

175 FERC ¶ 61,121
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
Neil Chatterjee, Allison Clements,
and Mark C. Christie.

San Diego Gas & Electric Company

Docket Nos. EL00-95-291

V.

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

Investigation of Practices of the California Independent System Operator and the California Power Exchange

EL00-98-263

**ORDER ACCEPTING
SETTLEMENT OVERLAY COMPLIANCE FILING**

(Issued May 20, 2021)

1. In this order, we address the California Parties' ¹ Settlement Overlay Compliance Filing submitted pursuant to the Commission directive in a July 10, 2018 order.² In that order, the Commission addressed the California Independent System Operator Corporation's (CAISO) and the 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,

¹ The California Parties are, collectively, Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), Southern California Edison Company (SoCal Edison), the People of the State of California ex rel. Xavier Becerra, Attorney General, the Public Utilities Commission of the State of California, and the California Department of Water Resources acting solely under the authority and powers created by California Assembly Bill 1 of the 2001-2002 First Extraordinary Session, codified in sections 80000 through 80270 of the California Water Code (CERS).

² *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 164 FERC ¶ 61,019 (2018) (July 2018 Order).

2001). The July 2018 Order directed the California Parties, CAISO, and CalPX to prepare a settlement overlay that would reconcile the refund calculations performed by CAISO and CalPX with the amounts already paid and received under settlement agreements among the California Parties and more than 60 market participants.³ In this order, we accept for filing the California Parties’ Settlement Overlay Compliance Filing, including market participant-specific overlays, and approve the proposed steps for accomplishing market clearing and the wind-down of CalPX.

I. Background

2. Because the settlement overlay filing at issue here addresses the final market clearing processes in this proceeding, which has spanned more than 20 years, it is necessary to recount many of the significant issues underlying the 2000-2001 Western energy crisis and, in particular, this proceeding.
3. This proceeding began in August 2000 when SDG&E filed a complaint under section 206 of the Federal Power Act,⁴ 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. SDG&E alleged that since the beginning of June 2000, wholesale electric prices in California have at times exceeded, often by a multiple of three or four, prices seen at comparable load levels in prior years.⁵ In an August 2000 order, the Commission instituted a hearing 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,⁶ and set October 2, 2000, as the refund effective date.
4. In November 2000, the Commission found that the market structure and market rules for wholesale sales of electric energy in California were seriously flawed and caused unjust and unreasonable rates.⁷ In a subsequent order, the Commission

³ 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).

⁴ 16 U.S.C. § 824e.

⁵ SDG&E Complaint, Docket No. EL00-95-000, at 1 (Aug. 2, 2000).

⁶ *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 92 FERC ¶ 61,172, at 61,603 (2000).

⁷ *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 93 FERC ¶ 61,121 (2000).

established a process for calculating refunds related to transactions in the spot markets operated by CAISO and CalPX during the Refund Period.⁸ Under this approach, all sales of 24 hours or less were mitigated.⁹ To mitigate these transactions, the Commission used the Mitigated Market Clearing Price (MMCP), which served 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.¹⁰

5. To calculate the MMCPs for each hour of the Refund Period and the refunds owed, the Commission established an evidentiary hearing.¹¹ 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.¹² 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.¹³ 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 (2020).¹⁴ On December 12, 2002, the presiding judge issued proposed findings,¹⁵ which the Commission largely affirmed in an order issued on March 26, 2003.¹⁶

⁸ *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 96 FERC ¶ 61,120 (2001) (July 25 Order).

⁹ *Id.* at 61,517.

¹⁰ See *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 97 FERC ¶ 61,275 (2001).

¹¹ July 25 Order, 96 FERC at 61,499.

¹² *Id.* at 61,520.

¹³ *Id.*

¹⁴ *Id.* at 61,519.

¹⁵ *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 101 FERC ¶ 63,026 (2002).

¹⁶ *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 102 FERC

6. The Commission has since 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.¹⁷

7. Subsequent Commission orders also addressed calculation and allocation of various offsets to sellers' refund liabilities, such as NOx emission costs,¹⁸ fuel cost allowances,¹⁹ and other cost offsets,²⁰ as well as an offset to account for a shortfall in refunds resulting from the United States Court of Appeals for the Ninth Circuit's (Ninth Circuit) *Bonneville* decision holding that the Commission could not order non-

¶ 61,317 (2003).

¹⁷ *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).

¹⁸ 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).

¹⁹ 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).

²⁰ 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. Co. v. Sellers of Energy and Ancillary Servs.*, 112 FERC ¶ 61,176, at P 2 (2005); *see also San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 114 FERC ¶ 61,070 (2006); *San Diego Gas & Elec. Co. v. Seller of Energy and Ancillary Servs.*, 115 FERC ¶ 61,171, at P 25 (2006).

jurisdictional suppliers to pay refunds.²¹ The Commission implemented the *Bonneville* decision 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 during the Refund Period and that the *Bonneville* Shortfall be allocated among both jurisdictional and non-jurisdictional refund recipients.²²

8. In April 2017, the Ninth Circuit issued an opinion²³ reversing 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."²⁴

9. Meanwhile, on May 4, 2016, CAISO and CalPX submitted their respective Refund Rerun Compliance Filings addressing the calculation of refunds based on the MMCPs established in this proceeding, various offsets to those refunds, and certain related issues. Responding to certain Commission orders in this proceeding, 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 included calculations of interest on both refunds and past due receivables. Numerous parties submitted comments on these filings.

