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**
	)	
Puget Sound Energy, Inc.	)	**Docket No. EL01-10-000**
v.	)	
Sellers of Energy and/or Capacity	)	
	)	
Investigation of Anomalous Bidding Behavior and Practices in Western Markets	)	**Docket No. IN03-10-000**
	)	
Fact-Finding Investigation Into Possible Manipulation of Electric and Natural Gas Prices	)	**Docket No. PA02-2-000**
	)	
American Electric Power Service Corporation	)	**Docket Nos. EL03-137-000, *et al*.**
	)	
Enron Power Marketing, Inc. and Enron Energy Services	)	**Docket Nos. EL03-180-000, *et al*.**
	)	
California Independent System Operator Corporation	)	**Docket No. ER03-746-000**
	)	
City of Glendale, California	)	**Docket No. EL03-182-000**

COMMENTS OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION IN SUPPORT OF THE JOINT OFFER OF SETTLEMENT INVOLVING CITY OF GLENDALE, CALIFORNIA

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) (2010), the

California Independent System Operator Corporation ("ISO")[1] hereby submits its comments on the Joint Offer of Settlement ("Settlement Agreement") filed by the City of Glendale, California ("Glendale") and the California Parties[2] (collectively, the "Settling Parties"), in the above-captioned proceedings on February 28, 2011.

I. COMMENTS

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

Although the ISO is not a signatory to the Settlement Agreement, the ISO, along with the California Power Exchange ("PX"), will be responsible for the financial implementation of this settlement on its books of account and in the financial clearing phase of the market re-runs that have been ordered by the Commission.[3] For this reason, the ISO has a direct and substantial interest in the Commission's treatment of the Settlement Agreement.

B. The ISO Supports the Settlement Agreement.

The ISO has always supported the general principle that the end to complex litigation through settlement is the preferred process as opposed to the continuation of that litigation for all litigants, or for even a selected subset of the litigants. In addition, this Commission has consistently encouraged parties to resolve disputes whenever

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[1] Capitalized terms not otherwise defined herein are used as defined in Appendix A to the ISO Tariff, or in the Settlement and Release of Claims Agreement referred to in the text.

[2] For purposes of the Settlement Agreement, the "California Parties" means, collectively, Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, the People of the State of California, *ex rel.* Kamala D. Harris, Attorney General, the California Public Utilities Commission, and 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.

[3] *See*, in particular, 105 FERC ¶ 61,066 (2003), the Commission's Order on Rehearing, Docket Nos. EL00-95-081, *et al.*

possible through settlement.[4] The Refund Proceeding has now been ongoing for over nine years. Against this backdrop, the ISO continues to support the general principle of settlement as embodied in the Settlement Agreement offered by the Settling Parties. The approval of the proposed Settlement Agreement will allow certain amounts of cash to flow sooner than would otherwise be the case and in that respect will clearly benefit Market Participants.

The ISO also notes and supports the inclusion in the Settlement Agreement of a duty to cooperate on the part of the Settling Parties.[5] It will be absolutely essential that the cooperation of the Settling Parties be maintained from the ISO's perspective, so that the proper financial adjustments can be made so as to properly implement the Settlement Agreement.

The ISO thanks the Settling Parties for their efforts to work together and reach agreement. It is the ISO's hope that the Commission will not have to become involved in any implementation disputes involving this Settlement Agreement. However, recognizing that it is not possible to foresee every contingency that might arise, the procedural framework is in place to handle such disputes, if indeed they do arise.

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

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

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

[5] *See*, in particular, Section 6.2 of the Settlement and Release of Claims Agreement (Attachment B to Settlement Agreement).

implementing this Settlement Agreement,[6] along with their directors, officers, employees and consultants. Therefore, in any order approving this Settlement Agreement, the Commission should state that the ISO, along with its directors, officers, employees and consultants, will be held harmless with respect to the settlement and accounting activities that it will have to perform in order to implement the Settlement Agreement, and that neither the ISO, nor its directors, officers, employees or consultants, will be responsible for recovering any funds disbursed pursuant to the Settlement Agreement, which are subsequently required to be repaid. As noted above, the Commission has already approved 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

[6] 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, and the City of Pasadena. The Commission has, to date, provided the ISO with hold harmless treatment with respect to all of these settlements on which it has ruled.

bilateral in nature. However, this settlement requires the ISO to adopt that fiction as between the Settling Parties, and make billing adjustments accordingly. A Market Participant might file a complaint or bring suit against the ISO, and/or its directors, officers, employees and consultants, claiming that the ISO did not make appropriate accounting adjustments, and as a result did not reflect the appropriate amount of refunds or receivables owing to that Market Participant.

