

**EXHIBIT NO. ISO-46**

# THOMPSON COBURN

San Diego Gas & Electric Co.  
Docket No. EL0-95-045, et al.

Exhibit No. ISO-46  
Page 1 of 47

Thompson Coburn, LLP

FILED  
OFFICE OF THE SECRETARY

02 JUL 31 PM 4:32

Suite 600  
1909 K Street, N.W.  
Washington, D.C. 20006-1167  
202-585-6900

July 31, 2002

FAX 202-585-6969

www.thompsoncoburn.com

Honorable Magalie Roman Salas  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE, Room 1A  
Washington, D.C. 20426

Re: Cities of Anaheim, Azusa, Banning, Colton and Riverside,  
California v. California Independent System Operator Corporation,  
Docket No. EL00-111-002; Salt River Project Agricultural  
Improvement and Power District v. California Independent System  
Operator Corporation, Docket No. EL01-84-000 (Not Consolidated)

Dear Secretary Salas:

Enclosed please find the original and fourteen (14) copies of an Offer of Settlement and Settlement Agreement by the California Independent System Operator Corporation ("California ISO"), Cities of Anaheim, Azusa, Banning, Colton and Riverside, California ("Southern Cities"), Salt River Project Agricultural Improvement and Power District ("SRP"), City of Vernon, California ("Vernon") and California Department of Water Resources ("CDWR") (all inclusive, the "Settling Parties") in the above-referenced proceeding.

Also enclosed is a separate Explanatory Statement as required by Rule 602 of the Commission's Rules of Practice and Procedure. The Settling Parties ask the Secretary to transmit a copy of this Offer of Settlement and Settlement Agreement to Presiding Administrative Law Judge Jacob Leventhal pursuant to Rule 602(b).

Pursuant to Rule 602(f) of the Commission's Rules of Practice and Procedure, the participants in the proceedings covered by the Offer of Settlement may file initial comments regarding the Offer of Settlement within twenty (20) days of the filing. Reply comments may be filed within ten (10) days thereafter. Accordingly, initial comments will be due on or before August 20, 2002, and reply comments will be due on or before August 30, 2002.

Please date stamp the two additional copies enclosed herewith and return them to our messenger.

Thank you for your assistance.

Sincerely,

Bonnie S. Blair  
Bonnie S. Blair

Attorney for the Cities of Anaheim,  
Azusa, Banning, Colton, and Riverside,  
California

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

<b>Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California,</b>	)	
	)	
<b>Complainants</b>	)	
<b>v.</b>	)	<b>Docket No. EL00-111-002</b>
	)	
<b>California Independent System Operator Corporation,</b>	)	
	)	
<b>Respondent</b>	)	
	)	
<b>Salt River Project Agricultural Improvement and Power District</b>	)	
	)	
<b>Complainant</b>	)	<b>Docket No. EL01-84-000</b>
<b>v.</b>	)	
	)	<b>(Not Consolidated)</b>
<b>California Independent System Operator Corporation,</b>	)	
	)	
<b>Respondent</b>	)	

**OFFER OF SETTLEMENT AND SETTLEMENT AGREEMENT**

Pursuant to Rule 602 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission" or "FERC"), 18 C.F.R. § 385.602 (2001), the California Independent System Operator Corporation ("California ISO"), Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California ("Southern Cities"), Salt River Project Agricultural Improvement and Power District ("SRP"), City of Vernon, California ("Vernon") and California Department of Water Resources ("CDWR") (collectively, the "Settling Parties"), hereby offer and agree to the terms of this Settlement Agreement as the full and final resolution of all issues in the above-

captioned complaint proceedings pertaining to the California ISO's allocation and collection of energy costs incurred as a result of schedule deviations through neutrality adjustment charges during the period June 1, 2000 through February 26, 2001.

### **BACKGROUND**

To avoid an intervention in market operations or prevent or relieve a system emergency, during the period June 1, 2000 through December 11, 2000, the California ISO purchased energy to serve the loads of Scheduling Coordinators who did not Schedule or deliver enough energy to meet the real-time needs of their loads. The California ISO allocated costs incurred by the California ISO for Dispatch instructions made by the California ISO to serve the Loads of Scheduling Coordinators who did not adequately Schedule or deliver enough Energy to all Scheduling Coordinators, including to those Scheduling Coordinators who Scheduled and delivered enough Energy to serve their own Load, in the form of neutrality adjustment charges. The neutrality adjustment charges billed to all Scheduling Coordinators included the costs of energy procured through out-of market dispatches by the California ISO as well as the costs of energy procured within California ISO markets in excess of the applicable market clearing price, or soft cap, in effect during this time period.<sup>1</sup> The neutrality adjustment charges were assessed based on the ratio of each Scheduling Coordinator's metered Demand and Exports to the total metered Demand and Exports in each Settlement Interval.

---

<sup>1</sup> A \$250/MWh break point, or soft price cap, was in effect when energy was procured by the California ISO in December 2000. A \$150/MWh break point, or soft cap, was in effect when energy was procured by the California ISO during the period January 1, 2001 through February 26, 2001.

On September 15, 2000, the Southern Cities filed a complaint against the California ISO in Docket No. EL00-111-000. In their complaint, the Southern Cities (1) challenged the allocation to all Scheduling Coordinators of the costs of acquiring energy due to underscheduling by some Scheduling Coordinators and (2) alleged that the California ISO violated its filed Tariff by assessing neutrality adjustment charges to Scheduling Coordinators in excess of the \$0.095/MWh limit contained in the ISO Tariff, after June 1, 2000, without first obtaining prior authorization from the California ISO Governing Board to increase the limit or providing notice to Scheduling Coordinators of any increase in the limit authorized by such Board.

On September 25, 2000, the California ISO filed an answer to the Southern Cities' complaint. In its answer, the California ISO defended the allocation of energy purchase costs to all Scheduling Coordinators and alleged that the limit on neutrality adjustment charges was intended to be applied for budgeting purposes only on an annual basis, not an hourly basis, and was never intended to prohibit it from recovering legitimately incurred costs.

On March 14, 2001, the Commission granted in part and dismissed in part the Southern Cities' complaint.<sup>2</sup> The Commission concluded that the California ISO violated the \$0.095/MWh limit on neutrality adjustment charges in the California ISO's filed Tariff that was in effect from June 1, 2000 until September 15, 2000, and ordered the California ISO to pay refunds for amounts charged in excess of this limit to one of the complainants. The Commission found that there was no basis for requiring the California ISO to absorb the costs of such refunds, and therefore allowed the California

---

<sup>2</sup> *Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California v. California Independent System Operator Corporation*, 94 FERC ¶ 61,268 (2001).

ISO to allocate those costs to the remaining Scheduling Coordinators in proportion to their relevant metered Demands (with the proviso that such costs could not exceed on an individual basis the \$0.095/MWh limit stated in the California ISO's filed Tariff).

In the March 14 Order, the Commission also concluded that the Southern Cities' complaint about the manner in which the California ISO allocated energy costs resulting from underscheduling was moot because the California ISO had amended its Tariff, after the Southern Cities filed their complaint, to allocate these costs only to those Scheduling Coordinators who actually deviated from their schedules. This change to the California ISO's allocation methodology was filed with and approved by the Commission on December 8, 2000, as part of Amendment No. 33 to the California ISO's Tariff; however, the California ISO did not implement the change until December 12, 2000. The Southern Cities, Vernon, and the California ISO applied for rehearing of the Commission's March 14 Order.

