UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services	**))))**	**Docket Nos. EL00-95-000**
Investigation of Practices of the California Independent System Operator and the California Power Exchange	**))))**	**Docket Nos. EL00-98-000**
Puget Sound Energy, Inc. v. Sellers of Energy and/or Capacity	**))))**	**Docket No. EL01-10-000**
American Electric Power Service Corp.	**))**	**Docket Nos. EL03-137-000, *et al.***
Enron Power Marketing, Inc. and Enron Energy Services, Inc.	**)))**	**Docket Nos. EL03-180-000, *et al.***
California Independent System Operator Corporation	**)))**	**Docket No. ER03-746-000**
State of California, ex rel. Bill Lockyer, Attorney General of the State of California v. British Columbia Power Exchange Corp.	**))))**	**Docket No. EL02-71-000**

COMMENTS OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION IN SUPPORT OF JOINT OFFER OF SETTLEMENT INVOLVING STATE WATER PROJECT

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 (“Settlement Agreement”) filed by the California Department of Water Resources, State Water Project and the California

Parties[1] (collectively, the "Settling Parties"), in the above-captioned proceedings on August 21, 2014.

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.[2] 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. The approval of the proposed Settlement Agreement will allow significant 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 Settling Agreement of a duty to cooperate on the part of the Settling Parties.[3] It will be absolutely essential that the cooperation of the Settling Parties be maintained from the ISO's perspective, so

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[1] For purposes of the Settlement Agreement, "California Parties" means collectively, Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, and the Public Utilities Commission of the State of California ("CPUC"), 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").

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

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

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 the Settlement Agreement make it necessary to hold harmless the market operators (*i.e.*, the ISO and the PX) that are ultimately tasked with implementing the Settlement Agreement,[4] 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

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[4] 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, the amendment to the Dynegy Settlement, 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.

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 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.[5]

[5] *See* Joint Explanatory Statement at 18 (Attachment A to the Joint Offer of Settlement).

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.

C. The ISO Interprets Sections 4.1.8.1 and 4.7 of the Settlement Agreement To Apply Only to Refunds Distributed to SWP Through Other California Parties Settlements, and Not To Impact the CAISO's Refund Calculations, Including Refund Offset Determinations

Section 4.7 of the Settlement Agreement indicates that the PX will withhold approximately $2 million in SWP receivables which, along with the amount payable by SWP as set forth in Section 4.1.2, will constitute the "Offset Payment." This "Offset Payment" will be applied by the PX to satisfy SWP's share of liability—as presently computed by the ISO and PX—for various allocations of refund offsets,[6] such that the refunds allocated to SWP through other settlement agreements entered into by the California Parties in this proceeding will not be reduced by these offsets. Similarly, Section 4.1.8.1 states that SWP's "right to refunds under past and future settlements entered into by the California Parties shall not be reduced or offset by any Fuel Cost Allowance, Emissions Offset, Cost Offset, or Good Faith Negotiation Charges, and Settling Supplier and its assignees shall not be subject to true-ups or further

[6] These offsets include the fuel cost allowance, emissions offset, and cost-based filing offset, as directed by the Commission.

adjustments in relation to those charges that otherwise would be applied under other settlements."

Based on the reference to "past and future settlements," as well as correspondence with the California Parties, the ISO understands that these provisions excluding SWP from refund offset adjustments only apply to refunds allocated to SWP in connection with the past and future settlements entered into by the California Parties in this proceeding. These provisions do not, however, require the ISO to make any adjustments to its refund calculations for SWP or any other party, including the determination and allocation of refund offsets. These calculations by the ISO will reflect the application of the Commission's refund orders to transactions in the ISO's markets during the refund period. To the extent that adjustments will ultimately need to be made to the ISO's calculations to reflect the application of these provisions, the ISO understands that such adjustments would be made as part of the process for integrating settlements, which will occur after the ISO submits its refund rerun compliance filing. The ISO has discussed this issue with the California Parties, who have expressed agreement with the ISO's interpretation of these provisions.

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,

/s/ Michael Kunselman

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Dated: September 10, 2014

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of this document upon the parties listed on the official service lists in the captioned proceedings, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010)..

Dated this 10th day of September, 2014 in Washington, DC.

/s/ Daniel Klein
Daniel Klein