

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

NEO California Power LLC

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Docket No. EL02-18-000  
EL00-95-000  
EL00-98-000

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**SETTLING PARTIES' REPLY COMMENTS  
IN SUPPORT OF OFFER OF SETTLEMENT**

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Pursuant to Rule 602(f)(2) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. § 385.602(f)(2) (2008), and the April 2, 2009 Extension of Time, the California Independent System Operator Corporation (“CAISO”), on behalf of itself and the other settling parties, California Power Holdings, LLC (“CPH”), Harbor Cogeneration Company (“Harbor”), and MMC Energy North America, LLC (“MMC”) (collectively, the “Settling Parties”) hereby submit these Reply Comments, a Revised Explanatory Statement (Attachment 1), and a Revised Settlement Agreement (Attachment 2 (final) and Attachment 3 (redline))<sup>1</sup> in support of the Offer of Settlement, submitted March 4, 2009. With the Revised Settlement Agreement, the settlement is uncontested.

The California Parties and the California Power Exchange (the “CalPX”) submitted comments to the settlement on March 24, 2009, raising specific concerns regarding the treatment under the settlement of potential principal and interest shortfalls, the accounting treatment for the settlement payments, and the hold harmless provision.

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<sup>1</sup> The Settling Parties will submit a final executed Revised Settlement Agreement by April 22, 2009.

On April 3, 2009, Los Angeles Department of Water and Power (“LADWP”) submitted reply comments mirroring the concerns raised by the California Parties and the CalPX.

The Settling Parties have discussed each of these issues with the commenters, and have agreed to revise the Settlement Agreement to address each of the concerns raised. The California Parties, the CalPX, and LADWP (collectively the “Commenters”) have now advised that they no longer have any objections, and do not contest the settlement as revised. The Commission should thus approve the Revised Settlement Agreement without further change or modification.<sup>2</sup>

**I.  
THE REVISED SETTLEMENT AGREEMENT IS UNCONTESTED**

The Commenters raised several issues each of which, as summarized briefly below, has been resolved with the Revised Settlement Agreement. With these changes the settlement is now uncontested.<sup>3</sup>

***Interest Shortfalls***

The Commenters raised concerns that the SRA Owners would not be allocated interest shortfalls. The issue arises because the PX funds are invested in accounts that earn less than the FERC interest rate, creating a potential interest shortfall that must be spread among market participants. The Commenters were concerned that under the settlement the “SRA Owners [would receive] 100 percent of the interest due them at the compounded FERC interest rate.” (*See, e.g.*, CalPX Comments at 4). The Settlement

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<sup>2</sup> In its March 24, 2009 Initial Comments at page 2, Commission Trial Staff concluded that the Offer of Settlement “is fair reasonable and in the public interest.” The Settling Parties have been authorized to represent that Commission Trial Staff does not oppose the terms of the revised settlement or the certification of the settlement for the Commission’s approval.

<sup>3</sup> Given the resolution of the specific concerns raised by the Commenters, the Settling Parties have not sought to respond or clarify the record as to each particular assertion made in the comments. This, in no way, should be deemed acquiescence in any such assertions.

Agreement states that the SRA Owners will be paid only “an amount of interest to be determined by the Commission . . . .” (Settlement Agreement, § 2.2). The intent of the parties was always that the SRA Owners will be subject to any interest shortfall. Section 2.2 has thus been revised to clarify this point by expressly providing that the SRA Owners are subject to any interest shortfalls. (*See Attachments 2 and 3, Section 2.2*).

### ***Principal Shortfalls***

The Commenters expressed concern that the settlement does not allocate any potential principal shortfall in the CalPX settlement clearing account, that would otherwise result in the SRA Owners receiving less than 100 percent of their principal balances at the conclusion of the refund proceeding. They agree, however, that any principal shortfall allocated to the SRA Owners would be de minimis. Sections 2.1 and 2.2 of the agreement have been revised to address this concern such that any principal shortfall will be deducted from the future interest payments to be made to the SRA Owners. (*See Attachments 2 and 3, Sections 2.1 and 2.2*).

### ***Accounting Treatment***

The California Parties seek clarification that “any amounts paid by the PX pursuant to the Settlement will be credited against total amounts owed by the PX to the CAISO.” (California Parties Comments at 3). Section 2.1 of the agreement provides that “The CAISO will adjust its books to credit [the SRA Principal Receivable Settlement Amount] to the PX, thereby reducing amounts payable by the PX to the CAISO.” Additional clarifying language has been added to Section 4 of the Settlement Agreement, providing that the settlement payments will be applied “as a credit against amounts due by the PX to the CAISO . . .”. (*See Attachments 2 and 3, Section 4.1*).

The CalPX seeks clarification that its payments under the settlement will be applied to its oldest debt from October 2000, rather than to its defaults on the July and August 2001 invoices, and asserts that CAISO Tariff Section 11.12.5 requires such accounting treatment. (CalPX Comments at 6-7). The CalPX is concerned that “if the CalPX’s payment is applied instead to the July and August 2001 time period, the interest shortfall will increase for CalPX participants.” (*Id.* at 7) In fact, as an accounting matter, it makes no difference to which debt the payment is applied. Interest has been accrued on each debt from the date it was incurred until the date of payment. Whether the debt was accrued in October 2000 or July 2001, the payment of the debt will terminate the accrual only of any additional interest going forward.

Nonetheless, Section 4.1 of the agreement has been revised to reflect that the CalPX payments will be applied “in order of the creation of the debt, in accordance with CAISO Tariff Section 11.12.5.” (*See* Attachments 2 and 3, Section 4.1).<sup>4</sup>

### ***The Hold Harmless Provision***

The California Parties seek clarification that, notwithstanding Section 4.4 (the “hold harmless provision”), the CAISO will remain involved to facilitate the implementation of the Settlement. (Cal. Parties Comments at 3, 11). The CAISO agrees that it will continue to be involved with the implementation of the settlement, and it is not

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<sup>4</sup> LADWP, citing the California Parties’ comments, states that the California Department of Water Resources, California Electric Resources Scheduling Division (“CERS”) paid the CAISO for “all overdue amounts to the SRA Owners.” (LADWP Comments at 4.) This statement is incorrect; it does not accurately reflect the comments of the California Parties. In fact, the California Parties explained that CERS paid the invoices issued to Pacific Gas & Electric and Southern California Edison, and that CERS paid all of the SRA charges that were issued to these two utilities. (*See* California Parties Comments at page 5, Castillo Declaration at ¶5.) CERS, however, did not pay the SRA charges that were issued to the PX, because CERS was not invoiced for these charges. The payments provided for in this settlement are for the amounts the SRA Owners are due from the CalPX only. Recognizing that the California Parties and the LADWP do not contest the revised settlement, the Settling Parties offer this clarification only to correct any potential misunderstanding related to the amounts owed to the SRA Owners.

the intent of the Settling Parties that Section 4.4 diminish CAISO's role in doing so. Section 4.4 has been revised accordingly. (*See Attachments 2 and 3, Section 4.4*).

The CalPX states that "the Commission should . . . ensure that with respect to CalPX the hold harmless provision set forth in Section 4.4 of the SRA Settlement be included in any approved version of the settlement." (CalPX Comments at 2, 9). The Settling Parties agree that Section 4.4 should be included in the final approved version of the settlement.

## **II. CONCLUSION**

For all the foregoing reasons, the Settling Parties respectfully request that the Commission approve the settlement subject to the proposed revisions, as set forth in the Revised Settlement Agreement.

Dated: April 10, 2009

Respectfully submitted on it own behalf and  
on behalf of the Settling Parties,

*/s/ Roger E. Collanton*

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**ATTACHMENT 1**

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

NEO California Power LLC

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Docket No. EL02-18-000  
EL00-95-000  
EL00-98-000

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**REVISED EXPLANATORY STATEMENT**

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Pursuant to Rule 602 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"), 18 C.F.R. § 385.602 (2008), the California Independent System Operator Corporation ("CAISO"), California Power Holdings, LLC ("CPH"), Harbor Cogeneration Company ("Harbor"), and MMC Energy North America, LLC ("MMC") (collectively, "Settling Parties") hereby submit this Revised Explanatory Statement in support of the Revised Settlement Agreement ("Settlement Agreement").