10. On May 16, 2018, the California Parties, CAISO, and CalPX submitted a joint motion (Joint Motion) requesting Commission action on the Refund Rerun Compliance Filings, approving undisputed issues and reserving judgment on the remaining issues until the completion of the settlement overlay proposal. According to the Joint Motion, the California Parties had entered into more than 60 settlements with suppliers, and 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

²¹ *Bonneville Power Admin. v. FERC*, 422 F.3d 908 (9th Cir. 2005) (*Bonneville*).

²² See *San Diego Gas & Elec. 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).

²³ *Cal. Pub. Util. Comm'n v. FERC*, 854 F.3d 1136 (9th Cir. 2017).

²⁴ *Id.* at 1148.

process, and hundreds of millions of dollars in payments flowed from CAISO and accounts to settling participants to implement those compromises. The Joint Motion further explained that because each settlement's principal and interest amounts were different from the calculated amounts in many respects, there would be a need for a "settlement overlay" to reconcile the CAISO and CalPX calculations, as reflected in their Refund Rerun Compliance Filings, with the settlements.

11. In the July 2018 Order, the Commission accepted for filing, subject to further orders, CAISO's and CalPX's refund calculations for transactions that took place in the California organized markets during the Refund Period and deferred action on certain issues in dispute until the submission of the proposed Settlement Overlay Compliance Filing.

12. During the course of their joint work on the final settlement overlay calculations, the California Parties, CAISO, and CalPX filed regular status reports. In an October 1, 2019 status report, the California Parties, CAISO, and CalPX informed the Commission that none of the previously disputed issues would require Commission action.

13. On April 22, 2020, the California Parties submitted the Settlement Overlay Compliance Filing.

II. Settlement Overlay Compliance Filing

A. The Settlement Overlay Process

14. The California Parties state that the Settlement Overlay Compliance Filing includes market participant-specific overlays, as well as the allocation of various market shortfalls, and the implementation of certain true-ups required by the various settlements. The California Parties explain that during the settlement overlay process, refund rerun calculations previously performed by CAISO and CalPX were adjusted to reflect amounts already paid and received, to resolve amounts that have not yet been paid and received, and to account for all funds that have flowed or will flow, with the ultimate goal of bringing the accounts at CAISO and CalPX to zero.

15. The California Parties also state that market participant-specific overlays factor in the amounts and transfers that flowed through the settlements that covered periods and transactions outside the Refund Period.²⁵ The California Parties state that interest amounts were also adjusted to reflect settlement dates and to account for any

²⁵ Settlement Overlay Compliance Filing at 10-11. The transactions outside the Refund Period include long-term bilateral contracts entered into during the period of May 1, 2000 through October 1, 2000 (the so-called "Summer Period"), and bilateral long-term sales to CERS during the period of January 17, 2001 through June 20, 2001.

discrepancies between estimated and final amounts. According to the California Parties, the Settlement Overlay Compliance Filing also resolves interest shortfalls, the *Bonneville* Shortfall, and various offsets²⁶ and disposes of chargeback and collateral accounts created within CAISO and CalPX by settlement agreements.²⁷

16. Further, the California Parties state that the settlement overlay calculations were performed in close consultation and cooperation with CAISO and CalPX, along with active participation by market participants.²⁸ The Settlement Overlay Compliance Filing also proposes the clearing process, including safeguards against potential defaults, and addresses the CalPX wind-down process and CAISO's and CalPX's document retention obligations. In addition, the California Parties propose to hold harmless CAISO and CalPX in effectuating the settlement overlay process.²⁹

17. Next, the California Parties address the details of the process for determining market participant-specific overlays. The California Parties note that no two settlements between the California Parties and suppliers are identical. To capture the individual terms, the California Parties explain, the process first determines the "Net End Balance," which is the amount owed by or to each market participant without regard to who has the ultimate right or responsibility for the various charges. The California Parties state that the amounts are then assigned to the appropriate party in accordance with the terms of the settlements resulting in "Net Clearing Balances" that reflect those assignments.³⁰ The California Parties add that, consistent with Commission orders, the settlement overlay combines CAISO and CalPX market positions.³¹

18. The California Parties further propose to allocate the *Bonneville* Shortfall among both jurisdictional and non-jurisdictional refund recipients through a *pro rata* reduction

²⁶ *Id.* at 11-12.

²⁷ *Id.* at 12 (citing *Pac. Gas. & Elec. Co.*, 95 FERC ¶ 61,020, at 61,040 (2001) (stating that a chargeback is "an allocation mechanism intended to allow the [Cal]PX to recover the uncollected Receivables of a defaulting [Cal]PX debtor from the remaining participants in the market."))

²⁸ *Id.* at 13-17.

²⁹ *Id.* at 4.

³⁰ *Id.* at 19.

