

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

California Independent System Operator)
Corp., Pacific Gas and Electric Company,) Docket No. EL21-____-00
Southern California Edison Company)

**PETITION FOR APPROVAL OF
UNCONTESTED SETTLEMENT AGREEMENT**

Pursuant to Rule 207(a)(5) of the Rules of Practice and Procedure¹ of the Federal Energy Regulatory Commission (“FERC” or “Commission”), the California Independent System Operator Corporation (“CAISO”), Pacific Gas and Electric Company (“PG&E”), and Southern California Edison Company (“SCE”) (collectively, the “Applicants”) respectfully petition² for approval of an uncontested settlement (Attachment A, the “Settlement Agreement”) among the Applicants and Shell Energy North America (US), L.P. (“Shell Energy”). The Settlement Agreement resolves the issues presented in Shell Energy’s petitions for review pending before the U.S. Court of Appeals for the District of Columbia Circuit (“D.C. Circuit”), Case Nos. 20-1239 and 21-1148 (the “Litigations”).³ In

¹ 18 C.F.R. § 385.207(a)(5).

² The Applicants proceed by way of a petition under Rule 207(a)(5) following the Commission’s guidance in *Dominion Transmission, Inc.*, 111 FERC ¶ 61,285, P 32 (2005), and subsequent cases. *E.g., Sw. Power Pool, Inc.*, 175 FERC ¶ 61,155, P 1 and n.1 (2021). Here, as in those orders, the Settlement Agreement does not settle a matter currently before the Commission in any existing FERC docket. Rather, the Settlement Agreement resolves issues presented in petitions for review before the D.C. Circuit.

Should the Commission determine that approval of the Settlement Agreement is proper under Rule 602, the Applicants will supplement this filing to comply with Rule 602(c) (18 C.F.R. § 385.602(c)), the Chief Administrative Law Judge’s December 15, 2016 Notice to the Public, and any other applicable requirement.

³ This Petition is not intended to alter the terms of the Settlement Agreement. In the event of any conflict between the Petition and the terms of the Settlement Agreement, the Settlement Agreement will govern. Unless otherwise stated, capitalized terms used in this Petition have the meanings provided, or incorporated by reference, in the Settlement Agreement.

order to avoid the time and expense of further litigation, the Applicants respectfully request that the Commission issue an order accepting the Settlement Agreement as just and reasonable, without modification or condition, by September 28, 2021.⁴

I. COMMUNICATIONS

The Applicants request that all correspondence, pleadings, and other communications concerning this filing be served upon the following individuals who should be included on the official service list in this proceeding:

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II. BACKGROUND

The Settlement Agreement relates to litigation concerning Amendment No. 60 to the CAISO Tariff, in which the CAISO proposed revisions to the methodology for

⁴ The Applicants request action by this date because September 29 is the date on which the parties to the Litigations are required to file with the D.C. Circuit a report regarding the status of these proceedings. The Litigations are currently being held in abeyance by the court.

allocating costs related to the must-offer obligation under that Tariff. The proceedings on Amendment No. 60 to the CAISO Tariff have an extensive history before the Commission, and are also the subject of petitions for review before the D.C. Circuit brought by Shell Energy and others.

The Applicants and Shell Energy each participated in FERC Docket No. ER04-835. SCE, Shell Energy and the California ISO are parties to D.C. Circuit Case No. 20-1239 (consolidated with Case No. 20-1236). Shell Energy has also filed a related petition for review in the D.C. Circuit, Case No. 21-1148. As discussed below, the Settlement Agreement resolves certain issues and ongoing litigation among the Settling Parties related to the Litigations concerning Amendment No. 60 presented in the petitions for review before the D.C. Circuit.

Shell Energy has authorized the Applicants to represent to the Commission that it does not oppose Commission acceptance of the Settlement Agreement as requested herein.

III. PETITION

The Applicants respectfully request that the Commission approve the attached Settlement Agreement, without modification or condition, as a just and reasonable resolution of the Litigations. Acceptance of the Settlement Agreement will result in the resolution of the pending Litigations, saving of litigation expenses, and elimination of regulatory uncertainty. Nothing in the Settlement Agreement will prejudice or harm any other CAISO market participant, as the only commitments and obligations under this agreement are those that will be borne by the parties thereto. A description of each significant section of the Settlement Agreement follows:

Section 2.1 of the Settlement Agreement explains that the purpose of the Settlement Agreement is to fully resolve all issues raised by Shell Energy in the Litigations before the D.C. Circuit.