On December 29, 2000, the California ISO filed an amendment to its Tariff to explicitly state that the limit on neutrality adjustment charges would be applied on an annual basis, rather than an hourly basis. The Commission approved this Tariff change prospectively and it went into effect on February 27, 2001.<sup>3</sup>

On May 14, 2001, the Commission issued an order granting in part and denying in part rehearing of the March 14 Order.<sup>4</sup> The Commission reaffirmed its requirement that the \$0.095/MWh limit on neutrality charges must be applied on an hourly basis and again denied the Southern Cities' request to change the cost allocation methodology.

---

<sup>3</sup> *California Independent System Operator Corp.*, 94 FERC ¶ 61,266 (2001).

<sup>4</sup> *Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California v. California Independent System Operator Corporation*, 95 FERC ¶ 61,197 (2001).

With respect to the issue of how refunds for amounts charged in excess of the \$0.095/MWh limit should be calculated and the source of the amounts to be refunded, the Commission required the California ISO to apply the Tariff limit equally, and calculate the neutrality adjustment charges assessed, to all Scheduling Coordinators, in accordance with the \$0.095/MWh limit in effect for the period June 1, 2000 through September 15, 2000. The Southern Cities, Vernon, and the California ISO applied for rehearing of the Commission's May 14 Order.

On June 1, 2001, SRP filed a complaint against the California ISO in Docket No. EL01-84-000. SRP (1) challenged the collection of energy purchase costs that resulted from underscheduling by some Scheduling Coordinators from other Scheduling Coordinators that procured and scheduled sufficient generation resources in the forward markets to meet the Demands of their own loads, (2) alleged that the California ISO failed to implement the new Amendment No. 33 allocation methodology on the December 10, 2000 effective date ordered by the Commission, and (3) challenged the California ISO's application of the \$0.095/MWh limit on neutrality adjustment charges in its Tariff, the increase of that limit to \$0.35/MWh after September 15, 2001, and the collection of neutrality adjustment charges in excess of the \$0.35/MWh limit.<sup>5</sup> On June 21, 2001, the California ISO filed an answer to SRP's complaint, opposing the relief requested by SRP. On June 22, 2001, the California ISO, Southern Cities and SRP filed a motion to institute settlement procedures to resolve the issues raised in these complaint proceedings consensually and end their litigation.<sup>6</sup> Vernon also agreed to

---

<sup>5</sup> Complaint of Salt River Project Agricultural Improvement and Power District Against the California Independent System Operator Corporation, Docket No. EL01-84-000 (filed June 1, 2001).

<sup>6</sup> Motion to Initiate Settlement Proceedings, Docket Nos. EL00-111-002 and EL01-84-000 (filed June 22, 2001).



participate in these settlement procedures. On July 6, 2001, the Commission issued an Order Initiating Settlement Proceedings and, on July 11, 2001, Judge Leventhal was appointed to serve as a settlement facilitator in these complaint proceedings.<sup>2</sup>

On July 12, 2001, the Southern Cities and the California ISO each filed a petition for review of the Commission's March 14 and May 14 Orders with the United States Court of Appeals for the District of Columbia Circuit. On July 30, 2001, the Southern Cities filed a motion for voluntary dismissal with that Court, requesting that the case be dismissed without prejudice pending the outcome of settlement discussions among the parties. On October 16, 2001, the Court of Appeals dismissed the Southern Cities' petition without prejudice. On August 28, 2001, pursuant to a Commission request which the ISO did not oppose, the Court of Appeals also dismissed the California ISO's petition for review without prejudice. On September 10, 2001, the California ISO filed an additional petition for review with the Court of Appeals to protect its right of appeal. Subsequently, the California ISO moved to withdraw its petition for review and the Court of Appeals granted the California ISO's motion on October 19, 2001.

Settlement conferences were held on July 18, 2001, October 2, 2001, November 1, 2001, February 14, 2002, and March 19, 2002, before Judge Leventhal to resolve the complaints filed by the Southern Cities and SRP. These settlement conferences were noticed to the public and attended by FERC Staff and other active parties to the proceedings. Ultimately, the Settling Parties were able to reach a mutually acceptable resolution of the complaints filed by the Southern Cities and SRP that takes into

---

<sup>2</sup> *Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California v. California Independent System Operator Corporation*, 96 FERC ¶ 61,024 (2001); Order of Chief Judge Designating Settlement Judge and Scheduling Settlement Conference, Docket Nos. EL00-111-002 and EL01-84-000 (issued July 11, 2001).

consideration the interests of other parties and applies the relief accorded in this Settlement Agreement to all Scheduling Coordinators on a non-discriminatory basis.

**ARTICLE I**  
**SCOPE OF SETTLEMENT**

1.1 This Settlement Agreement finally resolves all issues raised in Docket Nos. EL00-111-000, *et al.* and EL01-84-000 pertaining to the allocation and collection of Settlement Costs, as defined in Section 2.1 *infra*, to include all Charge Type 1010 costs of Dispatch instructions made by the California ISO to avoid an intervention in market operations or to prevent or relieve a System Emergency during the period June 1, 2000 through February 26, 2001. The terms of this Settlement Agreement shall be applied by the California ISO, on a non-discriminatory basis, to all Scheduling Coordinators.

**ARTICLE II**  
**COST ALLOCATION**

2.1 For purposes of this Settlement Agreement, the term "Settlement Costs" shall be defined to include all costs of Dispatch instructions made by the California ISO to avoid an intervention in market operations or to prevent or relieve a System Emergency, the costs of which prior to ISO Tariff Amendment No. 33 were required to be allocated pursuant to the ISO Tariff to all Scheduling Coordinators in proportion to their metered Demand and Exports and were collected through the neutrality adjustment charge in Charge Type 1010. After the implementation of Amendment No. 33 such costs were allocated to and collected from Scheduling Coordinators pro rata based upon the ratio of each Scheduling Coordinator's Net Negative Uninstructed Deviations to the total Net Negative Uninstructed Deviations in each Settlement Interval through the new Charge Type 487. Other capitalized words and phrases used in this

Settlement Agreement without definition shall have the meanings given to those terms in Appendix A to the ISO Tariff.

2.2 The cost allocation methodology contained in Amendment No. 33 to the ISO Tariff, which was filed by the California ISO on December 8, 2000 in Docket No. ER01-607-000, shall be used to allocate Settlement Costs incurred by the California ISO during the period December 8, 2000 through December 11, 2000 and this allocation methodology shall be applied on the same basis to each and every Scheduling Coordinator effective as of December 8, 2000. This cost allocation methodology is set forth in Section 11.2.4.2.1 as filed with the Commission and in effect at the time of adoption of Amendment No. 33 to the ISO Tariff, and it provides:

**11.2.4.2.1 Allocation of Costs Resulting From ISO Dispatch Orders**

Pursuant to Section 11.2.4.2, the ISO may, at its discretion, dispatch any Participating Generator, Participating Load and import, that has not bid into the Imbalance Energy or Ancillary Services markets, to avoid an intervention in market operations or to prevent or relieve a System Emergency. Such dispatch may result from, among other things, planned and unplanned transmission facility outages; bid insufficiency in the Ancillary Services and Real-Time Energy markets; and location-specific requirements of the ISO. For each settlement interval, all costs incurred by the ISO for such Dispatch instructions necessary as a result of a transmission facility outage or in order to satisfy a location-specific requirement in that settlement interval shall be payable to the ISO by the Participating Transmission Owner in whose Service Area the transmission facility is located or the location-specific requirement arose. For each settlement interval, all costs incurred by the ISO for such Dispatch instructions other than for a transmission facility outage or a location-specific requirement in that settlement interval shall be charged to each Scheduling Coordinator pro rata based upon the ratio of each Scheduling Coordinator's Net Negative Uninstructed Deviations to the total Net Negative Uninstructed Deviations in each settlement interval.

