

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

Public Utilities Providing Service in)
California under Sellers' Choice)
Contracts) Docket No. EL04-108-000

**COMMENTS OF THE CALIFORNIA INDEPENDENT
SYSTEM OPERATOR CORPORATION IN SUPPORT OF THE
OFFER OF SETTLEMENT AND SETTLEMENT AGREEMENT BETWEEN THE
CALIFORNIA DEPARTMENT OF WATER RESOURCES AND SEMPRA
GENERATION**

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 (“CAISO”)¹ hereby submits its comments on the Offer of Settlement and Settlement Agreement (“Settlement Agreement”) filed by the California Energy Resources Scheduling Division (“CERS”) of the California Department of Water Resources (“CDWR”) and Sempra Generation (f/k/a Sempra Energy Resources) (collectively, the “Settling Parties”), in the above captioned proceeding on April 7, 2005.

I. COMMENTS

The CAISO 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 system that serves much of California. Although the CAISO is not a signatory to it, the Settlement Agreement will directly affect the CAISO by resolving issues associated with delivery of energy pursuant to the long-term power contract between the Settling

¹ Capitalized terms not otherwise defined herein are used as defined in Appendix A to the ISO Tariff.

Parties under the CAISO's Market Redesign and Technology Upgrade project ("MRTU"). This Settlement Agreement removes an obstacle to implementation of a locational marginal price ("LMP")-based market as part of MRTU and thereby obviates the need for litigation to resolve, as to Settling Parties, the issues relating to seller's choice contracts identified in the Commission's Order of June 17, 2004.² The CAISO favors settlement of complex litigation over litigation. In addition, this Commission has consistently encouraged parties to resolve disputes whenever possible through settlement.³

The CAISO has been working to resolve seller's choice contract issues upon implementation of MRTU for over two years. In the first half of 2004, the CAISO began developing the concept of trading hubs and the use of an Inter-Scheduling Coordinator Trade ("Inter-SC Trade") mechanism to provide alternative delivery points for existing contracts under MRTU. In its June 17 Order, the Commission instituted this proceeding to investigate the feasibility of both upholding seller's choice contracts without modification and implementing the CAISO's proposed market redesign.⁴ Settlement discussions to attempt to resolve the issues raised in this proceeding commenced in July 2004. Thereafter, the CAISO continued to work with parties to the proceeding and other stakeholders in further developing the details associated with trading hubs, including the definition of Existing Zone Generation Trading Hubs ("EZ Gen Hubs") as successor contract delivery points to today's existing congestion zones, and the Inter-SC trade mechanism, including the requirement for physical validation of Inter-SC trades at

² *Order on Further Development of the California ISO's Market Redesign and Establishing Hearing Procedures, California Independent System Operator Corporation and Public Utilities Providing Service in California under Sellers' Choice Contracts*, Docket Nos. ER02-1656-017, *et al.* and EL04-108-000, 107 FERC ¶ 61,274 (2004) ("June 17 Order").

³ *See, e.g., Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California v. California Independent System Operator Corporation*, 96 FERC ¶ 61,024, at 61,065 (2001).

⁴ *See* June 17 Order at PP 165-66.

nodes, which became the cornerstone to resolving the issues in this proceeding through negotiated settlements, rather than litigation.

On March 15, 2005, the CAISO submitted to the Commission its Comprehensive Design Proposal for Inter-Scheduling Coordinator Trades (“Inter-SC Trade Proposal”), which explains how the CAISO intends to offer settlement of Inter-SC Trades when it implements MRTU and also describes the EZ Gen Hubs which will serve as successor contract delivery points to today’s existing congestion zones under LMP.⁵ As the CAISO proceeded through the steps of developing and then filing the Inter-SC Trade Proposal, the Settling Parties were able to craft their settlement regarding the disposition of their contract. As the parties noted in filing it, the Settlement Agreement is contingent on the Commission’s approval of the Inter-SC Trade Proposal without modification.

The CAISO offers specific comment on only one section of the Settlement Agreement. Section 6.3 addresses the potential for modifications to the Inter-SC Trade Proposal that would have a materially adverse effect on the interests of either of the Settling Parties. The section establishes the preference of the Settling Parties that the Commission determine whether a proposed modification of the Inter-SC Trade Proposal would have a materially adverse effect before, or simultaneously with, its determination of whether to approve the modification. The CAISO appreciates the Settling Parties’ interests in having the Commission do so, and in the normal course of events believes that pre-determination or simultaneous determination is to be preferred. However, the CAISO notes that Section 6.3(f) envisions a situation in which the Commission approves a modification before determining whether the modification has a materially adverse effect on either of the settling parties. While the CAISO does not now

⁵ *Comprehensive Design Proposal for Inter-Scheduling Coordinator Trades Under the California Independent System Operator Corporation’s Market Redesign and Technology Upgrade*, filed at the Commission by the CAISO on March 15, 2005, and assigned Docket No. ER02-1656-025.

anticipate a specific situation in which it might request the Commission to approve a proposed modification before making the determination concerning material adversity, the CAISO believes it appropriate that the Settlement Agreement recognizes that such a situation could arise and makes explicit the Commission's ability, even after approving the Settlement Agreement, to approve a modification to the Inter-SC Trade Proposal on as short a schedule as might be necessary under the circumstances existing at the time.

The Settlement Agreement, along with other settlement agreements filed in this proceeding, and adoption of the CAISO's March 15 Inter-SC Trade Proposal, without modification, will resolve the disposition under MRTU of those seller's choice contracts for which the parties to the contracts have determined that Commission action is necessary. Parties to many other contracts have elected to deal with disposition of those contracts under LMP on their own, without Commission involvement, and have filed motions to dismiss those contracts from this proceeding. Commission approval of the Settlement Agreement and the Inter-SC Trade Proposal, without modification, and favorable Commission action on the pending motions to dismiss, all by mid-May, is crucial to maintaining the CAISO's current schedule for development of the software and systems required to implement its LMP-based market redesign by the proposed February 2007 implementation date. Accordingly, the CAISO requests that the Commission approve the Settlement Agreement.

Finally, the CAISO thanks the Settling Parties for working together to reach agreement and for keeping the CAISO involved in this process. While it has taken significant time and effort to reach this Settlement Agreement, the time and effort have been well spent.

II. CONCLUSION

Wherefore, for the reasons stated above, the CAISO supports the Settlement Agreement as filed and encourages the Commission to approve it.

Respectfully submitted,

/s/ J. Phillip Jordan

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Dated: April 27, 2005

Certificate of Service

I hereby certify that I have this day served a copy of this document by posting it to the public document listserv, consistent with the guidelines contained in the Presiding Administrative Law Judge's Prehearing Order of July 1, 2004. Dated at Washington, DC this 27th day of April, 2005.

/s/ Ronald E. Minsk
Ronald E. Minsk