Section 3.1 of the Settlement Agreement states that all issues raised by Shell Energy in the Litigations will be fully resolved by the Commission's acceptance of the Settlement Agreement, and summarizes the structure of the Settlement Agreement.

Section 3.2 of the Settlement Agreement states that, if the Commission accepts the Settlement Agreement without modification or condition, and after the expiration of all deadlines for rehearing and appeal of such Commission order, as applicable (the "Settlement Effective Date"), the CAISO will issue Recalculation Settlement Statements that contain: (1) settlement charges reflecting Reliability Services Costs to the SCE Participating Transmission Owner in an agreed amount ; (2) settlement charges reflecting Reliability Services Costs to the PG&E Participating Transmission Owner in an agreed amount; and (3) a credit to Shell Energy in the amount corresponding to the foregoing amounts. The CAISO will make every effort to, but will not be required to, issue such Recalculation Settlement Statements within thirty calendar days after Commission acceptance.

Section 3.3 of the Settlement Agreement states that the issuance of the Recalculation Settlement Statements described in Section 3.2 of the Settlement Agreement solely reflect a compromise by the Parties to resolve the Litigations, and will not serve as the basis for any future adjustments.

Section 3.4 of the Settlement Agreement states that within fourteen calendar days after the issuance of the Recalculation Settlement Statements described in Section 3.2

of the Settlement Agreement, the CAISO will issue Invoices and a Payment Advice reflecting the adjustments shown in the Recalculation Settlement Statements.

Section 3.5 states that if and only if the Commission accepts the Settlement Agreement without modification or condition, within seven Business Days of the ISO's issuance of the Invoices and Payment Advice described in Section 3.4 of the Settlement Agreement, Shell Energy will file motions with the D.C. Circuit to dismiss the Litigations, along with any other petition(s) for review filed by Shell Energy regarding any Commission orders issued in FERC Docket Nos. ER04-835, EL04-103, and/or EL14-67.

Section 3.6 of the Settlement Agreement states that if and only if the D.C. Circuit grants the motions to dismiss described in Section 3.5 of the Settlement Agreement, and within 7 business days after the latest of the D.C. Circuit's orders in those motions, Shell will file a motion to withdraw all pending protests, requests for rehearing or other pending pleadings in FERC Docket No. ER04-835, and covenants not to file any further pleadings in FERC Docket No. ER04-835 after the Settlement Effective Date, except for pleadings to enforce the Settlement Agreement.

Section 3.7 of the Settlement Agreement states that if Shell Energy fails to comply with the commitments set forth in Sections 3.5 or 3.6 of the Settlement Agreement, or if the D.C. Circuit or Commission deny any motion to dismiss or to withdraw described in Sections 3.5 or 3.6 of the Settlement Agreement, the CAISO shall reverse the charges and credits set forth in Section 3.2 of the Settlement Agreement, with interest due on such amounts at the rate specified in 18 C.F.R. Section 35.19a.

Section 4.1 of the Settlement Agreement states that the payment obligations included in the Settlement Agreement will be triggered upon issuance by the Commission

of an order accepting the Settlement Agreement without modification or condition, and the expiration of all deadlines for rehearing and appeal of such Commission order.

Section 5.1 of the Settlement Agreement states that the standard of review for any proposed change sought by any of the Settling Parties to the terms of the Settlement Agreement shall be the “public interest” application of the just and reasonable standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956), and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

Article 6 of the Settlement Agreement sets forth general terms and conditions of the Settlement Agreement.

V. DOCUMENTS SUBMITTED WITH THIS PETITION

The following documents are included as attachments to this petition:

Attachment A – Settlement Agreement (Privileged)

Attachment B – Settlement Agreement (Public)

Attachment C – Proposed Protective Agreement

VI. REQUEST FOR PRIVILEGED TREATMENT

Pursuant to 18 CFR § 388.112, the Applicants request privileged treatment of financial terms set forth in Section 3 of the Settlement Agreement. Section 6.10 of the Settlement Agreement stipulates that such terms will be kept confidential and may not be disclosed except by order of a regulatory authority. Moreover, privileged treatment is appropriate because public disclosure of the financial terms agreed to by the settling parties could cause one or more of the Settling Parties competitive harm. Consistent with the Commission’s regulations, the Applicants are submitting both privileged and public redacted versions of the Settlement Agreement. A proposed protective

agreement, based upon the Commission's Model Protective Order, is provided as Attachment C to this petition.