The Settling Parties submit that the Settlement Agreement resolves all issues set for hearing in Docket No. EL02-18-000. The Parties further assert that the Settlement Agreement is in the public interest, and urge the Commission to approve the Settlement Agreement on its terms, without modification or condition. This Explanatory Statement summarizes the Settlement Agreement, but is not intended to modify or alter any provision of the Settlement Agreement.

**I.  
BACKGROUND**

To ensure the reliability of the CAISO Control Area during the 2001, 2002 and 2003 summer periods, on August 24, 2000, CAISO issued a request for bids seeking

proposals from new generation facilities to provide peaking capability (up to 3,000 MW). In response, (1) NEO California Power LLC (“NEO”) submitted a proposal to construct a 48 MW unit located in Chowchilla, California and a 44 MW unit in Red Bluff, California; (2) Harbor submitted a proposal to add two steam turbines to an 80 MW combined-cycle unit located in Wilmington, California; and (3) RAMCO submitted a proposal to construct a 44 MW unit located in Escondido, California and a 44 MW unit in Chula Vista, California. Subsequently, CAISO executed a Summer Reliability Agreement (“SRA”) for each unit, which entitled CAISO to dispatch capacity from each of these units for up to 500 hours during the summer periods of 2001, 2002, and 2003.

Under the SRAs, the CAISO’s obligation to pay the SRA Owners was expressly conditioned on the CAISO’s recovery of the costs from its Scheduling Coordinators pursuant to the CAISO Tariff. To facilitate this recovery, the CAISO established a trust account (the “SRA Trust Account”) to receive payment through its markets. The SRA owners were then paid from the SRA Trust Account.

The SRA Owners did not receive full payment on invoices for July and August 2001, because there was a default in the CAISO markets. The invoices for these months included adjustments to settlements from December 2000, including additional charges to the California Power Exchange Corporation (the “PX”). The PX did not pay its invoices, however, having declared bankruptcy.<sup>1</sup> Consequently, all market creditors, including the SRA Trust Account, were paid only a portion of their receivables for July and August 2001. Under the PX’s confirmed plan of reorganization, the SRA Trust Account is a creditor in Class 7, which is defined to include “all claims of CalISO.”

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<sup>1</sup> The PX filed for Chapter 11 bankruptcy protection on March 9, 2001.



On November 13, 2001, NEO filed a complaint against the CAISO in Docket No. EL02-18-000 asserting non-payment of invoiced amounts under the SRAs. CAISO responded to NEO's complaint, explaining that it would be unable to pay NEO (or the other SRA Owners) until the funds controlled by the PX were distributed by the Commission pursuant to its authority under the PX's confirmed plan of reorganization.

On May 20, 2003, the Commission issued an order on NEO's complaint, establishing hearing procedures, but holding the hearing in abeyance pending settlement judge procedures.<sup>2</sup> On June 2, 2003, Chief Administrative Law Judge Curtis L. Wagner assigned the settlement proceedings to The Honorable Joseph R. Nacy. The first settlement conference took place on June 20, 2003. NEO and CAISO participated in several settlement conferences on this matter from June 2003 through March 2004.

On January 24, 2005, CAISO and NEO filed a Joint Status Report in Docket No. EL02-18 informing the Commission that the PX bankruptcy and the Commission's ongoing investigation of the rates charged to California's ratepayers, along with the anticipated refunds in Docket Nos. EL00-95 and EL00-98 ("Refund Proceedings") was the key impediment to satisfying the CAISO's obligation to NEO under the SRAs. Since the Joint Status Report was filed, a number of settlements in the Refund Proceedings have been filed and approved by the Commission authorizing the distribution of funds held by the PX.

The CAISO and the SRA Owners worked together to resolve issues related to NEO's complaint in Docket No. EL02-18 under the framework of a global settlement (including all SRA Owners), similar to the settlements accepted by the Commission

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<sup>2</sup> *NEO California Power LLC*, 103 FERC ¶ 61,206 (2003).

relating to the Refund Proceedings. The Settlement Agreement filed herewith is the result of these renewed efforts.

**II.**  
**SUMMARY OF REVISED SETTLEMENT AGREEMENT**

**The various sections of the Settlement Agreement are summarized as follows:**

**SECTION 1** sets forth the definition of certain terms used throughout the Settlement Agreement.

**SECTION 2.1** provides that upon Commission approval of the Offer of Settlement, the Commission will direct the PX to release funds out of the PX Settlement Clearing Account to the individual SRA Owners as full payment for the critical reliability services they provided to CAISO during the 2001 summer period under the SRAs (the “SRA Principal Receivable Settlement Amount”). This Section further provides that in the event of a principal shortfall in the PX Settlement Clearing Account at the conclusion of the Refund Proceeding, a pro rata portion of the principal shortfall will be allocated to the SRA Owners and deducted from the interest payments to be made to the CAISO as set forth in Section 2.2.

**SECTION 2.2** provides that upon the distribution of the SRA Principal Receivable Settlement Amount by the PX, interest will cease accruing on the unpaid principal balances, but will continue to compound on unpaid SRA Interest. This Section further provides that the SRA Interest Receivable Settlement Amount shall be reduced on a pro rata basis as a result of any interest shortfalls allocated among PX market participants, as well as by the amount of any principal shortfall, as set forth in Section 2.1. This Section also states that the PX shall pay to the CAISO an amount of interest to be subsequently determined by the Commission (“SRA Interest Receivable Settlement

Amount”), subject to any shortfalls in interest or principal, as set forth above, but no later than the date on which the PX makes the distribution of interest to its market participants as contemplated in the Commission’s order issued on October 19, 2007 in Docket No. EL00-95-164 (*San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Servs.*, 121 FERC ¶ 61,067 at PP 57-58 (2007)).

**SECTION 2.3** provides that Commission approval of the Settlement Agreement and subsequent payment of the SRA Principal Receivable Settlement Amount and SRA Interest Receivable Settlement Amount resolves all issues with respect to NEO’s November 13, 2001 complaint against CAISO in Docket No. EL02-18. This Section further provides that within thirty (30) Business Days after receipt of the SRA Principal Receivable Settlement Amount, CPH will request the Complaint be held in abeyance. Within thirty (30) days after receipt of the SRA Interest Receivable Settlement Amount, CPH will cause the Complaint to be dismissed.

**SECTIONS 2.3, 2.4 and 2.5** provide that the SRA Principal Receivable Settlement Amount and the SRA Interest Receivable Settlement Amount will be the only payments made under the Settlement Agreement and that all issues between the Parties as to the matters discussed in the Agreement will be fully and completely resolved.

**SECTION 2.6** provides that the Parties acknowledge and agree that it is their intention that the releases granted pursuant to Sections 2.3 through 2.5 shall be effective as a bar to all causes of action and demands for additional relief.

**SECTION 2.7** provides that the releases set forth in Sections 2.3 through 2.5 shall run to, benefit and be enforceable by any individual who, as an officer, director, agent or employee of a corporate or organizational party that receives the benefits of such

releases, participated as an officer, director, agent or employee in or might be claimed to be liable for any of the actions or events of potential liability for which a party is released by Sections 2.3 through 2.5.

**SECTION 3.1** provides that the Settlement Agreement shall become effective when the Commission by order accepts or approves the Agreement in its entirety without modifications or conditions or with such modifications or changes as are agreed to by the Settling Parties. The Agreement further provides that if the Commission accepts the Settlement without modification with respect to one SRA Owner, the Settlement shall be binding on such SRA Owner.

**SECTION 4.1** provides that upon Commission approval, CAISO and PX will conform their books and records by reflecting the payment of the SRA Principal Receivable Settlement Amount to the SRA Owners as a credit against amounts due by the PX to the CAISO, thereby reducing amounts payable by the PX to the CAISO. This Section also provides that CAISO shall apply the PX payments, in order of the creation of such debt, in accordance with Section 11.12.5 of the CAISO Tariff.

**SECTION 4.2** provides that each Party shall reasonably and in good faith cooperate and take all reasonable steps to secure (i) the release of funds to the SRA Owners as contemplated by the Agreement, (ii) the accounting treatment contemplated under Section 4 of the Agreement, and (iii) any other acts of the PX or CAISO necessary to effectuate the terms of the Agreement.