2.3 The California ISO shall implement the Amendment No. 33 cost allocation methodology for the period December 8, 2000 beginning with Hour Ending 0001,

through December 11, 2000, ending at Hour Ending 0001 on December 12, 2001, in the same manner that the California ISO has implemented the Amendment No. 33 cost allocation methodology for the period December 12, 2000 through February 26, 2001.

2.4 Nothing in this Settlement Agreement shall restrict the right of the California ISO to submit an application under Section 205 of the Federal Power Act to modify Section 11.2.4.2.1 of the ISO Tariff prospectively or the right of any Settling Party to protest such application; provided, however, that no such application or protest shall seek retroactive effect for any modification of Section 11.2.4.2.1 that would alter the allocation methodology agreed to herein for the period commencing on December 8, 2000 and ending on February 26, 2001. Similarly, nothing in this Settlement Agreement shall restrict the right of any Settling Party to submit an application under Section 206 of the Federal Power Act to modify Section 11.2.4.2.1 of the ISO Tariff prospectively or the right of the California ISO to protest such application; provided, however, that no such application or protest shall seek retroactive effect for any modification of Section 11.2.4.2.1 of the ISO Tariff that would alter the allocation methodology agreed to herein for the period commencing on December 8, 2000 and ending on February 26, 2001.

### **ARTICLE III** **REFUNDS**

3.1. The California ISO represents that until it calculates the settlement statements of all Scheduling Coordinators, the California ISO cannot determine the precise refund amounts that would be owed to the Scheduling Coordinators of the Settling Parties as a result of applying the Amendment No. 33 cost allocation methodology to the Settlement Costs incurred by the California ISO during the period December 8, 2000 through December 11, 2000. Based on currently available data, it is

the expectation of the Settling Parties that application of the Amendment No. 33 methodology to the Settlement Costs incurred by the California ISO during the period December 8, 2000 through December 11, 2000, would result in the following refund amounts to the Settling Parties in these proceedings:

Anaheim	\$ 2,608,093.08
Azusa	\$ 232,316.75
Banning	\$ 132,662.64
Colton	\$ 219,000.00 <sup>a</sup>
Riverside	\$ 1,858,470.87
SRP	\$ 4,896,819.28
Vernon	\$ 1,162,265.76
CDWR	\$ 6,636,950.22

3.2 The California ISO shall not credit interest on actual refund amounts nor shall any Settling Party or Scheduling Coordinator for any Settling Party, to the extent it disputed neutrality adjustment charges in its December 2000 settlement statement and such Scheduling Coordinator did not pay for all or part of those charges, pay to the California ISO interest on such unpaid amounts. In addition, the California ISO shall reverse any interest charges assessed previously by the California ISO to any such Scheduling Coordinator on such unpaid amounts.

3.3 Solely for purposes of this comprehensive settlement and in consideration of all other provisions of this Settlement Agreement, it is agreed that in submitting this

---

<sup>a</sup> Because Colton receives Scheduling Coordinator services from Coral Power, the refund amount listed for Colton has been approximated based upon a proportion of the refund amounts calculated for other Scheduling Coordinators.

for rehearing is filed by that date. If any application for rehearing is filed, a Commission order shall be deemed a Final Order when the Commission has acted on all requests for rehearing and no further requests for rehearing remain pending before the Commission.

4.2 The provisions of this Settlement Agreement are not severable. Without limiting the foregoing, unless all of the Settling Parties otherwise agree in accordance with Section 4.3, this Settlement Agreement shall not become effective if the Commission declines to remove the California ISO's refund liability for amounts collected in excess of the hourly limit, if any, on neutrality adjustment charges for the period June 1, 2000 through February 26, 2001, or the Commission modifies, alters or imposes conditions on the Settlement Agreement.

4.3 If the Commission approves this Settlement Agreement, but modifies or imposes conditions on the Settlement Agreement, or otherwise alters the intended effect of this Settlement Agreement, within ten days after the Commission issues a Final Order approving the Settlement Agreement, the Settling Parties shall notify each other and the Commission of their acceptance or rejection of such modifications, conditions, and/or alterations. If all Settling Parties accept the Commission's modifications, conditions, and/or alterations, this Settlement Agreement shall become effective fifteen days after issuance of the Commission's Final Order modifying, conditioning, or altering the Settlement Agreement. If a Settling Party rejects any modification, condition, and/or alteration, this Settlement Agreement shall not become effective and is null and void.

**ARTICLE V**  
**DETERMINATION OF ACTUAL REFUND AMOUNTS**  
**AND ISSUANCE OF NEW SETTLEMENT STATEMENTS**  
**TO ALL SCHEDULING COORDINATORS**

5.1 As soon as practicable, but not later than thirty days after the effective date of this Settlement Agreement, the California ISO will report to the Settling Parties on a schedule for the calculation and statement of Settlement Costs incurred by the California ISO for the December 8 through 11, 2000, dates as is provided for herein. Settling Parties shall have ten days to agree to the schedule proposed by the California ISO or to propose an alternative schedule. All parties agree to work in good faith to agree upon a schedule that reflects the limits of resources and staff at the California ISO and need for timely finality. In any event, the schedule may not be extended beyond sixty days after the report date as described in this section. Consistent with the final agreed upon schedule, the California ISO shall calculate and provide to each Scheduling Coordinator a draft settlement statement demonstrating the actual refund amounts that would be credited to that Scheduling Coordinator by applying the Amendment No. 33 cost allocation methodology to Settlement Costs incurred by the California ISO during the period December 8, 2000 through December 11, 2000. Such settlement statements remain subject to further changes as a result of other proceedings pending before the Commission and/or the court(s). If the actual refund amount credited to a Settling Party in the draft settlement statement provided by the California ISO is less than eighty-five percent of the projected refund amount for that Settling Party set forth in Section 3.1, the Settling Party(ies) may promptly inform the ISO and all Parties to this proceeding that it is exercising its right to renegotiate the Settlement for the purpose of trying to restore the affected Settling Party(ies) to the

economic position it would have been in if that Settling Party(ies) had actually received eighty-five percent of the projected refund amount set forth in Section 3.1. If such renegotiations fail, the Settling Party(ies) may terminate the Settlement.

5.2 In accordance with the schedule as agreed upon pursuant to Section 5.1 *supra*, and the ISO Payments Calendar, the California ISO shall distribute to all Scheduling Coordinators settlement statements containing credits or debits for the amounts owed to or owed by each Scheduling Coordinator as calculated through application of the Amendment No. 33 cost allocation methodology to the Settlement Costs incurred by the California ISO during the period December 8, 2000 through December 11, 2000. Invoicing for and payment of such credits and debits shall be conducted as separate invoices for amounts receivable and distributions which shall be specific to the terms of this Settlement Agreement and distinct from the otherwise applicable provisions of the ISO Tariff governing invoicing for and payment of credits and debts for Market Participants for transactions in ISO Markets, but shall be governed by the ISO Payment Calendar for timing of invoicing and distribution of funds. It is specifically agreed and understood that all Settling Parties, by and through their respective Scheduling Coordinators, regardless of whether individual Settling Parties self-schedule or employ a Scheduling Coordinator, shall be treated no differently than the ISO treats other Scheduling Coordinators for purposes of separate invoicing under this Section 5.2 of the Settlement Agreement and that the separate invoicing process established in this Section 5.2 shall not form a basis for treating the amounts owed to or owed by Scheduling Coordinators or Settling Parties that employ Scheduling Coordinators under such separate invoices any differently than other amounts owed to



or owed by other Scheduling Coordinators under the regular monthly invoices issued by the ISO in accordance with the ISO Tariff.