VII. CONCLUSION

The Settlement Agreement would fully resolve all of the issues raised in the Litigations. Commission approval of the Settlement Agreement will result in the resolution of pending litigation, saving of litigation expenses, and elimination of regulatory uncertainty. The Settlement Agreement will not prejudice or harm any entity. As a result, Commission acceptance of the Settlement Agreement will have a just and reasonable outcome. The Applicants therefore respectfully request that the Commission accept the Settlement Agreement without modification or condition, by September 28, 2021.

[Signatures on the Following Page]

Respectfully submitted,

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Dated August 13, 2021

Attachment B

EXECUTION VERSION

SETTLEMENT AGREEMENT

This settlement agreement (“Settlement Agreement”) is entered into by the California Independent System Operator Corporation (“CAISO”), Pacific Gas and Electric Company (“PG&E”), Shell Energy North America (US), L.P. (“Shell Energy”), and Southern California Edison Company (“SCE”) (collectively, the “Settling Parties,” and each individually, a “Settling Party”).

TERMS

The terms of this Settlement Agreement are as follows:

ARTICLE 1

DEFINITIONS

1.1 All defined terms used in this Settlement Agreement and not defined herein have the meanings set forth in the CAISO Tariff as of the date hereof .

ARTICLE 2

PURPOSE

2.1 The purpose of this Settlement Agreement is to fully resolve all issues raised by Shell Energy in *Shell Energy North America (US), L.P. v. Federal Energy Regulatory Commission*, No. 20-1239 (D.C. Cir.) and *Shell Energy North America (US), L.P. v. Federal Energy Regulatory Commission*, No. 21-1148 (D.C. Cir.) (the “Litigations”), thereby avoiding the time and expense of further litigation.

2.2 The Settlement Agreement shall be submitted to the Federal Energy Regulatory Commission (the “Commission”) for its approval.

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ARTICLE 3

AGREEMENT OF THE SETTLING PARTIES

3.1 All issues raised by Shell Energy in the Litigations will be fully resolved by the Commission's approval of this Settlement Agreement and the performance thereof by the Settling Parties. In accordance with the process set forth in the remaining provisions in this Article 3, the Settlement Agreement provides that the CAISO will issue SCE and PG&E charges of [REDACTED] each and Shell a corresponding credit of [REDACTED], in exchange for Shell Energy withdrawing the Litigations.

3.2 If the Commission approves the Settlement Agreement without modification or condition, and after the expiration of all deadlines for rehearing or appeal of such Commission order, as applicable (the "FERC Approval Date"), the CAISO will issue Recalculation Settlement Statements that contain: (1) settlement charges reflecting Reliability Services Costs to the SCE Participating Transmission Owner in the amount of [REDACTED] (2) settlement charges reflecting Reliability Services Costs to the PG&E Participating Transmission Owner in the amount of [REDACTED]; and (3) a credit to Shell Energy in the amount of [REDACTED]. The CAISO will make every effort to issue such Recalculation Settlement Statements within thirty calendar days after the FERC Approval Date.

3.3 The issuance of the Recalculation Settlement Statements described in Section 3.2 of this Settlement Agreement solely reflect a compromise by the Parties to resolve the Litigations, and will not serve as the basis for any future adjustments.

3.4 Within fourteen calendar days after the issuance of the Recalculation Settlement Statements described in Section 3.2 of this Settlement Agreement, the

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CAISO will issue Invoices and a Payment Advice reflecting the adjustments shown in the Recalculation Settlement Statements with the result being Shell Energy receiving a credit from CAISO in the amount of [REDACTED]

3.5 Within seven Business Days of Shell Energy's receipt of the credit described in Section 3.4 of this Settlement Agreement, Shell Energy will file motions with the D.C. Circuit to dismiss the Litigations along with any other petition(s) for review filed by Shell Energy regarding any Commission orders issued in FERC Docket ER04-835, EL04-103, and EL14-67.

3.6 If the D.C. Circuit grants the motions to dismiss described in Section 3.5, above, then within 7 business days after the latest of the D.C. Circuit's order, Shell will file a notice withdrawing all pending protests, requests for rehearing or other pending pleadings in FERC Docket No. ER04-835, and covenants not to file any further pleadings in FERC Docket No. ER04-835 after that date, except for pleadings to enforce this Settlement Agreement.

3.7 If Shell Energy fails to comply with the commitments set forth in Sections 3.5 or 3.6, or if the D.C. Circuit denies any motion to dismiss described in Section 3.5, the CAISO shall reverse the charges and credits set forth in Section 3.2 of this Settlement Agreement, with interest due on such amounts at the rate specified in 18 C.F.R. Section 35.19a.

