

November 22, 2024

Ms. Debbie-Anne A. Reese
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

**Re: California Independent System Operator Corporation
Docket No. ER25-____-000**

Settlement Agreement in Docket No. ER21-2579

Dear Secretary Reese:

Enclosed for filing on behalf of the California Independent System Operator Corporation (CAISO), CXA La Paloma, LLC, and EDF Trading North America LLC (collectively, the Settling Parties) are a settlement agreement and explanatory statement addressing matters at issue in Commission Docket No. ER21-2579.¹ Pursuant to Commission rules, the CAISO files this settlement in eTariff.²

The CAISO requests the Commission afford privileged treatment to Exhibit A to the settlement agreement under 18 C.F.R. § 388.112 because it contains confidential financial information. The CAISO has included with its filing a proposed form of protective agreement it is prepared to utilize for purposes of 18 CFR § 388.112(b)(2).

¹ 18 C.F.R. § 385.602.

² Electronic Tariff Filings; Notice of Additional eTariff Type of Filing Codes, 81 Fed. Reg. 89,457 (Dec. 12, 2016). Filing in eTariff under these circumstances requires creation of a new docket number. For the avoidance of doubt, however, the CAISO stresses this settlement is submitted to resolve issues in Docket No. ER21-2579.

The Settling Parties respectfully request that the agreement and explanatory statement be transmitted to the Honorable Joel deJesus, the Presiding Settlement Administrative Law Judge in Docket No. ER21-2579.³

Respectfully submitted,

/s/ David S. Zlotlow

David S. Zlotlow

Lead Counsel

California Independent System
Operator Corporation

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CC:

Charles Dickenson, FERC Trial Staff

Frank Kelly, FERC Trial Staff

Kenneth Ende, FERC Trial Staff

Capital Power Investments LLC

All Parties in Docket No. ER21-2579

³ 18 C.F.R. § 385.602(b)(2)(i).

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

EDF Trading North America LLC

Docket No. ER21-2579

**EXPLANATORY STATEMENT
TO JOINT OFFER OF SETTLEMENT AND
SETTLEMENT AGREEMENT**

Pursuant to Rule 602 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (the “Commission”), EDF Trading North America LLC (“EDF Trading”), CXA La Paloma LLC (“CXA La Paloma”), and the California Independent System Operator Corporation (“CAISO”) (collectively, the “Settling Parties”) respectfully file this Explanatory Statement in support of approval of an offer of settlement and executed settlement agreement (“Settlement Agreement”) among the Settling Parties.¹ The Settlement Agreement resolves the issues presented in this proceeding related to EDF Trading and CXA La Paloma’s application for fuel cost recovery from CAISO. Settling Parties submit the Settlement Agreement jointly and believe the Settlement Agreement will be uncontested. In order to avoid the time and expense of further litigation, the Settling Parties respectfully request the Commission issue an order approving the Settlement Agreement as fair and reasonable and in the public interest, without modification or condition.²

¹ 18 C.F.R. § 385.602(c)(1)(ii).

² The Settlement Agreement has been filed simultaneously as an attachment to the accompanying Transmittal Letter. This Explanatory Statement is not intended to alter the terms of the Settlement Agreement. In the event of any conflict between the Explanatory Statement and the terms of the Settlement Agreement, the Settlement Agreement will govern. Unless otherwise stated, capitalized terms in the Petition have the meanings provided or incorporated by reference in the Settlement Agreement.

I. PROCEDURAL HISTORY

On July 29, 2021, EDF Trading, as Scheduling Coordinator for CXA La Paloma submitted a Request to Recover Fuel-Related Costs and Request for Confidential Treatment, in the Alternative Petition for Limited Waiver or for Remedial Relief (the “Request”).³ EDF Trading and CXA La Paloma sought recovery of fuel costs incurred on February 16, 2021, arising from the commitment of generating units in response to a market dispatch from CAISO. EDF Trading and CXA La Paloma had incurred the fuel costs when the market price for fuel was especially high during the 2021 Winter Storm Uri. These fuel costs were not recovered through market revenues or otherwise from CAISO. On August 19, 2021, CAISO moved to intervene and protest the Request, arguing that EDF Trading and CXA La Paloma failed to meet certain procedural requirements under the CAISO tariff to receive recovery and that, assuming the Commission granted waiver of those tariff requirements, the Commission had insufficient evidence in the record to conclude the Request was just and reasonable.⁴ On September 27, 2021, EDF Trading and CXA La Paloma submitted a Motion for Leave to Answer, Answer and Supplement to the Application, providing additional information to the Commission.⁵

On March 7, 2024, the Commission issued an Order Granting Request for Fuel Cost Recovery, Establishing Hearing and Settlement Judge Procedures, and Dismissing Waiver Request and Request for Remedial Relief.⁶ The Commission held that EDF Trading and CXA La Paloma

³ *EDF Trading North America, LLC*, Application to Recover Fuel Procurement Costs, Docket No. ER21-2579 (July 29, 2021).