**SECTION 4.4** provides that the PX and the CAISO shall be held harmless for actions taken to implement the Settlement, but that the CAISO shall continue to remain involved in the implementation of this Agreement.

**SECTION 4.5** provides FERC approval of the Agreement will constitute a grant of such waivers of the CAISO and the PX tariffs as may be necessary for the CAISO and the PX to disburse such funds as required by the Agreement.

**SECTION 5.1** provides that the Agreement represents a fair and reasonable negotiated settlement that is in the public interest and that its terms shall not limit or restrict the arguments that the Parties may take in any future proceeding before the Commission, except as to the matters explicitly described in the Agreement.

**SECTION 5.2** provides that the Settlement does not establish any principles or precedent.

**SECTION 5.3** provides that the discussions among the Parties that produced the Agreement have been conducted on the explicit understanding, pursuant to Rule 602(e) of the Commission's Rules of Practice and Procedures, that all offers of settlement and any comments on these offers are privileged and not admissible as evidence against any participant who objects to their admission and that any discussion of the Parties with respect to offers of settlement is not subject to discovery or admissible in evidence.

**SECTION 5.4** provides that the Commission's review of any modifications to the Settlement Agreement, regardless of who proposes the modification, shall be based on the just and reasonable standard and not the public interest standard.

**SECTION 6.1** provides that the Agreement constitutes the Parties' complete and exclusive statement of the terms of the Settlement.

**SECTION 6.2** provides that the Agreement may be executed in any number of counterpart signature pages.

**SECTION 6.3** provides that Commission acceptance of the Agreement shall constitute the requisite waiver of any and all otherwise applicable Commission regulations, to the extent necessary, to permit implementation of the Agreement.

**SECTION 6.4** provides that to the extent not governed by federal law, the Agreement will be governed by the law of the State of California, without giving effect to principles of conflicts of laws that would require the application of laws of another jurisdiction.

**SECTION 6.5** provides that the Agreement shall be binding upon and inure to the benefit of the Parties hereto and their permitted successors and assigns.

**SECTION 6.6** provides that the Agreement is not intended to confer upon any person or entity that is not a Party any rights or remedies under the Agreement.

### **III. RESPONSES TO STANDARD SETTLEMENT QUESTIONS**

In accordance with the October 15 and 23, 2003 orders of Chief Administrative Law Judge Curtis L. Wagner, Jr., the Parties address the Commission's five questions in order to assist the Commission in its determination as to whether the Settlement should be accepted. The Parties make the following responses to the Commission's questions:

- a. There are no issues or major implications for the Commission underlying the Settlement Agreement. The Settlement is a complete settlement as among CAISO and the SRA Owners (CPH, Harbor, and MMC) as to the matters addressed therein. The SRA Owners fulfilled their critical reliability capacity contracts and are not subject to any market re-runs or refunds.
- b. The Settlement Agreement does not raise any policy implications for the Commission. The Agreement specifically states in Section 5.2 that it does not establish any principles or precedent, and in Section 5.1 that it does not constitute a determination as to the merits regarding any issue in the proceeding. The Settlement Agreement provides for payments from the CAISO through the

release of PX funds to resolve disagreements among the Parties concerning payments for past reliability services.

- c. The Settlement Agreement does not affect any other pending cases before the Commission. None of the SRA Owners are parties to the Refund Proceedings, nor are the SRA payments subject to refund.
- d. The Settlement Agreement does not involve matters of first impression and does not involve any previous reversals on the issues involved.
- e. The Commission's review of any modifications to the Settlement Agreement proposed by the Settling Parties, the Commission or third parties shall be based on the just and reasonable standard.
- f. The Settlement accomplishes two objectives the Commission has long recognized: (i) promoting market stability and (ii) reducing litigation.

#### **IV. CONCLUSION**

For the foregoing reasons, the Parties state that the Settlement serves each of their own interests and also serves important overriding public interest purposes, that the Settlement should be approved by the Commission in accordance with its terms as filed, without change or modification, and that the public interest would further be served by the Commission acting on the Settlement as soon as it is able.

Dated: April 10, 2009

**ATTACHMENT 2**



## REVISED SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into by and among California Power Holdings, LLC (“CPH”), Harbor Cogeneration Company (“Harbor”), MMC Energy North America, LLC (“MMC”) and the California Independent System Operator Corporation (“CAISO”). CPH, Harbor, MMC and CAISO are each a “Party,” and collectively they are “Parties” to this Agreement.

### RECITALS

**Whereas**, on August 24, 2000, CAISO issued a Request for Bids seeking proposals from new generation facilities to provide peaking capability in order to ensure the reliability of the CAISO’s Control Area during the 2001, 2002 and 2003 summer periods;

**Whereas**, in response to CAISO’s Request for Bids, NEO California Power LLC (“NEO”), Harbor, and RAMCO, Inc. (“RAMCO”) submitted proposals to construct new generating units and/or add generating capability to existing units;

**Whereas**, the CAISO accepted proposals from NEO and RAMCO to build two generating units each, and a proposal from Harbor to add to an existing generating unit. CAISO executed two separate Summer Reliability Agreements (“SRAs”) each with NEO and RAMCO, and one with Harbor. The contract terms of each of the SRAs extended through October 31, 2003.

**Whereas**, the SRA contracts expressly condition the CAISO’s obligation to pay the SRA Owners on the CAISO’s recovery of the costs from its Scheduling Coordinators under the terms of the CAISO tariff. To facilitate this recovery, the CAISO established the SRA Trust Account, treated the SRA Trust Account as a participant in its markets, and paid the SRA owners from the SRA Trust Account;

**Whereas**, under the terms of the SRAs, NEO, RAMCO, and Harbor issued invoices that were accepted by CAISO, which assessed corresponding credits to the SRA Trust Account and charges to Scheduling Coordinators. To the extent that any Scheduling Coordinators disputed the charges associated with the SRAs, those disputes have been resolved;

**Whereas**, the SRA Owners did not receive full payment on invoices that CAISO assessed to Market Participants for the trade months of July and August 2001, due to a default by the California Power Exchange Corporation (the “PX”) on its market invoices. These trade months included retroactive adjustments correcting invoices originally issued for November and December 2000, including adjustments affecting the PX. Due to its bankruptcy filing, the PX did not pay its invoices and thus the SRA Trust Account and other CAISO Creditors were paid only a portion of their receivables for July and August 2001. As a result of the shortfall in the SRA Trust Account, the CAISO paid the SRA Owners only a portion of what they were owed for those trade months;

**Whereas**, on November 13, 2001, NEO filed a complaint against CAISO with the FERC in Docket No. EL02-18-000, stating that the CAISO had not paid NEO the full amount due on its invoices;

**Whereas**, in response to NEO's complaint, CAISO explained that it would be unable to pay NEO until the funds controlled by the PX were distributed by the Commission pursuant to its authority under the PX's confirmed plan of reorganization;

**Whereas**, on May 20, 2003, the Federal Energy Regulatory Commission established hearing procedures and held the hearing in abeyance pending settlement judge procedures;

**Whereas**, on January 24, 2005, the Parties informed the Commission that settlement negotiations are continuing and that the payment dispute should be resolved with the pending clearing of accounts from the PX Bankruptcy and Refund Proceedings;

**Whereas**, on January 3, 2007, CPH acquired all NEO's interests in the SRAs and associated generating plants, including NEO's claims against CAISO under the SRAs;

**Whereas**, on January 9, 2006, MMC acquired all of RAMCO's interests in the SRAs and associated generating plants, including any claims that RAMCO may have against CAISO under the SRAs;

**Whereas**, the Parties have been committed to settling the disputes addressed herein rather than litigate or continue to litigate, as the case may be;

**Whereas**, FERC has on several occasions authorized the release of funds held by the PX to creditors who have resolved through agreement or otherwise resolved their overall financial position with respect to the ISO and PX markets during the refund period of October 2, 2000 through June 21, 2001;

**Whereas**, the SRA Owners are not subject to any pending refund cases pending before the Commission;

**Whereas**, upon approval of this Agreement by the Federal Energy Regulatory Commission ("FERC" or the "Commission"), the SRA Owners and the SRA Trust Account would have no unresolved issues with respect to the ISO and PX markets during the refund period of October 2, 2000 through June 21, 2001;

**Now, therefore**, in consideration of the exchange of promises and covenants contained in this Settlement Agreement, the legal sufficiency of which the Parties acknowledge, the Parties agree, subject to approval by the Commission, as follows:

## Section 1: Definitions

**“Business Day”** means a calendar day falling within Monday through Friday except for Federal holidays.

**“CAISO”** means the California Independent System Operator Corporation, a California nonprofit public benefit corporation.

