

164 FERC ¶ 61,019  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Neil Chatterjee,  
Robert F. Powelson, and Richard Glick.

San Diego Gas & Electric Company

Docket Nos. EL00-95-291  
EL00-98-263

v.

Sellers of Energy and Ancillary Services Into Markets  
Operated by the California Independent System Operator  
Corporation and the California Power Exchange

EL00-95-286  
EL00-98-261  
EL00-95-000  
EL00-98-000

ORDER ACCEPTING COMPLIANCE FILINGS  
SUBJECT TO FURTHER ORDERS AND GRANTING JOINT MOTION

(Issued July 10, 2018)

1. In this order, we accept for filing, subject to further orders, the California Independent System Operator Corporation's (CAISO) and California Power Exchange Corporation's (CalPX) Refund Rerun Compliance Filings calculating refunds for transactions that took place in the California organized markets during the Refund Period (October 2, 2000 – June 20, 2001) and defer action on certain issues in dispute until a later stage of this proceeding. The California Parties,<sup>1</sup> CAISO, and CalPX will have 90 days from the date of issuance of this order to submit their settlement overlay proposal or inform the Commission in the event they require more time to complete it, and to also inform the Commission of the status of the remaining issues in dispute. This order also grants a Joint Motion filed by CAISO, CalPX, and the California Parties that requested that the Commission accept the compliance filings and defer action on disputed issues.

---

<sup>1</sup> The California Parties are the People of the State of California, *ex rel.* Xavier Becerra, Attorney General; the Public Utilities Commission of the State of California; Pacific Gas and Electric Company (PG&E); and Southern California Edison Company (SoCal Edison).

## **I. Background**

2. This proceeding began in August 2000 when SDG&E filed a complaint under section 206 of the Federal Power Act,<sup>2</sup> seeking “an emergency order capping at \$250 per MWh the prices at which sellers subject to [the Commission’s] jurisdiction may bid energy or ancillary services” into the CAISO and CalPX markets.<sup>3</sup> In an August 2000 order, the Commission instituted a hearing proceeding (Refund Proceeding) “to investigate the justness and reasonableness of the rates and charges of public utilities that sell energy and ancillary services to or through” the CAISO and CalPX markets,<sup>4</sup> and set October 2, 2000, as the refund effective date.

3. In November 2000, the Commission found that market structure and rules for wholesale sales of electric energy in California were seriously flawed and caused unjust and unreasonable rates.<sup>5</sup> In a subsequent order, the Commission established a process for calculating refunds related to transactions in the spot markets operated by CAISO and CalPX during the Refund Period.<sup>6</sup> Under this approach, all sales of 24 hours or less were mitigated.<sup>7</sup> To mitigate these transactions, the Commission used the Mitigated Market Clearing Price (MMCP). The MMCP serves as a proxy price based on the marginal cost of the most expensive unit dispatched to serve load in CAISO’s real-time imbalance energy market.<sup>8</sup>

---

<sup>2</sup> 16 U.S.C. § 824e (2012).

<sup>3</sup> SDG&E Complaint, Docket No. EL00-95-000, at 1 (Aug. 2, 2000).

<sup>4</sup> *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 92 FERC ¶ 61,172, at 61,603 (2000).

<sup>5</sup> *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 93 FERC ¶ 61,121 (2000).

<sup>6</sup> *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 96 FERC ¶ 61,120 (2001) (July 25 Order).

<sup>7</sup> *Id.* at 61,517.

<sup>8</sup> *See San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 97 FERC ¶ 61,275 (2001).

4. To calculate the MMCPs for each hour of the Refund Period and the refunds owed, the Commission established an evidentiary hearing.<sup>9</sup> The Commission directed the presiding judge to certify findings of fact on: (1) the mitigated price in each hour of the Refund Period; (2) the amount of refunds each supplier owed according to the Commission's MMCP method; and (3) the amount currently owed to each supplier.<sup>10</sup> The Commission also directed CAISO to provide the presiding judge with a re-creation of mitigated prices resulting from the MMCP methodology for every hour during the Refund Period and directed CAISO and CalPX to rerun their settlement billing processes and provide the presiding judge and the parties with these data.<sup>11</sup> In addition, the Commission required that interest be calculated on both refunds and receivables past due, pursuant to the Commission's methodology for the calculation of interest set forth in 18 C.F.R § 35.19a.<sup>12</sup> On December 12, 2002, the presiding judge issued proposed findings,<sup>13</sup> which the Commission largely accepted in an order issued on March 26, 2003.<sup>14</sup>

5. Subsequently, the Commission has issued numerous orders in this proceeding addressing a variety of issues relating to the refund rerun process. One of the issues is the allocation of interest shortfalls resulting from the difference between the Commission's interest rate and a lower interest rate earned on the funds in the CalPX Settlement Clearing Account.<sup>15</sup>

---

<sup>9</sup> July 25 Order, 96 FERC at 61,499.

<sup>10</sup> *Id.* at 61,520.

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

<sup>12</sup> *Id.* at 61,519.

<sup>13</sup> *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Servs.*, 101 FERC ¶ 63,026 (2002).

<sup>14</sup> *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Servs.*, 102 FERC ¶ 61,317 (2003).

<sup>15</sup> *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 105 FERC ¶ 61,066, at P 158 (2003) (October 16 Order); *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 109 FERC ¶ 61,218, at P 39 (2004); *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 110 FERC ¶ 61,336, at PP 41, 56, *reh'g denied*, 112 FERC ¶ 61,226 (2005).

