



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 March 1, 2001 through September 30, 2003 (Settlement Period),<sup>2</sup> as they relate to Allegheny. The settlement consists of a “Joint Offer of Settlement,” a “Joint Explanatory Statement,” and a “Settlement and Release of Claims Agreement” (collectively, the Settlement).<sup>3</sup>

2. The Parties filed the Settlement pursuant to Rule 602 of the Commission’s Rules of Practice and Procedure.<sup>4</sup> The Parties state that the Settlement became binding as of the execution date; however, some of the operative provisions only become effective as of, or in relation to, the Settlement Effective Date, which is defined as the date on which the Commission issues the order approving the Settlement.<sup>5</sup> Additionally, the Parties explain that the 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>6</sup>

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<sup>1</sup> The California Parties are Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, the Public Utilities Commission of the State of California (CPUC), and 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 Electricity Oversight Board and the California Department of Water Resources (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 (CERS)).

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

<sup>3</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 Administrative Law section, dated February 18, 2011, not to recuse herself from considering matters in those dockets.

<sup>4</sup> 18 C.F.R. § 385.602 (2016).

<sup>5</sup> Joint Explanatory Statement at 9; Settlement and Release of Claims Agreement at §§ 2.1, 2.2, and 1.28.

<sup>6</sup> Joint Explanatory Statement at 9; Settlement and Release of Claims Agreement at § 2.3.

3. The Parties state that the Settlement benefits customers by resolving claims for refunds and other remedies as between Allegheny on the one hand and the California Parties on the other relating to Allegheny's transactions in the Western energy markets during the Settlement Period.<sup>7</sup> The Parties state 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 encouraged settlements of claims related to transactions in the Western energy markets.<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 (FPA)<sup>10</sup> to investigate, among other things, the justness and reasonableness of public utility sellers' rates in the California Independent System Operator Corporation (CAISO) and California Power Exchange Corporation (CalPX) markets in Docket Nos. EL00-95-000 and EL00-98-000.<sup>11</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>12</sup> Also in 2002, the Attorney General of the State of California filed a complaint with the Commission in Docket No. EL02-71-000, alleging that generators and marketers selling power in the Western energy markets, as well as those making spot sales of energy to CERS, had failed to file

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<sup>7</sup> Joint Offer of Settlement at 5.

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

<sup>9</sup> *Id.* at 5-6 (citing *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 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> *Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices*, 98 FERC ¶ 61,165 (2002).

their rates as required by the Commission's market-based rate program.<sup>13</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>14</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>15</sup> or why their arrangements with other entities did not constitute gaming and/or anomalous bidding behavior.<sup>16</sup> In 2009, the Attorney General of the State of California filed a complaint with the Commission in Docket No. EL09-56-000, alleging that certain energy suppliers made short-term bilateral sales to CERS at unjust and unreasonable prices.<sup>17</sup>

6. The Parties state that Allegheny made bilateral sales of energy to CERS during the Settlement Period.<sup>18</sup> The Parties state that the Settlement resolves claims against Allegheny in the above-captioned proceedings during the Settlement Period as they relate to Allegheny.<sup>19</sup> The Settlement does not provide for the participation of other Market Participants because Allegheny was not a direct participant in the CAISO and CalPX energy markets during the October 2, 2000, through June 20, 2001 refund period and the settlement consideration relates to CERS bilateral sales.<sup>20</sup>

7. The Parties state that the monetary consideration flowing from Allegheny to CERS will be \$3,600,000.<sup>21</sup> The Parties explain that this amount is derived from application of the mitigated market clearing price to Allegheny's bilateral sales to CERS,

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<sup>13</sup> *State of California ex rel. Lockyer v. British Columbia Power Exchange Corp.*, 99 FERC ¶ 61,247, *order on reh'g*, 100 FERC ¶ 61,295 (2002).

<sup>14</sup> *Investigation of Anomalous Bidding Behavior and Practices in the Western Markets*, 103 FERC ¶ 61,347 (2003).

<sup>15</sup> *American Elec. Power Serv. Corp.*, 103 FERC ¶ 61,345 (2003).

<sup>16</sup> *Enron Power Mktg., Inc.*, 103 FERC ¶ 61,346 (2003).

<sup>17</sup> *State of California ex rel. Brown v. Powerex Corp.*, 135 FERC ¶ 61,178 (2011).

<sup>18</sup> Joint Explanatory Statement at 3.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 3, 4.