⁴ *EDF Trading North America, LLC*, Motion to Intervene and Protest of CAISO, Docket No. ER21-2579 (Aug. 19, 2021).

⁵ *EDF Trading North America, LLC*, Motion for Leave to Answer and Answer and Supplement of EDF Trading, Docket No. ER21-2579 (Sept. 27, 2021).

⁶ *EDF Trading North America, LLC*, Order Granting Request for Fuel Cost Recovery, Establishing Hearing and Settlement Judge Procedures, and Dismissing Waiver Request and Request for Remedial Relief, Docket No. ER21-2579 (March 7, 2024).

were entitled to recover fuel costs under the CAISO tariff and had properly and timely brought their request to the Commission.⁷ However, the Commission found that there remained issues of material fact that required a trial-type evidentiary hearing.⁸ The Commission held the matter in abeyance for settlement proceedings before a Settlement Judge.⁹

On March 13, 2024, the Chief Judge designated Judge Joel deJesus as the Settlement Judge in this matter.¹⁰ The Settling Parties appeared before Judge deJesus on May 9, 2024, for the first settlement conference. Since that time, the Settling Parties have worked diligently, with assistance from Judge deJesus and Commission Trial Staff, to reach a settlement. The Parties finally agreed to the terms of the Settlement Agreement in October, 2024 and now submit the Settlement Agreement to the Commission for approval.

II. SUMMARY OF SETTLEMENT

Below is a summary of the key terms of the Settlement Agreement.

- **Preamble:** The Settlement Agreement includes a Preamble describing certain agreed facts and circumstances required to understand the terms of the Settlement Agreement.
- **Article 1:** Includes definitions in the Settlement Agreement that are not otherwise defined.
- **Article 2:** Describes the purpose of the Settlement Agreement to resolve all claims between the Settling Parties.
- **Article 3:** Sets forth the agreements of the Settling Parties as to payment and consideration and a mechanism for payment. Specifically:
 - This is a \$528,000 black box settlement.
 - The payment obligation in the settlement is unconditional, final, irrevocable, and CAISO fully waives and/or releases its rights to any recovery or recoupment.

⁷ See *id.* at ¶¶ 53-62.

⁸ *Id.* at ¶ 65.

⁹ *Id.*

¹⁰ *EDF Trading North America, LLC*, Order of Chief Judge Designating Settlement Judge, Docket No. ER21-2579 (Mar. 13, 2024).

- The settlement includes robust and unequivocal releases of all claims that may exist between EDF Trading, CXA La Paloma, and CAISO arising from or related to the facts of this proceeding.
- **Article 4:** Provides the effective date of the Settlement Agreement and provides for a mechanism should the Commission not accept the Settlement Agreement without condition or modification.
- **Article 5:** Sets forth the Standard of Review.
- **Article 6:** Sets forth Representations and Warranties of the Settling Parties as to the ability and authorization to execute the Settlement Agreement.
- **Article 7:** Provides General Terms and Conditions, including that the Settlement Agreement is subject to Commission approval, has no precedential value, is entire and non-severable among other general provisions.

All Settling Parties, through their authorized representatives, have executed the Settlement Agreement.

I. RESPONSE TO REQUIRED QUESTIONS

By order dated December 15, 2016, the Chief Administrative Law Judge requires all parties submitting Offers of Settlement under Rule 602 to address four questions in their Explanatory Statement.¹¹ The questions and responses applicable to the Settlement Agreement are provided as follows:

A. Does the Settlement affect other pending cases?

No. Settling Parties submit that the Settlement Agreement does not affect any other pending cases, nor any other issue reserved for litigation. The Settlement Agreement does not establish a policy or principle that would affect any other pending cases.

¹¹ *Amended Notice to the Public on Information to be Provided with Settlement Agreements and Guidance on the Role of Settlement Judges*, FERC (Dec. 15, 2016), available at: <https://www.ferc.gov/sites/default/files/2020-05/notice-to-the-public-AmendNoticeInfoProvidedSettlementAgnts.docx>.

B. Does the Settlement involve issues of first impression?

No. Settling Parties submit that the Settlement Agreement does not involve any issues of first impression.

C. Does the Settlement depart from Commission precedent?

No. Settling Parties submit that the Settlement Agreement does not depart from Commission precedent. Nothing in the Settlement Agreement would require the Commission to re-examine or change any existing policy or procedure.

D. Does the Settlement seek to impose a standard of review other than the ordinary just and reasonable standard with respect to any changes to the Settlement that might be sought by either a third party or the Commission acting sua sponte?

No. The Settlement Agreement does not seek to impose a standard of review other than the ordinary just and reasonable standard with respect to any modifications to the Settlement Agreement that might be sought by the Commission acting *sua sponte*, or by a third party.

