

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

San Diego Gas & Electric Company)	Docket Nos. EL00-95-000
v.)	
Sellers of Energy and Ancillary Services)	
)	
Investigation of Practices of the California Independent System Operator and the California Power Exchange)	Docket Nos. EL00-98-000
)	
Puget Sound Energy, Inc.)	Docket No. EL01-10-000
v.)	
Sellers of Energy and/or Capacity)	
)	
Investigation of Anomalous Bidding Behavior and Practices in Western Markets)	Docket No. IN03-10-000
)	
Fact-Finding Investigation Into Possible Manipulation of Electric and Natural Gas Prices)	Docket No. PA02-2-000

**COMMENTS OF THE CALIFORNIA INDEPENDENT
SYSTEM OPERATOR CORPORATION IN SUPPORT OF THE
JOINT OFFER OF SETTLEMENT INVOLVING
PUBLIC UTILITY DISTRICT NO. 2 OF GRANT COUNTY, WASHINGTON**

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) (2007), the California Independent System Operator Corporation (“ISO”)¹ hereby submits its comments on the Joint Offer of Settlement (“Settlement Agreement”) filed by the Public Utility District No. 2 of Grant County, Washington (“Grant

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

County”) and the California Parties² (collectively, the “Settling Parties”), in the above-captioned proceedings on February 29, 2008.

I. COMMENTS

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

Although the ISO is not a signatory, the Settlement Agreement resolves pending litigation that Grant County brought against the ISO based on sales that Grant County made during the refund period.³ In addition, it is the ISO that will be responsible for the financial implementation of this settlement on its books of account and in the financial clearing phase of the market re-runs that have been ordered by the Commission.⁴ For both of these reasons, the ISO has a direct and substantial interest in the Commission’s treatment of the Settlement Agreement.

B. The ISO Supports the Settlement Agreement.

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

² The California Parties consist of the People of the State of California *ex rel.* Edmund G. Brown, Jr., Attorney General of the State of California (“California Attorney General”), California Department of Water Resources, acting solely under the authority and powers created by AB1-X, codified in Sections 80000 through 80270 thereof and not under its powers and responsibilities with respect to the State Water Resources Development System (“CERS”), Pacific Gas and Electric Company (“PG&E”), Southern California Edison Company (“SCE”), and San Diego Gas & Electric Company (“SDG&E”), the California Public Utility Commission, and the California Electricity Oversight Board.

³ See Sections 6.5 and 6.9 of the Settlement and Release of Claims Agreement (Attachment B to Settlement Agreement).

⁴ See, in particular, 105 FERC ¶ 61,066 (2003), the Commission’s Order on Rehearing, Docket Nos. EL00-95-081, *et al.*

resolve disputes whenever possible through settlement.⁵ The Refund Proceeding has now been ongoing for over seven years. Against this backdrop, the ISO continues to support the general principle of settlement as embodied in the Settlement Agreement offered by the Settling Parties. The approval of the proposed Settlement Agreement will allow certain amounts of cash to flow sooner than would otherwise be the case and in that respect will clearly benefit Market Participants. The ISO also supports this settlement because, as noted above, it will resolve ongoing litigation that Grant County brought against the ISO.

The ISO also notes and supports the inclusion in the Settlement Agreement of a duty to cooperate on the part of the Settling Parties.⁶ This duty to cooperate includes providing assistance to the ISO as necessary in order to implement the Settlement Agreement. It will be absolutely essential that the cooperation of the Settling Parties be maintained from the ISO's perspective, so that the proper financial adjustments can be made so as to properly implement the Settlement Agreement.

The ISO thanks the Settling Parties for their efforts to work together and reach agreement. It is the ISO's hope that the Commission will not have to become involved in any implementation disputes involving this Settlement Agreement. However, recognizing that it is not possible to foresee every

⁵ *Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California v. California Independent System Operator Corporation*, 96 FERC ¶ 61,024, at 61,065 (2001).

⁶ See, in particular, Section 10.12 of the Settlement and Release of Claims Agreement (Attachment B to Settlement Agreement).

contingency that might arise, the procedural framework is in place to handle such disputes, if indeed, they do arise.

