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 AMEND AND SUPPLEMENT THE 2004 DYNEGY– CALIFORNIA PARTIES 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) (2014), the California Independent System Operator Corporation ("ISO") hereby submits its comments on the Joint Offer of Settlement to Amend and Supplement the 2004 Dynegy – California Parties Settlement Agreement ("Amended Settlement") filed by the Dynegy Parties[1] and the California Parties[2] (collectively, the "Settling Parties"), in the above-captioned proceedings on May 30, 2014.

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[1] The Dynegy Parties are Dynegy Inc., an Illinois corporation reorganized pursuant to the terms of the Joint Chapter 11 Plan of Reorganization for Dynegy Holdings, LLC and Dynegy Inc. confirmed by Order of the United States Bankruptcy Court for the Southern District of New York on September 10, 2012, in Case Nos. 12-36728 and 11-38111; and Dynegy Power Marketing, LLC, a Texas limited liability company.

[2] For purposes of the Amended Settlment, "California Parties" means, collectively, Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, the Public Utilities Commission of the State of California, the California Electricity Oversight Board, and the People of the State of California *ex rel*. Kamala D. Harris, Attorney General, and the California Department of Water Resources acting solely under the authority and powers created by Assembly Bill 1 of the First Extraordinary Session of 2001-2002, codified in Sections 80000 through 80270 of the California Water Code ("CERS").

The purposes of the Amended Settlement are to: (i) allow for immediate distribution to the California Parties and additional settling parties of nearly $56 million of interest and other receivables that were assigned and conveyed to the California Parties in the 2004 settlement and are currently held by the California Power Exchange ("PX") in its settlement clearing account; (2) supplement and update certain provisions in the 2004 settlement relating to ISO and PX accounting procedures; and (3) resolve the California Parties' claims in the Bankruptcy Proceeding.

I. COMMENTS

A. The ISO Supports the Amended Settlement

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 Amended Settlement offered by the Settling Parties. The approval of the Amended Settlement will resolve open issues relating to the original Dynegy 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 Amended Settlement 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 Amended Settlement.

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 Amended Settlement.

As with previous settlements filed and approved in these proceedings, the circumstances of the Amended Settlement make it necessary to hold harmless the market operators (*i.e.*, the ISO and the PX) that are ultimately tasked with implementing the Amended Settlement,[5] along with their directors, officers, employees and consultants. Therefore, in any order approving this Amended Settlement, 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 Amended Settlement, and that neither the ISO, nor its directors, officers, employees or consultants, will be

[4] *See*, in particular, Section 5.2 of the First Amendment to 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, AEPCO, the amendment to the Williams settlement, TransAlta and Avista. The Commission has, to date, provided the ISO with hold harmless treatment with respect to all of these settlements on which it has ruled.

responsible for recovering any funds disbursed pursuant to the Amended Settlement, 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 Amended Settlement.

First, as with previous settlement agreements in these proceedings, the flow of funds pursuant to the Amended Settlement 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 Amended Settlement, 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.

[6] *See* Joint Explanatory Statement at 14 (Attachment A to Amended Settlement).

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: June 19, 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 19th day of June, 2014 in Washington, DC.

/s/ Michael Kunselman
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