**ARTICLE VI**  
**NO PRECEDENTIAL EFFECT**

6.1 This Settlement Agreement is made upon the express understanding that it constitutes a negotiated settlement and, except as otherwise expressly provided for herein, no Settling Party shall be deemed to have approved, accepted, agreed to, or consented to any principle or policy relating to rate methodology, cost of service, cost allocation, rate design, rate level, refunds or any other matter affecting or relating to any of the rates, charges, classifications, terms, conditions, principles, issues or tariff sheets associated with this Settlement Agreement. This Settlement Agreement shall not be deemed to be a "settled practice" as that term was interpreted and applied in *Public Service Commission of the State of New York v. FERC*, 642 F.2d 1335 (D.C. Cir. 1980) and shall not be the basis for any decision with regard to the burden of proof in any future litigation. This Settlement Agreement shall not be cited as precedent, nor shall it be deemed to bind any Settling Party (except as otherwise expressly provided for herein) in any future proceeding, including, but not limited to, any FERC proceeding, except in any proceeding to enforce this Settlement Agreement.

IN WITNESS WHEREOF, the Settling Parties have agreed to and caused this  
Settlement Agreement to be duly executed by their duly authorized officers on this \_\_th  
day of \_\_\_\_\_, 2002.

CITY OF ANAHEIM, CALIFORNIA

BY Maurice S. Edwards

TITLE Public Utilities General Manager

DATE June 19, 2002

CITY OF AZUSA, CALIFORNIA

BY \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

CITY OF BANNING, CALIFORNIA

BY \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

CITY OF COLTON, CALIFORNIA

BY \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

IN WITNESS WHEREOF, the Settling Parties have agreed to and caused this Settlement Agreement to be duly executed by their duly authorized officers on this \_\_\_th day of \_\_\_\_\_, 2002.

CITY OF ANAHEIM, CALIFORNIA

BY \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

CITY OF AZUSA, CALIFORNIA

BY  \_\_\_\_\_

TITLE Mayor \_\_\_\_\_

DATE \_\_\_\_\_

CITY OF BANNING, CALIFORNIA

BY \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

CITY OF COLTON, CALIFORNIA

BY \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

IN WITNESS WHEREOF, the Settling Parties have agreed to and caused this Settlement Agreement to be duly executed by their duly authorized officers on this 9<sup>th</sup> day of July, 2002.

CITY OF ANAHEIM, CALIFORNIA

BY \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

CITY OF AZUSA, CALIFORNIA

BY \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

CITY OF BANNING, CALIFORNIA

BY (Signature) (PAUL TAYLOR)

TITLE PUBLIC WORKS DIRECTOR

DATE 7/9/02

CITY OF COLTON, CALIFORNIA

BY \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

IN WITNESS WHEREOF, the Settling Parties have agreed to and caused this Settlement Agreement to be duly executed by their duly authorized officers on this 3<sup>rd</sup> day of JULY, 2002.

CITY OF ANAHEIM, CALIFORNIA

BY \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

CITY OF AZUSA, CALIFORNIA

BY \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

CITY OF BANNING, CALIFORNIA

BY \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

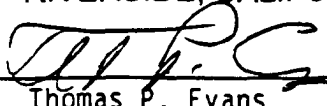
CITY OF COLTON, CALIFORNIA

BY Deirdra H. Bennett

TITLE MAYOR

DATE JULY 3, 2002

CITY OF RIVERSIDE, CALIFORNIA

BY   
Thomas P. Evans  
TITLE Riverside Public Utilities Director  
DATE July 26, 2002

**APPROVED AS TO FORM**  
 7-26-02  
**SUPERVISOR DEPUTY CITY ATTORNEY**

SALT RIVER PROJECT AGRICULTURAL  
IMPROVEMENT AND POWER DISTRICT

BY \_\_\_\_\_  
TITLE \_\_\_\_\_  
DATE \_\_\_\_\_

CITY OF VERNON, CALIFORNIA

BY \_\_\_\_\_  
TITLE \_\_\_\_\_  
DATE \_\_\_\_\_

CALIFORNIA DEPARTMENT OF WATER RESOURCES

BY \_\_\_\_\_  
TITLE \_\_\_\_\_  
DATE \_\_\_\_\_

CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

BY \_\_\_\_\_  
TITLE \_\_\_\_\_  
DATE \_\_\_\_\_

CITY OF RIVERSIDE, CALIFORNIA

BY \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

SALT RIVER PROJECT AGRICULTURAL  
IMPROVEMENT AND POWER DISTRICT

BY Robert S. Nichols

TITLE MANAGING DIRECTOR

DATE JULY 29, 2002

CITY OF VERNON, CALIFORNIA

BY \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

CALIFORNIA DEPARTMENT OF WATER RESOURCES

BY \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

BY \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

CITY OF RIVERSIDE, CALIFORNIA

BY \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

SALT RIVER PROJECT AGRICULTURAL  
IMPROVEMENT AND POWER DISTRICT

BY \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

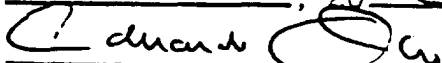
CITY OF VERNON, CALIFORNIA

BY 

TITLE City Administrator/City Clerk

DATE July 29, 2002

Approved As To Form

7-29, 2002  


EDUARDO OLIVO  
CITY ATTORNEY

CALIFORNIA DEPARTMENT OF WATER RESOURCES

BY \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

BY \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_



CITY OF RIVERSIDE, CALIFORNIA

BY \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

SALT RIVER PROJECT AGRICULTURAL  
IMPROVEMENT AND POWER DISTRICT

BY \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

CITY OF VERNON, CALIFORNIA

BY \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

CALIFORNIA DEPARTMENT OF WATER RESOURCES

BY *D. C. Keim*

TITLE *Attorney*

DATE *July 29, 2002*

CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

BY \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

CITY OF RIVERSIDE, CALIFORNIA

BY \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

SALT RIVER PROJECT AGRICULTURAL  
IMPROVEMENT AND POWER DISTRICT

BY \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

CITY OF VERNON, CALIFORNIA

BY \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

CALIFORNIA DEPARTMENT OF WATER RESOURCES

BY \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

BY Margaret A. Ralston

TITLE counsel

DATE July 29, 2002

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

<b>Cities of Anaheim, Azusa, Banning, Colton and Riverside, California</b>	)	
	)	
<b>v.</b>	)	<b>Docket No. EL00-111-002</b>
	)	
<b>California Independent System Operator Corporation</b>	)	
	)	
<b>Salt River Project Agricultural Improvement and Power District</b>	)	<b>Docket No. EL01-84-000</b>
	)	
<b>v.</b>	)	
	)	<b>(Not Consolidated)</b>
<b>California Independent System Operator Corporation</b>	)	

**EXPLANATORY STATEMENT  
IN SUPPORT OF OFFER OF SETTLEMENT**

Pursuant to Rule 602(c)(1)(ii) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission" or "FERC"), 18 C.F.R. §385.602(c)(1)(ii) (2001), the California Independent System Operator Corporation ("California ISO"), Cities of Anaheim, Azusa, Banning, Colton and Riverside, California ("Southern Cities"), Salt River Project Agricultural Improvement and Power District ("SRP"), City of Vernon, California ("Vernon"), and California Department of Water Resources ("CDWR") (all inclusive, the "Settling Parties") hereby submit this Explanatory Statement in support of the concurrently filed Offer of Settlement and Settlement Agreement ("Settlement") in the above-captioned complaint proceedings. Other active participants in these complaint proceedings - - including the FERC Staff, Southern California Edison Company, the Modesto Irrigation District, Silicon Valley

Power, the City of Redding, California, the City of Palo Alto, California, and the M-S-R Public Power Agency also support or do not oppose the Settlement.