IV. CONCLUSION

The Settlement Agreement resolves all issues that are outstanding in this proceeding. The Settlement Agreement is fair, reasonable, and in the public interest and will save Settling Parties and the Commission the expense and effort of protracted litigation. Settling Parties respectfully request that the Commission find that the Settlement Agreement is fair and reasonable and in the public interest and approve it without condition or modification.

Dated: November 22, 2024

Respectfully submitted,

/s/ Kenneth W. Irvin

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*Counsel for the California Independent
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SETTLEMENT AGREEMENT

This settlement agreement (“Settlement Agreement”) is entered into by CXA La Paloma, LLC (“CXA La Paloma”), EDF Trading North America, LLC (“EDF”) and the California Independent System Operator Corporation (“CAISO”) (collectively, the “Settling Parties,” and each individually, a “Settling Party”).

WHEREAS CXA La Paloma owns a natural gas combined cycle generator in McKittrick, California that participates in markets administered by CAISO.

WHEREAS on February 16, 2021, CXA La Paloma, through EDF as its Scheduling Coordinator, energy manager and supplier of natural gas, incurred fuel-related costs responding to a market dispatch from CAISO that were not recovered through the CASIO Open Access Transmission Tariff’s (“Tariff’s”) bid cost recovery process.

WHEREAS on July 29, 2021, as supplemented on September 28, 2021, EDF, as Scheduling Coordinator for CXA La Paloma, filed for recovery of those costs before the Federal Energy Regulatory Commission (the “Commission”) pursuant to section 205 of the Federal Power Act and the CAISO Tariff (Docket No. ER21-2579).

WHEREAS on August 19, 2021, CAISO intervened and protested EDF and CXA La Paloma’s filing.

WHEREAS on February 9, 2024, CXA La Paloma was sold to Capital Power Investments LLC (Docket No. EC24-22) and the interest in this proceeding was retained by seller, CXA La Paloma Holdco, LLC, which has the sole right to control, settle and compromise, all claims and causes of action which have been asserted by or on behalf of CXA La Paloma in the Action, as memorialized in the Purchase and Sale Agreement at Section 6.18, which was filed with the Commission on a non-public basis. *CXA La Paloma, LLC*, Joint Application for Authorization

under Section 203 of the Federal Power Act of CXA La Paloma, LLC, Exh. I, Docket No. EC24-22 (Dec. 5, 2023).

WHEREAS on March 7, 2024, the Commission issued an Order Granting Request for Fuel Cost Recovery, Establishing Hearing and Settlement Judge Procedures, and Dismissing Waiver Request and Request for Remedial Relief.

WHEREAS the Settling Parties engaged in settlement conferences and negotiations before Judge Joel deJesus and with the assistance of Commission Trial Staff.

WHEREAS the Settling Parties reached an agreement to settle this dispute and to submit this Settlement Agreement to the Commission for final approval.

TERMS

The terms of this Settlement Agreement are as follows:

1. DEFINITIONS

1.1. All defined terms used in the Settlement Agreement and not otherwise defined herein have the meaning set forth in the CAISO Tariff in effect at the time of the Execution Date.

1.2. “Execution Date” shall mean the day on which the Settling Parties have all signed the Settlement Agreement.

1.3. “Effective Date” shall have the meaning given in Section 4 of the Settlement Agreement.

2. PURPOSE

2.1. The purpose of this Settlement Agreement is to resolve all claims arising in, or related to, the action pending before the Federal Energy Regulatory Commission (“FERC” or the

“Commission”) captioned *EDF Trading North America LLC*, Docket No. ER21-2579 (the “Action”).

2.2. The Settlement Agreement shall be submitted to the Commission for its approval and shall become effective as set forth in Section 4 below.

3. AGREEMENT OF THE SETTTLING PARTIES

3.1. As soon as practicable following the Effective Date of the Settlement Agreement, and not more than twenty-one (21) days after the Effective Date of the Settlement Agreement, CAISO will pay, or cause to be paid, a black box settlement amount of \$528,000.00 to the account designated by CXA La Paloma which is set forth in Exhibit A attached hereto. This payment will be made in consideration of fully releasing all claims that CXA La Paloma has asserted, or could assert, against CAISO in this Action. In consideration for the benefits of this Settlement Agreement EDF also releases all claims that it has asserted, or could assert, against CAISO in this Action. In consideration of these releases CAISO also agrees to release all claims it has asserted, or could assert, in the Action. The extent of the releases is further enumerated in section 3.6 below.

3.2. CAISO will allocate the costs of the Settlement Agreement pro-rata to load in the CAISO market consistent with the Principles of CAISO Tariff section 11.8.6.

3.3. Within ten (10) days of the Effective Date of the Settlement Agreement, CAISO agrees to voluntarily withdraw its April 8, 2024, Request for Rehearing to the Commission; provided that withdrawal of CAISO’s Request for Rehearing is without prejudice to the legal arguments made in the Request for Rehearing regarding CAISO Tariff sections 30.11 and 30.12. In withdrawing its Request for Rehearing, CAISO does not waive its rights under the Federal Power Act (“FPA”) Section 205 to amend its Tariff on a prospective basis.