6. Subsequent Commission orders also addressed calculation and allocation of various offsets to sellers' refund liabilities, such as NOx emission costs,<sup>16</sup> fuel cost allowances,<sup>17</sup> and other cost offsets,<sup>18</sup> as well as an offset to account for a shortfall in refunds resulting from the United States Court of Appeals for the Ninth Circuit (Ninth Circuit) decision holding that the Commission could not order non-jurisdictional suppliers to pay refunds.<sup>19</sup> The Commission implemented the *Bonneville Opinion* by requiring CAISO and CalPX to reduce refund amounts that buyers will receive by the total amount of refunds that otherwise would have been paid by non-public utility entities for their sales into the CAISO and CalPX spot markets during the Refund Period. The Commission ordered that a shortfall in refunds (Bonneville Shortfall) must be allocated through a *pro rata* reduction based on refund recipients' overall share of CAISO load

---

<sup>16</sup> Emissions offsets permitted suppliers to recover their emissions costs, such as NOx costs. In 2001, the Commission ruled that generators' emissions costs should be excluded from the calculation of the MMCP and that, instead, generators should recover those costs through a reduction in MMCP refunds. *San Diego Gas & Elec. Co v. Sellers of Energy and Ancillary Servs.*, 95 FERC ¶ 61,418, at 62,562 (2001); October 16 Order, 105 FERC ¶ 61,066 at P 158 (approving CAISO's allocation methodology of approved emission claims); *see also San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 112 FERC ¶ 61,323 (2005), *order on reh'g*, 114 FERC ¶ 61,313 (2006).

<sup>17</sup> Fuel cost allowances are adjustments to suppliers' revenues intended to permit suppliers to recover the difference between their actual fuel costs and the fuel-cost component in the MMCP. *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 109 FERC ¶ 61,297 (2004), *order on reh'g*, 110 FERC ¶ 61,293 (2005); *see also San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 116 FERC ¶ 61,167 (2006), *order on reh'g*, 122 FERC ¶ 61,274 (2008).

<sup>18</sup> Cost offset claims were allowed "to ensure that no seller's mitigated revenue falls below the cost the seller incurred to serve the relevant California markets." *San Diego Gas & Elec. v. Sellers of Energy and Ancillary Servs.*, 112 FERC ¶ 61,176, at P 2 (2005); *see also San Diego Gas & Elec. v. Sellers of Energy and Ancillary Servs.*, 114 FERC ¶ 61,070 (2006); *San Diego Gas & Electric Co. v. Seller of Energy and Ancillary Servs.*, 115 FERC ¶ 61,171, at P 25 (2006).

<sup>19</sup> *Bonneville Power Admin. v. FERC*, 422 F.3d 908 (9th Cir. 2005) (*Bonneville Opinion*).

during the Refund Period and that the Bonneville Shortfall be allocated among both jurisdictional and non-jurisdictional refund recipients.<sup>20</sup>

7. Additionally, on remand from the Ninth Circuit,<sup>21</sup> the Commission issued a series of orders addressing tariff violations committed outside the Refund Period, during the Summer Period (May 1 - October 1, 2000) and established a seller-specific remedy.<sup>22</sup> The Ninth Circuit affirmed the Commission's findings of certain sellers' tariff violations affecting the market clearing prices.<sup>23</sup> On May 3, 2018, the Commission issued an order addressing compliance filings by two remaining respondents in that proceeding, APX, Inc. (APX)<sup>24</sup> and Hafslund Energy Trading L.L.C. (Hafslund).<sup>25</sup>

8. In October 2016, the Ninth Circuit granted the Commission's request for partial voluntary remand to reconsider the cost offset claims submitted by Shell Energy North America (US), L.P. (f/k/a Coral Power, L.L.C.) (Shell) and Hafslund.<sup>26</sup> On remand, the

---

<sup>20</sup> See *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Servs.*, 121 FERC ¶ 61,067, at P 39 (2007), *order on reh'g*, 125 FERC ¶ 61,214 (2008), *aff'd in Cal. Pub. Util. Comm'n v. FERC*, 854 F.3d 1136 (9th Cir. 2017).

<sup>21</sup> *Pub. Util. Comm'n of the State of Cal. v. FERC*, 462 F.3d 1027, 1061 (9th Cir. 2006).

<sup>22</sup> *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, Opinion No. 536, 149 FERC ¶ 61,116 (2014), *order on reh'g*, Opinion No. 536-A, 153 FERC ¶ 61,144 (2015), *order on reh'g*, Opinion No. 536-B, 154 FERC ¶ 61,063 (2016), *order on reh'g*, 158 FERC ¶ 61,076 (2017), *aff'd in part sub nom. MPS Merchant Servs., Inc. v. FERC*, 836 F.3d 1155 (9th Cir. 2016) (MPS Decision); see also *Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 163 FERC ¶ 61,080 (2018) (Summer Period Compliance Order), *reh'g pending*.

<sup>23</sup> See MPS Decision, 836 F.3d 1155.

<sup>24</sup> During the Summer Period, APX served as a scheduling coordinator submitting bids and schedules on behalf of its participants.

<sup>25</sup> Summer Period Compliance Order, 163 FERC ¶ 61,080. On June 4, 2018, in Docket No. EL00-95-310, Salt River Project Agricultural Improvement and Power District and Sacramento Municipal Utility District filed a request for clarification or, in the alternative, rehearing. That request will be addressed in a future order.

<sup>26</sup> *Pub. Util. Comm'n of the State of Cal. v. FERC*, No. 01-71934 *et al.* (9th Cir. Oct. 11, 2016).

Commission established a trial-type, evidentiary hearing to reexamine this issue.<sup>27</sup> The case is currently pending before the Administrative Law Judge (ALJ) in Docket No. EL00-95-307.