ARTICLE 4

EFFECTIVE DATE

4.1 This Settlement Agreement will become effective upon execution by the parties.

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ARTICLE 5

STANDARD OF REVIEW

5.1 The standard of review for any proposed change sought by any of the Settling Parties to the terms of this Settlement Agreement shall be the “public interest” application of the just and reasonable standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956), and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). With respect to proposed changes to the terms of the Settlement Agreement sought by a third party other than a Settling Party or the Commission acting *sua sponte*, the standard of review shall be the ordinary just and reasonable standard.

ARTICLE 6

REPRESENTATIONS AND WARRANTIES

Each Party represents and warrants to the other Parties that:

it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

it has all regulatory authorizations necessary for it to legally perform its obligations as set forth under this Settlement Agreement;

the execution, delivery and performance of this Settlement Agreement are within its powers, have been duly authorized by all necessary action, and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;

this Settlement Agreement is a legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses; and

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there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Settlement Agreement

ARTICLE 7

GENERAL TERMS AND CONDITIONS

6.1 *Negotiated Compromise Embodied in Settlement Agreement.* This Settlement Agreement represents a negotiated compromise resolved in the public interest and is expressly conditioned upon the approval of all provisions hereof by the Commission without material condition or modification. If the Commission fails to approve this Settlement Agreement in its entirety, without material condition or modification, this Settlement shall not become effective and shall be null and void.

6.2 *Precedential Value.* Except as explicitly set forth herein, no one will be deemed to have approved, accepted, agreed to, or consented to any principle or position in this proceeding, or to have prejudiced positions taken or that may be taken in this or any other proceedings. This Settlement Agreement will have no precedential value, will not be cited as precedent, and will not be deemed to bind any entity (except as otherwise expressly provided for herein) in any proceeding, including any Commission or court proceeding, except in any proceeding to enforce the Settlement Agreement. The Settlement Agreement will not be deemed to be a “settled practice” as that term was interpreted and applied in *Public Service Commission of the State of New York v. FERC*, 642 F.2d 1335 (D.C. Cir. 1980), or a “long standing practice” as that term was used in *Columbia Gas Transmission Corp. v. FERC*, 628 F.2d 578 (D.C. Cir. 1979).

6.3 *Negotiated Settlement Agreement.* This Settlement Agreement is made upon the express understanding that it constitutes a negotiated settlement agreement

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and, except as otherwise provided for herein, no one will be deemed to have approved, accepted, agreed to, or consented to any principle or policy related to the rates, charges, classifications, terms, conditions, principles, or issues associated with Settlement Agreement.

6.4 *Entire and Nonseverable Agreement.* This Settlement Agreement constitutes the full and complete agreement of the Settling Parties with respect to the subject matter addressed herein and supersedes all prior negotiations, understandings, and agreements, whether written or oral, between the Settling Parties with respect to the subject matter addressed herein, including but not limited to any “Terms Sheet” exchanged among the Settling Parties. The various provisions of the Settlement Agreement are not severable, and none of the provisions of the Settlement Agreement shall become operative unless and until the Settlement Agreement becomes effective in accordance with Section 4.1 hereof.

6.5 *Settlement Privilege.* All discussions among the parties related to this Settlement Agreement have been conducted with the explicit understanding and agreement, pursuant to Rule 602 of the Commission’s Rules of Practice and Procedure, that all offers of settlement and discussions relating thereto are and shall be privileged, shall be without prejudice to the positions of any party or participant presenting any such offer or participating in any such discussion, and are not to be used in any manner in connection with this proceeding or otherwise, except to the extent of enforcing the terms and conditions of the Settlement Agreement.

6.6 *Support for Settlement Agreement/No Waiver of Rights.* The Settling Parties will support this Settlement Agreement and will cooperate in securing

EXECUTION VERSION

Commission approval and implementation of the Settlement Agreement. Shell Energy agrees to intervene in the Commission proceeding seeking approval of this Settlement Agreement, and to indicate that it supports approval of the Settlement Agreement. The Settling Parties hereby waive any and all rights to seek rehearing or judicial review of any Commission order(s) approving the Settlement Agreement without modification or condition. However, if the Commission approves the Settlement Agreement with modifications or conditions, any Settling Party may seek rehearing or judicial review of the Commission order(s) approving the Settlement Agreement solely to challenge the Commission's imposition of such modifications or conditions in order to preserve the terms and conditions in order to preserve the terms and conditions of the Settlement Agreement as filed.