3.4. CXA La Paloma will unconditionally retain all benefits of the Settlement Agreement, including but not limited to the right to receive and/or transfer payment of the settlement amount specified in Section 3.1 above. CAISO provides unconditional, final, irrevocable and full waivers and releases to any claim it may have to receive refund, recovery, or any kind of recoupment of any benefit conferred to CXA La Paloma and/or EDF under the Settlement Agreement, whether based on current or future orders of the Commission, change of law, or any other circumstances.

3.5. The Settling Parties agree not to oppose any waivers necessary to effectuate the Settlement Agreement, including, without limitation, any waiver of the requirements in the CAISO Tariff section 30.

3.6. Upon entry of the Final Order, Settling Parties shall release, acquit, and forever discharge one another and their related entities, including any past or present employees, officers, directors, affiliates, parents, contractors, vendors, service providers, and representatives, shareholders, partners, members, managers, owners, heirs, executors, predecessors, successors, assigns, attorneys, counsel, insurers (including excess insurers and reinsurers), and/or sureties of any Settling Party (“Released Persons”) from any and all claims and causes of action arising from or related to this Action (the “Released Claims”), including, but not limited to, any causes of action arising under or premised upon any statute, tariff, constitution, law, ordinance, treaty, regulation, or common law of any country, state, province, county, city, or municipality including without limitation claims of negligence; breach of contract; breach of implied contract; breach of fiduciary duty; breach of confidence; fraud; misrepresentation (whether fraudulent, negligent or innocent); unjust enrichment; breach of the covenant of good faith and fair dealing; including, but not limited to, any and all claims for damages, injunctive relief, disgorgement, declaratory relief, equitable

relief, attorneys' fees and expenses, pre-judgment interest, statutory damages, punitive damages, special damages, exemplary damages, restitution, and/or the appointment of a receiver, whether liquidated or unliquidated, accrued or unaccrued, fixed or contingent, direct or derivative, having been asserted presently or in the future, and any other form of legal or equitable relief that either has been asserted, was asserted, or could have been asserted, by any Settling Party against any of the other Settling Parties and their Released Persons based on, relating to, concerning or arising out of the Action or the allegations, transactions, occurrences, facts, or circumstances alleged in or otherwise described in the filings in the Action including the Settlement Agreement (provided, however, that this release shall not include claims relating to the enforcement of the terms of this Settlement Agreement) from the beginning of time until the Effective Date of the Settlement Agreement. Settling Parties waive any principles of law similar to and including Section 1542 of the California Civil Code, which provides: A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY. Settling Parties agree that Section 1542 and all similar federal or state laws, rules, or legal principles of any other jurisdiction are knowingly and voluntarily waived in connection with the claims released in this Settlement Agreement and agree that this is an essential term of this Settlement Agreement. Settling Parties acknowledge that they may later discover claims presently unknown or suspected, or facts in addition to or different from those which they now believe to be true with respect to the matters released in this Settlement Agreement. Nevertheless, Settling

Parties fully, finally, and forever settle and release the Released Claims against the other Settling Parties and their Released Persons.

4. EFFECTIVE DATE

4.1. Subject to Section 4.2, this Settlement Agreement will become binding on the Settling Parties on the date a Commission Order accepting this Agreement, without modification, becomes final (“Final Order”). For purposes of this Settlement Agreement, an order will be considered a “Final Order” as of the date it is issued by the Commission if no comments or protests were filed in opposition to this Settlement Agreement, or, if comments or protests in opposition were filed, as of the date that rehearing is denied by the Commission by order or by operation of law, or, if rehearing was not sought, as of the date on which the right to seek Commission rehearing expires.

4.2. This Settlement Agreement is expressly conditioned upon the Commission’s Final Order accepting all provisions hereof without condition or modification. If the Commission should, by order, make approval of the Settlement Agreement subject to condition or modification, then a Settling Party shall have ten (10) business days to give written notice of withdrawal from the Settlement Agreement to the other Settling Parties, pursuant to the notice provisions in Section 7.11 herein. The Settling Parties agree to thereafter meet and confer in good faith to execute a new settlement agreement with the same purpose. Withdrawal pursuant to the Commission’s condition or modification will render the Settlement Agreement null and void as if it had never been executed. If no such notice of withdrawal is given, the Settling Parties will be deemed to have

accepted the Settlement Agreement as modified and/or conditioned by the Commission, and the Effective Date will be the day after the last day to give such a notice of withdrawal.

5. STANDARD OF REVIEW

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

6. REPRESENTATIONS AND WARRANTIES

6.1. Each Settling Party represents and warrants to the other Settling Parties that: it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; it has all regulatory authorizations necessary for it to legally perform its obligations as set forth under this Settlement Agreement; the execution, delivery, and performance of this Settlement Agreement are within its powers, have been duly authorized by all necessary action, and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, or order or the like applicable to it; this Settlement Agreement is a legally valid and binding obligation enforceable against it in accordance with its terms, subject to any equitable defenses; and there is not pending, or to its knowledge threatened

against it or any of its affiliate or related entities any legal proceedings that could materially adversely affect its ability to perform its obligations under this Settlement Agreement.