**“Effective Date”** shall have the meaning set forth in Section 3.1 of this Agreement.

**“FERC” or “Commission”** means the Federal Energy Regulatory Commission.

**“FERC Interest Rate”** shall have the meaning set forth in 18 C.F.R. § 35.19a(a)(2)(iii) or any successor thereto.

**“Harbor Cogeneration Company”** refers to the owner and operator of a combined-cycle facility located in Wilmington, California that had an output capability of 80 MW in 2000 (“the Harbor plant”).

**“NEO California LLC”** refers to the owner and operator of (i) a 48 MW natural gas-fired generation facility located in Chowchilla, California (the “Chowchilla plant”) and (ii) a 44 MW natural gas-fired generation facility located in Red Bluff, California (the “Red Bluff plant”) before California Power Holdings purchased a 100 percent direct membership interest in NEO and merged NEO into California Power Holdings, LLC.

**“Parties”** means the CAISO, California Power Holdings, LLC, Harbor Cogeneration Company, and MMC Energy North America, LLC, including their successors and assigns.

**“Complaint Proceeding”** means the proceeding conducted at the Commission in Docket No. EL02-18 concerning amounts owed under the Summer Reliability Agreements between CAISO and NEO California Power LLC.

**“PX”** means the California Power Exchange Corporation, a California nonprofit public benefit corporation.

**“PX Settlement Clearing Account”** means any and all accounts of the PX or the reorganized PX holding funds in trust pursuant to the terms of the PX tariff, the CAISO tariff, or a FERC or court order.

**“RAMCO”** refers to the owner and operator of (i) a 44 MW natural gas-fired generation facility located in Escondido, California and (ii) a 44 MW natural gas-fired generation facility located in Chula Vista, California, before MMC Energy North America, LLC purchased all of its assets.

**“Refund Proceeding”** means the FERC proceeding conducted in Docket Nos. EL00-95, et al. and EL00-98, et al. and related appeals of orders in that proceeding and any proceedings upon remand.

**“SRA Owners”** means California Power Holdings, LLC, Harbor Cogeneration Company, and MMC Energy North America, LLC, including their successors and assigns.

**“SRA Interest Receivable Settlement Amount”** has the meaning set forth in Section 2.2 of this Settlement Agreement.

**“SRA Principal Receivable Settlement Amount”** has the meaning set forth in Section 2.1 of this Settlement Agreement.

**“SRA Interest”** means the interest that has accrued to the SRA Owners under the terms of the SRAs, but in no event shall be accrued at a rate in excess of the FERC Interest Rate.

**“Summer Reliability Agreements or SRAs”** mean the Agreements between NEO, RAMCO, or Harbor, on the one hand, and CAISO, on the other hand. The two SRAs between the CAISO and NEO were executed initially on November 27, 2000, and filed on January 10, 2001 in FERC Docket No. ER01-0929, with amended and restated versions executed December 5, 2001, and filed on February 4, 2002 in FERC Docket No. ER02-0978. The SRAs between the CAISO and Harbor was executed December 4, 2000, and filed on January 10, 2001 in FERC Docket No. ER01-0929. The CAISO and RAMCO executed SRAs for the Chula Vista and Escondido facilities on November 27, 2000, and filed on January 10, 2001 in FERC Docket No. ER01-0929. This does not include two other SRAs between the CAISO and RAMCO for Pleasanton and East Livermore facilities, because those facilities were never constructed.

Capitalized terms that are not otherwise defined shall have the meaning set forth in the CAISO Tariff.

## **Section 2: Payment and Release**

2.1. No later than thirty (30) Business Days after the Effective Date, the PX shall distribute the SRA Principal Receivable Settlement Amount identified in Exhibit A, which represents the principal amounts yet unpaid under the SRAs, exclusive of accrued interest (“SRA Receivable”).

The calculation of the SRA Principal Receivable Settlement Amount is set forth in Attachment A to this Settlement Agreement. The PX will pay the SRA Principal Receivable Amount out of the PX Settlement Clearing Account to the individual SRA Owners, via wire transfer instructions provided by the SRA Owners. The CAISO will adjust its books to credit this same amount of funds to the PX, thereby reducing amounts payable by the PX to the CAISO.

In the event of a principal shortfall in the CalPX Settlement Clearing Account at the conclusion of the Refund Proceeding, a pro rata portion of the principal shortfall will be allocated to the SRA Owners. Any principal shortfall will be deducted from the interest payments to be made to the CAISO, as set forth in Section 2.2.

2.2 The SRA Interest Receivable Settlement Amount is set forth in Exhibit B to this Settlement Agreement. Upon the distribution of the SRA Principal Receivable Settlement Amount by the PX, interest will cease accruing on the unpaid principal balances, but will continue to compound on unpaid SRA Interest. The SRA Interest Receivable Settlement Amount shall be reduced on a pro rata basis as a result of any interest shortfalls allocated among PX market participants, as well as by the amount of any principal shortfall, as set forth in Section 2.1. The PX shall pay to the CAISO an amount of interest to be determined by the Commission, subject to any shortfalls in interest or principal, as set forth above, at a time to be determined by the Commission, but no later than the date on which the PX makes the distribution of interest to its market participants as contemplated in the Commission's order issued October 19, 2007 in Docket No. EL00-95-164 (paragraph 58). Within 10 Business Days after receiving this payment, the CAISO shall distribute, on a pro rata basis such proceeds, to the SRA Owners. The SRA Owners shall not have any other claim for interest except as provided for in this Section 2.2

2.3. The approval of this Settlement Agreement and subsequent payment of the SRA Principal Receivable Settlement Amount and SRA Interest Receivable Settlement Amount resolves all issues with respect to NEO's November 13, 2001 complaint against CAISO in Docket No. EL02-18 ("Complaint") relating to the sufficiency of payments made under the Summer Reliability Agreements. Within thirty (30) Business Days after receipt of the SRA Principal Receivable Settlement Amount, CPH will request the Complaint be held in abeyance. Within thirty (30) days after receipt of the SRA Interest Receivable Settlement Amount, CPH will withdraw the Complaint.

2.4. The Parties agree that the SRA Principal Receivable Settlement Amount and the SRA Interest Receivable Settlement Amount described in Section 2.1 and 2.2 above will be the only payments made under this Settlement Agreement. The Parties further agree that this Settlement Agreement resolves all issues that were raised or that could have been raised by any person in the Complaint Proceeding, whether or not they are signatories to this Settlement Agreement.

2.5 In return for the consideration specified elsewhere in this Settlement Agreement and full performance by the Parties of their respective obligations hereunder, and subject to the occurrence of the Settlement Effective Date, all claims as between the SRA Owners, on the one hand, and the CAISO, on the other hand, relating to Summer Reliability Agreements for monetary or non-monetary Remedies, including attorney's fees, shall be deemed settled and resolved, subject only to the right of SRA Owners to contest the calculation of SRA Interest, as calculated in Attachment B.

2.6 The Parties acknowledge and agree that it is their intention that the releases granted pursuant to Sections 2.3 through 2.5 shall be effective as a bar to all causes of

action and demands for monetary relief, including costs, expenses, attorneys' fees, damages, losses, and liabilities of every kind, known or unknown, suspected or unsuspected. In furtherance of this intention, SRA Owners, on the one hand, and the CAISO, on the other hand, with respect to the specific matters released herein, each knowingly, voluntarily, intentionally, and expressly waives, as against each other, any and all rights and benefits conferred by California Civil Code Section 1542 and any law of any state or territory of the United States or principle of common law that is similar to Section 1542. Section 1542 provides:

**“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”**

In connection with such waiver and relinquishment, the Parties each acknowledge that they are aware that they may hereafter discover facts in addition to or different from those that they know or believe to be true and with respect to the subject matter of this Agreement, but that it is their intention hereby to fully, finally, and forever settle and release all matters, disputes, differences, known or unknown, suspected or unsuspected, that are set forth in Sections 2.3 through 2.5. This Agreement is intended to include in its effect, without limitation, all claims encompassed within the settlement and releases set forth in Sections 2.3 through 2.5, including those that the Parties may not know or suspect to exist at the time of execution of this Agreement, and this Agreement contemplates the extinguishment of all such claims.