Consistent with the goals of the FERC Commissioners, this Settlement brings closure to litigation arising from the high costs of Energy<sup>1</sup> in California during 2000-2001.<sup>2</sup> The Settlement resolves disputed legal issues raised in these proceedings pertaining to the allocation and collection of Energy costs in neutrality adjustment charges assessed by the California ISO during the period June 1, 2000 through February 27, 2001. By putting these historical issues to rest, both the Commission and the participants can turn their attention to the future of Energy markets in the West and reduce further expenditures of their resources on events that occurred in the past. As a result of many months of negotiations among the participants, the Settlement fairly and delicately balances the interests of: (1) the Complainants and other Scheduling Coordinators that previously were allocated costs by the California ISO for Energy that was not procured to serve their loads; (2) Scheduling Coordinators for whom the Energy was procured; and (3) the California ISO, which seeks to collect its costs in a manner that allows it to remain revenue neutral. The Settling Parties respectfully request that the Settlement be approved expeditiously, without modification or condition, so that this particular chapter in the Western Energy crisis saga can be closed as quickly as possible.

---

<sup>1</sup> Capitalized terms used herein, unless otherwise defined, shall have the meaning set forth in the California ISO Tariff, Master Definitions Supplement A.

<sup>2</sup> See, e.g., Remarks of Chair Wood at December 19, 2001 Commission Meeting, Tr. at 151; Remarks of Chair Wood and Commissioner Breathitt at April 10, 2002 Commission Meeting, Tr. at 45, 56-57.

## I. BACKGROUND

These complaint proceedings involve the allocation and collection of Energy costs incurred by the California ISO. Scheduling Coordinators submit forward schedules to the California ISO for transmission and ancillary services needed to serve their loads within the California ISO's control area. When Scheduling Coordinators' actual loads exceed their scheduled loads and generation resources, the California ISO procures Energy to meet the real-time needs of these loads.

To avoid an intervention in market operations or prevent or relieve a system emergency, during the period June 1, 2000 through December 11, 2000, the California ISO purchased Energy to serve the loads of Scheduling Coordinators who did not Schedule or deliver enough Energy to meet the real-time needs of their loads. During that period, the California ISO allocated costs it incurred for Dispatch instructions made to serve the Loads of Scheduling Coordinators who did not adequately Schedule or deliver enough Energy to all Scheduling Coordinators, including to those Scheduling Coordinators who Scheduled and delivered enough Energy to serve their own Loads, in the form of neutrality adjustment charges. The neutrality adjustment charges billed to all Scheduling Coordinators included the costs of Energy procured through out-of-market dispatches by the California ISO as well as the costs of Energy procured within California ISO markets in excess of the applicable market clearing price, or soft cap, in effect during this time period.<sup>3</sup> The neutrality adjustment charges were assessed based

---

<sup>3</sup> A \$250/MWh break point, or soft price cap, was in effect when Energy was procured by the California ISO in December 2000. A \$150/MWh break point, or soft cap, was in effect when Energy was procured by the California ISO during the period January 1, 2001 through February 26, 2001.

on the ratio of each Scheduling Coordinator's metered Demand and Exports to the total metered Demand and Exports in each Settlement Interval.

On September 15, 2000, the Southern Cities filed a complaint against the California ISO in Docket No. EL00-111-000. In their complaint, the Southern Cities (1) challenged the allocation to all Scheduling Coordinators of the costs of acquiring Energy due to underscheduling by some Scheduling Coordinators and (2) alleged that the California ISO violated its filed Tariff by assessing neutrality adjustment charges to Scheduling Coordinators in excess of the \$0.095/MWh limit contained in the California ISO Tariff after June 1, 2000, without first obtaining prior authorization from the California ISO Governing Board to increase the limit or providing notice to Scheduling Coordinators of any increase in the limit authorized by such Board.

On September 25, 2000, the California ISO filed an answer to the Southern Cities' complaint. In its answer, the California ISO defended the allocation of Energy purchase costs to all Scheduling Coordinators and alleged that the limit on neutrality adjustment charges was intended to be applied for budgeting purposes only on an annual basis, not an hourly basis, and was never intended to prohibit it from recovering legitimately incurred costs.

On March 14, 2001, the Commission granted in part and dismissed in part the Southern Cities' complaint.<sup>4</sup> The Commission concluded that the California ISO

---

<sup>4</sup> *Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California v. California Independent System Operator Corporation*, 94 FERC ¶ 61,268 (2001), *reh'g granted in part* 95 FERC ¶ 61,197 (2001).

violated the \$0.095/MWh limit on neutrality adjustment charges in the California ISO's filed Tariff that was in effect from June 1, 2000 until September 15, 2000, and ordered the California ISO to pay refunds for amounts charged in excess of this limit to one of the complainants. The Commission found that there was no basis for requiring the California ISO to absorb the costs of such refunds, and therefore allowed the California ISO to allocate those costs to the remaining Scheduling Coordinators in proportion to their relevant metered Demands (with the proviso that such costs could not exceed on an individual basis the \$0.095/MWh limit stated in the California ISO's filed Tariff).

In the March 14 Order, the Commission also concluded that the Southern Cities' complaint about the manner in which the California ISO allocated Energy costs resulting from underscheduling was moot, because the California ISO had amended its Tariff, after the Southern Cities filed their complaint, to allocate these costs only to those Scheduling Coordinators who actually deviated from their schedules. This change to the California ISO's allocation methodology was filed with and approved by the Commission on December 8, 2000, as part of Amendment No. 33 to the California ISO's Tariff<sup>5</sup>; however, the California ISO did not implement the change until December 12, 2000. The Southern Cities, Vernon, and the California ISO applied for rehearing of the Commission's March 14 Order.

On December 29, 2000, the California ISO filed an amendment to its Tariff to explicitly state that the limit on neutrality adjustment charges would be applied on an

---

<sup>5</sup> *California Independent System Operator Corporation*, 93 FERC ¶61,239 (2000).

annual basis, rather than an hourly basis. The Commission approved this Tariff change prospectively, and it went into effect on February 27, 2001.<sup>6</sup>

On May 14, 2001, the Commission issued an order granting in part and denying in part rehearing of the March 14 Order.<sup>7</sup> The Commission reaffirmed its requirement that the \$0.095/MWh limit on neutrality charges must be applied on an hourly basis and again denied the Southern Cities' request to change the cost allocation methodology. With respect to the issue of how refunds for amounts charged in excess of the \$0.095/MWh limit should be calculated and the source of the amounts to be refunded, the Commission required the California ISO to apply the Tariff limit equally and calculate the neutrality adjustment charges assessed to all Scheduling Coordinators in accordance with the \$0.095/MWh limit in effect for the period June 1, 2000 through September 15, 2000. The Southern Cities, Vernon, and the California ISO applied for rehearing of the Commission's May 14 Order.

On June 1, 2001, SRP filed a complaint against the California ISO in Docket No. EL01-84-000. SRP (1) challenged the collection of Energy purchase costs that resulted from underscheduling by some Scheduling Coordinators from other Scheduling Coordinators that procured and scheduled sufficient generation resources in the forward markets to meet the Demands of their own loads, (2) alleged that the California ISO failed to implement the new Amendment No. 33 allocation methodology on the December 10, 2000 effective date ordered by the Commission, and (3) challenged the California ISO's application of the \$0.095/MWh limit on neutrality adjustment charges in

---

<sup>6</sup> *California Independent System Operator Corp.*, 94 FERC ¶ 61,266 (2001).