9. Shell has settled with the California Parties and has been dismissed as a respondent from this and related proceedings.<sup>28</sup> In addition, the California Parties have entered into a settlement with Bonneville Power Administration and Western Area Power Administration (Bonneville/Western).<sup>29</sup> Overall, the California Parties have settled with over 60 suppliers in the course of this proceeding.<sup>30</sup>

10. In April 2017, the Ninth Circuit issued an opinion<sup>31</sup> overturning the Commission's directive pertaining to the allocation of a \$5 million deficit in the CalPX Settlement Clearing Account that resulted from a transfer of funds from the Settlement Clearing Account to the operating account in March 2001. The Ninth Circuit ruled that the Commission erred in allocating the deficit "only to net buyers and not to all market participants."<sup>32</sup>

## **II. Refund Rerun Compliance Filings, Responsive Pleadings, and Motions for Clarification**

11. Notice of CAISO's Refund Rerun Compliance Filing was published in the *Federal Register*, 81 Fed. Reg. 33,518 (2016), with interventions and protests due on or before September 23, 2016, as subsequently extended.<sup>33</sup> Notice of CalPX's Refund Rerun

---

<sup>27</sup> *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 158 FERC ¶ 61,055 (2017).

<sup>28</sup> *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 163 FERC ¶ 61,083 (2018) (Shell Settlement Order).

<sup>29</sup> *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 163 FERC ¶ 61,087 (2018) (BPA Settlement Order).

<sup>30</sup> For an up-to-date list of the California Parties' settlements pertaining to the instant and related proceedings, see Joint Offer of Settlement, Docket No. EL00-95-309, Ex. C (Feb. 8, 2018).

<sup>31</sup> *Cal. Pub. Util. Comm'n v. FERC*, 854 F.3d 1136.

<sup>32</sup> *Id.* at 1148.

<sup>33</sup> Notice of Extension of Time, Docket No. EL00-95-291 (May 25, 2016).

Compliance Filing was published in the *Federal Register*, 81 Fed. Reg. 33,525 (2016), with interventions and protests due on or before September 23, 2016, as subsequently extended.<sup>34</sup>

12. The CAISO and CalPX Refund Rerun Compliance Filings address the calculation of refunds based on the MMCPs established in this proceeding, various offsets to those refunds, and certain related issues. Responding to Commission orders, CAISO and CalPX applied the MMCP to calculate refunds for transactions that took place during the Refund Period. CAISO and CalPX then calculated certain offsets to refunds directed by the Commission to arrive at net financial positions that reflect Commission-mandated adjustments for each entity that participated in the California energy markets during the Refund Period. The Refund Rerun Compliance Filings also include calculations of interest on both refunds and past due receivables.

13. On September 23, 2016, the California Parties filed comments identifying 16 issues with the CAISO and CalPX Refund Rerun Compliance Filings.<sup>35</sup> Midway Sunset Cogeneration Company (Midway Sunset), Shell,<sup>36</sup> and APX also submitted comments. Midway Sunset seeks clarification that the relevant numbers on which final cash clearing would be based would incorporate the settlements, including its 2008 settlement with the California Parties.<sup>37</sup> APX states that, although it does not currently have any concerns with the Refund Rerun Compliance Filings, it continues to review CAISO's and CalPX's calculations and reserves the right to comment further should it identify any issues or concerns.<sup>38</sup>

14. CAISO filed reply comments on October 24, 2016, addressing many of the issues that the California Parties raised. CAISO also filed supplemental reply comments on November 30, 2016, to address three issues on which CAISO and the California Parties reached agreement. On November 4, 2016, CalPX filed an answer responding to the California Parties' initial comments. The California Parties submitted supplemental comments on December 19, 2016, which CAISO answered on January 9, 2017. Both sets

---

<sup>34</sup> *Id.*

<sup>35</sup> These 16 issues are discussed in more detail in section IV of this order.

<sup>36</sup> Because Shell and the California Parties have since settled, Shell's comments will not be addressed in this order.

<sup>37</sup> Midway Sunset Comments at 1.

<sup>38</sup> APX Comments at 1-3.

of comments noted that some of the issues arising in the Refund Rerun Compliance Filings had been resolved among the parties.

15. Additionally, on December 17, 2007, the California Parties filed a motion for clarification requesting that the Commission clarify several issues related to the calculation and allocation of fuel cost adjustments, emissions costs, and cost recovery offsets.<sup>39</sup> On January 2, 2008, Edison Mission Marketing & Trading, Inc. and Los Angeles Department of Water and Power (LADWP) filed comments in response. On July 24, 2015, the California Parties filed an additional motion for clarification<sup>40</sup> concerning the refund shortfall which resulted from the Ninth Circuit's *Bonneville Opinion*.<sup>41</sup> On August 10, 2015, CAISO and CalPX submitted reply comments to the California Parties' motion and the California Parties filed an answer to their reply comments on August 19, 2015. CAISO also filed an answer to the California Parties' motion on September 1, 2015.

