UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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

COMMENTS OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION IN SUPPORT OF THE JOINT OFFER OF SETTLEMENT TO IMPLEMENT AND AMEND THE 2004 WILLIAMS – CALIFORNIA UTILITIES SETTLEMENT AGREEMENT

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) (2013), the California Independent System Operator Corporation ("ISO") hereby submits its comments on the Joint Offer of Settlement to Implement and Amend the 2004 Williams – California Utilities Settlement Agreement ("Amended Settlement") filed by the Williams Companies, Inc. and WPX Energy, Inc. (collectively, "Williams") and the California Utilities[1] (collectively, the "Settling Parties"), in the above-captioned proceedings on December 23, 2013.[2]

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[1] For purposes of the Settlement Agreement, the "California Utilities" means, collectively, Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company. The California Department of Water Resources acting solely under authority and powers created by California Assembly Bill 1 of the First Extraordinary Session of 2001-2002, codified in Sections 80000 through 80270 of the California Water Code, is a signatory to the Amended Settlement solely with respect to Section 7.2.4.2 thereof.

[2] As explained in its motion of January 13, the ISO is filing these comments one week after the 20-day initial comment deadline due to discussions with the Settling Parties regarding proper implementation of the settlement. As reflected in these comments, and particularly Section I.C., these discussions have been completed and a satisfactory understanding reached.

The purpose of the Amended Settlement is to resolve three issues that were "carved out" of the 2004 global settlement agreement between Williams and the California Utilities, as well as to address certain other remaining issues relating to the 2000-2001 California energy crisis period. As explained below, the ISO supports the settlement, subject to its interpretation regarding the appropriate accounting treatment of the "carve out" issue regarding Charge Type 485 penalties, as addressed in Section 3.2 of the Amended Settlement.

I. COMMENTS

A. The ISO Supports the Settlement Agreement.

The ISO has always supported the general principle that settlement is the preferred means for resolving complex disputes, even if the settlement involves only a selected subset of the litigants. In addition, this Commission has consistently encouraged parties to resolve disputes whenever possible through settlement.[3] The Refund Proceeding has now been ongoing for over twelve 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 resolve open issues relating to the original Williams Settlement Agreement and allow cash to flow sooner than would otherwise be the case and in that respect will clearly benefit Market Participants.

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

The ISO also notes and supports the inclusion in the Settlement Agreement of a duty to cooperate on the part of the Settling Parties.[4] 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.

B. The Commission Should State that the ISO's Directors, Officers, Employees and Consultants Will Be Held Harmless With Respect to the Settlement and Accounting Activities that the ISO Will Have to Perform in Order to Implement the Settlement Agreement.

As with previous settlements filed and approved in these proceedings, the circumstances of this Settlement Agreement make it necessary to hold harmless the market operators (*i.e.*, the ISO and the California Power Exchange ("PX")) that are ultimately tasked with implementing this Settlement Agreement,[5] 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,

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[4] *See*, in particular, Section 7.3 of the Settlement and Release of Claims Agreement (Attachment B to Amended Settlement).

[5] The ISO has requested hold harmless treatment in comments on previous settlements filed in this proceeding with respect to Duke, Williams, Mirant, Enron, PS Colorado, Reliant, IDACORP, Eugene Water and Electric Board, the Automated Power Exchange, Portland General, El Paso Merchant Energy, PacifiCorp, PPM Energy, Inc, Connectiv, Midway Sunset, the Cities of Anaheim, Azusa and Riverside, Grant County, Strategic Energy, Pinnacle West, NEGT, PECO/Exelon, Salt River Project, Puget Sound, AES, Constellation, CFE, Cargill, LADWP, NCPA, Public Service Company of New Mexico, Tucson Electric Power, Sempra, City of Santa Clara, PPL Energy, City of Seattle, SMUD, the City of Pasadena, the City of Glendale, the City of Burbank, the Modesto Irrigation District, the Turlock Irrigation District, NV Energy, AEP, Citizens/EMMT, CalPolar, Powerex, and AEPCO. The Commission has, to date, provided the ISO with hold harmless treatment with respect to all of these settlements on which it has ruled.

officers, employees or consultants, will be responsible for recovering any funds disbursed pursuant to the Settlement Agreement, which are subsequently required to be repaid. As noted above, the Commission has already approved hold harmless language for the ISO and the PX in the context of the California Parties' settlements with a number of entities. The factors that justified holding the ISO and PX harmless with respect to the implementation of these other settlements apply equally to the instant Settlement Agreement.

First, as with previous settlement agreements in these proceedings, 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 these proceedings. 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. 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 Amended Settlement 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 Amended Settlement.

These problems may be amplified as the Commission approves additional settlement agreements in these proceedings. As the number and variety of approved settlements increases, the task of implementing those settlements will become 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 these proceedings 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 Amended Settlement. 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 Amended Settlement that counsels against, or is inconsistent with, granting the ISO and the individuals associated with it the protection requested here. Indeed, the Amended Settlement 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.[6]

For these reasons, the Commission, in any order approving the Amended Settlement, 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 Amended Settlement, and that neither the ISO, nor its directors, officers, employees, or consultants will be responsible for recovering any funds disbursed pursuant to the Amended Settlement, which are subsequently required to be repaid.