6.7 *Successors, Assigns, and Purchasers.* This Settlement Agreement shall be binding on and shall inure to the benefit of the successors, assigns, or purchasers for value of the stock or assets of all Settling Parties.

6.8 *Headings.* Headings in this Settlement Agreement are included for convenience only and are not intended to have any significance in interpretation of the Settlement Agreement.

6.9 *Governing Law.* This Settlement Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced, and performed in accordance with the laws of the State of California, without regard to principles of conflicts of law.

6.10 *Confidentiality.* The financial terms contained in Article 3 are confidential and may not be disclosed or otherwise made known or available in any manner to any

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person that is not a Settling Party or regulatory authority (e.g., the Commission and California Public Utilities Commission), except by order of a regulatory authority. A Settling Party submitting the financial terms contained in Article 3 to a regulatory authority, or as part of a regulatory proceeding, shall take all reasonable steps to obtain confidential treatment from the applicable authority to avoid public disclosure. For clarification, each Settling Party may provide, upon request, the financial terms contained in Article 3 to any party to a rate proceeding before the Commission, including a formula rate update process, upon execution of the Commission's Model Protective Order or a protective order that is substantially similar in form to the Commission's Model Protective Order.

[SIGNATURES APPEAR ON THE PAGES THAT FOLLOW]

California Independent System Operator Corporation

Dede Subatki
Vice President, System Operations

Date: _____

Pacific Gas & Electric Company

Candice Chan
Director, Energy Contract Management and Settlements

Date: _____

Shell Energy North America (US), L.P.



Carolyn Comer
President and Chief Executive Officer

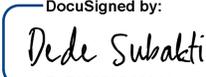
Date: 08/09/21

Southern California Edison Company

Kevin M. Payne
President and CEO

Date: _____

California Independent System Operator Corporation

DocuSigned by:

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Dede Subatki
Vice President, System Operations

Date: 8/12/2021

Pacific Gas & Electric Company

Candice Chan
Director, Energy Contract Management and Settlements

Date: _____

Shell Energy North America (US), L.P.

Carolyn Comer
President and Chief Executive Officer

Date: _____

Southern California Edison Company

Kevin M. Payne
President and CEO

Date: _____

California Independent System Operator Corporation

Dede Subatki
Vice President, System Operations

Date: _____

Pacific Gas & Electric Company



Candice Chan
Director, Energy Contract Management and Settlements

Date: 08/12/2021_____

Shell Energy North America (US), L.P.

Carolyn Comer
President and Chief Executive Officer

Date: _____

Southern California Edison Company

Kevin M. Payne
President and CEO

Date: _____

California Independent System Operator Corporation

Dede Subatki
Vice President, System Operations

Date: _____

Pacific Gas & Electric Company

Candice Chan
Director, Energy Contract Management and Settlements

Date: _____

Shell Energy North America (US), L.P.

Carolyn Comer
President and Chief Executive Officer

Date: _____

Southern California Edison Company

DocuSigned by:

Kevin M. Payne
President and CEO

Date: 8/12/2021

Attachment C

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System Operator)
Corp., Pacific Gas and Electric Company,) Docket No. EL21-____-00
Southern California Edison Company)

PROTECTIVE AGREEMENT

(Issued)

1. Participants in this proceeding(s) may exchange documents or materials that are deemed to contain Privileged Material and/or Critical Energy/Electric Infrastructure Information (CEII), as those terms are defined herein.

2. The Commission's regulations¹ and its policy governing the labelling of controlled unclassified information (CUI), establish and distinguish the respective designations of Privileged Material and CEII. As to these designations, this Protective Agreement provides that a Participant:
 - A. *may* designate as Privileged Material any material which customarily is treated by that Participant as commercially sensitive or proprietary or material subject to a legal privilege, which is not otherwise available to the public, and which, if disclosed, would subject that Participant or its customers to risk of competitive disadvantage or other business injury; and
 - B. *must* designate as CEII, any material that meets the definition of that term as provided by 18 C.F.R. §§ 388.113(a), (c).

3. For the purposes of this Protective Agreement, the listed terms are defined as follows:
 - A. Participant(s): As defined at 18 C.F.R. § 385.102(b).

¹ Compare 18 C.F.R. § 388.112, with 18 C.F.R. § 388.113. This Protective Agreement does not alter the respective requirements imposed by these sections on Privileged Material or CEII.