### **III. Joint Motion**

16. On May 16, 2018, the California Parties, CAISO, and CalPX submitted the Joint Motion requesting Commission action on the Refund Rerun Compliance Filings, approving 11 undisputed issues and reserving judgment on the five remaining issues until the completion of the settlement overlay proposal. The movants explain that the Refund Rerun Compliance Filings are an indispensable, but not final, step in determining who owes what to whom and directing a final distribution of cash among Refund Period market participants. According to the Joint Motion, the California Parties have entered into more than 60 settlements with suppliers. Those settlements resolved amounts owed and owing among multiple parties at compromise levels that differ from the refunds calculated under the Refund Rerun Compliance Filing process, and hundreds of millions of dollars in payments flowed from CAISO and accounts to settling participants to implement those compromises. The movants further explain that because each settlement's principal and interest amounts were different from the calculated amounts in many respects, there is a need for an accounting—which they call the settlement overlay—to reconcile the CAISO and CalPX calculations, as reflected in their Refund Rerun Compliance Filings, with the settlements.<sup>42</sup>

---

<sup>39</sup> California Parties Motion, Docket No. EL00-95-000 (Dec. 17, 2007).

<sup>40</sup> California Parties Motion, Docket No. EL00-95-286 (July 24, 2015).

<sup>41</sup> 422 F.3d 908.

<sup>42</sup> Joint Motion at 8.



17. The movants state that the settlement overlay is ongoing and involves resolving complex issues with various entities. The movants argue that the settlement overlay cannot be completed without Commission action on the Refund Rerun Compliance Filings.<sup>43</sup> Accordingly, the Joint Motion requests that the Commission first approve the MMCPs and MMCP refund calculations, and approve the interest calculation methodology, while recognizing that the numbers themselves will change through the accruals and reconciliation of interest, and that all refund calculations are subject to adjustment through the settlement overlay.<sup>44</sup> According to the Joint Motion, the movants will continue their work on the settlement overlay, using numbers approved by the Commission, and will seek Commission guidance as necessary. Upon completion of the settlement overlay, the California Parties will file it with the Commission for approval. CAISO and CalPX will also file with the Commission any further adjustments required by the Commission, including calculations to bring interest current to a cash clearing date, subject to the Commission's approval.<sup>45</sup> Further, the Joint Motion identifies the issues that have been resolved amongst the parties and those that are still pending but may be resolved either as part of the settlement overlay process or at a later date. These are discussed below.

#### **IV. Summary of Issues and Their Status**

18. As noted above, the California Parties initially identified 16 issues they had with the Refund Rerun Compliance Filings. Each of these issues is addressed in this section of the order. In particular, this discussion notes whether the California Parties have achieved consensus with CAISO and CalPX on these issues, and which issues remain in dispute.

19. For Issues One and Two, the California Parties request that the Commission approve the results of CAISO and CalPX's MMCP calculations, as well as the results of MMCP mitigation calculations. In their respective reply comments, CAISO and CalPX

---

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 14.

<sup>45</sup> *Id.* at 15.

state that they concur with the California Parties.<sup>46</sup> In the Joint Motion, the parties reiterate their consensus on these two issues.<sup>47</sup>

20. Under Issue Three, the California Parties express concern with CAISO's proposed distribution of funds associated with generator fines paid out under the settlements with Avista<sup>48</sup> and Sempra,<sup>49</sup> arguing that this should not reduce or eliminate amounts owed between CAISO and generators for those fines or the accrual of interest owed on such amounts.<sup>50</sup> In its reply comments, CalPX states that the California Parties have agreed that CalPX has properly accounted for the CAISO generator fines paid out under the Avista and Sempra global settlements.<sup>51</sup> In its supplemental comments, CAISO provides clarification of Issue Three and informs the Commission that the California Parties are satisfied with the explanation provided.<sup>52</sup> The Joint Motion also states that CAISO has addressed Issue Three to the California Parties' satisfaction, thereby resolving this issue.<sup>53</sup>

21. Issue Four concerns the fuel cost allowances and emissions offset claims submitted by three municipal sellers with which the California Parties have settled: LADWP, the City of Pasadena, California, and the City of Anaheim, California.<sup>54</sup> The

---

<sup>46</sup> See California Parties Comments at 6-7; CAISO Reply Comments at 3; CalPX Reply Comments at 4.

<sup>47</sup> Joint Motion at 10.

<sup>48</sup> Avista Corporation d/b/a Avista Utilities and Avista Energy, Inc. See *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 147 FERC ¶ 61,153 (2014).

<sup>49</sup> Sempra Energy, Sempra Energy Trading LLC, and Sempra Energy Solutions LLC. See *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 133 FERC ¶ 61,249 (2010).

<sup>50</sup> See California Parties Comments at 8-9.

<sup>51</sup> CalPX Reply Comments at 4-5.

<sup>52</sup> CAISO Supplemental Comments at 3-4; see also California Parties Supplemental Comments at 5.

<sup>53</sup> Joint Motion at 10.

<sup>54</sup> *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 112 FERC ¶ 61,323, at P 33 (2005), *reh'g denied*, 114 FERC ¶ 61,313 (2006) (approving Pasadena and LADWP emissions offsets); *San Diego Gas & Elec. Co.*, 122 FERC ¶ 61,274, at PP

California Parties argue that the Refund Rerun Compliance Filings fail to implement settlement provisions governing the accounting for those offsets.<sup>55</sup> CAISO replies that it takes no position on this issue, but states that it is not apparent from the language in the settlements that the refunds and fuel cost allowances and emissions offsets of these settled non-jurisdictional entities should be processed as if they are not immune under the *Bonneville Opinion*.<sup>56</sup> CAISO concludes that ultimately it is the Commission that must interpret the language in the settlements and the intent of the parties.<sup>57</sup> In its reply comments, CalPX states that it has reviewed the matter with the California Parties, who agree that CalPX has properly applied the fuel cost allowances and emissions offsets for these municipal entities.<sup>58</sup> In their supplemental comments, the California Parties confirm that CalPX calculated refunds owed both to and from these governmental sellers as if the sellers were jurisdictional, consistent with the settlements.<sup>59</sup> The Joint Motion informs the Commission that Issue Four remains unresolved with respect to CAISO and the California Parties; however, the movants argue that this issue does not need to be resolved as part of the Commission's ruling on the Refund Rerun Compliance Filings.<sup>60</sup>

