UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

San Diego Gas & Electric Company	)	
	)	
v.	)	**Docket No. EL00-95, *et al.***
	)	
Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange	)	
Investigation of Practices of the California Independent System Operator and the California Power Exchange	)	**Docket No. EL00-98, *et al***
California Independent System Operator Corporation	)	**Docket No. ER01-889-000**
Mirant California, LLC, Mirant Delta, LLC, and Mirant Potrero LLC	)	**Docket No. ER01-1455-000**
California Independent System Operator Corporation	)	**Docket No. ER01-3013-000**
California Independent System Operator Corporation	)	**Docket No. ER03-746-000**
Public Utilities Commission of the State of California	)	
	)	
v.	)	**Docket No. EL02-60-000**
	)	
Sellers of Long Term Contracts to the California Department of Water Resources	)	
California Electricity Oversight Board	)	
	)	
v.	)	**Docket No. EL02-62-000**
	)	
Sellers of Energy and Capacity Under Long –Term Contracts with the California Department of Water Resources	)	

Mirant Americas Energy Marketing, LP Mirant California, LLC, Mirant Delta, LLC, and Mirant Potrero, LLC	**)**	**Docket No. EL03-158-000**
Enron Power Marketing, Inc. and Enron Energy Services Inc., et al.	**)**	**Docket No. EL03-180-000**
Pacific Gas and Electric Company	**)** **)** **)** **)**	**Docket No. ER-98-495-000** **ER98-1614-000** **ER98-2145-000** **ER99-3603-000**
Mirant Delta, LLC and Mirant Potrero, LLC	**)**	**Docket No. ER03-215-000**
Mirant Delta, LLC and Mirant Potrero, LLC	**)**	**Docket No. ER04-227-000**
Mirant Delta, LLC and Mirant Potrero LLC	**)**	**Docket No. ER05-343-000**
Southern Company Energy Marketing, Inc. and Southern Company Services, Inc.	**)**	**Docket No.ER97-4166-000**
Southern Energy California, LLC	**)**	**Docket No. ER99-1841-000**
Southern Energy Delta, LLC	**)**	**Docket No. ER99-1842-000**
Southern Energy Potrero, LLC	**)**	**Docket No. ER99-1833-000**
Mirant Americas Energy Marketing, LP	**)**	**Docket No. ER99-1265-000**
Mirant California, LLC	**)**	**Docket No. ER01-1265-000**
Mirant Delta, LLC	**)**	**Docket No. ER01-1270-000**
Mirant Potrero, LLC	**)**	**Docket No. ER01-1278-000**
State of California, ex rel Bill Lockyer Attorney General of the state of California	**)** **)** **)**	
v.	**)** **)**	**Docket No. EL02-71-000**
British Columbia Power Exchange Corp. Coral Power, LLC, Dynegy Power	**)** **)**	

Marketing, Inc., Enron Power Marketing, Inc., Mirant Americas Energy Marketing, Inc., Reliant Energy Services, Inc. Williams Energy Marketing & Trading Co.	)	
Puget Sound Energy, Inc.	)	
v.	)	**Docket No.EL01-10-000**
All Jurisdictional Sellers of Energy and/or Capacity in the Northwest	)	
Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices	)	**Docket No. PA02-2-000**
Mirant Americas Energy Marketing, LP	)	**Docket No. PA03-8-000**
Investigation of Anomalous Bidding Behavior Docket And Practices in the Western Markets	)	**Docket No. IN03-10-000**

COMMENTS OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION IN SUPPORT OF THE JOINT OFFER OF SETTLEMENT

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) (2003), the California Independent System Operator Corporation ("ISO")[1] hereby submits its comments on the Joint Offer of Settlement ("Settlement Agreement") filed by Mirant Parties[2] or Mirant, the California Parties,[3] and the Commission's Office of Market

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

[2] "Mirant Parties or "Mirant" refers to the following entities: Mirant Corporation, Mirant Americas, Inc., Mirant Americas Energy Marketing, LP, Mirant Americas Energy Marketing Investments, Inc., Mirant Americas Generation, LLC, Mirant California Investments, Inc., Mirant California, LLC, Mirant Delta, LLC, Mirant Potrero, LLC, Mirant Special Procurement, Inc., Mirant Services, LLC and Mirant Americas Development, Inc.

[3] The California Parties consist of The People of the state of California, ex rel. Bill Lockyer, Attorney General of the state of California,("California Attorney General"), California Department of Water

Oversight and Investigations ("OMOI") (collectively, the "Settling Parties") in the above captioned proceedings on January 31, 2005. The ISO comments as follows on the Settlement Agreement as filed with the Commission.

I. COMMENTS

A. The ISO Supports the Settlement Agreement

The ISO is a non-profit public benefit corporation organized under the laws of the state of California and is responsible for the reliable operation of the transmission grid comprising the transmission systems of SCE, SDG&E, PG&E, and various municipalities. Although it is not a party to the Settlement Agreement, the ISO will be responsible for the financial implementation of this settlement on its books of account and in the financial clearing phase of the market re-runs that have been ordered by the Commission as a part of the Refund Proceeding.[4]

The ISO supports the general principle that settlement is the preferred means to resolving disputes. In addition, this Commission has consistently encouraged parties to resolve disputes whenever possible through settlement.[5] Consistent with this general principle, the ISO supports the Settlement Agreement offered by the Settling Parties and urges the Commission to approve it. The proposed Settlement Agreement will result in release of cash to Settling Parties sooner than would otherwise be the case and helps to bring the refund proceeding, initiated four and a half years ago, to

---

Resources, acting solely under the authority and powers created by AB1-X, codified in Sections 80000 through 80270 thereof and not under its powers and responsibilities with respect to the State Water Resources Development System ("CERS"), Pacific Gas and Electric Company ("PG&E"), Southern California Edison Company ("SCE"), and San Diego Gas & Electric Company ("SDG&E"), the California Public Utility Commission, and the California Electricity Oversight Board.