³¹ *Id.* at 19-20.

of their refunds based on their purchases in the relevant periods, with netting of purchases and sales over hourly intervals.³²

19. The California Parties also state that certain funding shortfalls could not yet be quantified or had not yet been assigned when the settlements were finalized. The California Parties explain that a \$5 million shortfall that arose due to accounting operation at CalPX in March 2001³³ was allocated by CalPX among all market participants using the allocation factors that govern the CalPX Wind-Up charge.³⁴ This allocation is reflected in the “PX \$5M shortfall” column of the filing’s Summary of Overlay Balances.

20. The California Parties further explain that the settlement overlays also address a second shortfall that accrued due to the difference between the Commission-established interest rate on receivables and refunds and a much lower interest rate for cash amounts held at CalPX.³⁵ The California Parties explain that the Commission adopted a methodology for allocating the shortfall for market participants where a share fraction is derived based upon the absolute value of each participant’s interest for its final account balances in relation to the total amount of the interest shortfall.³⁶ The California Parties state that because the structure of the settlements made it difficult to distinguish between CAISO and CalPX interest amounts, CAISO and CalPX interest amounts had to be combined.³⁷ This is reflected in the “ISO and PX Interest Shortfall” column of the filing’s Summary of Overlay Balances.

21. The California Parties further state that many market participants that settled with the California Parties transferred all future risks and rewards to the California Parties and,

³² *Id.* at 25. According to the California Parties, similar *Bonneville* Shortfall reductions have been made to the account balances of refund recipients who made purchases during the CERS Period and (1) did not settle with CERS, (2) settled with CERS but retained the right to receive refunds resulting from their purchases made during the CERS Period, (3) agreed to bear the *Bonneville* Shortfall, or (4) agreed to forego refunds received (directly or indirectly through others) from CERS.

³³ *Id.* at 27. *See supra* note 23.

³⁴ *See infra* note 54.

³⁵ Settlement Overlay Compliance Filing at 28.

³⁶ *Id.* at 28 (citing *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 110 FERC ¶ 61,336 at PP 41, 56).

³⁷ *Id.* at 29.

as a result, those market participants have no continuing financial stake in the outcome of the settlement overlay. The settled parties with retained benefits/obligations and market participants that did not settle (Impacted Participants)³⁸ pose a risk of default by non-payment. The California Parties state that the total amount owed by Impacted Participants that have a positive Net Clearing Balance as of December 31, 2018 is \$52 million.³⁹ The California Parties propose to provisionally withhold this amount from final market clearing in a Default Fund and to allocate the resulting shortfall using the same methodology as the interest shortfall. The California Parties state that all payments actually received will be returned to market participants according to their share of the default amount.⁴⁰ The California Parties assure the Commission that the Impacted Participants have had an ample opportunity to challenge this proposal during the settlement overlay process and the California Parties have resolved disputes with several of them, as reflected in their final settlement overlays.⁴¹

22. The California Parties note that the Commission has held that the fuel cost allowances of the various suppliers are allocated to market participants based on their gross hourly purchasing in each market in hours in which the costs are incurred.⁴² The California Parties state that for those settlements where the fuel cost allowance is subject to a true-up, the “Fuel Cost Allowance” column of the Summary of Overlay Balances reflects a true-up of those amounts based on a refund rerun fuel cost allowance calculation.⁴³

23. Further, the California Parties state that the Commission determined that emissions offsets should be allocated among market participants based on their gross control area load.⁴⁴ The California Parties continue to state that for those settlements where emissions offsets are subject to true-ups, the “Emissions” column of the Summary

³⁸ *Id.* at 14 n.44. *See also* Ex. 4 for a list of Impacted Participants.

³⁹ Settlement Overlay Compliance Filing at 31.

⁴⁰ *Id.* at 32.

⁴¹ *Id.* at 17.

⁴² *Id.* at 33 (citing *San Diego Gas & Elec. Co. v. Seller of Energy and Ancillary Servs.*, 109 FERC ¶ 61,297 at PP 30-32).

⁴³ *Id.* at 34.

⁴⁴ *Id.* (citing October 16 Order, 105 FERC ¶ 61,066 at P 158).

of Overlay Balances reflects a true-up of emissions offsets amounts based on the refund rerun emissions offset allocation.

24. The California Parties note that cost offsets are allocated to buyers based on the period-wide net refunds owed to the buyer.⁴⁵ The California Parties state that for those settlements where cost offsets are subject to true-up, the balances in the “Cost Offset” column of the Summary of Overlay Balances reflects a true-up of cost offset amounts based on refund rerun cost offset allocation.

25. Regarding outstanding claims in Docket No. ER01-889,⁴⁶ the California Parties state that the California investor-owned utilities agreed to reallocate these settlement amounts among themselves at financial clearing amounts of the CERS energy charges.⁴⁷

26. Regarding Summer Reliability Agreement shortfalls,⁴⁸ the California Parties state that CAISO has collected and maintained in a separate trust account certain funds relating to the Summer Reliability Agreements, and that the parties agreed to a revised allocation that permitted certain payouts at the time of approval, and a final payout to the investor-owned utilities at market clearing if any amounts remain after Summer Reliability Agreement shortfalls assigned to them are taken into account.⁴⁹

⁴⁵ *Id.* at 35 (citing *San Diego Gas & Elec. Co. v. Seller of Energy and Ancillary Servs.*, 115 FERC ¶ 61,171 at P 28).