22. For Issue Five, the California Parties challenge the accuracy and compliance of the cost offset submitted by Shell.<sup>61</sup> The Joint Motion states that approval of the Shell

---

36-37 (2008) (addressing LADWP fuel cost allowances); *San Diego Gas & Elec. Co.*, 116 FERC ¶ 61,167 (2006) (addressing LADWP fuel cost allowance and rejecting disputes concerning Anaheim fuel cost allowance); *San Diego Gas & Elec. Co.*, 108 FERC ¶ 61,311, at P 42 (2004) (rejecting disputes concerning LADWP fuel cost allowance).

<sup>55</sup> California Parties Comments at 9-10.

<sup>56</sup> CAISO Reply Comments at 5 (citing *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Servs.*, 125 FERC ¶ 61,214, at P 22 (2008); *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Servs.*, 138 FERC ¶ 61,091, at P 27 (2012)).

<sup>57</sup> *Id.* at 6-7; *see also* CAISO Reply Comments to California Parties Supplemental Comments at 2-3.

<sup>58</sup> CalPX Reply Comments at 6-7.

<sup>59</sup> California Parties Supplemental Comments at 6-7.

<sup>60</sup> Joint Motion at 10.

<sup>61</sup> California Parties Comment at 13-17.

Settlement moots all objections to the Shell cost offset claim. According to the Joint Motion, parties that decline to participate in the Shell Settlement will have their refunds reduced by the full amount of the Shell cost offset filing; participants in the settlement will bear the agreed-upon cost offset.<sup>62</sup> The Joint Motion concludes that the Commission does not need to address this issue.<sup>63</sup>

23. Issues Six, Seven, and Nine involve the California Parties' challenges to proposed calculations, sequencing, and allocation of the Bonneville Shortfall and related offsets.<sup>64</sup> Issue Eight concerns the proposed allocation methodology of fuel cost allowances.<sup>65</sup> The Joint Motion states that the California Parties will withdraw their objections to these Issues because of their settlements with Shell and Bonneville/Western.<sup>66</sup>

24. Under Issue Ten, the California Parties argue that it is premature for the Commission to adopt any set of interest calculations. The California Parties state that the calculations provided by CAISO and CalPX are not final numbers because interest continually accrues, so the numbers will never be final numbers until a date is specified on which funds will flow. In addition, the California Parties state, the settlement overlay will reflect dollar flows under the settlements and will restate many of the principal amounts owed between and among parties and CAISO and CalPX.<sup>67</sup> In its reply comments, CalPX states that it will perform the final interest calculations at the end of the refund process in the final cash clearing.<sup>68</sup> In its supplemental reply comments, CAISO states that after further discussions, CAISO and the California Parties agree that the specific interest numbers reflected in CAISO's compliance filing will not be the final interest numbers and will change as interest will continue to accumulate on many of the items reflected in the CAISO's compliance filing.<sup>69</sup> In their supplemental comments, the

---

<sup>62</sup> Joint Motion at 11; *see id.* at 4-5 (citing Shell Settlement Order, 163 FERC ¶ 61,083; Shell Settlement § 5.2.3).

<sup>63</sup> *Id.* at 11.

<sup>64</sup> California Parties Comments at 17-22, 23-26.

<sup>65</sup> *Id.* at 22-23.

<sup>66</sup> Joint Motion at 11-12.

<sup>67</sup> California Parties Comments at 26-27.

<sup>68</sup> CalPX Reply Comments at 13.

<sup>69</sup> CAISO Supplemental Reply Comments at 6.

California Parties state that CAISO agrees that the consideration or approval of specific interest calculations is premature.<sup>70</sup> In reply, CAISO states that CAISO and the California Parties also agreed that the methodology for calculating interest that is described in sections VI.A through VI.F of CAISO's compliance filing is consistent with Commission orders in this proceeding and thus there is no dispute as to CAISO's underlying methodology.<sup>71</sup> The Joint Motion reiterates that there is no dispute on this issue because the parties support CAISO's interest calculation methodology and agree that final calculations and reconciliation of interest will be updated in the settlement overlay.<sup>72</sup>

25. In regard to Issue Eleven, the California Parties state that contrary to the Commission's directive to allocate interest shortfalls based on all parties' final net interest positions, CAISO plans to calculate and allocate the interest shortfalls separately for its own markets, based on the net interest position of each participant in its markets, rather than combining participant balances between the CAISO and CalPX markets.<sup>73</sup> In its reply comments, CAISO states that its compliance filing does not include a calculation of the interest shortfall nor does it request approval for any related methodology. Instead, CAISO continues to state, the compliance filing explains how the interest shortfall is to be allocated pursuant to the Commission's directives in prior orders, including the directives that interest be calculated separately for the CalPX and CAISO markets, and that the allocation of the interest shortfall should be based on the net interest of each participant within each market as opposed to the participant's net interest between the two markets. CAISO further argues that because, in Opinion No. 536-A, the Commission denied the California Parties' request to clarify this very issue, the California Parties' raising this issue again here is improper.<sup>74</sup> In its reply comments, CalPX states that it has not taken a position on combining the CalPX and CAISO markets for purposes of calculating interest shortfalls, but submits that the issue is outside of the

---

<sup>70</sup> California Parties Supplemental Comments at 14.

