E bankruptcy proceedings by pointing to several sections of the Rate Case Settlement Agreement. CalPX specifically cites section 15, which states,

Notwithstanding any other provision in this Settlement Agreement to the contrary, all Parties retain their right to challenge issues and to pursue all rights and remedies not expressly resolved by this Settlement, or to oppose such challenges. *Parties hereby agree that issues relating to the collateral help by the PX, or arising from the FERC Refund Proceeding in San Diego Gas & Electric Co., et al., Docket No. EL00-95-000 . . . or in any related appeals or other civil proceedings, are not included within the issues resolved herein, and such issues are expressly included in this reservation of rights, without limitation as to other issues that may also be included.*<sup>37</sup>

CalPX additionally cites section 15-B.1 which provides that the release in the Rate Case Settlement Agreement “does not relate to claims not resolved in Section 11 including (a) rights and obligations of PG&E under PG&E's Plan of Reorganization and (b) *PG&E's obligations under the Class 6 Escrow agreement.*”<sup>38</sup> CalPX asserts that this section 15 language explicitly rebuts PG&E's arguments related to CalPX's ability to pursue its case in the PG&E bankruptcy proceedings. As to PG&E's claims that the Rate Case Settlement Agreement “demands restraint” on the part of CalPX, or that the “settlement provides for the resolution of CalPX's claims against PG&E in its bankruptcy case,”<sup>39</sup> CalPX responds that PG&E has misrepresented what the settlement actually says. CalPX states that its claims against PG&E that were resolved by the Rate Case Settlement Agreement are expressly described in section 11 to that agreement, and are “solely as to professional fees and expenses in [that] case.”<sup>40</sup> CalPX further states that minimization

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<sup>36</sup> CalPX notes that PG&E's representative member on the CalPX Board of Directors voted in favor of the instant filing. CalPX Answer at 6.

<sup>37</sup> Rate Case Settlement Agreement, Section 15 (emphasis added by CalPX).

<sup>38</sup> Rate Case Settlement Agreement, Section 15-B.1 (emphasis added by CalPX).

<sup>39</sup> *See supra* P 16.

<sup>40</sup> CalPX Answer at 7-8 (citing Section 11 of the Rate Case Settlement Agreement).

of costs relates to the Retained Claims and PX Commandeering Litigation, which are distinct from the Class 6 Escrow drawdown, and the “pending claims” are those specified in section 11, described above.<sup>41</sup>

22. In addition to responding to specific claims related to the Rate Case Settlement Agreement, CalPX also more broadly states that PG&E has not met its burden of showing that the costs in CalPX’s filing are “wasteful or imprudent.”<sup>42</sup> CalPX asserts that the fact that the litigation has gone on as long as it has displays that CalPX’s claims have merit, and also the “significant financial stakes at issue” prove that this is a very serious matter in which much is at stake.<sup>43</sup> Finally, CalPX states that, given how long this current litigation has gone on, the amount of money that necessarily has been spent thus far due to the complexity of the issues, and the unpredictable outcome of the case, the dollar amounts it has included in the instant filing are just and reasonable.<sup>44</sup>

23. CalPX also filed an answer to PG&E’s motion to lodge the District Court’s opinion affirming the bankruptcy court. CalPX states that its Board of Directors will not pursue the Class 6 Escrow litigation any further, and, as a result, will not be incurring fees associated with that litigation in Rate Period 28. CalPX asserts that this renders PG&E’s protest, as it relates to the Other-Legal category in Rate Period 28, moot. CalPX states that “the funds that were budgeted for [the Class 6 Escrow] litigation for Rate Period 28, but which will not be used, will be reflected as “Available Cash,” and will reduce the amount of cash and, correspondingly, the amount of wind-up fees needed for Rate Period 29.”<sup>45</sup>

### **III. Discussion**

#### **A. Procedural Matters**

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<sup>41</sup> CalPX Answer at 8.

<sup>42</sup> *Id.* at 9. CalPX quotes PG&E’s own protest, which states that “intervenors that seek to challenge the allowance of specific costs have the burden of showing that the costs are wasteful or imprudent.” PG&E Protest at 11.

<sup>43</sup> CalPX Answer at 9.

<sup>44</sup> *Id.* at 16-18.

<sup>45</sup> CalPX December 21 Answer at 1-3; *see also* CalPX rate schedule for Rate Period 28; Exhibit CPX-1, Direct Testimony of Interim CEO David K. Gottlieb on Behalf of [CalPX], at 27-28.

24. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2015), the Commission will grant IDACORP's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

25. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits an answer to a protest and/or answer unless otherwise ordered by the decisional authority. We will accept CalPX's answer because it has provided information that assisted us in our decision-making process.