7. GENERAL TERMS AND CONDITIONS

7.1. **Negotiated Compromise Subject to Commission Approval.** This Settlement Agreement represents a negotiated compromise resolved in the public interest and is expressly conditioned upon the approval of all provisions hereof by the Commission without condition or modification as provided for in Section 4.2. If the Commission fails to approve this Settlement Agreement in its entirety, without material condition or modification, and a Settling Party withdraws pursuant to Section 4.2, then this Settlement Agreement shall not become effective and shall be null and void.

7.2. **No Precedential Value.** Except as explicitly set forth herein, no Settling Party will be deemed to have approved, accepted, agreed to, or consented to (i) any principle or position in this proceeding or to have prejudiced positions taken or that may be taken in this or any other proceedings, nor (ii) any principle or policy related to the rates, charges, classifications, terms, conditions, principles, or issues associated with the Settlement Agreement. This Settlement Agreement will have no precedential value, will not be cited as precedent, and will not be deemed to bind any entity (except as otherwise expressly provided for herein) in any proceeding, including any Commission or court proceeding, except in any proceeding to enforce the Settlement Agreement. The Settlement Agreement will not be deemed to be a “settled practice” as that term was interpreted and applied in *Public Service Commission of the State of New York v. FERC*, 642

F.2d 1335 (D.C. Cir. 1980), or a “long standing practice” as that term was used in *Columbia Gas Transmission Corp. v. FERC*, 628 F.2d 578 (D.C. Cir. 1979).

7.3. **Entire and Nonseverable Agreement.** This Settlement Agreement constitutes the full and complete agreement of the Settling Parties with respect to the subject matter addressed herein and supersedes all prior negotiations, understandings, and agreements, whether written or oral, between the Settling Parties with respect to the subject matter addressed herein, including but not limited to, any “Term Sheets” exchanged among the Settling Parties. The various provisions of the Settlement Agreement are not severable, and none of the provisions of the Settlement Agreement shall become operative unless and until the Settlement Agreement becomes effective in accordance with Section 4 hereof.

7.4. **Settlement Privilege.** All discussions among the Settling Parties related to this Settlement Agreement have been conducted with the explicit understanding and agreement, pursuant to Rule 602 of the Commission’s Rules of Practice and Procedure and/or Federal Rule of Evidence 408, to the extent applicable, that all offers of settlement and discussions relating thereto are and shall be privileged, shall be without prejudice to the positions of any party or participant presenting any such offer or participating in any such discussion, and are not to be used in any manner in connection with this proceeding or otherwise, except to the extent of enforcing the terms and conditions of this Settlement Agreement.

7.5. **Support for Settlement Agreement/No Waiver of Rights.** The Settling Parties will support this Settlement Agreement and will cooperate in securing Commission approval and implementation of the Settlement Agreement. The Settling Parties agree that if the Commission approves the Settlement Agreement with modification or condition and no Settling Party exercises its right under Section 4.2 to withdraw from the Settlement Agreement, then the Settling Parties

hereby waive any and all rights to seek rehearing or judicial review of any Commission order(s) approving the Settlement Agreement with modification or condition.

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

7.7. **Fees and costs.** Each Settling Party shall bear its own costs, expenses, and attorneys' fees in connection with the negotiation, preparation, execution and delivery of this Settlement Agreement and the relief contemplated herein.

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

7.9. **Execution in Counterparts.** This Settlement Agreement may be executed in one or more counterparts, each of which shall be an original but all of which, taken together, shall constitute one legal document.

7.10. **Notices.** All notices to Settling Parties provided for herein shall be in writing and sent by overnight mail and email to:

CXA La Paloma: Robert Ackermann Chief Litigation Officer, Senior Vice President CLMG Corp., <i>the authorized representative for CXA La Paloma Holdco, LLC, by authorization for CXA La Paloma, LLC</i> 7195 Dallas Parkway Plano, Texas 75024 RAckermann@clmgcorp.com and	EDF Gerald Nemec General Counsel and Secretary EDF Trading North America, LLC 601 Travis Street, Suite 1700 Houston, TX 77002 Phone: (281) 653-1608 gerald.nemec@edftrading.com and	CAISO: David Zlotlow Lead Counsel 250 Outcropping Way Folsom, CA 95816 dzlotlow@caiso.com e-recipient@caiso.com
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Joseph Williams Norton Rose Fulbright US LLP 799 9 th Street, NW Washington, DC 20001 joseph.williams@nortonrosefulbright.com with copy to: Capital Power Investments, LLC c/o Capital Power Corporation 155 Federal Street, Suite 1200 Boston, MA 02110 notices@capitalpower.com	Kenneth W. Irvin Sidley Austin LLP 1501 K Street, NW Washington, DC 20005 Tel: (202) 736-8256 kirvin@sidley.com	
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7.11. **No Oral Modification.** No modification or amendment of any provisions of this Settlement Agreement will be valid unless in writing, signed by authorized representatives for the Settling Parties, submitted to the Commission for approval, and approved by the Commission in the same manner as this Settlement Agreement.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

