UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

San Diego Gas & Electric Company	)	
v.	)	**Docket Nos. EL00-95-000**
Sellers of Energy and Ancillary Services	)	
	)	
Investigation of Practices of the California	)	
Independent System Operator and the	)	**Docket Nos. EL00-98-000**
California Power Exchange	)	
	)	
Investigation of Anomalous Bidding	)	
Behavior and Practices in Western Markets	)	**Docket No. IN03-10-000**
	)	
Fact-Finding Investigation Into Possible	)	
Manipulation of Electric and Natural Gas	)	**Docket No. PA02-2-000**
Prices	)	
	)	
Reliant Resources, Inc., *et al*.	)	**Docket No. EL03-170-000**
	)	
Enron Power Marketing and Enron Energy	)	**Docket No. EL03-180-000**
Services, Inc., *et al*.	)	
	)	
Reliant Energy Services, Inc., *et al*.	)	**Docket No. EL03-59-000**

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

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) (2004), the California Independent System Operator Corporation ("ISO")[1] hereby submits its comments on the Joint Offer of Settlement ("Settlement Agreement")

[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.

filed by Reliant,[2] the California Parties,[3] and the Commission's Office of Market Oversight and Investigations ("OMOI") (collectively, the "Settling Parties") in the above captioned proceedings on October 14, 2005.

I. COMMENTS

A. The Settlement Agreement Directly Affects the ISO's Interests

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. The ISO is not a signatory to the Settlement Agreement. However, it is the ISO that 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] Therefore, the ISO has a direct and substantial interest in the Commission's treatment of the Settlement Agreement.

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[2] For purposes of this filing "Reliant" refers to: Reliant Energy, Inc.; Reliant Energy Services, Inc.; Reliant Energy Power Generation, Inc.; Reliant Energy California Holdings, Inc.; Reliant Energy Coolwater, Inc.; Reliant Energy Ellwood, Inc.; Reliant Energy Etiwanda, Inc.; Reliant Energy Mandalay, Inc.; Reliant Energy Ormond Beach, Inc.; and each of the affiliates and subsidiaries of Reliant Energy, Inc. listed on Exhibit A to the Settlement Agreement.

[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 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.

B. The ISO Supports the Settlement Agreement

The ISO has always supported the general principle that the end to complex litigation through settlement is the preferred process as opposed to the continuation of that litigation for all litigants, or for even a selected subset of the litigants. In addition, this Commission has consistently encouraged parties to resolve disputes whenever possible through settlement.[5] The refund proceeding has now been ongoing for over five years. Against this backdrop, the ISO continues to support the general principle of settlement as embodied in the Settlement Agreement offered by the Settling Parties. The approval of the proposed Settlement Agreement will allow certain 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 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. It will be absolutely essential that 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.

The ISO thanks the Settling Parties for their efforts to work together and reach agreement. It is the ISO's hope that the Commission will not have to become involved in any implementation disputes involving this Settlement

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

[6] *See*, in particular, Section 7.5 of the Settlement Agreement.

Agreement. 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 indeed, they do arise.

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 this proceeding, the 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,[7] 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

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[7] The ISO has requested hold harmless treatment in comments on previous settlements filed in this proceeding with respect to Duke, Williams, Mirant, Enron, and the Public Service Company of Colorado ("PSC Colorado"). The Commission has, to date, provided the ISO with hold harmless treatment with respect to three of these settlements -- those involved Duke, Williams, and Mirant. *See* 109 FERC ¶ 61,257 (2004) (order accepting the Duke settlement), 111 FERC ¶ 61,107 (2005) (order accepting the Mirant settlement), 111 FERC ¶ 61,186 (2005) (order on rehearing of the order approving the Williams settlement). The Commission has yet to rule on the Enron and PSC Colorado settlements. The ISO requests that the Commission approve such language for each such settlement that it has approved, or may approve, in these proceedings.

hold harmless language for the ISO and the PX in the context of the California Parties' settlements with Duke, Williams, and Mirant. The factors that justified holding the ISO and PX harmless with respect to the implementation of the Duke, Mirant, and Williams settlements apply equally to the instant Settlement Agreement.

First, the financial impact of this Settlement Agreement is substantial – over $500 million dollars. As with previous settlement agreements in this proceeding, 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 ordinarily 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 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 ISO's implementation of the Settlement Agreement.

These problems may be amplified as the Commission approves more settlement agreements in this proceeding. The Commission has already approved the settlements reached by Williams, Dynegy, Duke, and Mirant with the California Parties. As the volume of settlements increases, the task of implementing those settlements will become more and more complicated. Likewise, the possibility 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 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.[8]

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, or employees, or consultants will be responsible for recovering any funds disbursed pursuant to the Settlement Agreement, which are subsequently required to be repaid.

D. The Commission Should Confirm That Certain Terms of the Settlement Agreement Relating to the Calculation of Refunds Prior to October 2, 2000 Would Apply Only Upon Receipt of a FERC Order Directing Refunds for That Period

In the section addressing ISO and PX accounting and implementation, the Settlement Agreement provides that the ISO and PX will calculate the amount of refunds, if any, that Reliant would owe, or would be owed, if the Commission's refund methodology were to be applied to the period from May 1, 2000 through October 1, 2000 (defined in the Settlement Agreement as the "Pre-October

[8] *See* Joint Offer of Settlement, Joint Explanatory Statement at 14-15.

Period"), and submit these calculations to the Commission at the time they submit their calculations of refunds for other Market Participants.[9] Currently, the Commission's refund orders only provide for refunds for the period October 2, 2000 through June 20, 2001 (the "Refund Period"). The ISO understands the reference to "if any" in Sections 7.1.3 and 7.1.4 to mean that the ISO would be required to calculate refunds relating to the Pre-October Period only if the Commission expands the scope of the Refund Period by issuing an order stating that refunds should be made for the Pre-October Period. The ISO requests that this interpretation be explicitly adopted as part of any order approving the Settlement Agreement.

II. CONCLUSION

Wherefore, for the reasons stated above the ISO respectfully states that it supports the Settlement Agreement 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. Finally, the ISO requests that any order approving the Settlement Agreement confirm that the ISO would be required to calculate

[9] *See* Settlement Agreement, Sections 7.1.3, 7.1.4.

refunds relating to the Pre-October Period only if the Commission issues an order so expanding the scope of the Refund Period.

Respectfully submitted,

/s/ Michael Kunselman

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Dated: November 3, 2005

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 3rd day of November, 2005.

/s/ Daniel J. Shonkwiler
Daniel J. Shonkwiler