UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

San Diego Gas & Electric Company	)	**Docket Nos. EL00-95-000**
v.	)	
Sellers of Energy and Ancillary Services	)	
	)	
Investigation of Practices of the California Independent System Operator and the California Power Exchange	)	**Docket Nos. EL00-98-000**
	)	
Investigation of Wholesale Rates of Public Utility Sellers of Energy and Ancillary Services in the Western Market Systems Coordinating Council	)	**Docket No. EL01-68-000**
	)	
Fact-Finding Investigation Into Possible Manipulation of Electric and Natural Gas Prices	)	**Docket No. PA02-2-000**
	)	
California Independent System Operator Corporation	)	**Docket No. ER03-746-000**
	)	
State of California, ex rel. Bill Lockyer, Attorney General of the State of California	)	**Docket No. EL02-71-000**
v.	)	
British Columbia Power Exchange Corp.	)	
	)	
Investigation of Anomalous Bidding Behavior and Practices in Western Markets	)	**Docket No. IN03-10-000**
	)	
Aquila Merchant Services, Inc.	)	**Docket No. EL03-138-000**
	)	
Aquila Merchant Services, Inc.	)	**Docket No. EL03-181-000**

COMMENTS OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION IN SUPPORT OF JOINT OFFER OF SETTLEMENT INVOLVING MPS MERCHANT SERVICES

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") between MPS Merchant Services, Inc., as successor to Aquila Power Corporation and the California Parties[1] (collectively, the "Settling Parties"), in the above-captioned proceedings on December 8, 2016.

I. COMMENTS

A. The ISO Supports the Settlement Agreement

The ISO has always supported the general principle that settlement is the preferred means for resolving complex disputes, even if the settlement involves only a selected subset of the litigants. In addition, this Commission has consistently encouraged parties to resolve disputes whenever possible through settlement.[2] Against this backdrop, the ISO continues to support the general principle of settlement as embodied in the Settlement Agreement. The approval of the proposed Settlement Agreement will allow significant amounts of cash to flow sooner than would otherwise be the case and in that respect will clearly benefit Market Participants.

The ISO also notes and supports the inclusion in the Settling Agreement of a duty to cooperate on the part of the Settling Parties.[3] It will be absolutely essential that

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[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"), and the California Department of Water Resources acting 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] *Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California v. California Independent System Operator Corporation*, 96 FERC ¶ 61,024, at 61,065 (2001).

[3] *See*, in particular, Section 6.4 of the Settlement and Release of Claims Agreement (Attachment B to Settlement Agreement).

the cooperation of the Settling Parties be maintained from the ISO's perspective, so that the proper financial adjustments can be made so as to properly implement the Settlement Agreement.

B. The Commission Should State that the ISO's Directors, Officers, Employees and Consultants Will Be Held Harmless With Respect to the Settlement and Accounting Activities that the ISO Will Have to Perform in Order to Implement the Settlement Agreement.

As with previous settlements filed and approved in these proceedings, the circumstances of the Settlement Agreement make it necessary to hold harmless the market operators (*i.e.*, the ISO and the PX) that are ultimately tasked with implementing the Settlement Agreement,[4] along with their directors, officers, employees and consultants. Therefore, in any order approving this Settlement Agreement, the Commission should state that the ISO, along with its directors, officers, employees and consultants, will be held harmless with respect to the settlement and accounting activities that it will 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. The Commission has already approved hold harmless language for the ISO and the PX in the context of the California Parties' settlements with a number of 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.

[4] The ISO has requested hold harmless treatment in comments on previous settlements filed in this proceeding. The Commission has, to date, provided the ISO with hold harmless treatment with respect to the settlements on which it has ruled.

First, as with previous settlement agreements in these proceedings, the flow of funds pursuant to the Settlement Agreement will also require unprecedented accounting adjustments on the part of the ISO. These accounting adjustments will not be made under the terms of the ISO Tariff, but rather pursuant to the Settlement Agreement, the terms of which have been determined by a subset of parties to these proceedings. As the Commission is well aware, the ISO Markets ordinarily are not bilateral in nature. However, this settlement requires the ISO to adopt that fiction as between the Settling Parties. A Market Participant might file a complaint or bring suit against the ISO, and/or its directors, officers, employees and consultants, claiming that the ISO did not make appropriate accounting adjustments, and as a result did not reflect the appropriate amount of refunds or receivables owing to that Market Participant.

Moreover, because the Settlement Agreement has been filed prior to the final orders in the Refund Proceeding, it is not certain that the Settling Parties' estimates of payables and receivables are accurate, and due to the complexity of the settlement, there may be additional, unforeseen impacts to ISO Market Participants. It is possible that such impacts would cause Market Participants to bring actions against the ISO (or its directors, officers, employees and consultants), as a result of the implementation of the Settlement Agreement.

A hold harmless provision would also be appropriate because 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 the accounting necessary to implement the Settlement Agreement. These individuals

should not be subjected to litigation, along with its attendant costs and expenditure of time, for merely implementing a settlement authorized by the Commission.

Finally, 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. Indeed, the Settlement Agreement provides for numerous mutual releases and waivers, which will effectively "hold harmless" the Settling Parties from existing and potential claims. Moreover, the Settling Parties state that they do not oppose the Commission adopting hold harmless provisions for the ISO and PX.[5]

For these reasons, the Commission, in any order approving the Settlement Agreement, should state that the ISO, along with its directors, officers, employees, and consultants, will be held harmless with respect to the settlement and accounting activities that the ISO will 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.

[5] *See* Joint Explanatory Statement at 21 (Attachment A to Settlement Agreement).

II. CONCLUSION

Wherefore, for the reasons stated above the ISO respectfully states that it supports the Settlement Agreement. The ISO also 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 accounting activities that it will 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.

Respectfully Submitted,

/s/ Michael Kunselman

Roger E. Collanton
General Counsel
Burton Gross
Assistant General Counsel
Daniel J. Shonkwiler
Lead Counsel
California Independent System
Operator Corporation
250 Outcropping Way
Folsom, CA 95630
Tel: (916) 351-4400
Fax: (916) 351-4436
E-mail: dshonkwiler@caiso.com

Michael Kunselman
Alston & Bird LLP
The Atlantic Building
950 F Street, NW
Washington, DC 20004
Tel: (202) 239-3300
Fax: (202) 654-4875
E-mail: michael.kunselman@alston.com

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

Michael Kunselman
(202) 239-3395