- B. Privileged Material:²
- i. Material (including depositions) provided by a Participant in response to discovery requests or filed with the Commission, and that is designated as Privileged Material by such Participant;³
 - ii. Material that is privileged under federal, state, or foreign law, such as work-product privilege, attorney-client privilege, or governmental privilege, and that is designated as Privileged Material by such Participant;⁴
 - iii. Any information contained in or obtained from such designated material;
 - iv. Any other material which is made subject to this Protective Agreement by the Federal Energy Regulatory Commission (Commission), any court, or other body having appropriate authority, or by agreement of the Participants (subject to approval by the relevant authority);

² The Commission's regulations state that "[f]or the purposes of the Commission's filing requirements, non-CEII subject to an outstanding claim of exemption from disclosure under FOIA will be referred to as privileged material." 18 C.F.R. § 388.112(a). The regulations further state that "[f]or material filed in proceedings set for trial-type hearing or settlement judge proceedings, a participant's access to material for which privileged treatment is claimed is governed by the presiding official's protective order." 18 C.F.R. § 388.112(b)(2)(v).

³ See *infra* P 11 for the procedures governing the labeling of this designation.

⁴ The Commission's regulations state that "[a] presiding officer may, by order . . . restrict public disclosure of discoverable matter in order to . . . [p]reserve a privilege of a participant. . . ." 18 C.F.R. § 385.410(c)(3). To adjudicate such privileges, the regulations further state that "[i]n the absence of controlling Commission precedent, privileges will be determined in accordance with decisions of the Federal courts with due consideration to the Commission's need to obtain information necessary to discharge its regulatory responsibilities." 18 C.F.R. § 385.410(d)(1)(i).

- v. Notes of Privileged Material (memoranda, handwritten notes, or any other form of information (including electronic form) which copies or discloses Privileged Material);⁵ or
- vi. Copies of Privileged Material.
- vii. Privileged Material does not include:
 - a. Any information or document that has been filed with and accepted into the public files of the Commission, or contained in the public files of any other federal or state agency, or any federal or state court, unless the information or document has been determined to be privileged by such agency or court;
 - b. Information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this Protective Agreement; or
- C. Critical Energy/Electric Infrastructure Information (CEII): As defined at 18 C.F.R. §§ 388.113(a), (c).
- D. Non-Disclosure Certificate: The certificate attached to this Protective Agreement, by which Participants granted access to Privileged Material and/or CEII must certify their understanding that such access to such material is provided pursuant to the terms and restrictions of this Protective Agreement, and that such Participants have read the Protective Agreement and agree to be bound by it. All executed Non-Disclosure Certificates must be served on all Participants on the official service list maintained by the Secretary of the Commission for this proceeding.
- E. Reviewing Representative: A person who has signed a Non-Disclosure Certificate and who is:
 - i. Commission Trial Staff designated as such in this proceeding;
 - ii. An attorney who has made an appearance in this proceeding for a Participant;

⁵ Notes of Privileged Material are subject to the same restrictions for Privileged Material except as specifically provided in this Protective Agreement.

- iii. Attorneys, paralegals, and other employees associated for purposes of this case with an attorney who has made an appearance in this proceeding on behalf of a Participant;
- iv. An expert or an employee of an expert retained by a Participant for the purpose of advising, preparing for, submitting evidence or testifying in this proceeding;
- v. A person designated as a Reviewing Representative by order of the Commission; or
- vi. Employees or other representatives of Participants appearing in this proceeding with significant responsibility for this docket.

4. Privileged Material and/or CEII shall be made available under the terms of this Protective Agreement only to Participants and only to their Reviewing Representatives as provided in Paragraphs 6-10 of this Protective Agreement. The contents of Privileged Material, CEII or any other form of information that copies or discloses such materials shall not be disclosed to anyone other than in accordance with this Protective Agreement and shall be used only in connection with this specific proceeding.

5. All Privileged Material and/or CEII must be maintained in a secure place. Access to those materials must be limited to Reviewing Representatives specifically authorized pursuant to Paragraphs 7-9 of this Protective Agreement.