<sup>7</sup> *Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California v. California Independent System Operator Corporation*, 95 FERC ¶ 61,197 (2001).



its Tariff, the increase of that limit to \$0.35/MWh after September 15, 2000, and the collection of neutrality adjustment charges in excess of the \$0.35/MWh limit.<sup>8</sup> On June 21, 2001, the California ISO filed an answer to SRP's complaint, opposing the relief requested by SRP. On June 22, 2001, the California ISO, Southern Cities and SRP filed a motion to institute settlement procedures to resolve the issues raised in these complaint proceedings consensually and end their litigation.<sup>9</sup> Vernon also agreed to participate in these settlement procedures. On July 6, 2001, the Commission issued an Order Initiating Settlement Proceedings and, on July 11, 2001, Judge Leventhal was appointed to serve as a settlement facilitator in these complaint proceedings.<sup>10</sup>

On July 12, 2001, the Southern Cities and the California ISO each filed a petition for review of the Commission's March 14 and May 14 Orders with the United States Court of Appeals for the District of Columbia Circuit. On July 30, 2001, the Southern Cities filed a motion for voluntary dismissal with that Court, requesting that the case be dismissed without prejudice pending the outcome of settlement discussions among the parties. On October 16, 2001, the Court of Appeals dismissed the Southern Cities' petition without prejudice. On August 28, 2001, pursuant to a Commission request which the California ISO did not oppose, the Court of Appeals also dismissed the California ISO's petition for review without prejudice. On September 10, 2001, the California ISO filed an additional petition for review with the Court of Appeals to protect

---

<sup>8</sup> Complaint of Salt River Project Agricultural Improvement and Power District Against the California Independent System Operator Corporation, Docket No. EL01-84-000 (filed June 1, 2001).

<sup>9</sup> Motion to Initiate Settlement Proceedings, Docket Nos. EL00-111-002 and EL01-84-000 (filed June 22, 2001).

<sup>10</sup> *Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California v. California Independent System Operator Corporation*, 96 FERC ¶ 61,024 (2001); Order of Chief Judge Designating Settlement Judge and Scheduling Settlement Conference, Docket Nos. EL00-111-002 and EL01-84-000 (issued July 11, 2001).

its right of appeal. Subsequently, the California ISO moved to withdraw its petition for review and the Court of Appeals granted the California ISO's motion on October 19, 2001.

Settlement conferences were held on July 18, 2001, October 2, 2001, November 1, 2001, February 14, 2002, March 19, 2002, and May 16, 2002 before Judge Leventhal to resolve the complaints filed by the Southern Cities and SRP. These settlement conferences were noticed to the public and attended by FERC Staff and other active parties to the proceedings. Ultimately, the Settling Parties were able to reach a mutually acceptable resolution of the complaints filed by the Southern Cities and SRP that takes into consideration the interests of other parties and applies the relief accorded in this Settlement Agreement to all Scheduling Coordinators on a non-discriminatory basis.

## **II. DESCRIPTION OF SETTLEMENT**

The Settlement resolves the two basic legal issues raised in these complaint proceedings:

- (1) whether the California ISO's allocation of Energy costs to all Scheduling Coordinators through neutrality adjustment charges was just, reasonable and not unduly discriminatory or preferential, and, if not, whether refunds should be required?
- (2) whether the California ISO collected neutrality adjustment charges from Scheduling Coordinators in accordance with the filed rates set forth in the California ISO's tariff and, if not, whether refunds should be required?

Consistent with the Commission's longstanding "cost causation" ratemaking principle,<sup>11</sup> the Settlement assigns responsibility for the costs of Energy procured by the California ISO to those Scheduling Coordinators for whom the California ISO purchased Energy to serve their loads during the period December 8-11, 2000. Although cost responsibility could have been assigned to these Scheduling Coordinators going as far back as November 14, 2000—which is the earliest refund effective date for the Southern Cities' complaint—the Settling Parties, as a matter of compromise, limited the starting date to December 8, 2000.

To assist the California ISO in maintaining its revenue neutrality, the Settling Parties also agreed, as a matter of compromise, to request that the Commission exercise its discretion to decline to order the California ISO to pay refunds for amounts collected in excess of the hourly limit on neutrality adjustment charges, if any, during the

---

<sup>11</sup> *Gulf Power Co. v. Federal Energy Regulatory Comm'n*, 983 F.2d 1095, 1100 (D. C. Cir. 1993) ("one of the fundamental equitable principles of ratemaking is that costs should be borne by those who benefit from them"); *See also Northern States Power Co.*, 64 FERC ¶61,324, at p. 63,379 (1993) ("The fundamental theory of Commission ratemaking is that costs should be recovered in the rates of those customers who utilize the facilities and thus cause the cost to be incurred."); *Mansfield Municipal Electric Department v. New England power Company*, 97 FERC ¶61,134, at p. 61,615 (2001), *reh'g denied* 98 FERC ¶ 61,115 (2001) ("[I]t is a fundamental basis of Commission ratemaking that costs should be recovered in the rates of those customers who utilize the facilities and thus cause the costs to be incurred."); *City of College Station, Texas*, 97 FERC ¶ 61,152, at p. 61,667 (2001), *reh'g denied*, 98 FERC ¶ 61,222 (2002) (principle of cost causation provides that "insofar as possible, a company should recover its costs from the entities that cause the company to incur those costs" and when "a company follows this principle, it properly distributes its costs among those who take the services that give rise to the costs.").

period June 1, 2000 through February 26, 2001.<sup>12</sup> The Settling Parties respectfully submit that it would be equitable for the Commission to grant such a request under the unique circumstances presented here because: (1) the California ISO procured the Energy to serve others, and (2) the request is part of an interrelated settlement package that will provide other relief to the Settling Parties and other Scheduling Coordinators that paid for costs of Energy they did not cause.

In this manner, the Settlement fairly and delicately balances the interests of: (1) the Complainants and other Scheduling Coordinators that previously were allocated costs by the California ISO for Energy that was not procured to serve their loads; (2) Scheduling Coordinators for whom the Energy was procured; and (3) the California ISO, which seeks to collect its costs in a manner that allows it to remain revenue neutral.

The Settlement consists of six Articles. Article I describes the scope of the Settlement and states that the Settlement Agreement finally resolves all issues raised in Docket Nos. EL00-111-000, *et al.* and EL01-84-000 pertaining to the allocation and collection of Settlement Costs, as defined in §2.1 of the Settlement Agreement, during the period June 1, 2000 through February 26, 2001. Article I also states that the terms of the Settlement Agreement shall apply on a non-discriminatory basis to all Scheduling Coordinators.

Article II sets forth the methodology for allocating the "Settlement Costs," defined to include all costs of Dispatch instructions made by the California ISO to avoid an intervention in market operations or to prevent or relieve a System

---

<sup>12</sup> *Niagara Mohawk Power Corporation v. Federal Power Comm'n*, 379 F.2d 153, 159 (1967), and *Towns of Concord, Norwood, and Wellesley, Massachusetts v. Federal Energy Regulatory Comm'n*, 955 F.2d 67, 72 and 76 (D.C. Cir. 1992) (recognizing agency discretion to decide not to order refunds based on equitable considerations).