2.7 The releases set forth in Sections 2.3 through 2.5 shall run to, benefit and be enforceable by any individual who, as an officer, director, agent or employee of a corporate or organizational party that receives the benefits of such releases participated as an officer, director, agent or employee in or might be claimed to be liable for any of the actions or events of potential liability for which a party is released by Sections 2.3 through 2.5. The release and discharge of individuals effected by this Section 2.7 is not intended to expand the number or identity of corporate or organizational entities released or discharged by any of Sections 2.3 through 2.5.

### **Section 3: Effective Date and Termination**

3.1. This Settlement Agreement shall become effective when the Commission by order accepts or approves this Settlement Agreement in its entirety without modifications or conditions or with such modifications or changes as are agreed to by the Settling Parties in accordance with the following provision (the "Effective Date"). If the Commission by order approves this Settlement Agreement conditioned on the modification of any of the terms of this Settlement Agreement (a "Conditional Approval Order"), the Settling Parties shall confer to determine whether they accept such

modifications, and if so, make any necessary compliance filing. If one or more Parties do not accept such modifications, the Parties will negotiate in good faith, if necessary, to restore the balance of risks and benefits reflected in this Settlement Agreement as executed; and any such renegotiated Settlement Agreement shall be filed with the Commission. If, within thirty calendar days of the date of the issuance of the Conditional Approval Order, the Parties do not either accept and file the Settlement Agreement as modified or agree to and file a renegotiated Settlement Agreement and unless the Parties agree to extend the time period for such negotiations, this Settlement Agreement shall terminate. Notwithstanding anything in this Section 3.1, if this Commission accepts this Settlement without modification with respect to one SRA Owner, the Settlement shall be binding on such SRA Owner.

#### **Section 4: PX and CAISO Accounting**

4.1 Upon approval of this Settlement, CAISO and PX will conform their books and records by reflecting the payment of the SRA Principal Receivable Settlement Amount to the SRA Owners as a credit against amounts due by the PX to the CAISO, thereby reducing amounts payable by the PX to the CAISO. The CAISO shall apply the PX payments, in order of the creation of such debt, in accordance with CAISO Tariff Section 11.12.5.

4.2 Upon distribution of the SRA Interest Receivable Settlement Amount, CAISO and PX will conform their books and records to reflect the payment of SRA interest to the SRA Owners.

4.2 Each Party shall reasonably and in good faith cooperate and take all reasonable steps to secure (i) the release of funds to the SRA Owners as contemplated by this Agreement, (ii) the accounting treatment contemplated under this Section 4, and (iii) any other acts of the PX or CAISO necessary to effectuate the terms of this Agreement. This duty of cooperation shall include making individual or joint requests to the PX, executing appropriate waivers, providing data, and providing other assistance to the PX and the CAISO as necessary to implement this Agreement.

4.4 The PX and the CAISO shall be held harmless for actions taken to implement the Settlement. Notwithstanding, this provision, CAISO shall continue to remain involved in the implementation of this Agreement.

4.5 FERC approval of this Agreement shall constitute a grant of such waivers of the CAISO and the PX tariffs as may be necessary for the CAISO and the PX to disburse such funds as required by this Agreement, to account for transfers, allocations, and distributions of funds as required by this Agreement, and to otherwise implement this Agreement.

#### **Section 5: Scope and Limitations**

5.1. For the sole purpose of settling the matters described herein, this Settlement Agreement represents a fair and reasonable negotiated settlement that is in the public interest. The terms of this Settlement Agreement shall not limit or restrict the arguments that the Parties may put forth or the positions that the Parties may take in any future proceeding before FERC, except as to the matters explicitly described herein. Nor shall the Parties be deemed to have approved, accepted, agreed, or consented to any concept, theory or principle underlying or supposed to underlie any of the matters provided for herein or to be prejudiced thereby in any future proceeding except as to the extent relied upon to settle the matters explicitly described herein.

5.2. This Settlement Agreement is made upon the express understanding that it constitutes a negotiated settlement and, except as otherwise expressly provided for herein, no settling Party shall be deemed to have approved, accepted, agreed to, or consented to any principle or policy relating to rate design, rate calculation, or any other matter affecting or relating to any of the rates, charges, classifications, terms, conditions, principles, issues or tariff sheets associated with this Settlement Agreement. This Settlement Agreement shall not be cited as precedent, nor shall it be deemed to bind any settling Party (except as otherwise expressly provided for herein) in any future proceeding, including, but not limited to, any FERC proceeding, except in any proceeding to enforce this Settlement Agreement or in the Complaint Proceeding.

5.3. The discussions among the Parties that have produced this Settlement Agreement have been conducted on the explicit understanding, pursuant to Rule 602(e) of the Commission's Rules of Practice and Procedures, that all offers of settlement and any comments on these offers are privileged and not admissible as evidence against any participant who objects to their admission and that any discussion of the Parties with respect to offers of settlement is not subject to discovery or admissible in evidence.

5.4 The Commission's review of any modifications to this Settlement Agreement, regardless of who proposes the modification, shall be based on the just and reasonable standard and not the public interest standard.

## **Section 6: Miscellaneous**

6.1 This Settlement Agreement constitutes the Parties' complete and exclusive statement of the terms of this Settlement. All prior written and oral understandings, offers or other communications of every kind pertaining to the terms of this Settlement are hereby superseded.

6.2. This Settlement Agreement may be executed in any number of counterpart signature pages, each having the same force and effect as the original.

6.3. Commission acceptance of this Settlement Agreement shall constitute the requisite waiver of any and all otherwise applicable Commission regulations, to the extent necessary, to permit implementation of the provisions of this Settlement Agreement. This Settlement Agreement constitutes the full and complete agreement of



the Parties with respect to the subject matter addressed herein and supersedes all prior negotiations, understandings, and agreements, whether written or oral, between the Parties with respect to the subject matter described herein.

6.4 To the extent not governed by federal law, this agreement and the rights and duties of the Parties hereunder will be governed by and construed, enforced, and performed in accordance with the law of the State of California, without giving effect to principles of conflicts of laws that would require the application of laws of another jurisdiction.

6.5 This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their permitted successors and assigns.

6.6 This Agreement is not intended to confer upon any person or entity that is not a Party any rights or remedies hereunder, and no one, other than a Party, is entitled to rely on any representation, warranty, covenant, release, waiver or agreement contained herein.

**IN WITNESS WHEREOF**, the Parties hereto, as of March 4, 2009, through their respective representatives who represent that they are fully authorized to execute on behalf of their principals, have hereunto set their hands and seals.