⁴⁶ Docket No. ER01-889 concerned certain CalPX charges to CERS for energy purchases on behalf of the California investor-owned utilities.

⁴⁷ Settlement Overlay Compliance Filing at 40-41 (citing *Pac. Gas & Elec. Co.*, 160 FERC ¶ 62,061 (2017) (letter order approving settlement); *Pac. Gas & Elec. Co.*, 170 FERC ¶ 61,130 (2020) (order approving amendment to settlement). The reallocation is included in the final clearing balances detailed in Ex. 5, col. 11 of this filing.

⁴⁸ The Summer Reliability Agreements were entered into by CAISO and certain entities that provided capacity to CAISO during the Western energy crisis. Payment under the Summer Reliability Agreements was delayed in conjunction with the issues being litigated in this proceeding. In 2018, the Commission approved an uncontested settlement with respect to this matter. *See NEO California Power LLC*, 163 FERC ¶ 61,075 (2018).

⁴⁹ Settlement Overlay Compliance Filing at 41. The California Parties state that the net clearing balance of each investor-owned utility reflects the non-cash portion of the Summer Reliability Agreement allocation, which is further documented in Exhibit 5, Row 84, and Exhibit 10.

27. Regarding balances remaining in various settling supplier accounts, the California Parties state that, since the California Parties have assumed responsibility for all receivables and refund shortfalls and excesses resulting from the settlements, the California Parties determine how such transferred amounts should be allocated among them.⁵⁰ Regarding balances owed by SDG&E and SoCal Edison, the California Parties state that the investor-owned utilities have agreed to transfer SDG&E's and SoCal Edison's balances to PG&E, thereby reducing the calculated amount owed to PG&E and reducing the amounts owed by SDG&E and SoCal Edison to zero. The California Parties explain that SDG&E and SoCal Edison will reimburse PG&E for the balance transfers when they separately disburse among themselves the California Parties' escrow funds as part of the final clearing.⁵¹

B. The Proposed Final Clearing Process

28. As part of the proposed final clearing process, the California Parties state that, together with CalPX, they will file at the Commission a schedule itemizing the collections, once actual defaults are known. The California Parties state that excess amounts will be paid back to market participants that paid into the Default Fund (except that no amounts will be paid back to those in default) in proportion to their Default Fund assessments. The California Parties propose that market participants will then have 90 days after such filing to petition the Commission concerning responsibility for default amounts and to request that the Commission take such enforcement action as may be necessary and appropriate under the circumstances to ensure that defaulting market participants fully and completely comply with their obligations to the market.⁵²

29. The California Parties further propose certain steps to effectuate market clearing once the Commission approves the instant filing. The California Parties maintain that the proposed process for market clearing is consistent with the Commission's regulations.⁵³ The California Parties explain that the process allows amounts owed to the market to flow on the same day as amounts owed from the market with a corresponding single final interest date. The California Parties propose the following 15 steps:⁵⁴

⁵⁰ *Id.* at 42; Ex. 10.

⁵¹ *Id.* at 42-43. The California Parties explain that this transfer will benefit other market participants by eliminating any possibility of default risk at no cost to others in the market.

⁵² *Id.* at 44.

⁵³ *Id.* at 45 (citing 18 C.F.R. § 35.19a).

⁵⁴ *Id.* at 45-50.

30. First, the California Parties propose that within 30 days of a Commission order accepting the Settlement Overlay Compliance Filing, market participants will provide CalPX with notarized wire transfer information. Market participants that do not provide such information will not receive payment on the date on which net clearing balances are distributed (Final Payment Date) – any amounts owed to them will be retained by CalPX for 45 days after the Final Payment Date pending receipt of such information. After such date, if information is not provided, then any amounts owed to them will be paid to market participants using the same methodology used to allocate excess amounts available in the Default Fund.

31. Second, the California Parties propose that approvals will be sought in both the CalPX and PG&E bankruptcy courts, eliminating any concern or question that PG&E and CalPX are authorized to implement final clearing pursuant to this process notwithstanding their pending Chapter 11 bankruptcy cases.⁵⁵

32. Third, the California Parties propose that they together with CalPX will establish a publicly noticed final payment date, which will be no earlier than 45 days after a Commission order approving the Settlement Overlay Compliance Filing.

33. Fourth, the California Parties propose that interest will be updated to the Final Payment Date, and any post-December 31, 2018 payments and charges on the CAISO or CalPX accounts of participants will be factored in, as well as any new settlement implementation agreements reached between the California Parties and specific market participants.

34. Fifth, the California Parties propose that at least 15 business days prior to the final payment date, the California Parties will post a schedule showing the updated calculations and the revised net end balances and net clearing balances.

35. Sixth, the California Parties propose that at least 15 business days prior to the final payment date, CalPX will file at the Commission a notice of any participant in the CalPX or CAISO markets that has not provided CalPX with notarized wire transfer information.

36. Seventh, the California Parties propose that CalPX will issue invoices to all market participants stating amounts owed or owing as part of that market clearing.

