

177 FERC ¶ 61,034
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

October 21, 2021

In Reply Refer To:
California Independent System Operator
Corporation
Docket No. ER21-2718-000

Davis Wright Tremaine LLP
1301 K Street, NW
Suite 500 East
Washington, D.C. 20005

Attention: Michael Kunselman, Esq.

Dear Mr. Kunselman:

1. On August 13, 2021, pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure,¹ you filed, in the above-referenced proceeding, an uncontested Settlement Agreement among the California Independent System Operator Corporation (CAISO), Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SoCal Edison) (together, the Applicants), and Shell Energy North America (US), L.P. (Shell Energy). According to the Applicants, the Settlement Agreement resolves the issues presented in Shell Energy's petitions for review pending before the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit)² that relate to Amendment No. 60 to the CAISO Tariff (the Litigation).³

¹ 18 C.F.R. § 385.207(a)(5) (2020).

² *Shell Energy N. Am. (US), L.P. v. FERC*, No. 20-1239 (D.C. Cir. filed July 7, 2020); *Shell Energy N. Am. (US), L.P. v. FERC*, No. 21-1148 (D.C. Cir. filed June 30, 2021).

³ The proceedings on Amendment No. 60 involve the allocation of certain types of costs under CAISO's then-existing Tariff. These proceedings have an extensive history before the Commission and are also the subject of petitions for review before the D.C. Circuit brought by Shell Energy and others. *See generally Cal. Indep. Sys. Operator Corp.*, Docket Nos. ER04-835-000, *et seq.* (Amendment No. 60 proceedings).

2. The Settlement Agreement provides that after the Commission approves the Settlement Agreement, CAISO will issue Recalculation Settlement Statements identifying charges to SoCal Edison and PG&E and a credit to Shell Energy. Within 14 calendar days after the issuance of the Recalculation Settlement Statements, CAISO will issue invoices and a payment advice with the result being Shell Energy receiving a credit from CAISO. Within seven business days of Shell Energy's receipt of the credit from CAISO, Shell Energy will file motions with the D.C. Circuit to dismiss the Litigation along with any other petition(s) for review filed by Shell Energy regarding any Commission orders issued in Docket Nos. ER04-835-000, *et seq.*, EL04-103-000, *et seq.*, and EL14-67-000, *et seq.* The Applicants assert that nothing in the Settlement Agreement will prejudice or harm any other CAISO market participant, as the only commitments and obligations under this agreement are those that will be borne by the parties thereto.⁴

3. Notice of the August 13 filing was published in the *Federal Register*, 86 Fed. Reg. 46,841 (Aug. 20, 2021), with interventions or protests due on or before September 3, 2021. Calpine Corporation and NRG Power Marketing LLC filed timely motions to intervene. Shell Energy and the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (Six Cities) filed timely motions to intervene and comments.

4. 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.

5. In its comments supporting the Settlement Agreement, Shell Energy states that approval of the Settlement Agreement would avoid the expense of further litigation while resolving longstanding issues addressed in the Litigation.⁵ Six Cities asserts in support of the Settlement Agreement that the Commission's approval will bring these proceedings to a just and reasonable resolution after more than 17 years since the start of the Amendment No. 60 proceedings.⁶

6. Article 5.1 of the Settlement Agreement provides the following standard of review:

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

⁴ CAISO August 13, 2021 Filing at 3–4.

⁵ Shell Energy September 2, 2021 Comments at 2.

⁶ Six Cities September 3, 2021 Comments at 2–3.

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.⁷

7. The Settlement Agreement resolves all issues in dispute in the Litigation and is uncontested. The Settlement Agreement appears to be fair and reasonable and in the public interest, and is hereby approved. Commission approval of the Settlement Agreement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

By direction of the Commission.

Debbie-Anne A. Reese,
Deputy Secretary.

⁷ Transmittal, attach. B at § 5.1.