6. Privileged Material and/or CEII must be handled by each Participant and by each Reviewing Representative in accordance with the Non-Disclosure Certificate executed pursuant to Paragraph 9 of this Protective Agreement. Privileged Material and/or CEII shall not be used except as necessary for the conduct of this proceeding, nor shall they (or the substance of their contents) be disclosed in any manner to any person except a Reviewing Representative who is engaged in this proceeding and who needs to know the information in order to carry out that person's responsibilities in this proceeding. Reviewing Representatives may make copies of Privileged Material and/or CEII, but such copies automatically become Privileged Material and/or CEII. Reviewing Representatives may make notes of Privileged Material, which shall be treated as Notes of Privileged Material if they reflect the contents of Privileged Material.

7. If a Reviewing Representative's scope of employment includes any of the activities listed under this Paragraph 7, such Reviewing Representative may not use information contained in any Privileged Material and/or CEII obtained in this proceeding for a commercial purpose (e.g. to give a Participant or competitor of any Participant a commercial advantage):

- A. Energy marketing;
- B. Direct supervision of any employee or employees whose duties include energy marketing; or
- C. The provision of consulting services to any person whose duties include energy marketing.

8. If a Participant wishes to designate a person not described in Paragraph 3.E above as a Reviewing Representative, the Participant must seek agreement from the Participant providing the Privileged Material and/or CEII. If an agreement is reached, the designee shall be a Reviewing Representative pursuant to Paragraph 3.D of this Protective Agreement with respect to those materials. If no agreement is reached, the matter must be submitted to the Commission for resolution.

9. A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Privileged Material and/or CEII pursuant to this Protective Agreement until three business days after that Reviewing Representative first has executed and served a Non-Disclosure Certificate.⁶ However, if an attorney qualified as a Reviewing Representative has executed a Non-Disclosure Certificate, any participating paralegal, secretarial and clerical personnel under the attorney's instruction, supervision or control need not do so. Attorneys designated Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with this Protective Agreement, and must take all reasonable precautions to ensure that Privileged Material and/or CEII are not disclosed to unauthorized persons. All executed Non-Disclosure Certificates must be served on all Participants on the official service list maintained by the Secretary of the Commission for the proceeding.

10. Any Reviewing Representative may disclose Privileged Material and/or CEII to any other Reviewing Representative as long as both Reviewing Representatives have executed a Non-Disclosure Certificate. In the event any Reviewing Representative to whom Privileged Material and/or CEII are disclosed ceases to participate in this proceeding, or becomes employed or retained for a position that renders him or her ineligible to be a Reviewing Representative under Paragraph 3.D of this Protective Agreement, access to such materials by that person shall be terminated. Even if no

⁶ During this three-day period, a Participant may file an objection with the Commission contesting that an individual qualifies as a Reviewing Representative, and the individual shall not receive access to the Privileged Material and/or CEII until resolution of the dispute.

longer engaged in this proceeding, every person who has executed a Non-Disclosure Certificate shall continue to be bound by the provisions of this Protective Agreement and the Non-Disclosure Certificate for as long as the Protective Agreement is in effect.⁷

11. All Privileged Material and/or CEII in this proceeding filed with the Commission or submitted to any Commission personnel, must comply with the Commission's *Notice of Document Labelling Guidance for Documents Submitted to or Filed with the Commission or Commission Staff*.⁸ Consistent with those requirements:

- A. Documents that contain Privileged Material must include a top center header on each page of the document with the following text: CUI//PRIV. Any corresponding electronic files must also include this text in the file name.
- B. Documents that contain CEII must include a top center header on each page of the document with the following text: CUI//CEII. Any corresponding electronic files must also include this text in the file name.
- C. Documents that contain both Privileged Material and CEII must include a top center header on each page of the document with the following text: CUI//CEII//PRIV. Any corresponding electronic files must also include this text in the file name.
- D. The specific content on each page of the document that constitutes Privileged Material and/or CEII must also be clearly identified. For example, lines or individual words or numbers that include both Privileged Material and CEII shall be prefaced and end with "BEGIN CUI//CEII//PRIV" and "END CUI//CEII//PRIV".

12. If any Participant desires to include, utilize, or refer to Privileged Material or information derived from Privileged Material in testimony or other exhibits during the hearing in this proceeding in a manner that might require disclosure of such materials to persons other than Reviewing Representatives, that Participant first must notify both counsel for the disclosing Participant and the Presiding Judge, and identify all such Privileged Material. Thereafter, use of such Privileged Material will be governed by procedures determined by the Presiding Judge.

⁷ See *infra* P 19.

⁸ 82 Fed. Reg. 18,632 (Apr. 20, 2017) (issued by Commission Apr. 14, 2017).