Emergency, the costs of which prior to California ISO Tariff Amendment No. 33 were required to be allocated pursuant to the California ISO Tariff to all Scheduling Coordinators in proportion to their metered Demand and Exports and were collected through the neutrality adjustment charge in Charge Type 1010. After the implementation of Amendment No. 33, such costs were allocated to and collected from Scheduling Coordinators pro rata based upon the ratio of each Scheduling Coordinator's Net Negative Uninstructed Deviations to the total Net Negative Uninstructed Deviations in each Settlement Interval through the new Charge Type 487. Section 2.2 provides that the cost allocation methodology contained in Amendment No. 33 to the California ISO Tariff, which was filed by the California ISO on December 8, 2000 in Docket No. ER01-607-000, shall be used to allocate Settlement Costs incurred by the California ISO during the period December 8, 2000 through December 11, 2000 to each and every Scheduling Coordinator effective as of December 8, 2000. This cost allocation methodology is set forth in Section 11.2.4.2.1 as in effect at the time of adoption of Amendment No. 33 to the California ISO Tariff, and it essentially provides that the Settlement Costs shall be allocated to each Scheduling Coordinator pro rata based upon the ratio of each Scheduling Coordinator's Net Negative Uninstructed Deviations to the total Net Negative Uninstructed Deviations in each settlement interval. Section 2.3 provides that the California ISO shall implement the Amendment No. 33 cost allocation methodology for the period December 8, 2000 through December 11, 2000 in the same manner that the California ISO has implemented the Amendment No. 33 cost allocation methodology for the

period December 12, 2000 through February 26, 2001. As noted above, this allocation methodology is consistent with the Commission's cost causation policy, because it allocates the costs of Energy procured by the California ISO to the Scheduling Coordinators for whom the California ISO procured the Energy, *i.e.*, those with Net Negative Uninstructed Deviations during the period covered by the Settlement Agreement.

Section 2.4 provides that the Settlement Agreement does not restrict the right of the California ISO to submit an application under Section 205 of the Federal Power Act ("FPA") or the right of any Settling Party to submit an application under Section 206 of the FPA to modify Section 11.2.4.2.1 of the California ISO Tariff prospectively or the right of any Settling Party to protest any such application; provided, however, that no such application or protest shall seek retroactive effect for any modification of Section 11.2.4.2.1 that would alter the allocation methodology agreed to in the Settlement Agreement for the period commencing on December 8, 2000 and ending on February 26, 2001.

Article III of the Settlement Agreement states that until the California ISO calculates the settlement statements of all Scheduling Coordinators, it cannot determine the precise refund amounts that would be owed to the Scheduling Coordinators of the Settling Parties as a result of applying the Amendment No. 33 cost allocation methodology to the Settlement Costs incurred by the California ISO during the period December 8, 2000 through December 11, 2000. Based on currently available data, it is the expectation of the Settling Parties that application of the Amendment No. 33 methodology to the Settlement Costs incurred by the California ISO during the period

December 8, 2000 through December 11, 2000, would result in the following refund amounts to the Settling Parties in these proceedings:

Anaheim	\$ 2,608,093.08
Azusa	\$ 232,316.75
Banning	\$ 132,662.64
Colton	\$ 219,000.00 <sup>13</sup>
Riverside	\$ 1,858,470.87
SRP	\$ 4,896,819.28
Vernon	\$ 1,162,265.76
CDWR	\$ 6,636,950.22

Section 3.2 provides that the California ISO shall not credit interest on actual refund amounts nor shall any Settling Party or Scheduling Coordinator for any Settling Party, to the extent it disputed neutrality adjustment charges in its December 2000 settlement statement and such Scheduling Coordinator did not pay for all or part of those charges, pay to the California ISO interest on such unpaid amounts. Section 3.2 further provides that the California ISO shall reverse any interest charges assessed previously to any such Scheduling Coordinator on such unpaid amounts. The Settling Parties have agreed to these provisions regarding interest in order to simplify the process of applying the settlement allocation methodology and the California ISO's preparation of the revised invoices to implement the Settlement Agreement.

---

<sup>13</sup> Because Colton receives Scheduling Coordinator services from Coral Power, the refund amount listed for Colton has been approximated based upon a proportion of the refund amounts calculated for other Scheduling Coordinators.

Section 3.3 provides that solely for purposes of this comprehensive settlement and in consideration of all other provisions of the Settlement Agreement, the Settling Parties shall request that the Commission exercise its remedial discretion to decline to order the California ISO to pay refunds for amounts collected in excess of the hourly limit on neutrality adjustment charges, if any, during the period June 1, 2000 through February 26, 2001. If the Commission grants this request, which is a condition on this Settlement Agreement taking effect, the California ISO will not be required to absorb or reallocate on a prospective basis any Settlement Costs incurred during that period due to its collection of amounts in excess of the hourly limit. From and after February 27, 2001, Section 11.2.9.1 has been amended to clarify that the neutrality adjustment charge limit will be applied on an annual basis, rather than an hourly basis, in accordance with the Commission's order approving such amendment.

Article IV contains provisions regarding the effective date and non-severability of the terms of the Settlement Agreement. Except as otherwise provided in Section 4.3, the Settlement Agreement is to become effective when the Commission issues a Final Order (defined as an order no longer subject to rehearing before the Commission) removing the California ISO's obligation to pay refunds for amounts collected in excess of the hourly Tariff limit on neutrality adjustment charges, if any, during the period June 1, 2000 through February 26, 2001 and approving the Settlement Agreement as the final resolution of the captioned proceedings without modification or condition and thereby binding all Market Participants to the terms therein.

Section 4.2 states that the provisions of the Settlement Agreement are not severable, and that, unless all of the Settling Parties otherwise agree in accordance with



Section 4.3, the Settlement Agreement shall not become effective if the Commission declines to remove the California ISO's refund liability for amounts collected in excess of the hourly limit, if any, on neutrality adjustment charges for the period June 1, 2000 through February 26, 2001, or the Commission modifies, alters or imposes conditions on the Settlement Agreement. Section 4.3 provides that if the Commission approves the Settlement Agreement, but modifies or imposes conditions on the Settlement Agreement, or otherwise alters the intended effect of the Settlement Agreement, within ten days after the Commission issues a Final Order approving the Settlement Agreement, the Settling Parties shall notify each other and the Commission of their acceptance or rejection of such modifications, conditions, and/or alterations. If all Settling Parties accept the Commission's modifications, conditions, and/or alterations, the Settlement Agreement shall become effective fifteen days after issuance of the Commission's Final Order modifying, conditioning, or altering the Settlement Agreement. If a Settling Party rejects any modification, condition, and/or alteration, the Settlement Agreement shall not become effective and is null and void.

Article V provides procedures for the establishment of a timetable for the determination of actual refunds and the issuance of new settlement statements to all Scheduling Coordinators following the effective date of the Settlement Agreement. Section 5.1 provides that as soon as practicable, but not later than thirty days after the effective date of the Settlement Agreement, the California ISO will report to the Settling Parties on a schedule for the calculation and statement of Settlement Costs incurred by the California ISO for the December 8 through 11, 2000, dates. The Settling Parties shall have ten days to agree to the schedule proposed by the California ISO or to

propose an alternative schedule. All parties agree to work in good faith to agree upon a schedule that reflects the limits of resources and staff at the California ISO and need for timely finality. In any event, the schedule may not be extended beyond sixty days after the report date as described in Section 5.1. Consistent with the final agreed upon schedule, the California ISO shall calculate and provide to each Scheduling Coordinator a draft settlement statement demonstrating the actual refund amounts that would be credited to that Scheduling Coordinator by applying the Amendment No. 33 cost allocation methodology to Settlement Costs incurred by the California ISO during the period December 8, 2000 through December 11, 2000.