CXA LA PALOMA, LLC

By: Robert A. Ackermann
Robert A. Ackermann (Nov 19, 2024 13:53 CST)

JBW

Name: Robert Ackermann


Title: Chief Litigation Officer, Senior Vice
President

CLMG Corp., *the authorized representative for*
CXA La Paloma Holdco, LLC, *by authorization for*
CXA La Paloma, LLC

EDF TRADING NORTH AMERICA, LLC

By: *Gerald Nemec*
Gerald Nemec (Nov 19, 2024 14:09 CST)
Name: Gerald Nemec
Title: General Counsel

**CALIFORNIA INDEPENDENT SYSTEM
OPERATOR CORPORATION**

By: 
Dede Subakti (Nov 19, 2024 12:05 PST)

Name: Dede Subakti

Title: Vice President, System Operations

EXHIBIT A
PAYMENT ACCOUNT DESIGNATED BY CXA LA PALOMA

PUBLIC VERSION
Privileged Material Redacted

PRIVILEGED INFORMATION
REDACTED PURSUANT TO
18 C.F.R § 388.112

PROTECTIVE AGREEMENT

This Protective Agreement (“Agreement”) is entered into this ____ day of _____, 2024 by and between the California Independent System Operator Corporation (“CAISO”) and _____ (“Intervenor”), or *vice versa*, in connection with the proceeding before the Federal Energy Regulatory Commission (the “Commission”) in Docket No. _____. The CAISO and Intervenor are sometimes referred to as herein individually as a “Party” or jointly as the “Parties.”

1. The CAISO filed Protected Materials in the above-referenced Commission proceeding and Intervenor is a Participant in such proceeding, as the term Participant is defined in 18 C.F.R. Section 385.102(b), or has filed a motion to intervene or a notice of intervention in such proceeding. The CAISO and Intervenor enter into this Agreement in accordance with their respective rights and obligations set forth in 18 C.F.R. Section 388.112(b)(2). Notwithstanding any order terminating such proceeding, this Agreement shall remain in effect until specifically modified or terminated by the Commission or court of competent jurisdiction.

2. This Agreement applies to the following two categories of Protected Materials: (A) a Party may designate as protected those materials which customarily are treated by that Party as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject that Party or its customers to risk of competitive disadvantage or other business injury; and (B) a Party shall designate as protected those materials which contain privileged trade secret, commercial and financial information, as defined in 18 C.F.R. Section 388.107.

3. Definitions – For purposes of this Agreement:

(a) (1) The term “Protected Materials” means (A) materials provided by a Party in association with this proceeding and designated by such Party as protected; (B) any information contained in or obtained from such designated materials; (C) notes of Protected Materials; and (D) copies of Protected Materials. The Party producing the Protected Materials shall physically mark them on each page as “PROTECTED MATERIALS” or with words of similar import as long as the term “Protected Materials” is included in that designation to indicate that they are Protected Materials. If the Protected Materials contain Critical Energy Infrastructure Information, the Party producing such information shall additionally mark on each page containing such information the words “Contains Critical Energy Infrastructure Information – Do Not Release.”

(2) The term “Notes of Protected Materials” means memoranda, handwritten notes, or any other form of information (including electronic form) which copies or discloses materials described in Paragraph 3(a)(1). Notes of Protected Materials are subject to the same restrictions provided in this Agreement for Protected Materials except as specifically provided in this Agreement.

(3) Protected Materials shall not include (A) any information or document contained in the publicly-available files of the Commission or of any other federal or state agency, or any federal or state court, unless the information or document has been determined to be protected by such agency or court, or (B) information that is public knowledge, or which

becomes public knowledge, other than through disclosure in violation of this Agreement, or (C) any information or document labeled as “Non-Internet Public” by a Party, in accordance with Paragraph 30 of FERC Order No. 630, FERC Stats. & Regs. ¶ 31,140 (2003). Protected Materials do include any information or documents contained in the files of the Commission that has been designated as Critical Energy Infrastructure Information.

(b) The term “Non-Disclosure Certificate” shall mean the certificate annexed hereto by which Reviewing Representatives who have been granted access to Protected Materials shall certify their understanding that such access to Protected Materials is provided pursuant to the terms and restrictions of this Agreement, and that they have read the Agreement and agree to be bound by it. Each Party shall provide a copy of the Non-Disclosure Certificate(s) executed by its Reviewing Representative(s) to the other Party prior to such Reviewing Representative(s) receiving access to any Protected Materials.