[4] *See*, in particular, 105 FERC ¶ 61,066 (2003), the Commission's Order on Rehearing, Docket EL00-95-081 et al.

[5] Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California v. California Independent System Operator Corporation, 96 FERC ¶ 61,024, at 61,065 (2001).

conclusion. Accordingly, approval of the Settlement will clearly benefit Market Participants.

Specifically, the ISO supports the inclusion in the Settlement Agreement of a duty to cooperate on the part of the Settling Parties.[6] This duty to cooperate includes providing assistance to the ISO as necessary in order to implement the Settlement Agreement. The cooperation and assistance of the Settling Parties is essential to ensure that the proper financial adjustments can be made following the end of the market re-runs taking place in this proceeding to implement this settlement.

With the cooperation of the Settling Parties, the ISO believes that implementation disputes can be avoided and Commission involvement would not be needed. However, recognizing that it is not possible to foresee every contingency that might arise, the procedural framework is in place to handle such disputes, if they were to arise.

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 it Will Have to Perform in Order to Implement the Settlement Agreement.

The unique circumstances of this Settlement Agreement make it necessary to hold harmless the market operators (*i.e.*, the ISO and PX) that are ultimately tasked with implementing this Settlement Agreement and others like it,[7] along with their directors, officers, employees and consultants. Therefore, in any order approving this Settlement

---

[6] See Section 6.9.8 of the Settlement Agreement.

[7] The ISO has requested hold harmless treatment in comments on previous settlements filed in this proceeding with respect to Dynegy and Williams. In its July 2, 2004 order accepting the Williams settlement, 108 FERC ¶ 61,002 (2004), the Commission denied the ISO and PX's request for a hold harmless provision. The ISO sought rehearing of this ruling. However, the ISO and PX were granted the requested "hold harmless" language when the Commission approved the Duke settlement with the California Parties in this same proceeding, 109 FERC ¶ 61,257 (2004). The ISO requests that the Commission approve such language for each such settlement that it has approved, or may approve, in these proceedings.

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' settlement with Duke. The factors that supported holding the ISO and PX harmless with respect to the implementation of the Duke settlement apply equally to the instant Settlement Agreement.

First, the financial impact of this Settlement Agreement is substantial – over $320 million dollars. 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 this proceeding. As the Commission is well aware, the ISO Markets are not bilateral in nature. However, this settlement requires the ISO to adopt that fiction as between the Settling Parties, and make billing adjustments accordingly. A Market Participant could 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 that 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 (and even its directors, officers, employees and consultants), as a result of the ISO's implementation of the Settlement Agreement.

All of these problems will be amplified as the Commission approves more settlement agreements in this proceeding. The Commission has already approved settlements reached between Williams, Dynegy, Duke and the California Parties. As the volume of settlements increases, the task of implementing those settlements will become more and more complicated. Likewise, the possibility that a party will bring an action against one, or both, of the market operators also increases. For this reason, the ISO believes that it is critically important that the Commission hold the ISO (along with its directors, officers, employees, and consultants) harmless with respect to the implementation of all of the settlements reached in this proceeding that involve the flow of monies through the ISO Markets.

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 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 recommends 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. It is unreasonable to permit the Settling Parties to insulate themselves in this manner without providing similar protection to the entities that will be required to financially reflect and implement the Settlement Agreement. A hold harmless provision of the type requested by the ISO is also consistent with the approved terms of the ISO Tariff, which provides that the ISO shall not be liable in damages to any Market Participant for "any losses, damages, claims, liability, costs or expenses . . . arising from the performance or non-performance of its obligations" under the ISO Tariff, except to the extent that they result from negligence or intentional wrongdoing on the part of the ISO. ISO Tariff, Section 14.1.

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 it will have to perform in order to implement the Settlement Agreement, and that neither the ISO, nor its directors, officers, or 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 states that it supports the Settlement Agreement as filed and will work with the Settling Parties to implement it. The ISO also respectfully requests that the Commission state, in any order approving the Settlement Agreement, that 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, or 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/ Gene L. Waas

Charles F. Robinson
General Counsel
Gene L. Waas
Regulatory Counsel

The California Independent System Operator Corporation
151 Blue Ravine Road
Folsom, CA 95630
Telephone: (916) 608-7049

J. Phillip Jordan
Michael Kunselman
Swidler Berlin, LLP
3000 K Street, Ste. 300
Washington, D.C. 20007
Telephone: (202) 424-7500

Dated: February 22, 2005

CALIFORNIA ISO

California Independent
System Operator

February 22, 2005

BY ELECTRONIC TRANSMISSION

The Honorable Magalie Roman Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: ***San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator Corporation and California Power Exchange***
Docket No. EL00-95, et al.

Dear Secretary Salas:

Enclosed for electronic filing please find Comments of the California Independent System Operator Corporation in Support of the Joint Offer of Settlement in the above-referenced dockets.

Thank you for your assistance in this matter.

Very truly yours,

/s/ Gene L. Waas
Gene L. Waas

Counsel for the California Independent
System Operator Corporation

Enclosures

cc: All parties of record

CERTIFICATE OF SERVICE

I hereby certify that I have on this day served copies of the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Folsom, CA, this 22nd day of February, 2005.

/s/ Gene L. Waas
Gene L. Waas