<sup>71</sup> CAISO Reply to California Parties Supplemental Comments at 7.

<sup>72</sup> Joint Motion at 12.

<sup>73</sup> California Parties Comments at 27-28 (citing *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 110 FERC ¶ 61,336, at PP 37, 41, 56, *reh'g denied*, 112 FERC ¶ 61,226 (2005), *appeal pending sub nom. Pac. Gas & Elec. Co. v. FERC*, No. 05-71831, *et al.* (9th Cir.)); *see also id.* at 30.

<sup>74</sup> CAISO Reply Comments at 20 (citing Opinion 536-A, 153 FERC ¶ 61,144 at P 145).

scope of the Commission's consideration of CalPX's Refund Rerun Compliance Filing.<sup>75</sup> In their supplemental comments, the California Parties state that CAISO's reliance on the holding in Opinion No. 536-A is misplaced because in that order the Commission held that it was unclear why the interest shortfall methodology should apply to the Summer Period, but said nothing about the issue of how CAISO and CalPX balances should be combined or treated for the Refund Period shortfall calculation.<sup>76</sup> In its further reply comments, CAISO states that it disagrees with the California Parties' interpretation of Opinion No. 536-A, arguing that the only sensible reading of that order is that the Commission's denial involved all of the California Parties' requests for clarification regarding interest shortfall calculations, including its request that the shortfall be calculated on the basis of combined CAISO and CalPX balances.<sup>77</sup>

26. The Joint Motion notes that Issue Eleven remains in dispute, but the parties agree that because this issue pertains to the calculation of interest shortfalls, it does not need to be resolved as part of the Commission's ruling on the Refund Rerun Compliance Filings. Accordingly, CAISO, CalPX, and the California Parties ask that the Commission reserve this issue to be addressed at a later time if needed.<sup>78</sup>

27. Under Issue Twelve, the California Parties argue that the Commission should include the amounts ordered to be disgorged for tariff violations committed during the Summer Period in the calculation of Refund Period interest shortfalls.<sup>79</sup> In their reply comments, CAISO and CalPX argue that the interest shortfalls are solely a product of the Refund Period rerun process, and there should be no shortfall relating to the Summer Period disgorgement amounts.<sup>80</sup> In the Joint Motion, CAISO, CalPX, and the California

---

<sup>75</sup> CalPX Reply Comments at 13-14.

<sup>76</sup> California Parties Supplemental Comments at 15 (citing Opinion 536-A, 153 FERC ¶ 61,144 at P 145).

<sup>77</sup> CAISO Reply Comments to California Parties Supplemental Comments at 8-9 (citing Opinion No. 536-A, 153 FERC ¶ 61,144 at PP 133, 145).

<sup>78</sup> Joint Motion at 12.

<sup>79</sup> California Parties Comments at 30.

<sup>80</sup> CAISO Reply Comments at 20-21; CalPX Reply Comment at 14-15.

Parties state that Issue Twelve remains in dispute but does not need to be resolved as part of the Commission's ruling on the Refund Rerun Compliance Filings.<sup>81</sup>

28. Issue Thirteen concerns treatment of miscellaneous categories of interest identified in the Refund Rerun Compliance Filings but not directly related to the Refund Period transactions. The California Parties argue that the best way to deal with those extra interest amounts owed by CAISO and other surplus funds held by CAISO and CalPX is to treat them as just another unfunded interest amount that is rolled into the interest shortfall to be calculated for the combined CAISO and CalPX markets.<sup>82</sup> In its reply comments, CAISO disagrees with the California Parties' proposed treatment of these funds, arguing that they should not go to a particular subset of market creditors—i.e., those that would otherwise be allocated an interest shortfall. Instead, CAISO recommends that these funds should be applied toward all market creditor balances.<sup>83</sup> CalPX replies that it does not take a position on how this interest surplus should be applied. In CalPX's opinion, the disposition of such surplus interest need not be resolved at this time in the context of CalPX's Refund Rerun Compliance Filing.<sup>84</sup> In their supplemental comments, the California Parties argue that the Commission has called for combined market clearing and the Commission should direct CAISO to include all such accounts in the combined clearing.<sup>85</sup> In reply, CAISO echoes CalPX's comments that the disposition of these funds does not need to be resolved now because the issue is distinct from the core issues in the Refund Rerun Compliance Filings.<sup>86</sup> The Joint Motion asks that the Commission reserve this issue for resolution at a later time, if necessary.<sup>87</sup>

29. For Issue Fourteen, the California Parties challenge CalPX's treatment of the Enron Interpleader funds that Enron paid to resolve claims against it pending in its

---

<sup>81</sup> Joint Motion at 12-13.

<sup>82</sup> California Parties Comments at 32-33.

<sup>83</sup> CAISO Reply Comments at 22-23.

<sup>84</sup> CalPX Reply Comments at 15-16.

<sup>85</sup> California Parties Supplemental Comments at 16 (citing *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 136 FERC ¶ 61,036, at P 27 (2011) (July 2011 Order); *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 138 FERC ¶ 61,092, at P 23 (2012)).

<sup>86</sup> CAISO Reply Comment to California Parties Supplemental Comments at 10.