## **B. Substantive Matters**

### **1. Rate Period 28 Costs**

26. The Commission finds CalPX's filing for Rate Period 28 costs is just and reasonable, and therefore accepts it, effective January 1, 2016, as requested. Under section 9 of the Rate Case Settlement Agreement, CalPX is required to make filings with the Commission every six months in order to recover its Going Forward Costs.<sup>46</sup> We find that CalPX has properly justified its costs for Rate Period 28, and that the filing satisfies the section 9 requirement, consistent with the previous rate schedules submitted by CalPX on file with the Commission. The Commission finds that, due to CalPX's decision not to pursue further litigation with regard to the Class 6 Escrow, PG&E's protest as it pertains to the Other-Legal category in Rate Period 28 is now moot and we therefore reject it.

### **2. Rate Period 26 Budget Increase**

27. As part of its filing, CalPX has requested to increase the Rate Period 26 budget for the category Other-Legal in order to fund a budget overrun resulting from its involvement in the PG&E bankruptcy proceedings. Both PG&E and SDG&E protest<sup>47</sup> this increase because they believe it results from CalPX's improper pursuit of litigation in the PG&E bankruptcy proceedings, and that Commission approval of these cost overruns is not in

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<sup>46</sup> See *supra* note 4.

<sup>47</sup> Although SDG&E styled its submission as "comments," it echoes the arguments made in PG&E's protest.

the public interest. The Commission disagrees. As the Commission has previously explained in determining whether a public utility's expenditures were prudent, "managers of a utility have broad discretion in conducting their business affairs and in incurring costs necessary to provide services to their customers."<sup>48</sup> We conclude that the decision to pursue litigation in the PG&E bankruptcy proceedings is a business decision that is within the discretion of CalPX, and that CalPX has sufficiently supported the costs it seeks to recover. Further, PG&E and SDG&E have not raised anything in their protests to demonstrate that CalPX should not be permitted to recover these costs.

28. The explanatory statement of the Rate Case Settlement Agreement, to which PG&E points as somehow restraining CalPX's current actions, does not preclude or affect CalPX's current involvement in the PG&E bankruptcy proceedings. It "provides for the resolution of the [Cal]PX's claims against PG&E in its bankruptcy case," and further states that CalPX "agrees not to make any further claim against PG&E for professional fees and expenses . . . and shall not make additional claims against PG&E related to various insurance agreements. . . ."<sup>49</sup> The Commission agrees with CalPX that nowhere in this language does it state CalPX is prohibited from challenging the drawdown of the Class 6 Escrow, nor does the drawdown fall under "professional fees and expenses" or "claims . . . related to various insurance agreements."

29. PG&E tries to further buttress its protest with language from section 3-A of the Rate Case Settlement. This section provides:

As of May 31, 2005, [Cal]PX shall in good faith seek to minimize the costs of any continuing Retained Claims or PX Commandeering Litigation or the costs associated with pending claims in PG&E's bankruptcy case . . . .<sup>50</sup>

The Commission agrees with CalPX that this section also does not pertain to CalPX's present involvement in the PG&E bankruptcy proceedings because the Class 6 Escrow drawdown is not related to "continuing Retained Claims or [the] PX Commandeering Litigation," nor does it relate to a "pending claim." The Commission finds that, pursuant to sections 11 and 15 of the Rate Case Settlement Agreement, the CalPX claims that were resolved by the agreement were those related to "professional fees and expenses," and

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<sup>48</sup> See, e.g., *New England Power Co.*, Opinion No. 231, 31 FERC ¶ 61,047, at 61,084, *reh'g denied*, Opinion No. 231-A, 32 FERC ¶ 61,112 (1985), *aff'd sub nom. Violet v. FERC*, 800 F.2d 280 (1<sup>st</sup> Cir. 1986).

<sup>49</sup> See *supra* note 26.

<sup>50</sup> See *supra* note 27.

CalPX has the express “right to challenge issues and to pursue all rights and remedies not expressly resolved by th[at] [s]ettlement, or to oppose such challenges.”<sup>51</sup>

30. In addition to the fact that CalPX is within its right to pursue its present action (and to therefore seek recovery of the resulting cost overruns), the Commission notes that the decision to disburse funds from the Class 6 Escrow, the basis of the litigation involving CalPX and PG&E, is within the purview of the bankruptcy court and its reviewing courts.<sup>52</sup> As such, we make no finding here regarding the merits of the litigation.<sup>53</sup>

31. Because CalPX has provided the proper support for its cost overruns, we find the requested increase in the Rate Period 26 budget in the Other-Legal category just and reasonable and we therefore accept CalPX’s filing, effective January 1, 2016, as requested.

The Commission orders:

CalPX’s Rate Schedule No. 1 is hereby accepted, effective January 1, 2016, as requested, 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>51</sup> See *supra* P 21, notes 37 and 40.

<sup>52</sup> *San Diego Gas and Elec. Co. v. Sellers of Energy and Ancillary Services*, 149 FERC ¶ 61,115, at P 31 (2014). In that order, the Commission approved a settlement between the California Parties and the California Department of Water Resources State Water Project over CalPX’s objection to a provision in the settlement pertaining to PG&E’s drawdown of the Class 6 Escrow.

<sup>53</sup> That the District Court affirmed the bankruptcy court does not alter our finding that it was within CalPX’s discretion to make its decision to pursue this litigation.