37. Eighth, the California Parties propose that to ensure that the funds are available for payout by CalPX, five business days before the Final Payment Date, CAISO will make

⁵⁵ We note that, since the submission of the Settlement Overlay Compliance Filing, PG&E submitted a Plan of Reorganization to facilitate its exit from bankruptcy, which was approved on June 20, 2020, by the United States Bankruptcy Court, Northern District of California, San Francisco Division.

payment to CalPX of all funds, principal, and interest identified on Exhibit 13 of the Settlement Overlay Compliance Filing.

38. Ninth, the California Parties propose that market participants that owe funds in their net clearing balance must pay them by the final payment date to an account and in such fashion as specified by CalPX in the final invoices.

39. Tenth, the California Parties propose that CalPX makes payment to those participants that are owed funds in their final net clearing balance on the final payment date.

40. Eleventh, the California Parties propose that one business day after the final payment date, CAISO will pay out the cash portion of the Summer Reliability Agreement balances, based on wire transfer information that will be provided to CAISO by the California Parties.

41. Twelfth, the California Parties propose that within 15 business days after the final payment date, the California Parties, in consultation with CalPX, will determine the extent, if any, by which the Default Fund is overfunded. The overfunded amount in the Default Fund will be allocated to market participants using the Interest Shortfall allocations, except that no additional funds will be allocated to participants in default.

42. Thirteenth, as proposed by the California Parties, CalPX will provide an accounting to market participants of unpaid amounts, of Default Fund allocations for each participant entitled to receive amounts, and of any other unpaid amounts still owed to each market participant. This will be publicly posted by the California Parties and filed at the Commission by CalPX, and market participants will then have 90 days to request that the Commission take such enforcement action as may be necessary and appropriate.⁵⁶

43. Fourteenth, the California Parties propose that settling suppliers shall be free to withdraw the funds from escrow accounts that they control pursuant to various settlements, once the final clearing has occurred and those suppliers have paid any amounts that they owe to CalPX.⁵⁷

⁵⁶ *Id.* at 48-49 (citing *Filing of Privileged Materials and Answers to Motions*, Order No. 769, 141 FERC ¶ 61,049 (2012)).

⁵⁷ *Id.* at 49-50 (citing *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 118 FERC ¶ 61,168 (2007)).

44. Finally, the California Parties propose that upon final clearing, the California Parties will disburse, consistent with the various settlements, the amounts retained in their escrows and close the escrows.⁵⁸

C. CalPX Wind-Down Activities

45. Next, the California Parties state that CalPX has maintained both funds and accounts over the nearly two decades and has assisted the California Parties and CAISO in the settlement overlay process. According to the California Parties, CalPX is currently funded pursuant to the terms of the CalPX Wind-Up Settlement⁵⁹ and the rate cases it files with the Commission every six months. The California Parties add that CalPX intends to continue to file such rate cases to cover its customary operating expenses, such as for tax preparation and salary and benefits for its employees. The California Parties further state that CalPX has set aside in a subaccount within the settlement clearing account the \$7.5 million reserve provided for in section 10 of the CalPX Wind-Up Settlement, and liability for that amount has been allocated among market participants, which will be used to wind down CalPX's operations, pending future Commission approval for requested use of those funds.⁶⁰

46. The California Parties state that CalPX's wind-down activities will include: instituting a process for the retention and ultimate destruction of its books and records; addressing lease obligations and office closure expenses; paying fees to dissolve its corporation; and paying fees and expenses to close its bankruptcy case. According to the California Parties, CalPX will reconcile the wind-up fees on hand with its final expenses, and to the extent any amounts remain, they will be allocated to CalPX market participants in the same percentages that those participants were charged the wind-up fees.

47. The California Parties state that, because CalPX will be dissolved as a corporate entity, its Board of Directors will determine a document retention period for all of its corporate documents, not merely those related to this proceeding. The California Parties state that CalPX requests that the retention period running through the issuance of a final, non-appealable order apply to all CalPX corporate records as a minimum period, with its Board of Directors having discretion to retain certain records for longer periods until they are destroyed. With respect to CAISO's operations, the California Parties explain that

⁵⁸ *Id.* at 50.

⁵⁹ See *Cal. Power Exchange Corp.*, Joint Offer of Settlement, Docket No. ER02-2234-010 (Sept. 1, 2005); *Cal. Power Exchange Corp.*, 113 FERC ¶ 61,017 (2005) (approving the CalPX Wind-Up Settlement).

⁶⁰ Settlement Overlay Compliance Filing at 51-52.