13. Nothing in this Protective Agreement shall be construed as precluding any Participant from objecting to the production or use of Privileged Material and/or CEII on any appropriate ground.
14. Nothing in this Protective Agreement shall preclude any Participant from requesting the Commission, or any other body having appropriate authority, to find this Protective Agreement should not apply to all or any materials previously designated Privileged Material pursuant to this Protective Agreement. The Commission, or any other body having appropriate authority may alter or amend this Protective Agreement as circumstances warrant at any time during the course of this proceeding.
15. Each Participant governed by this Protective Agreement has the right to seek changes in it as appropriate from the Commission, or any other body having appropriate authority.
16. Subject to Paragraph 18, the Commission shall resolve any disputes arising under this Protective Agreement pertaining to Privileged Material according to the following procedures. Prior to presenting any such dispute to the Commission, the Participants to the dispute shall employ good faith best efforts to resolve it.
 - A. Any Participant that contests the designation of material as Privileged Material shall notify the Participant that provided the Privileged Material by specifying in writing the material for which the designation is contested.
 - B. In any challenge to the designation of material as Privileged Material, the burden of proof shall be on the Participant seeking protection. If the Commission finds that the material at issue is not entitled to the designation, the procedures of Paragraph 18 shall apply.
 - C. The procedures described above shall not apply to material designated by a Participant as CEII. Material so designated shall remain subject to the provisions of this Protective Agreement, unless a Participant requests and obtains a determination from the Commission's CEII Coordinator that such material need not retain that designation.
17. The designator will have five (5) days in which to respond to any pleading requesting disclosure of Privileged Material. Should the Commission, as appropriate, determine that the information should be made public, the Commission will provide notice to the designator no less than five (5) days prior to the date on which the material will become public. This Protective Agreement shall automatically cease to apply to such material on the sixth (6th) calendar day after the notification is made unless the designator files a motion with the Commission, as appropriate, with supporting affidavits,

demonstrating why the material should continue to be privileged. Should such a motion be filed, the material will remain confidential until such time as addressed by the Commission, as provided in the Commission's regulations, 18 C.F.R. §§ 385.714, .715. No Participant waives its rights to seek additional administrative or judicial remedies after the Commission's denial of any appeal thereof or determination in response to any certified question. The provisions of 18 C.F.R. §§ 388.112 and 388.113 shall apply to any requests under the Freedom of Information Act (5 U.S.C. § 552) for Privileged Material and/or CEII in the files of the Commission.

18. Privileged Material and/or CEII shall remain available to Participants until the later of 1) the date an order terminating this proceeding no longer is subject to judicial review, or 2) the date any other Commission proceeding relating to the Privileged Material and/or CEII is concluded and no longer subject to judicial review. After this time, the Participant that produced the Privileged Material and/or CEII may request (in writing) that all other Participants return or destroy the Privileged Material and/or CEII. This request must be satisfied with within fifteen (15) days of the date the request is made. However, copies of filings, official transcripts and exhibits in this proceeding containing Privileged Material, or Notes of Privileged Material, may be retained if they are maintained in accordance with Paragraph 5 of this Protective Agreement. If requested, each Participant also must submit to the Participant making the request an affidavit stating that to the best of its knowledge it has satisfied the request to return or destroy the Privileged Material and/or CEII. To the extent Privileged Material and/or CEII are not returned or destroyed, they shall remain subject to this Protective Agreement.

19. Regardless of any order terminating this proceeding, this Protective Agreement shall remain in effect until specifically modified or terminated by the Commission. All CEII designations shall be subject to the "[d]uration of the CEII designation" provisions of 18 C.F.R. § 388.113(e).

20. Any violation of this Protective Agreement and of any Non-Disclosure Certificate executed hereunder shall constitute a violation of an order of the Commission.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System Operator)
Corp., Pacific Gas and Electric Company,) Docket No. EL21-____-00
Southern California Edison Company)

NON-DISCLOSURE CERTIFICATE

I hereby certify my understanding that access to Privileged Material and/or Critical Energy/Electric Infrastructure Information (CEII) is provided to me pursuant to the terms and restrictions of the Protective Agreement in this proceeding, that I have been given a copy of and have read the Protective Agreement, and that I agree to be bound by it. I understand that the contents of Privileged Material and/or CEII, any notes or other memoranda, or any other form of information that copies or discloses such materials, shall not be disclosed to anyone other than in accordance with the Protective Agreement. I acknowledge that a violation of this certificate constitutes a violation of an order of the Federal Energy Regulatory Commission.

By: _____

Printed Name: _____

Title: _____

Representing: _____

Date: _____