<sup>21</sup> Joint Explanatory Statement at 9; Settlement and Release of Claims Agreement at § 4.1.

reduced to take into account Allegheny's profits as measured in the manner consistent with the Commission's methodology in Docket No. EL00-95.<sup>22</sup>

8. The Parties explain that, in return for the specified consideration and subject to specified limitations, the Settlement generally resolves all claims between the California Parties on the one hand and Allegheny on the other, relating to transactions in the Western energy markets during the Settlement Period for refunds, disgorgement of profits, or other remedies.<sup>23</sup>

9. The Parties state that the Settlement provides for the California Parties and Allegheny to 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 that: (1) Allegheny or any California Party charged or collected unjust, unreasonable, or otherwise unlawful rates, terms, or conditions for electric capacity, energy, ancillary services, or transmission congestion in the Western energy markets during the Settlement Period; (2) Allegheny or any California Party manipulated the Western energy markets in any fashion or otherwise violated any applicable tariff, regulation, law, rule, or order relating to transactions in the Western energy markets during the Settlement Period; (3) Allegheny or any California Party benefited in any fashion from the manipulation of the Western energy markets by third parties or the tariff violations or other violations of market rules by third parties; or (4) any California Party is liable for payments to Allegheny for congestion charges, transmission line losses, energy, or ancillary services during the Settlement Period.<sup>24</sup>

10. In addition, the Parties state that the Settlement provides for the California Parties and Allegheny mutually to 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) Allegheny or any California Party charged or collected unjust, unreasonable, or otherwise unlawful rates, terms, or conditions for electric capacity, energy, ancillary services, or transmission congestion in the Western energy markets during the Settlement Period; (2) Allegheny or any California Party manipulated the Western energy markets

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<sup>22</sup> Joint Explanatory Statement at 3-4.

<sup>23</sup> Joint Explanatory Statement at 10; Settlement and Release of Claims Agreement at § 5.1.1.

<sup>24</sup> Joint Explanatory Statement at 10; Settlement and Release of Claims Agreement at § 5.2.1.

in any fashion; (3) Allegheny or any California Party was unjustly enriched by the foregoing released claims or otherwise violated any applicable tariff, regulation, law, rule, or order relating to transactions in the Western energy markets during the Settlement Period; (4) Allegheny or any California Party benefited in any fashion from the manipulation of the Western energy markets by third parties or the tariff violations or other violations of market rules by third parties; or (5) any California Party is liable for payments to Allegheny for congestion charges, transmission line losses, energy, or ancillary services during the Settlement Period<sup>25</sup>

11. 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, even though such assurances appear unnecessary given that CAISO and CalPX are not required to take any actions to implement the Settlement.<sup>26</sup>

### **Procedural Matters**

12. Pursuant to Rule 602(f) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.602(f) (2016), initial comments on the Settlement were to be submitted no later than September 13, 2016, and reply comments were to be submitted no later than September 23, 2016. Initial comments were filed by CAISO and CalPX. Reply comments were filed by the Parties (Joint Reply Comments).

### **Settlement Comments**

13. Both CAISO and CalPX note that the circumstances of this Settlement warrant hold harmless treatment for CAISO and CalPX even though they will not have to directly implement its terms. CAISO and CalPX assert that because the Settlement resolves claims between Allegheny and the California Parties for a portion of the Commission refund period, it may impact the CAISO and CalPX markets and require CAISO and CalPX, along with their directors, officers, employees, and consultants, to take actions as a result of the Settlement.<sup>27</sup> Accordingly, CalPX requests that the following "hold harmless" language be incorporated into any Commission order approving the Settlement:

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<sup>25</sup> Joint Explanatory Statement at 10-11; Settlement and Release of Claims Agreement at § 5.3.1.

<sup>26</sup> Joint Explanatory Statement at 11-12.

<sup>27</sup> CAISO Comments at 2; CalPX Comments at 3.

The Commission recognizes that the settlement between the Parties resolves claims in the FERC Refund Proceedings during the Settlement Period of March 1, 2001 through September 30, 2003. Therefore, except to the extent caused by their own gross negligence, neither officers, directors, employees nor professionals of CalPX shall be liable for the impacts, if any, of the settlement on the CalPX markets including but not limited to 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 due to the CalPX as a result of the settlement, CalPX shall not be responsible for recovering or collecting such funds or amounts represented by such credits.<sup>28</sup>

CalPX states that this is a similar “hold harmless” provision that the Commission has approved in other orders approving settlements.<sup>29</sup>

14. 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>30</sup>

### **Commission Determination**

15. 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>31</sup> the Commission determines that CalPX and CAISO

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<sup>28</sup> CalPX Comments at 5.

<sup>29</sup> *Id.*

<sup>30</sup> Joint Reply Comments at 3.

<sup>31</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 (same); *San Diego Gas & Elec. Co. v. Sellers of Energy and*

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.

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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*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).