CAISO will retain records relevant to this proceeding until after a final order has been issued in this docket and related proceedings. The California Parties request that a Commission order confirm that the document retention procedures contemplated for CAISO satisfy the Commission's requirements for document retention.⁶¹

D. Hold Harmless Protection for CAISO and CalPX

48. The California Parties state that, in all of the California Parties' settlements that the Commission has approved, the Commission has granted "hold harmless" protection to CAISO and CalPX, and their respective officers, directors, employees, and contractors. The California Parties contend that a Commission order approving the financial clearing should specifically provide that CAISO and CalPX, and their officers, directors, attorneys, employees, and agents, will be held harmless and be released from liability for carrying out the clearing. The California Parties request that the order should further provide that at the time of the transfers and clearings, the relevant account balances will be set to zero and that neither CAISO nor CalPX will have liability to market participants for any such transfers and clearings. The California Parties argue that, because these entities are responsible for paying out tens of millions of dollars to various market participants, they face extreme exposure to liability, and that it is crucial for them to be free to implement the important steps to accomplish market clearing without the risk of liability.⁶²

49. Finally, the California Parties note that other proceedings arising out of the 2000-2001 Western energy crisis are not resolved as a result of the settlement overlay process and that these pending proceedings will need to be resolved separately.⁶³

⁶¹ *Id.* at 52-53.

⁶² *Id.* at 53-55.

⁶³ *Id.* at 55-58. Specifically, the California Parties state that the following matters are not addressed by the Settlement Overlay Compliance Filing: (1) Summer Period refunds in Docket Nos. EL00-95 and EL00-98 and, in particular, the pending request by the California Parties for the Commission to initiate an enforcement action against Hafslund Energy Trading, LLC (Hafslund) for Hafslund's failure to comply with the Commission's Summer Period refund orders; (2) the long-term contracts proceeding in Docket Nos. EL02-60 and EL02-62; (3) the proceeding in Docket No. EL02-71 concerning whether sellers' violations of reporting requirements led to unjust and unreasonable rates during the Western energy crisis; and (4) pending proceedings in the Ninth Circuit in Docket Nos. EL01-10 and EL09-56.

III. Notice of Filings and Responsive Pleadings

50. Notice of the Settlement Overlay Compliance Filing was published in the *Federal Register*, 85 Fed. Reg. 27,215 (May 7, 2020), with interventions and protests due on or before June 8, 2020, as subsequently extended until June 26, 2020.⁶⁴ Timely, unopposed motions to intervene were filed by Sempra Energy, Sempra Energy Trading LLC (f/k/a Sempra Energy Trading Corp.) and Sempra Energy Solutions LLC (collectively, Sempra), American Electric Power Service Corporation (AEP), and City of Riverside, California (Riverside).

51. Sempra filed comments stating that it is authorized by the California Parties to state that they reached an agreement that will govern the disposition of the claims and that the California Parties did not have a chance to remove Sempra from the Settlement Overlay Compliance Filing and thus there is nothing for the Commission to decide with respect to Sempra in this filing. Sempra states that it is authorized to state that the California Parties concur with Sempra's position.⁶⁵ AEP also filed comments stating that, while it continues to review the materials, it has not identified any objections to the proposed Settlement Overlay Compliance Filing.⁶⁶

52. Riverside filed a protest, citing inconsistencies between the proposed Settlement Overlay Compliance Filing and the 2008 settlement agreement reached between Riverside and the California Parties.⁶⁷ On October 6, 2020, Riverside submitted a Status Report and Notice of Withdrawal of Motion to Intervene and Protest, informing the Commission that it has resolved the issues with the California Parties and will withdraw its June 26, 2020 protest. On October 19, 2020, the California Parties filed a notice informing the Commission that the California Parties' settlement-implementing arrangement with Riverside resolves and satisfies all obligations and liabilities arising from Riverside's transactions in the CAISO- and CalPX-operated markets during the Refund Period and any other amounts set forth for Riverside in the Overlay Compliance Filing, as may be amended.⁶⁸ Riverside subsequently withdrew its protest.

⁶⁴ Notice of Extension of Time, Docket No. EL00-95-291 (June 4, 2020).

⁶⁵ Sempra Motion to Intervene and Comments at 2.

⁶⁶ AEP Motion to Intervene and Comments at 3.

⁶⁷ Riverside Motion to Intervene and Protest at 5 (citing *San Diego Gas & Elec. Co. v. Seller of Energy and Ancillary Servs.*, 123 FERC ¶ 61,242 (2008)). *Id.* at 8–9.

⁶⁸ California Parties Notice Concerning Settlement Implementation Arrangement with Riverside at 2.

53. On June 26, 2020, Sacramento Municipal Utility District (SMUD) filed comments, disputing having any remaining liabilities under the proposed Settlement Overlay Compliance Filing because of its 2011 agreement with the California Parties.⁶⁹ On September 22, 2020, SMUD filed a Notice of Withdrawal of its June 26, 2020 comments, informing the Commission that it has reached the agreement with the California Parties. Subsequently, on September 25, 2020, the California Parties filed a notice informing the Commission that the California Parties' settlement-implementing arrangement with SMUD resolves and satisfies all obligations and liabilities arising from SMUD's transaction in the CAISO and CalPX operated markets during the Refund Period.⁷⁰

54. In addition, on July 7, 2020, the California Parties filed a notice to advise the Commission that they reached agreement with Automated Power Exchange (APX) and APX Participants concerning amounts that will be paid by them to implement their remaining obligations under the 2007 APX Settlement.⁷¹ The California Parties state that their settlement-implementing arrangement with APX and its participants ensures that APX amounts will be paid without need for the procedures proposed in the Settlement Overlay Compliance Filing to allocate APX liability and address potential APX defaults. The California Parties add that the arrangement also resolves the overlay issues of APX Participant Morgan Stanley Capital Group (Morgan Stanley), which will apply its balances in CAISO and CalPX to satisfy a portion of remaining APX liability. The California Parties conclude that APX and the APX Participants have resolved and satisfied all obligations and liabilities APX and Morgan Stanley have to, and all account balances APX and Morgan Stanley have in, CAISO and CalPX relating to the May 1,

⁶⁹ *San Diego Gas & Elec. Co. v. Seller of Energy and Ancillary Servs.*, 135 FERC ¶ 61,059 (2011).