(c) The term “Reviewing Representative” shall mean a person who has signed a Non-Disclosure Certificate and who is:

- (1) an attorney retained by a Party for purposes of this proceeding;
- (2) attorneys, paralegals, and other employees associated for purposes of this proceeding with an attorney described in Paragraph (3)(c)(1);
- (3) an expert or employee of an expert retained by a Party for the purpose of advising, preparing or testifying in this proceeding;
- (4) a person designated as a Reviewing Representative by order of the Commission; or
- (5) employees or other representatives of a Party with significant responsibility for matters involving this proceeding.

4. Protected Materials shall be made available under the terms of this Agreement only to Parties and only through their Reviewing Representative(s) as provided in Paragraphs 7-9.

5. Protected Materials shall remain available to a Party until the later of the date that an order terminating this proceeding becomes no longer subject to judicial review, or the date that any other Commission proceeding relating to the Protected Material is concluded and no longer subject to judicial review. If requested to do so in writing after that date, the Party shall, within fifteen days of such request, return the Protected Materials (excluding Notes of Protected Materials) to the Party that produced them, or shall destroy the materials, except that copies of filings, official transcripts and exhibits in this proceeding that contain Protected Materials, and Notes of Protected Materials may be retained, if they are maintained in accordance with Paragraph 6, below. Within such time period the Party, if requested to do so, shall also submit to the producing Party an affidavit stating that, to the best of its knowledge, all Protected Materials and all Notes of Protected Materials have been returned or have been destroyed or will be

maintained in accordance with Paragraph 6. To the extent Protected Materials are not returned or destroyed, they shall remain subject to this Agreement.

6. All Protected Materials shall be maintained by the Party in a secure place. Access to those materials shall be limited to those Reviewing Representatives specifically authorized pursuant to Paragraphs 8-9.

7. Protected Materials shall be treated as confidential by the Party and its Reviewing Representative(s) in accordance with the certificate executed pursuant to Paragraph 9. Protected Materials shall not be used except as necessary for the conduct of this proceeding, nor shall they be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of this proceeding and who needs to know the information in order to carry out that person's responsibilities in this proceeding. Reviewing Representatives may make copies of Protected Materials, but such copies become Protected Materials. Reviewing Representatives may make notes of Protected Materials, which shall be treated as Notes of Protected Materials if they disclose the contents of Protected Materials.

8. (a) If a Reviewing Representative's scope of employment includes the marketing of energy or the buying or selling of generating assets, the direct supervision of any employee or employees whose duties include the foregoing, the provision of consulting services to any person whose duties include the foregoing, or the direct supervision of any employee or employees whose duties include the foregoing, such Reviewing Representative may not use information contained in any Protected Materials obtained through this proceeding to give any Party or any competitor of any Party a commercial advantage.

(b) In the event that a Party wishes to designate as a Reviewing Representative a person not described in Paragraph 3(c) above, the Party shall seek agreement from the Party providing the Protected Materials. If an agreement is reached that person shall be a Reviewing Representative pursuant to Paragraphs 3(c) above with respect to those materials. If no agreement is reached, the Party shall submit the disputed designation to the Commission for resolution.

9. (a) A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Protected Materials pursuant to this Agreement unless that Reviewing Representative has first executed a Non-Disclosure Certificate; provided, that if an attorney qualified as a Reviewing Representative has executed such a certificate, the paralegals, secretarial and clerical personnel under the attorney's instruction, supervision or control need not do so. A copy of each Non-Disclosure Certificate shall be provided to counsel for the Party asserting confidentiality prior to disclosure of any Protected Material to that Reviewing Representative.

(b) Attorneys qualified as Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with this Agreement.

10. Any Reviewing Representative may disclose Protected Materials to any other Reviewing Representative as long as the disclosing Reviewing Representative and the receiving Reviewing Representative both have executed a Non-Disclosure Certificate. In the event that any Reviewing

Representative to whom the Protected Materials are disclosed ceases to be engaged in these proceedings, or is employed or retained for a position whose occupant is not qualified to be a Reviewing Representative under Paragraph 3(c), access to Protected Materials by that person shall be terminated. Even if no longer engaged in this proceeding, every person who has executed a Non-Disclosure Certificate shall continue to be bound by the provisions of this Agreement and the certification.

11. Subject to Paragraph 17, the Commission shall resolve any disputes arising under this Agreement. Prior to presenting any dispute under this Agreement to the Commission, the Parties shall use their best efforts to resolve it. If a Party contests the designation of materials as protected, it shall notify the Party that provided the Protected Materials by specifying in writing the materials whose designation is contested. This Agreement shall automatically cease to apply to such materials five (5) business days after the notification is made unless the Party, within said 5-day period, files a motion with the Commission, with supporting affidavits, demonstrating that the materials should continue to be protected. In any challenge to the designation of materials as protected, the burden of proof shall be on the Party seeking protection. If the Commission finds that the materials at issue are not entitled to protection, the procedures of Paragraph 17 shall apply. The procedures described above shall not apply to Protected Materials designated by a Party as Critical Energy Infrastructure Information. Materials so designated shall remain protected and subject to the provisions of this Agreement unless a Party requests and obtains a determination from the Commission's Critical Energy Infrastructure Information Coordinator that such materials need not remain protected.

