UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services	)	**Docket Nos. EL00-95-000**
Investigation of Practices of the California Independent System Operator and the California Power Exchange	)	**Docket Nos. EL00-98-000**
State of California, ex rel. Edmund G. Brown Jr., Attorney General of the State of California v. Powerex Corp. (f/k/a British Columbia Power Exchange Corp.) *et al*.	)	**Docket No. EL09-56-000**
State of California, ex rel. Bill Lockyer, Attorney General of the State of California v. British Columbia Power Exchange Corp.	)	**Docket No. EL02-71-000**

COMMENTS OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION REGARDING JOINT OFFER OF SETTLEMENT INVOLVING MERRILL LYNCH

Pursuant to Rule 602(f) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"), 18 C.F.R. § 385.602(f) (2016), the California Independent System Operator Corporation ("ISO") hereby submits its comments on the Joint Offer of Settlement ("Settlement Agreement") filed by Merrill Lynch Capital Services, Inc. and the California Parties[1] (collectively, the "Settling Parties"), in the above-captioned proceedings on December 9, 2016.

[1] For purposes of the Settlement Agreement, "California Parties" means collectively, Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, the Public Utilities Commission of the State of California ("CPUC"), the People of the State of California *ex rel*. Kamala D. Harris, Attorney General, and the California Department of Water Resources acting

I. COMMENTS

As explained in the Joint Explanatory Statement accompanying the Settlement Agreement, Merrill Lynch was not a direct participant in the markets operated by the ISO and California Power Exchange ("PX") during the period covered by the Settlement Agreement.[2] The Settlement Agreement does not include any provisions governing accounting adjustments to the ISO's books and records. Therefore, the ISO does not anticipate that any such adjustments would be necessary in order to implement the Settlement Agreement.

Nevertheless, out of an abundance of caution, the ISO requests that the Commission state that the ISO, along with its directors, officers, employees and consultants, will be held harmless if it becomes necessary for the ISO to perform any accounting activities in order to implement the Settlement Agreement, and that neither the ISO, nor its directors, officers, employees or consultants, will be responsible for recovering any funds disbursed pursuant to the Settlement Agreement, which are subsequently required to be repaid. The Commission has already approved hold harmless language for the ISO and the PX in the context of the California Parties' settlements with numerous other entities. The factors that justified holding the ISO and PX harmless with respect to the implementation of these other settlements apply equally to the instant Settlement Agreement, namely: (1) any accounting adjustments that might be necessary to implement the Settlement Agreement would not be made under the terms of the ISO Tariff, but rather pursuant to the Settlement Agreement, the

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solely under the authority and powers created by Assembly Bill 1 of the First Extraordinary Session of 2001-2002, codified in Sections 80000 through 80270 of the California Water Code ("CERS").

[2] *See* Joint Explanatory Statement at 5 (Attachment A to Settlement Agreement).

terms of which have been determined by a subset of parties to these proceedings; (2) the ISO markets are not bilateral in nature, but any adjustments would need to be made as if they were; and (3) the ISO is a non-profit public benefit corporation, and it would not be reasonable to subject its officers, employees, and consultants to suits claiming individual liability for engaging in any accounting necessary to implement the Settlement Agreement.

There is nothing in the Settlement Agreement that counsels against, or is inconsistent with, granting the ISO and the individuals associated with it the protection requested here. Moreover, the Settling Parties state that they do not oppose the Commission adopting hold harmless provisions for the ISO and PX.[3]

II. CONCLUSION

Wherefore, for the reasons stated above the ISO respectfully requests that the Commission state, in any order approving the Settlement Agreement, that the ISO, along with its directors, officers, employees, and consultants, will be held harmless with respect to the settlement and any accounting activities that it might have to perform in order to implement the Settlement Agreement, and that neither the ISO, nor its directors, officers, employees, or consultants will be responsible for recovering any funds disbursed pursuant to the Settlement Agreement, which are subsequently required to be repaid.

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[3] *See* Joint Explanatory Statement at 15.

Respectfully Submitted,

/s/ Michael Kunselman

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Dated: December 19, 2016

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of this document upon the email listserv established by the Commission for this proceeding.

Dated this 19th day of December, 2016 in Washington, DC.

/s/ Michael Kunselman

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