⁷⁰ California Parties Notice Concerning Settlement Implementation Arrangement with SMUD at 2.

⁷¹ Prior to and during the Refund Period, APX served as a scheduling coordinator submitting bids and schedules on behalf of its participants. The 2007 APX Settlement resolved all disputes and claims among APX Participants regarding appropriate allocation of net refunds due to APX. *San Diego Gas & Elec. Co. v. Seller of Energy and Ancillary Servs.*, 118 FERC ¶ 61,168. As for the refund liability, the unique situation of APX required that APX and its participating sellers be held jointly and severally liable for refunds where the refund liability cannot be apportioned based on specific transactions to an individual seller. *San Diego Gas & Elec. Co. v. Sellers of Energy & Ancillary Servs.*, 127 FERC ¶ 61,269, at P 272 (2009); *San Diego Gas & Elec. Co. v. Sellers of Energy & Ancillary Servs.*, 122 FERC ¶ 61,274 at PP 54-56; October 16 Order, 105 FERC ¶ 61,066 at P 170.

2000 through June 20, 2001 period, and any other amounts set forth for APX and Morgan Stanley in the proposed Settlement Overlay Compliance Filing.⁷²

A. CAISO Answer and CalPX Comments

55. CAISO submitted an answer to the Settlement Overlay Compliance Filing, explaining that it is not a party to the settlement agreements included in the filing and takes no position on the appropriateness of the adjustments made to implement those settlement agreements. CAISO also states that it has no objection to the final clearing process proposed by the California Parties, and supports the establishment of the Default Fund to cover any shortages due to payment defaults.⁷³ CAISO also states that it intends to keep all the records pertaining to the refund rerun process until a final order is issued in the instant proceeding and related dockets.⁷⁴ CAISO also agrees that CalPX must institute a process for the retention and ultimate destruction of its books and records because CAISO cannot accept custody of CalPX's records and to ensure it remains in compliance with its own legal obligations.⁷⁵ Finally, CAISO requests that a Commission order addressing the Settlement Overlay Compliance Filing include a "hold harmless" protection to CAISO and CalPX. CAISO also argues that it would not be liable for any shortfalls even barring a Commission grant of such protection.⁷⁶

56. In its comments, CalPX states that it concurs with the California Parties' proposed final clearing process.⁷⁷ CalPX requests that the Commission's final order expressly state that the final cash clearing process procedures approved pursuant to the Settlement Overlay Compliance Filing supersede sections B and C of Exhibit 3 to CalPX's Plan of Reorganization. CalPX explains that the Plan of Reorganization approved in 2002 by the

⁷² For this reason, the instant order does not address the proposal concerning APX and its participants originally included in the Settlement Overlay Compliance Filing. The California Parties' settlement-implementing arrangement with APX and its participants ensures that APX amounts will be paid without need for the procedures proposed in the Overlay Compliance Filing to allocate APX liability and address potential APX defaults. *See* Notice of California Parties concerning settlement implementation arrangement with APX and APX Participants at 1-2.

⁷³ CAISO Answer at 6.

⁷⁴ *Id.* at 7.

⁷⁵ *Id.* at 8.

⁷⁶ *Id.* at 2.

⁷⁷ CalPX Comments at 3-4.

bankruptcy court set forth provisional procedures for distributions to market participants. According to CalPX, those procedures have been mooted by subsequent events and will be superseded by a Commission order to be issued in the instant proceeding.⁷⁸

⁷⁸ *Id.* at 4-5.

57. CalPX further requests that as part of the CalPX wind-down process provided for in the instant filing, the retention period running through the issuance of final, non-appealable orders apply to all CalPX corporate records as a minimum period. CalPX notes that its Board of Directors may extend the retention period beyond that point in time, if necessary.⁷⁹

58. Finally, CalPX requests that the Commission approve the following “hold harmless” provision with respect to CalPX. CalPX explains that this provision is substantially similar to the “hold harmless” provision approved numerous times by the Commission in connection with CalPX’s implementation of the California Parties’ settlements with settling suppliers:

The Commission recognizes that CalPX will be required to implement the Commission’s Order by paying substantial funds on a combined CalPX-ISO market basis from its Settlement Clearing account at the Commission’s direction. Therefore, except to the extent caused by their own gross negligence, CalPX, its directors, officers, employees and professionals shall not be liable for implementing the Order, including but not limited to: 1) cash payouts, any shortfall of funds or any accounting entries on CalPX’s books pursuant to the final clearing process; 2) implementing the wind-down of the CalPX and its retention and ultimate destruction of corporate records; or 3) any delay in such implementation due to circumstances beyond the reasonable control of CalPX.⁸⁰

IV. Commission Determination

A. Procedural Matters

59. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2020), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Substantive Matters

60. As an initial matter, we note that the Settlement Overlay Compliance Filing is the result of the joint efforts of the California Parties, CAISO, CalPX, and affected market participants. These entities worked diligently for almost two years to perform these complex settlement overlay calculations, while resolving disputes that arose during the process. Moreover, as noted above, after the Settlement Overlay Compliance Filing was

⁷⁹ *Id.* at 6.