<sup>87</sup> Joint Motion at 13.

bankruptcy.<sup>88</sup> The California Parties contend that CalPX reduced receivables for participants in the Enron interpleader settlement by each participant's share of the \$17.5 million allowed claim but did not apply an offsetting credit to reflect the fact that the \$17.5 million in credits arose from an Enron payment. The California Parties request that the Commission direct CalPX to reflect the Enron Interpleader payments by crediting those payments to Enron's CalPX account.<sup>89</sup> In its reply comments, CalPX states that it intends to make the accounting adjustment reflecting the credit to Enron during the global settlement overlay since some global settlements specify the treatment of the credit with respect to a settling supplier. According to CalPX, the California Parties have agreed to this treatment of the Enron Interpleader payment in the overlay phase.<sup>90</sup> In their supplemental comments, the California Parties state that this issue is resolved because CalPX has confirmed that it will credit the Enron Interpleader to reflect the discharge of Enron's liability as part of the settlement overlay.<sup>91</sup> The Joint Motion reiterates that this issue has been resolved because CalPX proposed to implement the mutually agreeable approach to the Enron Interpleader funds as part of the settlement overlay.<sup>92</sup>

30. Issue Fifteen addresses allocation of proceeds of energy sales from block forward contracts. The California Parties state that in February 2001, CalPX took over PG&E and SoCal Edison's CalPX block forward market positions and managed them for about a week, to satisfy amounts they owed in the markets. According to the California Parties, pursuant to a Commission directive, CalPX was to develop a mechanism to credit the funds it received from sales of energy pursuant to the block forward contracts back to PG&E and SoCal Edison.<sup>93</sup> The California Parties point out that the amounts credited to PG&E's and SoCal Edison's accounts currently total \$4.9 million. The California Parties state that they do not challenge this total number; however, they ask that the amounts be

---

<sup>88</sup> See CAISO Comments at 33 (citing Joint Offer of Settlement, Attachment B at 26, § 7.7.1, Docket Nos. EL00-95-000 (Aug. 24, 2005), approved in *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 113 FERC ¶ 61,171 (2005); July 2011 Order, 136 FERC ¶ 61,036 at PP 48-51).

<sup>89</sup> California Parties Comments at 33-34 (citing CalPX Compliance Filing at 19-20 and Ex. CPX-E).

<sup>90</sup> CalPX Reply Comments at 16.

<sup>91</sup> California Parties Supplemental Comments at 16.

<sup>92</sup> Joint Motion at 13.

<sup>93</sup> California Parties Comments at 35 (citing July 2011 Order, 136 FERC ¶ 61,036 at P 60).



reallocated between PG&E and SoCal Edison pursuant to the allocation agreed upon between them. The California Parties argue that because the total amount of funds paid would not change, this reallocation would not impact CalPX and other market participants.<sup>94</sup> In its reply comments, CalPX states that it does not object to the alternative methodology proposed by the only two beneficiaries, since no other participant will be impacted.<sup>95</sup> The Joint Motion notes that this issue has been resolved and asks the Commission to accept the proposed allocation.<sup>96</sup>

31. Under Issue Sixteen, the California Parties suggest that the disgorgement amounts ordered in the Summer Period proceeding should be incorporated into the remaining steps of the refund process and market clearing. The California Parties contend that to ensure the security of the funds, in the event of creditworthiness issues, the Commission should confirm that the amounts held by CalPX are held in trust for the parties owed funds, in total, as a result of the Docket No. EL00-95 proceeding, and that unless a respondent is, in total, owed an amount in the Docket No. EL00-95 proceeding, it has no legal or equitable right, title, or interest in or to any of the funds that CalPX holds. The California Parties add that when a respondent does have a positive total balance, its interest in the funds CalPX holds is limited to only the amount it is owed.<sup>97</sup> The California Parties argue that clearing the Summer Period disgorgement amounts through CalPX will ensure that non-creditworthy market participants cannot somehow avoid paying their Summer Period amounts, while separately receiving amounts that they may be due for the Refund Period.<sup>98</sup>

32. In its supplemental comments, CAISO states that the Commission does not need to decide this issue in connection with its review of the Refund Rerun Compliance Filings, and that neither Refund Rerun Compliance Filing needs to be modified to account for the disgorgements ordered for the Summer Period. According to CAISO, the California Parties agree with this position. CAISO adds that declining to rule on this issue now will not preclude the California Parties from raising the same argument or

---

<sup>94</sup> *Id.* at 35-36.

<sup>95</sup> CalPX Reply Comments at 18.

<sup>96</sup> Joint Motion at 13.

<sup>97</sup> California Parties Comments at 37-38 (citing to October 16 Order, 105 FERC ¶ 61,066 at P 180).

<sup>98</sup> *Id.* at 38.

related arguments in the future.<sup>99</sup> In its reply comments, CalPX states that it does not take a position on this matter, but believes that it should not be addressed in the context of its Refund Rerun Compliance Filing because this issue does not implicate calculations or balances set forth in the compliance filing. In CalPX's opinion, it is a matter that would involve the final cash clearing of the CalPX and CAISO markets, and could only be addressed after the global settlement overlay is complete. CalPX continues to argue that while the Summer Period disgorgement funds and the Refund Period funds may be netted for final cash clearing, they cannot be co-mingled in the CalPX Settlement Clearing Account.<sup>100</sup>

In their supplemental comments, the California Parties state that CalPX, CAISO, and the California Parties agree that this issue need not be decided in connection with the Refund Rerun Compliance Filings.<sup>101</sup> In the Joint Motion, the parties reiterate their agreement that the Commission should reserve this issue to be addressed at a later time, if necessary.<sup>102</sup>

## **V. Commission Determination**

### **A. Procedural Matters**

33. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2017), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept the answers filed in this proceeding because they have provided information that assisted us in our decision-making process.