[COUNTERPART SIGNATURE PAGES APPEAR ON FOLLOWING PAGES]

SIGNATURE PAGE FOR OFFER OF  
SETTLEMENT IN DOCKET NO. EL02-18-000

**California Independent System Operator  
Corporation**

Date: \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

SIGNATURE PAGE FOR OFFER OF  
SETTLEMENT IN DOCKET NO. EL02-18-000

**California Power Holdings, LLC**

Date: \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

SIGNATURE PAGE FOR OFFER OF  
SETTLEMENT IN DOCKET NO. EL02-18-000

**MMC Energy North America, LLC**

Date: \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

SIGNATURE PAGE FOR OFFER OF  
SETTLEMENT IN DOCKET NO. EL02-18-000

**Harbor Cogeneration Company**

Date: \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

**Exhibit A**

**SRA Principal Receivable Settlement Amount**

*The SRA Principal Receivable Amount is comprised of principal Capacity Payments owed under the SRA and does not include any accrued interest.*

**California Power Holdings, LLC: \$485,996.88**

**MMC Energy North America, LLC: \$38,356.26**

**Harbor Cogeneration Company: \$47,313.19**

**Attachment A**  
**SRA Principal Receivable Settlement Amount Calculation**

**California Power Holdings, LLC:**

|                   |                            |
|-------------------|----------------------------|
| <b>Chowchilla</b> | <b>\$ 449,348.98</b>       |
| <b>Red Bluff</b>  | <b><u>\$ 36,647.90</u></b> |
|                   | <b>\$ 485,996.88</b>       |

**MMC Energy North America, LLC:**

|                    |                            |
|--------------------|----------------------------|
| <b>Chula Vista</b> | <b>\$ 25,377.80</b>        |
| <b>Escondido</b>   | <b><u>\$ 12,978.46</u></b> |
|                    | <b>\$ 38,356.26</b>        |

**Harbor Cogeneration Company:**                   **\$47,313.19**

*See Spreadsheet – Attachment B*

**Exhibit B**

**SRA Interest Receivable Settlement Amount**

*The SRA Interest Receivable Amount is comprised of the SRA Interest amount, accrued as of June 30, 2009, as calculated with the SRA Settlement Interest Rate.*

**California Power Holdings, LLC:**

|                   |                            |
|-------------------|----------------------------|
| <b>Chowchilla</b> | <b>\$390,350.43</b>        |
| <b>Red Bluff</b>  | <b><u>\$ 65,127.25</u></b> |
|                   | <b>\$455,477.68</b>        |

**MMC Energy North America, LLC:**

|                    |                            |
|--------------------|----------------------------|
| <b>Chula Vista</b> | <b>\$ 25,602.98</b>        |
| <b>Escondido</b>   | <b><u>\$ 13,071.66</u></b> |
|                    | <b>\$ 38,674.64</b>        |

**Harbor Cogeneration Company:**                   **\$49,233.79**

*See Spreadsheet – Attachment B*



**Attachment B**  
**SRA Principal and Interest Summary**

**ATTACHMENT 3**

## REVISED SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into by and among California Power Holdings, LLC (“CPH”), Harbor Cogeneration Company (“Harbor”), MMC Energy North America, LLC (“MMC”) and the California Independent System Operator Corporation (“CAISO”). CPH, Harbor, MMC and CAISO are each a “Party,” and collectively they are “Parties” to this Agreement.

### RECITALS

**Whereas**, on August 24, 2000, CAISO issued a Request for Bids seeking proposals from new generation facilities to provide peaking capability in order to ensure the reliability of the CAISO’s Control Area during the 2001, 2002 and 2003 summer periods;

**Whereas**, in response to CAISO’s Request for Bids, NEO California Power LLC (“NEO”), Harbor, and RAMCO, Inc. (“RAMCO”) submitted proposals to construct new generating units and/or add generating capability to existing units;

**Whereas**, the CAISO accepted proposals from NEO and RAMCO to build two generating units each, and a proposal from Harbor to add to an existing generating unit. CAISO executed two separate Summer Reliability Agreements (“SRAs”) each with NEO and RAMCO, and one with Harbor. The contract terms of each of the SRAs extended through October 31, 2003.

**Whereas**, the SRA contracts expressly condition the CAISO’s obligation to pay the SRA Owners on the CAISO’s recovery of the costs from its Scheduling Coordinators under the terms of the CAISO tariff. To facilitate this recovery, the CAISO established the SRA Trust Account, treated the SRA Trust Account as a participant in its markets, and paid the SRA owners from the SRA Trust Account;

**Whereas**, under the terms of the SRAs, NEO, RAMCO, and Harbor issued invoices that were accepted by CAISO, which assessed corresponding credits to the SRA Trust Account and charges to Scheduling Coordinators. To the extent that any Scheduling Coordinators disputed the charges associated with the SRAs, those disputes have been resolved;

**Whereas**, the SRA Owners did not receive full payment on invoices that CAISO assessed to Market Participants for the trade months of July and August 2001, due to a default by the California Power Exchange Corporation (the “PX”) on its market invoices. These trade months included retroactive adjustments correcting invoices originally issued for November and December 2000, including adjustments affecting the PX. Due to its bankruptcy filing, the PX did not pay its invoices and thus the SRA Trust Account and other CAISO Creditors were paid only a portion of their receivables for July and August 2001. As a result of the shortfall in the SRA Trust Account, the CAISO paid the SRA Owners only a portion of what they were owed for those trade months;

**Whereas**, on November 13, 2001, NEO filed a complaint against CAISO with the FERC in Docket No. EL02-18-000, stating that the CAISO had not paid NEO the full amount due on its invoices;

**Whereas**, in response to NEO's complaint, CAISO explained that it would be unable to pay NEO until the funds controlled by the PX were distributed by the Commission pursuant to its authority under the PX's confirmed plan of reorganization;

**Whereas**, on May 20, 2003, the Federal Energy Regulatory Commission established hearing procedures and held the hearing in abeyance pending settlement judge procedures;

**Whereas**, on January 24, 2005, the Parties informed the Commission that settlement negotiations are continuing and that the payment dispute should be resolved with the pending clearing of accounts from the PX Bankruptcy and Refund Proceedings;

**Whereas**, on January 3, 2007, CPH acquired all NEO's interests in the SRAs and associated generating plants, including NEO's claims against CAISO under the SRAs;

**Whereas**, on January 9, 2006, MMC acquired all of RAMCO's interests in the SRAs and associated generating plants, including any claims that RAMCO may have against CAISO under the SRAs;

**Whereas**, the Parties have been committed to settling the disputes addressed herein rather than litigate or continue to litigate, as the case may be;

**Whereas**, FERC has on several occasions authorized the release of funds held by the PX to creditors who have resolved through agreement or otherwise resolved their overall financial position with respect to the ISO and PX markets during the refund period of October 2, 2000 through June 21, 2001;

**Whereas**, the SRA Owners are not subject to any pending refund cases pending before the Commission;

**Whereas**, upon approval of this Agreement by the Federal Energy Regulatory Commission ("FERC" or the "Commission"), the SRA Owners and the SRA Trust Account would have no unresolved issues with respect to the ISO and PX markets during the refund period of October 2, 2000 through June 21, 2001;

**Now, therefore**, in consideration of the exchange of promises and covenants contained in this Settlement Agreement, the legal sufficiency of which the Parties acknowledge, the Parties agree, subject to approval by the Commission, as follows:

## Section 1: Definitions

**“Business Day”** means a calendar day falling within Monday through Friday except for Federal holidays.

**“CAISO”** means the California Independent System Operator Corporation, a California nonprofit public benefit corporation.

**“Effective Date”** shall have the meaning set forth in Section 3.1 of this Agreement.

**“FERC” or “Commission”** means the Federal Energy Regulatory Commission.

**“FERC Interest Rate”** shall have the meaning set forth in 18 C.F.R. § 35.19a(a)(2)(iii) or any successor thereto.

**“Harbor Cogeneration Company”** refers to the owner and operator of a combined-cycle facility located in Wilmington, California that had an output capability of 80 MW in 2000 (“the Harbor plant”).

**“NEO California LLC”** refers to the owner and operator of (i) a 48 MW natural gas-fired generation facility located in Chowchilla, California (the “Chowchilla plant”) and (ii) a 44 MW natural gas-fired generation facility located in Red Bluff, California (the “Red Bluff plant”) before California Power Holdings purchased a 100 percent direct membership interest in NEO and merged NEO into California Power Holdings, LLC.

**“Parties”** means the CAISO, California Power Holdings, LLC, Harbor Cogeneration Company, and MMC Energy North America, LLC, including their successors and assigns.

**“Complaint Proceeding”** means the proceeding conducted at the Commission in Docket No. EL02-18 concerning amounts owed under the Summer Reliability Agreements between CAISO and NEO California Power LLC.

**“PX”** means the California Power Exchange Corporation, a California nonprofit public benefit corporation.

**“PX Settlement Clearing Account”** means any and all accounts of the PX or the reorganized PX holding funds in trust pursuant to the terms of the PX tariff, the CAISO tariff, or a FERC or court order.

**“RAMCO”** refers to the owner and operator of (i) a 44 MW natural gas-fired generation facility located in Escondido, California and (ii) a 44 MW natural gas-fired generation facility located in Chula Vista, California, before MMC Energy North America, LLC purchased all of its assets.