C. Treatment of Section 3.2 of the Amended Settlement

Section 3.2 of the Amended Settlement, entitled "Charge Type 485 Penalties Adjustment" provides that:

> (i) Williams and the CAISO have resolved the Charge Type 485 Dispute; (ii) to the extent that it has not done so, the CAISO must reverse Charge Type 485 Penalties in the amount of $4,857,517; and (iii) pursuant to Section 4.2.2.3 of the 2004 Agreement, Williams will receive, through a gross-up of the Williams Receivables, a credit to its CAISO accounts in the amount of $4,857,517, plus interest at the FERC Interest Rate through the date of distribution (accrued interest as of June 30, 2013 is $4,209,709).

This section also states that the credit identified in clause (ii) will constitute "full and complete satisfaction" of the Settling Parties' obligations pursuant to Sections 4.2.2.1 through 4.2.2.3" of the original Williams settlement agreement.

By way of background, Charge Type 485 penalties are fines that generators were subject to under the ISO tariff during the period December 8, 2000 to June 21, 2001 if they failed to comply with ISO dispatch instructions during actual or threatened

[6] *See* Joint Explanatory Statement at 13 (Attachment A to Amended Settlement).

system emergencies. These fines, which were based on the price of energy during the applicable intervals, were charged to ISO participating generators under Charge Type 485 in the ISO's settlements system, and thus became known as "Charge Type 485 Penalties" or "CT 485 Penalties." A more comprehensive discussion of these penalties is included in the ISO's Forty-Fifth Status Report filed in these proceedings on July 16, 2010.[7] For purposes of this discussion, it is important to note two things. First, with respect to the Charge Type 485 penalties originally assessed to Williams, the ISO and Williams, in 2004, settled a dispute which resulted in the ISO reducing the quantity of penalties charged to Williams. This is the "Charge Type 485 Dispute" referred to in the Amended Settlement. Second, the ISO adjusted the prices associated with the Charge Type 485 penalties as part of its refund rerun in which it accounted for the impact of the Commission-mandated mitigated market clearing prices ("MMCPs") on the price of energy during the period when penalties were assessed. Following these adjustments and the ISO's preparatory reruns, the ISO's current rerun calculations, which have been provided to parties in these proceedings, reflect the quantity of Charge Type 485 penalties agreed upon between Williams and the ISO.

The ISO understands that the amounts set forth in Section 3.2 of the Amended Settlement, including the principal amount of the credit to Williams of $4,857,517, plus interest at the FERC Interest Rate through the specified date of $4,209,709, is directly derived from the application of the mitigated market clearing prices to the quantity adjustments that result from the "Charge Type 485 Disputes." These calculations are

[7] Forty-Fifth Status Report on Settlement Re-Run Activities, Docket Nos. EL00-95, et al. (July 16, 2010) ("Forty-Fifth Status Report") at 6-7.

already reflected in the refund rerun calculations the ISO has provided to parties to these proceedings, including Williams and the California Utilities. Accordingly, the ISO interprets the directive in Section 3.2 that the ISO reverse and credit to Williams Charge Type 485 penalties in these amounts as not requiring the ISO to make any adjustments to either: (i) its preparatory rerun calculations, which have already been approved by the Commission, or (ii) its refund rerun calculations that will reflect the results of the various Commission orders regarding refunds and offsets, and which will form the basis of the ISO's refund rerun compliance filing to the Commission.[8] Rather, the ISO understands that the credit referred to in Section 3.2 can be accounted for through payment to Williams by the PX using funds held in the PX's Settlement Clearing Account, with appropriate adjustments to the ISO and PX accounts to be made as part of the process to reflect the impact of the various global settlements in the ISO and PX markets.

The ISO has discussed these issues with the California Utilities, and the California Utilities have confirmed that the ISO's interpretations of this provision are consistent with its meaning and intended effect, and agree with the implementation process as described by the ISO.

[8] This is, in practice, no different than the treatment of other adjustments dictated by the global settlements entered into by the California Parties and other market participants. The ISO has not yet reflected those adjustments on its books because it will first present, for the Commission's review, the calculations that reflect the Commission's directives regarding refunds and offsets. Subsequent to the Commission's approval of these calculations, the ISO and PX books will be adjusted to reflect the impact of the global settlements in preparation for a combined cash clearing. *See, e.g.,* Forty-Fifth Status Report at 14.

II. CONCLUSION

Wherefore, for the reasons stated above the ISO respectfully states that it supports the Amended Settlement. The ISO also respectfully requests that the Commission state, in any order approving the Amended Settlement, 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 Amended Settlement, and that neither the ISO, nor its directors, officers, employees, or consultants will be responsible for recovering any funds disbursed pursuant to the Amended Settlement, which are subsequently required to be repaid.

Respectfully Submitted,

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Dated: January 22, 2014

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of this document upon the email listserv established by the Commission for this proceeding.

Dated this 22nd day of January, 2014 in Washington, DC.

/s/ Michael Kunselman
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