⁸⁰ *Id.* at 7.

submitted, the California Parties worked with Riverside, SMUD, and APX and APX Participants to resolve outstanding issues. As a result, the Settlement Overlay Compliance Filing is uncontested.⁸¹

61. Upon thorough review of the Settlement Overlay Compliance Filing, we accept the proposed market participant-specific overlays, and approve the proposed 15-step market clearing process and proposed wind-down of CalPX. We conclude that the uncontested proposal represents a just and reasonable resolution of a lengthy, complicated proceeding. The Settlement Overlay Compliance Filing includes exhibits with summaries, comments, and supporting work papers demonstrating how calculations were conducted for each affected market participant. As noted above, no market participant has objected to its specific overlay calculation, and we find nothing in the record to indicate that these calculations are otherwise unjust and unreasonable or unduly discriminatory or preferential.

62. We further find that the prompt implementation of the proposed 15-step market clearing process will bring this proceeding to long-awaited closure in an orderly manner. We direct the California Parties, CAISO, and CalPX to implement the market clearing process as outlined in the instant filing, strictly adhering to all the proposed timelines and filing requirements proposed therein. In addition, we accept the commitment for CalPX to submit an informational filing setting forth an itemized schedule of defaults within 30 days of completion of the market clearing process. The wind-down process for CalPX also appears to be a reasonable means of ensuring that CalPX is able to perform its remaining obligations prior to its dissolution.

63. We find that once this order becomes final, the refund calculations accepted in this order are appropriate to use for the distribution procedures under CalPX's Plan of

⁸¹ On February 9, 2021, the California Parties filed a motion seeking Commission action on this filing. On February 11, CALifornians for Renewable Energy, Inc. (CARE) filed an answer that asks that the Commission prioritize CARE's complaint in a separate proceeding in Docket No. EL20-69-000 over this filing. However, CARE also raises vague concerns about this filing, such as asserting that the filing is not uncontested and that it wants to be held harmless from the California Parties' settlements. To the extent that CARE's answer to the motion is a protest to the Settlement Overlay Compliance Filing, we reject it. As noted above, the comment date in this proceeding was June 26, 2020, more than seven months prior to CARE's answer, and CARE has provided no reason for submitting such an untimely filing. Moreover, on the merits, CARE does not point to any specific issue with the Settlement Overlay Compliance Filing, but rather makes unclear arguments about the filing in general. We also note that the Commission has since issued an order on CARE's complaint in Docket No. EL20-69-000. See *CALifornians for Renewable Energy v. Cal. Indep. Sys. Operator Corp.*, 174 FERC ¶ 61,204 (2021).

Reorganization. We also agree with CAISO that it should not be required to retain the records pertaining to the instant proceeding beyond the time when Commission decisions in this and related dockets become final and non-appealable. The same applies to CalPX's record retention, unless its Board of Directors decides to retain the records for a longer period of time.

64. Consistent with the Commission's precedent,⁸² we find that CalPX and CAISO will be held harmless for actions taken to implement the settlement overlays and the market clearing process, as approved in this order. Accordingly, we accept the "hold harmless" language proposed by CalPX and set out above, with one modification. Specifically, as incorporated by this order, the language shall be read to apply to both CAISO and CalPX.

The Commission orders:

- (A) The Settlement Overlay Compliance Filing is hereby accepted, as discussed in the body of this order.
- (B) CAISO and CalPX are hereby directed to implement the 15-step market clearing process, as outlined in the Settlement Overlay Compliance Filing, as discussed in the body of this order.
- (C) CAISO and CalPX will be held harmless for actions taken to implement the settlement overlays and the market clearing process, as discussed in the body of this order.

⁸² Specifically, in orders approving settlements between the California Parties and settling suppliers in these and related proceedings, the Commission has granted CalPX's and CAISO's requests for hold harmless protection in effectuating the processes affecting them including in the settlement. See, e.g., *Diego Gas & Elec. Co. v. Sellers of Energy & Ancillary Servs.*, 163 FERC ¶ 61,083, at P 30 (2018) (incorporating proposed "hold harmless" language to apply to CAISO and CalPX); *San Diego Gas & Elec. Co. v. Sellers of Energy & Ancillary Servs.*, 158 FERC ¶ 61,115, at P 13 (2017) (same); *San Diego Gas & Elec. Co. v. Sellers of Energy & Ancillary Servs.*, 145 FERC ¶ 61,015, at P 25 (2013) (same).

(D) CalPX is hereby directed to submit an itemized schedule of defaults within 30 days of completion of the market clearing process, as discussed in the body of this order.

By the Commission. Commissioner Danly is not participating.

(S E A L)

Debbie-Anne A. Reese,
Deputy Secretary.