**“Refund Proceeding”** means the FERC proceeding conducted in Docket Nos. EL00-95, et al. and EL00-98, et al. and related appeals of orders in that proceeding and any proceedings upon remand.

**“SRA Owners”** means California Power Holdings, LLC, Harbor Cogeneration Company, and MMC Energy North America, LLC, including their successors and assigns.

**“SRA Interest Receivable Settlement Amount”** has the meaning set forth in Section 2.2 of this Settlement Agreement.

**“SRA Principal Receivable Settlement Amount”** has the meaning set forth in Section 2.1 of this Settlement Agreement.

**“SRA Interest”** means the interest that has accrued to the SRA Owners under the terms of the SRAs, but in no event shall be accrued at a rate in excess of the FERC Interest Rate.

**“Summer Reliability Agreements or SRAs”** mean the Agreements between NEO, RAMCO, or Harbor, on the one hand, and CAISO, on the other hand. The two SRAs between the CAISO and NEO were executed initially on November 27, 2000, and filed on January 10, 2001 in FERC Docket No. ER01-0929, with amended and restated versions executed December 5, 2001, and filed on February 4, 2002 in FERC Docket No. ER02-0978. The SRAs between the CAISO and Harbor was executed December 4, 2000, and filed on January 10, 2001 in FERC Docket No. ER01-0929. The CAISO and RAMCO executed SRAs for the Chula Vista and Escondido facilities on November 27, 2000, and filed on January 10, 2001 in FERC Docket No. ER01-0929. This does not include two other SRAs between the CAISO and RAMCO for Pleasanton and East Livermore facilities, because those facilities were never constructed.

Capitalized terms that are not otherwise defined shall have the meaning set forth in the CAISO Tariff.

## **Section 2: Payment and Release**

2.1. No later than thirty (30) Business Days after the Effective Date, the PX shall distribute the SRA Principal Receivable Settlement Amount identified in Exhibit A, which represents the principal amounts yet unpaid under the SRAs, exclusive of accrued interest (“SRA Receivable”).

The calculation of the SRA Principal Receivable Settlement Amount is set forth in Attachment A to this Settlement Agreement. The PX will pay the SRA Principal Receivable Amount out of the PX Settlement Clearing Account to the individual SRA Owners, via wire transfer instructions provided by the SRA Owners. The CAISO will adjust its books to credit this same amount of funds to the PX, thereby reducing amounts payable by the PX to the CAISO.

In the event of a principal shortfall in the CalPX Settlement Clearing Account at the conclusion of the Refund Proceeding, a pro rata portion of the principal shortfall will be allocated to the SRA Owners. Any principal shortfall will be deducted from the interest payments to be made to the CAISO, as set forth in Section 2.2.

2.2 The SRA Interest Receivable Settlement Amount is set forth in Exhibit B to this Settlement Agreement. Upon the distribution of the SRA Principal Receivable Settlement Amount by the PX, interest will cease accruing on the unpaid principal balances, but will continue to compound on unpaid SRA Interest. The SRA Interest Receivable Settlement Amount shall be reduced on a pro rata basis as a result of any interest shortfalls allocated among PX market participants, as well as by the amount of any principal shortfall, as set forth in Section 2.1. The PX shall pay to the ~~CAISO SRA Trust Account~~ an amount of interest to be determined by the Commission, subject to any shortfalls in interest or principal, as set forth above, at a time to be determined by the Commission, but no later than the date on which the PX makes the distribution of interest to its market participants~~suppliers that are not public utilities~~ as contemplated in the Commission's order issued October 19, 2007 in Docket No. EL00-95-164 (paragraph 58). Within 10 Business Days after receiving this payment, the CAISO shall distribute, on a pro rata basis such proceeds, to the SRA Owners. The SRA Owners shall not have any other claim for interest except as provided for in this Section 2.2

2.3. The approval of this Settlement Agreement and subsequent payment of the SRA Principal Receivable Settlement Amount and SRA Interest Receivable Settlement Amount resolves all issues with respect to NEO's November 13, 2001 complaint against CAISO in Docket No. EL02-18 ("Complaint") relating to the sufficiency of payments made under the Summer Reliability Agreements. Within thirty (30) Business Days after receipt of the SRA Principal Receivable Settlement Amount, CPH will request the Complaint be held in abeyance. Within thirty (30) days after receipt of the SRA Interest Receivable Settlement Amount, CPH will withdraw the Complaint.

2.4. The Parties agree that the SRA Principal Receivable Settlement Amount and the SRA Interest Receivable Settlement Amount described in Section 2.1 and 2.2 above will be the only payments made under this Settlement Agreement. The Parties further agree that this Settlement Agreement resolves all issues that were raised or that could have been raised by any person in the Complaint Proceeding, whether or not they are signatories to this Settlement Agreement.

2.5 In return for the consideration specified elsewhere in this Settlement Agreement and full performance by the Parties of their respective obligations hereunder, and subject to the occurrence of the Settlement Effective Date, all claims as between the SRA Owners, on the one hand, and the CAISO, on the other hand, relating to Summer Reliability Agreements for monetary or non-monetary Remedies, including attorney's fees, shall be deemed settled and resolved, subject only to the right of SRA Owners to contest the calculation of SRA Interest, as calculated in Attachment B.

2.6 The Parties acknowledge and agree that it is their intention that the releases granted pursuant to Sections 2.3 through 2.5 shall be effective as a bar to all causes of action and demands for monetary relief, including costs, expenses, attorneys' fees, damages, losses, and liabilities of every kind, known or unknown, suspected or unsuspected. In furtherance of this intention, SRA Owners, on the one hand, and the CAISO, on the other hand, with respect to the specific matters released herein, each knowingly, voluntarily, intentionally, and expressly waives, as against each other, any and all rights and benefits conferred by California Civil Code Section 1542 and any law of any state or territory of the United States or principle of common law that is similar to Section 1542. Section 1542 provides:

**“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”**

In connection with such waiver and relinquishment, the Parties each acknowledge that they are aware that they may hereafter discover facts in addition to or different from those that they know or believe to be true and with respect to the subject matter of this Agreement, but that it is their intention hereby to fully, finally, and forever settle and release all matters, disputes, differences, known or unknown, suspected or unsuspected, that are set forth in Sections 2.3 through 2.5. This Agreement is intended to include in its effect, without limitation, all claims encompassed within the settlement and releases set forth in Sections 2.3 through 2.5, including those that the Parties may not know or suspect to exist at the time of execution of this Agreement, and this Agreement contemplates the extinguishment of all such claims.

2.7 The releases set forth in Sections 2.3 through 2.5 shall run to, benefit and be enforceable by any individual who, as an officer, director, agent or employee of a corporate or organizational party that receives the benefits of such releases participated as an officer, director, agent or employee in or might be claimed to be liable for any of the actions or events of potential liability for which a party is released by Sections 2.3 through 2.5. The release and discharge of individuals effected by this Section 2.7 is not intended to expand the number or identity of corporate or organizational entities released or discharged by any of Sections 2.3 through 2.5.

### **Section 3: Effective Date and Termination**

3.1. This Settlement Agreement shall become effective when the Commission by order accepts or approves this Settlement Agreement in its entirety without modifications or conditions or with such modifications or changes as are agreed to by the Settling Parties in accordance with the following provision (the "Effective Date"). If the Commission by order approves this Settlement Agreement conditioned on the



modification of any of the terms of this Settlement Agreement (a "Conditional Approval Order"), the Settling Parties shall confer to determine whether they accept such modifications, and if so, make any necessary compliance filing. If one or more Parties do not accept such modifications, the Parties will negotiate in good faith, if necessary, to restore the balance of risks and benefits reflected in this Settlement Agreement as executed; and any such renegotiated Settlement Agreement shall be filed with the Commission. If, within thirty calendar days of the date of the issuance of the Conditional Approval Order, the Parties do not either accept and file the Settlement Agreement as modified or agree to and file a renegotiated Settlement Agreement and unless the Parties agree to extend the time period for such negotiations, this Settlement Agreement shall terminate. Notwithstanding anything in this Section 3.1, if this Commission accepts this Settlement without modification with respect to one SRA Owner, the Settlement shall be binding on such SRA Owner.