Moreover, because the Settlement Agreement has been filed prior to the final orders in the Refund Proceeding, it is not certain that the Settling Parties' estimates of payables and receivables are accurate, and due to the complexity of the settlement, there may be additional, unforeseen impacts to ISO Market Participants. It is possible that such impacts would cause Market Participants to bring actions against the ISO (or its directors, officers, employees and consultants), as a result of the ISO's implementation of the Settlement Agreement.

These problems may be amplified as the Commission approves 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 Settlement Agreement. These individuals should not be subjected to litigation, along with its attendant costs and expenditure of time, for merely implementing a settlement authorized by the Commission.

Finally, there is nothing in the Settlement Agreement that counsels against, or is inconsistent with, granting the ISO and the individuals associated with it the protection requested here. Indeed, the Settlement Agreement provides for numerous mutual releases and waivers, which will effectively "hold harmless" the Settling Parties from existing and potential claims. Moreover, the Settling Parties state that they do not oppose the Commission adopting hold harmless provisions for the ISO and PX.[7]

For these reasons, the Commission, in any order approving the Settlement Agreement, should state that the ISO, along with its directors, officers, employees, and consultants, will be held harmless with respect to the settlement and accounting activities that the ISO will have to perform in order to implement the Settlement Agreement, and that neither the ISO, nor its directors, officers, employees, or consultants will be responsible for recovering any funds disbursed pursuant to the Settlement Agreement, which are subsequently required to be repaid.

[7] *See* Joint Explanatory Statement at 17 (Attachment A to Settlement Agreement).

D. The ISO Interprets Section 6.1.3.6 of the Settlement Agreement to Mean that Glendale Will Not Owe Refunds Except as Provided For Under the Settlement Agreement.

Section 6.1.3.6 of the Settlement Agreement, entitled "Accounting Treatment of Calculations for Non-Settling Participants" provides that "any Unsettled Participant Refund Amount and any Unsettled Participant Interest Amount that is calculated for a Non-Settling Participant shall be removed from the books and records of the ISO and PX." The Settlement Agreement defines Unsettled Participant Refund Amount as the portion of the refunds that, assuming Glendale could be ordered by FERC to pay refunds in these proceedings, "would be deemed to be owed for Glendale's sales of energy and ancillary services into the California Markets to each Participant that is entitled to receive refunds."[8]

The ISO understands that this provision is intended to mean that although the ISO will continue to include Glendale in its refund calculations, at the end of the refund rerun process the ISO will need to adjust its books to reflect that no refunds will be paid by Glendale in these proceedings to parties in the ISO markets for the period covered by the Settlement Agreement, except for those that have been paid out under the Settlement Agreement. This identical language was included in the settlement agreements relating to LADWP and NCPA, and in connection with both of those agreements, the California Parties confirmed that the ISO's interpretation of this provision was correct. Therefore, the ISO assumes that this language, as reflected in the Glendale settlement, should continue to be interpreted in the same manner. As with other adjustments necessary to implement this and other settlement agreements

[8] Settlement Agreement, Section 6.1.3.1.

entered into by the California Parties in this proceeding, the ISO will work closely with the settling parties to make appropriate modifications to its books and records in order to reflect this intended result.

II. CONCLUSION

Wherefore, for the reasons stated above the ISO respectfully states that it supports the Settlement Agreement. The ISO also respectfully requests that the Commission state, in any order approving the Settlement Agreement, that the ISO, along with its directors, officers, employees, and consultants, will be held harmless with respect to the settlement and accounting activities that it will have to perform in order to implement the Settlement Agreement, and that neither the ISO, nor its directors, officers, employees, or consultants will be responsible for recovering any funds disbursed pursuant to the Settlement Agreement, which are subsequently required to be repaid.

Respectfully submitted,

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Dated: March 21, 2011

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 21st day of March, 2011, in Washington, DC.

/s/ Michael Kunselman

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