Section 5.1 further provides that such settlement statements remain subject to further changes as a result of other proceedings pending before the Commission and/or the court(s). For example, the Settling Parties recognize that California ISO purchases included in the Settlement Costs may be subject to price mitigation in Docket No. EL00-95-045, *et al.* The Settlement Agreement does not in any way interfere with the outcome of Docket No. EL00-95-000; to the extent that the prices for purchases included in the Settlement Costs are reduced, such reduction should be credited to the Scheduling Coordinators that actually have paid the related Settlement Costs.

If the actual refund amount credited to a Settling Party in the draft settlement statement provided by the California ISO is less than eighty-five percent of the projected refund amount for that Settling Party set forth in Section 3.1, Section 5.1 provides that the Settling Party(ies) may promptly inform the California ISO and all Parties to this proceeding that it is exercising its right to renegotiate the Settlement for the purpose of trying to restore the affected Settling Party(ies) to the economic position it would have

been in if that Settling Party(ies) had actually received eighty-five percent of the projected refund amount set forth in Section 3.1. If such renegotiations fail, the Settling Party(ies) may terminate the Settlement.

Section 5.2 provides that in accordance with the schedule as agreed upon pursuant to Section 5.1 and the California ISO Payments Calendar, the California ISO shall distribute to all Scheduling Coordinators settlement statements containing credits or debits for the amounts owed to or owed by each Scheduling Coordinator as calculated through application of the Amendment No. 33 cost allocation methodology to the Settlement Costs incurred by the California ISO during the period December 8, 2000 through December 11, 2000. Invoicing for and payment of such credits and debits shall be conducted as separate invoices for amounts receivable and distributions which shall be specific to the terms of the Settlement Agreement and distinct from the otherwise applicable provisions of the California ISO Tariff governing invoicing for and payment of credits and debts for Market Participants for transactions in California ISO Markets, but shall be governed by the California ISO Payment Calendar for timing of invoicing and distribution of funds. Section 5.2 explicitly provides that all Settling Parties, by and through their respective Scheduling Coordinators, shall be treated no differently than the California ISO treats other Scheduling Coordinators for purposes of separate invoicing under Section 5.2 of the Settlement Agreement and that the separate invoicing process established in Section 5.2 shall not form a basis for treating the amounts owed to or owed by Scheduling Coordinators or Settling Parties that employ Scheduling Coordinators under such separate invoices any differently than other amounts owed to

or owed by other Scheduling Coordinators under the regular monthly invoices issued by the California ISO in accordance with the California ISO Tariff.

Article VI provides that the Settlement Agreement constitutes a negotiated settlement and, except as otherwise expressly provided for in the Settlement Agreement, that no Settling Party shall be deemed to have approved, accepted, agreed to, or consented to any principle or policy relating to rate methodology, cost of service, cost allocation, rate design, rate level, refunds or any other matter affecting or relating to any of the rates, charges, classifications, terms, conditions, principles, issues or tariff sheets associated with the Settlement Agreement. Article VI further provides that the Settlement Agreement shall not be deemed to be a "settled practice" as that term was interpreted and applied in *Public Service Commission of the State of New York v. FERC*, 642 F.2d 1335 (D.C. Cir. 1980), shall not be the basis for any decision with regard to the burden of proof in any future litigation, and shall not be cited as precedent nor be deemed to bind any Settling Party (except as otherwise expressly provided for in the Settlement Agreement) in any future proceeding, including, but not limited to, any FERC proceeding, except in any proceeding to enforce the Settlement Agreement.

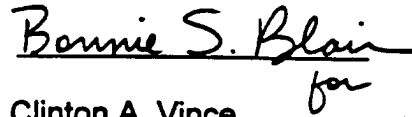
### **III. REQUEST FOR EXPEDITED APPROVAL**

The Settling Parties respectfully request that the Settlement be approved expeditiously, without modification or condition, so that this particular chapter in the Western Energy crisis saga can be closed as quickly as possible.

#### IV. CONCLUSION

Wherefore, the Settling Parties request that the Commission approve the Settlement expeditiously and without modification or condition.

Respectfully Submitted,

  
*Bonnie S. Blair*  
for

Charles F. Robinson  
Margaret A. Rostker  
Counsel for the California Independent  
System Operator Corporation  
151 Blue Ravine Road  
Folsom, CA 95630  
(916) 608-7286

Clinton A. Vince  
Deborah A. Swanstrom  
Emma F. Hand  
Sullivan & Worcester LLP  
1666 K Street, NW, Suite 700  
Washington, DC 20006  
(202) 775-6813

*Attorneys for the California  
Independent System Operator  
Corporation*

*Attorneys for Salt River Project  
Agricultural Improvement and Power  
District*

Channing D. Strother, Jr.  
McCarthy, Sweeney, & Harkaway, PC  
2175 K Street, NW, Suite 600  
Washington, DC 20037  
(202) 393-5710

Bonnie S. Blair  
Thompson Coburn LLP  
Suite 600  
1909 K Street, NW  
Washington, DC 20006  
(202) 585-6900

*Attorney for City of Vernon, California*


*Attorney for Cities of Anaheim, Azusa,  
Banning, Colton and Riverside,  
California*

Peter C. Kissel  
GKRSE  
1500 K Street, NW, Suite 330  
Washington, DC 20005

*Attorney for California Department of  
Water Resources*

## CERTIFICATE OF SERVICE

I hereby certify that I have on this 31st day of July, 2002, caused a copy of the foregoing document to be sent by first-class mail to all parties on the list compiled by the Secretary of the Commission in this proceeding.

  
\_\_\_\_\_  
Bonnie S. Blair

Attorney for the Cities of Anaheim, Azusa,  
Banning, Colton, and Riverside, California

Law Offices of:

Thompson Coburn LLP  
Suite 600  
1909 K Street, N.W.  
Washington, D.C. 20006-1167  
202-585-6900

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Cities of Anaheim, Azusa, Banning, Colton and Riverside, California	)	
	)	
v.	)	Docket No. EL00-111-002
	)	
California Independent System Operator Corporation	)	
	)	
	)	
Salt River Project Agricultural Improvement and Power District	)	
	)	
v.	)	Docket No. EL01-84-000
	)	
California Independent System Operator Corporation	)	(Not Consolidated)
	)	
	)	

NOTICE OF FILING

(August \_\_\_\_, 2002)

Take notice that on July 31st, 2002, the California Independent System Operator Corporation ("California ISO"), Cities of Anaheim, Azusa, Banning, Colton and Riverside, California ("Southern Cities"), Salt River Project Agricultural Improvement and Power District ("SRP"), City of Vernon, California ("Vernon") and California Department of Water Resources ("CDWR") (all inclusive, the "Settling Parties") tendered for filing with the Federal Energy Regulatory Commission an Offer of Settlement and Settlement Agreement in the above-captioned proceedings.

Pursuant to Rule 602(f) of the Commission's Rules of Practice and Procedure, the participants in the proceedings covered by the Offer of Settlement and Settlement Agreement may file initial comments regarding the Offer of Settlement and Settlement Agreement within twenty (20) days of the filing. Reply comments may be filed within ten (10) days thereafter. Accordingly, initial comments will be due on or before August 20, 2002 with reply comments due August 30, 2002. Comments should be filed with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Commission's web site at <http://www.ferc.gov>

using the "RIMS" or "FERRIS" link, select "Docket #" and follow the instructions (call 202-208-2222 for assistance).

**Magalie Roman Salas**  
**Secretary**