#### **Section 4: PX and CAISO Accounting**

4.1 Upon approval of this Settlement, CAISO and PX will conform their books and records ~~by to~~ reflecting the payment of the SRA Principal Receivable Settlement Amount to the SRA Owners as a credit against amounts due by the PX to the CAISO, thereby - reducing amounts payable by the PX to the CAISO. The CAISO shall apply the PX payments, in order of the creation of such debt, in accordance with CAISO Tariff Section 11.12.5.

4.2 Upon distribution of the SRA Interest Receivable Settlement Amount, CAISO and PX will conform their books and records to reflect the payment of SRA interest to the SRA Owners.

4.2 Each Party shall reasonably and in good faith cooperate and take all reasonable steps to secure (i) the release of funds to the SRA Owners as contemplated by this Agreement, (ii) the accounting treatment contemplated under this Section 4, and (iii) any other acts of the PX or CAISO necessary to effectuate the terms of this Agreement. This duty of cooperation shall include making individual or joint requests to the PX, executing appropriate waivers, providing data, and providing other assistance to the PX and the CAISO as necessary to implement this Agreement.

4.4 The PX and the CAISO shall be held harmless for actions taken to implement the Settlement. Notwithstanding, this provision, CAISO shall continue to remain involved in the implementation of this Agreement.

4.5 FERC approval of this Agreement shall constitute a grant of such waivers of the CAISO and the PX tariffs as may be necessary for the CAISO and the PX to disburse such funds as required by this Agreement, to account for transfers, allocations, and distributions of funds as required by this Agreement, and to otherwise implement this Agreement.

## **Section 5: Scope and Limitations**

5.1. For the sole purpose of settling the matters described herein, this Settlement Agreement represents a fair and reasonable negotiated settlement that is in the public interest. The terms of this Settlement Agreement shall not limit or restrict the arguments that the Parties may put forth or the positions that the Parties may take in any future proceeding before FERC, except as to the matters explicitly described herein. Nor shall the Parties be deemed to have approved, accepted, agreed, or consented to any concept, theory or principle underlying or supposed to underlie any of the matters provided for herein or to be prejudiced thereby in any future proceeding except as to the extent relied upon to settle the matters explicitly described herein.

5.2. This Settlement Agreement is made upon the express understanding that it constitutes a negotiated settlement and, except as otherwise expressly provided for herein, no settling Party shall be deemed to have approved, accepted, agreed to, or consented to any principle or policy relating to rate design, rate calculation, or any other matter affecting or relating to any of the rates, charges, classifications, terms, conditions, principles, issues or tariff sheets associated with this Settlement Agreement. This Settlement Agreement shall not be cited as precedent, nor shall it be deemed to bind any settling Party (except as otherwise expressly provided for herein) in any future proceeding, including, but not limited to, any FERC proceeding, except in any proceeding to enforce this Settlement Agreement or in the Complaint Proceeding.

5.3. The discussions among the Parties that have produced this Settlement Agreement have been conducted on the explicit understanding, pursuant to Rule 602(e) of the Commission's Rules of Practice and Procedures, that all offers of settlement and any comments on these offers are privileged and not admissible as evidence against any participant who objects to their admission and that any discussion of the Parties with respect to offers of settlement is not subject to discovery or admissible in evidence.

5.4 The Commission's review of any modifications to this Settlement Agreement, regardless of who proposes the modification, shall be based on the just and reasonable standard and not the public interest standard.

## **Section 6: Miscellaneous**

6.1 This Settlement Agreement constitutes the Parties' complete and exclusive statement of the terms of this Settlement. All prior written and oral understandings, offers or other communications of every kind pertaining to the terms of this Settlement are hereby superseded.

6.2. This Settlement Agreement may be executed in any number of counterpart signature pages, each having the same force and effect as the original.

6.3. Commission acceptance of this Settlement Agreement shall constitute the requisite waiver of any and all otherwise applicable Commission regulations, to the

extent necessary, to permit implementation of the provisions of this Settlement Agreement. This Settlement Agreement constitutes the full and complete agreement of the Parties with respect to the subject matter addressed herein and supersedes all prior negotiations, understandings, and agreements, whether written or oral, between the Parties with respect to the subject matter described herein.

6.4 To the extent not governed by federal law, this agreement and the rights and duties of the Parties hereunder will be governed by and construed, enforced, and performed in accordance with the law of the State of California, without giving effect to principles of conflicts of laws that would require the application of laws of another jurisdiction.

6.5 This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their permitted successors and assigns.

6.6 This Agreement is not intended to confer upon any person or entity that is not a Party any rights or remedies hereunder, and no one, other than a Party, is entitled to rely on any representation, warranty, covenant, release, waiver or agreement contained herein.

**IN WITNESS WHEREOF**, the Parties hereto, as of March 4, 2009, through their respective representatives who represent that they are fully authorized to execute on behalf of their principals, have hereunto set their hands and seals.

[COUNTERPART SIGNATURE PAGES APPEAR ON FOLLOWING PAGES]

SIGNATURE PAGE FOR OFFER OF  
SETTLEMENT IN DOCKET NO. EL02-18-000

**California Independent System Operator  
Corporation**

Date: \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

SIGNATURE PAGE FOR OFFER OF  
SETTLEMENT IN DOCKET NO. EL02-18-000

**California Power Holdings, LLC**

Date: \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

SIGNATURE PAGE FOR OFFER OF  
SETTLEMENT IN DOCKET NO. EL02-18-000

**MMC Energy North America, LLC**

Date: \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

SIGNATURE PAGE FOR OFFER OF  
SETTLEMENT IN DOCKET NO. EL02-18-000

**Harbor Cogeneration Company**

Date: \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

**Exhibit A**

**SRA Principal Receivable Settlement Amount**

*The SRA Principal Receivable Amount is comprised of principal Capacity Payments owed under the SRA and does not include any accrued interest.*

**California Power Holdings, LLC: \$485,996.88**

**MMC Energy North America, LLC: \$38,356.26**

**Harbor Cogeneration Company: \$47,313.19**



**Attachment A**  
**SRA Principal Receivable Settlement Amount Calculation**

**California Power Holdings, LLC:**

|                   |                            |
|-------------------|----------------------------|
| <b>Chowchilla</b> | <b>\$ 449,348.98</b>       |
| <b>Red Bluff</b>  | <b>\$ <u>36,647.90</u></b> |
|                   | <b>\$ 485,996.88</b>       |

**MMC Energy North America, LLC:**

|                    |                            |
|--------------------|----------------------------|
| <b>Chula Vista</b> | <b>\$ 25,377.80</b>        |
| <b>Escondido</b>   | <b>\$ <u>12,978.46</u></b> |
|                    | <b>\$ 38,356.26</b>        |

**Harbor Cogeneration Company:**                   **\$47,313.19**

*See Spreadsheet – Attachment B*

**Exhibit B**

**SRA Interest Receivable Settlement Amount**

*The SRA Interest Receivable Amount is comprised of the SRA Interest amount, accrued as of June 30, 2009, as calculated with the SRA Settlement Interest Rate.*

**California Power Holdings, LLC:**

|                   |                            |
|-------------------|----------------------------|
| <b>Chowchilla</b> | <b>\$390,350.43</b>        |
| <b>Red Bluff</b>  | <b><u>\$ 65,127.25</u></b> |
|                   | <b>\$455,477.68</b>        |

**MMC Energy North America, LLC:**

|                    |                            |
|--------------------|----------------------------|
| <b>Chula Vista</b> | <b>\$ 25,602.98</b>        |
| <b>Escondido</b>   | <b><u>\$ 13,071.66</u></b> |
|                    | <b>\$ 38,674.64</b>        |

**Harbor Cogeneration Company:**                      **\$49,233.79**

*See Spreadsheet – Attachment B*

**Attachment B**  
**SRA Principal and Interest Summary**

**CERTIFICATE OF SERVICE**

I hereby certify that I have, this 10th day of April, 2009, served this Settling Parties' Reply Comments in Support of Offer of Settlement in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

*Anna Pascuzzo*  
Anna Pascuzzo