

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

<b>San Diego Gas &amp; Electric Company</b>	)	<b>Docket Nos. EL00-95-000</b>
<b>v.</b>	)	
<b>Sellers of Energy and Ancillary Services</b>	)	
	)	
<b>Investigation of Practices of the California</b>	)	<b>Docket Nos. EL00-98-000</b>
<b>Independent System Operator and the</b>	)	
<b>California Power Exchange</b>	)	
	)	

**COMMENTS OF THE CALIFORNIA INDEPENDENT  
SYSTEM OPERATOR CORPORATION IN SUPPORT OF THE  
JOINT OFFER OF SETTLEMENT INVOLVING  
TRANSMISSION OWNER REVENUES**

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”)<sup>1</sup> hereby submits its comments on the Joint Offer of Settlement (“Settlement Agreement”) filed by Pacific Gas and Electric Company (“PG&E”), Southern California Edison Company (“SCE”), and San Diego Gas & Electric Company (“SDG&E”) (collectively, the “Settling Parties”) in the above-captioned proceedings on April 14, 2016

**I. COMMENTS**

**A. The Settlement Agreement Directly Affects the ISO’s Interests.**

Although the ISO is not a signatory to the Settlement Agreement, the ISO, along with the California Power Exchange (“PX”), will be responsible for reflecting this

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<sup>1</sup> Capitalized terms not otherwise defined herein are used as defined in Appendix A to the ISO Tariff, or in the Settlement and Release of Claims Agreement referred to in the text.

settlement on its books of account.<sup>2</sup> Therefore, the ISO has a direct and substantial interest in the Commission's treatment of the Settlement Agreement.

**B. The ISO Does Not Oppose the Settlement Agreement**

As explained in the overview, this Settlement Agreement relates to claims for payment of amounts that are owed to the Settling Parties based on charges for transmission services invoiced by the ISO during the period covered by this Settlement Agreement (October 1, 2000 through August 31, 2001).<sup>3</sup> These amounts do not relate to energy sales or purchases, and were not subject to mitigation. Moreover, refunds owed to the Settling Parties' ISO transmission owner accounts are not addressed by this settlement.<sup>4</sup>

Because the underlying transmission owner charges have not been subject to challenge in this proceeding, the ISO does not oppose discharging those obligations in the manner provided for in the Settlement Agreement. The ISO notes and supports the fact that the effectiveness of the settlement is made contingent on the approval of the PG&E and PX Bankruptcy Courts.<sup>5</sup>

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<sup>2</sup> See, in particular, 105 FERC ¶ 61,066 (2003), the Commission's Order on Rehearing, Docket Nos. EL00-95-081, *et al.*

<sup>3</sup> Joint Offer of Settlement at 2.

<sup>4</sup> *Id.* at 2, n.3.

<sup>5</sup> See, in particular, Sections 8.1 and 8.2 of the Settlement Agreement (Exhibit B to Joint Offer of Settlement).

**C. 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 this Settlement Agreement make it necessary to hold harmless the market operators (*i.e.*, the ISO and the PX) that are ultimately tasked with implementing this Settlement Agreement,<sup>6</sup> 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. As noted above, 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.

First, as with previous settlement agreements in these proceedings, the flow of funds pursuant to the Settlement Agreement will 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.

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<sup>6</sup> The ISO has requested hold harmless treatment in comments on previous settlements filed in this proceeding and the Commission has, to date, provided the ISO with hold harmless treatment with respect to all of these settlements.

Moreover, the interests of the parties to this particular Settlement Agreement are generally aligned insofar as they all wish to receive payment of their transmission owner revenues prior to the final cash clearing in this proceeding, and as such there may be additional, unforeseen impacts to other 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 ISO's implementation of the Settlement Agreement.

For these reasons, the ISO believes that it is critically important that the Commission, as with all settlements reached in these proceedings that involve the flow of monies through the ISO Markets, hold the ISO (along with its directors, officers, employees, and consultants) harmless with respect to the implementation of this 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. To the contrary, the Settling Parties explicitly state that they do not oppose the Commission adopting hold harmless provisions for the ISO and PX.<sup>7</sup>

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<sup>7</sup> See Joint Explanatory Statement at 14 (Exhibit A to Joint Offer of Settlement).

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.

## **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 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

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Dated: May 4, 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 4<sup>th</sup> day of May, 2016 in Washington, DC.

*/s/ Michael Kunselman*

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