### **B. Substantive Matters**

34. As requested by the parties in the Joint Motion, we will address only the undisputed issues raised by the California Parties concerning the CAISO and CalPX Refund Rerun Compliance Filings and defer action on the disputed issues until a later time, if necessary. Upon thorough review of the Refund Rerun Compliance Filings, we find that CAISO and CalPX have complied with the Commission's directives by accurately calculating MMCPs and correctly performing MMCP mitigation calculations (Issues One and Two). We therefore accept the MMCP values and the resulting MMCP mitigation calculations, including the distribution of generator fines (Issue Three). We also accept the proposed methodology for calculating interest on refunds but reserve

---

<sup>99</sup> CAISO Supplemental Comments at 6.

<sup>100</sup> CalPX Reply Comments at 10-12.

<sup>101</sup> California Parties Supplemental Comments at 17.

<sup>102</sup> Joint Motion at 14.

judgement on specific interest calculations until presented with final interest calculations (Issue Ten). In addition, we accept the proposed allocation of energy sales from block forward contracts between PG&E and SoCal Edison (Issue Fifteen).

35. We also note that the validity of Hafslund's cost offset claim is currently pending before the ALJ in Docket No. EL00-95-307. We expect that CAISO's and CalPX's final accounting will reflect the ALJ's findings on that matter.

36. For the settlement overlay, we expect CalPX to credit the Enron Interpleader funds to reflect the discharge of Enron's liability, as proposed by CalPX in its reply comments (Issue Fourteen).<sup>103</sup> Pursuant to the Ninth Circuit's April 2017 decision,<sup>104</sup> we also direct CalPX, when it performs the final cash clearing of the market, to allocate to all market participants a \$5 million deficit in the CalPX Settlement Clearing Account that resulted from a transfer of funds from the settlement clearing account to the operating account in March 2001.

37. Further, we dismiss as moot Issue Five concerning Shell's cost offset claim. As discussed, Shell has settled with the California Parties and has been dismissed as a respondent from this and related proceedings.<sup>105</sup> Specifically, the Shell Settlement has resolved issues concerning Shell's cost offset liability by establishing an agreed-upon cost offset for those who opt into the Shell Settlement.<sup>106</sup>

38. In addition, we dismiss as moot Issues Six, Seven, and Nine involving the calculation, sequencing, and allocation of the Bonneville Shortfall. The Commission has recently approved the settlement between the California Parties and Bonneville/Western.<sup>107</sup> In the Joint Motion, the California Parties state that because of this settlement, they will no longer pursue the issues pertaining to the Bonneville Shortfall.<sup>108</sup> Approval of the Shell Settlement and Bonneville Settlement also resolves Issue Eight, and we therefore dismiss that issue as well.

---

<sup>103</sup> CalPX Reply Comments at 16.

<sup>104</sup> *Cal. Pub. Util. Comm'n v. FERC*, 854 F.3d at 1148.

<sup>105</sup> Shell Settlement Order, 163 FERC ¶ 61,083.

<sup>106</sup> Joint Offer of Settlement, Docket No. EL00-95-305, § 5.2.3 (Oct. 19, 2017).

<sup>107</sup> BPA Settlement Order, 163 FERC ¶ 61,087.

<sup>108</sup> Joint Motion at 5.

39. In the Joint Motion, the parties have asked the Commission to defer action on Issue Four (fuel cost allowances and emissions offset claims submitted by municipal sellers who settled with the California Parties), Issue Eleven (allocation of interest shortfall), Issue Twelve (inclusion of the Summer Period disgorgement amounts in the calculation of the Refund Period interest shortfalls), Issue Thirteen (treatment of miscellaneous categories of interest), and Issue Sixteen (incorporation of the Summer Period disgorgement amounts in the remaining steps of the refund rerun process). We hereby grant this request, which will allow the parties to continue with the settlement overlay process through which CAISO and CalPX, working with the California Parties and other interested parties, will adjust Refund Rerun calculations to reflect the provisions of the more than fifty settlements reached over the last 12 years.<sup>109</sup> We find that permitting the parties to move forward in the settlement overlay process will help bring these long-running proceedings to a close by completing an integral step necessary for final cash clearing. Deferring action on these items will also provide an additional opportunity for the California Parties, CAISO, and CalPX to resolve the remaining issues voluntarily, just as they have voluntarily resolved several of the other issues that they had disputed initially. We encourage them to do so. We will address the issues remaining in dispute at a later time, if necessary. The California Parties, CAISO, and CalPX have 90 days from the date of issuance of this order to submit their settlement overlay proposal or inform the Commission in the event they require more time to complete it, and to also inform the Commission of the status of the remaining issues in dispute.

40. Finally, we dismiss as moot the California Parties' motions for clarification submitted on December 17, 2007, and July 24, 2015. The subsequent settlements<sup>110</sup> and resolution of issues among the parties have rendered them moot.

The Commission orders:

- (A) The Joint Motion is hereby granted, as discussed in the body of this order.
- (B) CAISO's and CalPX's Refund Rerun Compliance Filings are hereby accepted for filing, subject to further orders.
- (C) The California Parties, CAISO, and CalPX are hereby directed to submit within 90 days of the date of issuance of this order their settlement overlay proposal or inform the Commission in the event they require more time to complete it, and to also inform the Commission of the status of the remaining issues in dispute.

---

<sup>109</sup> See California Parties Comments at 40; Joint Motion at 8. We find that this addresses Midway Sunset's request to clarify that its settlement with the California Parties will be accounted before the final cash clearing phase.

<sup>110</sup> See Shell Settlement Order, 163 FERC ¶ 61,083; BPA Settlement Order, 163 FERC ¶ 61,087.

(D) The California Parties' motions for clarification are hereby dismissed as moot.

By the Commission. Chairman McIntyre is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,  
Deputy Secretary.