

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

<b>San Diego Gas &amp; Electric Company</b>	)	<b>Docket Nos. EL00-95-000</b>
<b>v.</b>	)	
<b>Sellers of Energy and Ancillary Services</b>	)	
	)	
<b>Investigation of Practices of the California Independent System Operator and the California Power Exchange</b>	)	<b>Docket Nos. EL00-98-000</b>
	)	
<b>State of California, ex rel. Bill Lockyer, Attorney General of the State of California</b>	)	<b>Docket No. EL02-71-000</b>
<b>v.</b>	)	
<b>British Columbia Power Exchange Corp.</b>	)	
	)	
<b>State of California, ex rel. Edmund G. Brown Jr., Attorney General of the State of California</b>	)	<b>Docket No. EL09-56-000</b>
<b>v.</b>	)	
<b>Powerex Corp. (f/k/a British Columbia Power Exchange Corp.) et al.</b>	)	

**COMMENTS OF THE CALIFORNIA INDEPENDENT  
SYSTEM OPERATOR CORPORATION REGARDING  
JOINT OFFER OF SETTLEMENT INVOLVING COMMERCE ENERGY**

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) (2016), the California Independent System Operator Corporation (“ISO”) hereby submits its comments on the Joint Offer of Settlement (“Settlement Agreement”) filed by Commerce Energy, Inc. f/k/a Commonwealth Energy Corporation and the California

Parties<sup>1</sup> (collectively, the “Settling Parties”), in the above-captioned proceedings on August 24, 2016.

## I. COMMENTS

As explained in the Joint Explanatory Statement accompanying the Settlement Agreement, Commerce Energy was not a direct participant in the markets operated by the ISO and California Power Exchange (“PX”) during the period covered by the Settlement Agreement.<sup>2</sup> The Settlement Agreement does not include any provisions governing accounting adjustments to the ISO’s books and records. The Settlement Agreement does, however, address the impact of the Settlement Agreement on the Automated Power Exchange (“APX”), and in particular, provides that Commerce Energy will receive a credit against any amount it is found to owe to the California Parties relating to the Commission’s determination regarding APX’s refund obligations in the California refund proceeding.<sup>3</sup> Section 3.2 of the Settlement Agreement provides that liability for this credit will be used to reduce the overall amount of refunds and interest, if any, that would otherwise be owed to the California Parties from APX or APX participants.

It is not clear to the ISO whether these provisions might potentially result in adjustments to ISO accounts. Therefore, out of an abundance of caution, the ISO requests that the Commission state that the ISO, along with its directors, officers,

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<sup>1</sup> For purposes of the Settlement Agreement, “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 (“CPUC”), 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”).

<sup>2</sup> See Joint Explanatory Statement at 4 (Attachment A to Settlement Agreement).

<sup>3</sup> Settlement Agreement, Article III.

employees and consultants, will be held harmless with respect to the settlement and any accounting activities that it might 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. The Commission has already approved hold harmless language for the ISO and the PX in the context of the California Parties' settlements with numerous other 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, namely: (1) any accounting adjustments necessary to implement the Settlement Agreement 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; (2) the ISO markets are not bilateral in nature, but any adjustments to ISO accounts under the Settlement Agreement would need to be made as if they were; and (3) 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 any accounting necessary to implement the Settlement Agreement.

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. Moreover, the Settling Parties state that they do not oppose the Commission adopting hold harmless provisions for the ISO and PX.<sup>4</sup>

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<sup>4</sup> See Joint Explanatory Statement at 13-14.

## II. CONCLUSION

Wherefore, for the reasons stated above the ISO 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 any accounting activities that it might 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 13, 2016

## 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 13<sup>th</sup> day of September, 2016 in Washington, DC.

*/s/ Michael Kunselman*

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