12. All copies of all documents reflecting Protected Materials, including the portion of any hearing testimony, exhibits, transcripts, briefs and other documents which refer to Protected Materials, shall be filed and served in sealed envelopes or by other appropriate means endorsed to the effect that they are protected pursuant to this Agreement. Such documents shall be marked "PROTECTED MATERIALS" and shall be filed under seal and served under seal upon the Commission and all Reviewing Representatives who are on the service list. Such documents containing Critical Energy Infrastructure Information shall be additionally marked "Contains Critical Energy Infrastructure Information – Do Not Release." For anything filed under seal, redacted versions or, where an entire document is protected, a letter indicating such, will also be filed with the Commission and served on all parties on the service list. Counsel for the producing Party shall, upon the request of a Party, provide a list of Reviewing Representatives who are entitled to receive such material. Counsel shall take all reasonable precautions necessary to assure that Protected Materials are not distributed to unauthorized persons. If any Party desires to include, utilize or refer to any Protected Materials or information derived therefrom in pleadings, testimony or exhibits to these proceedings in such a manner that might require disclosure of such material to persons other than Reviewing Representatives, such Party shall first notify both counsel for the disclosing Party and the Commission of such desire, identifying with particularity each of the Protected Materials. Thereafter, use of such Protected Materials will be governed by procedures determined by the Commission.

13. Nothing in this Agreement shall be construed as precluding any Party from objecting to the use of Protected Materials on any legal grounds.

14. Nothing in this Agreement shall preclude any Party from requesting the Commission or any other body having appropriate authority to find that this Agreement should not apply to all or any materials previously designated as Protected Materials pursuant to this Agreement. The Commission may alter or amend this Agreement as circumstances warrant at any time during the course of this proceeding.

15. The Parties may amend this Agreement only by mutual consent and in writing, provided, however, that a Party has the right to seek changes to this Agreement as appropriate from the Commission.

16. All Protected Materials filed with the Commission, or any other judicial or administrative body, in support of, or as a part of, a motion, other pleading, brief, or other document, shall be filed and served in sealed envelopes or by other appropriate means bearing prominent markings indicating that the contents include Protected Materials subject to this Agreement. Such documents containing Critical Energy Infrastructure Information shall be additionally marked "Contains Critical Energy Infrastructure Information – Do Not Release."

17. If the Commission finds at any time in the course of this proceeding that all or part of the Protected Materials need not be protected, those materials shall, nevertheless, be subject to the protection afforded by this Agreement for three (3) business days from the date of issuance of the Commission's decision, and if the Party seeking protection files an interlocutory appeal or requests that the issue be certified to the Commission, for an additional seven (7) business days. No Party waives its rights to seek additional administrative or judicial remedies after the Commission's decision respecting Protected Materials or Reviewing Representatives, or the Commission's denial of any appeal thereof. The provisions of 18 C.F.R. Sections 388.112 and 388.113 shall apply to any requests for Protected Materials in the files of the Commission under the Freedom of Information Act (5 U.S.C. § 552).

18. Nothing in this Agreement shall be deemed to preclude either Party from independently seeking through discovery in any other administrative or judicial proceeding information or materials produced in this proceeding under this Agreement.

19. Neither Party waives the right to pursue any other legal or equitable remedies that may be available in the event of actual anticipated disclosure of Protected Materials.

20. The contents of Protected Materials or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with this Agreement and shall be used only in connection with this proceeding. Any violation of this Agreement and of any Non-Disclosure Certificate executed hereunder shall constitute a violation of an order of the Commission.

IN WITNESS WHEREOF, the Parties each have caused this Protective Agreement to be signed by their respective duly authorized representatives as of the date first set forth above.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Representing CAISO

Representing Intervenor

NON-DISCLOSURE CERTIFICATE

I hereby certify my understanding that access to Protected Materials is provided to me pursuant to the terms and restrictions of the Protective Agreement dated _____, 2024 by and between the CAISO and _____ concerning materials in Federal Energy Regulatory Commission Docket No. _____, that I have been given a copy of and have read the Protective Agreement, and that I agree to be bound by it. I understand that the contents of the Protected Materials, any notes or other memoranda, or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with the Protective Agreement. I acknowledge that a violation of this certificate constitutes a violation of an order of the Federal Energy Regulatory Commission.

By: _____

Name: _____

Title: _____

Representing: _____

CERTIFICATE OF SERVICE

I certify that I have served the foregoing document upon the parties listed on the official service list in the captioned proceedings, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Folsom, California this 22nd day of November 2024.

/s/ Jacqueline Meredith

Jacqueline Meredith
An employee of the California ISO