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

As with previous settlements filed and approved in these proceedings, the circumstances of this Settlement Agreement make it necessary to hold harmless the market operators (*i.e.*, the ISO and the California Power Exchange (“PX”)) that are ultimately tasked with implementing this Settlement Agreement,⁷ along with their directors, officers, employees and consultants. Therefore, in any order approving this Settlement Agreement, the Commission should state that the ISO, along with its directors, officers, employees and consultants, will be held harmless with respect to the settlement and accounting activities that it will have to perform in order to implement the Settlement Agreement, and that neither the ISO, nor its directors, officers, employees or consultants, will be responsible for recovering any funds disbursed pursuant to the Settlement Agreement, which are subsequently required to be repaid. As noted above, the Commission has already approved hold harmless language for the ISO and the PX in the context of the California Parties’ settlements with a number of entities. The factors that

⁷ 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, and the Cities of Anaheim, Azusa and Riverside. The Commission has, to date, provided the ISO with hold harmless treatment with respect to all of these settlements on which it has ruled.

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, and make billing adjustments accordingly. A Market Participant might file a complaint or bring suit against the ISO, and/or its directors, officers, employees and consultants, claiming that the ISO did not make appropriate accounting adjustments, and as a result did not reflect the appropriate amount of refunds or receivables owing to that Market Participant.

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

These problems may be amplified as the Commission approves additional settlement agreements in these proceedings. As the number and variety of approved settlements increases, the task of implementing those settlements will become more complicated. Likewise, the possibility a party will bring an action against one, or both, of the market operators also increases. For this reason, the ISO believes that it is critically important that the Commission hold the ISO (along with its directors, officers, employees, and consultants) harmless with respect to the implementation of all of the settlements reached in these proceedings that involve the flow of monies through the ISO Markets.

A hold harmless provision would also be appropriate because the ISO is a non-profit public benefit corporation, and it would not be reasonable to subject its officers, employees, and consultants to suits claiming individual liability for engaging in the accounting necessary to implement the Settlement Agreement. These individuals should not be subjected to litigation, along with its attendant costs and expenditure of time, for merely implementing a settlement authorized by the Commission.

Finally, there is nothing in the Settlement Agreement that counsels against, or is inconsistent with, granting the ISO and the individuals associated with it the protection requested here. Indeed, the Settlement Agreement provides for numerous mutual releases and waivers, which will effectively “hold harmless” the Settling Parties from existing and potential claims. Moreover, the

Settling Parties state that they do not oppose the Commission adopting hold harmless provisions for the ISO and PX.⁸

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, or employees, or consultants will be responsible for recovering any funds disbursed pursuant to the Settlement Agreement, which are subsequently required to be repaid.

D. Given That the ISO Has No Claims Pending Against Grant County Arising Out of Sales During the Period Covered by the Settlement Agreement, the Commission Should Clarify That Grant County's Obligation to Dismiss Litigation Against the ISO Triggers as of the Effective Date of the Settlement Agreement

Section 6.9 of the Settlement Agreement provides that “Grant shall take such actions as are necessary to dismiss or withdraw with prejudice all claims against the California Parties *and the PX and ISO*, for damages, refunds, disgorgement of profits, costs and attorneys’ fees, or other monetary or non-monetary remedies in the Pending Proceedings.” However, this obligation, with respect to the litigation brought by Grant County against the ISO in the U.S. District Court, is contingent on upon “the withdrawal of any and all claims or potential claims by the ISO against Grant arising out of Grant’s sales during the Settlement Period or the Pending Proceedings.” The ISO currently has no claims

⁸ See Joint Explanatory Statement at 13 (Attachment A to Settlement Agreement).

against Grant County arising out of Grant County's sales made during the period covered by the Settlement Agreement, and the ISO has no intention of bringing such claims in the future. Therefore, in any order approving the Settlement Agreement, the Commission should clarify that Grant County's obligation to release all of its claims against the ISO relating to the proceedings covered by the Settlement Agreement is triggered as of the effective date of the Settlement Agreement, without the need for any further action by the ISO. If the Commission believes that further action by the ISO is necessary, it should specify that action in the order approving the settlement.

II. CONCLUSION

Wherefore, for the reasons stated above the ISO respectfully states that it supports the Settlement Agreement and will work with the Settling Parties to implement it. The ISO also respectfully requests that the Commission state, in any order approving the Settlement Agreement, that 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, or employees, or consultants will be responsible for recovering any funds disbursed pursuant to the Settlement Agreement, which are subsequently required to be repaid. Finally, the ISO requests that the Commission clarify that Grant County's obligation to release claims against the ISO in the proceedings covered by the Settlement Agreement triggers as of the effective date of the Agreement.

Respectfully submitted,

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Dated: May 16, 2008

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of this document upon upon the email listserv established by the Commission for this proceeding.

Dated this 16th day of May at Washington, DC.

/s/ Michael Kunselman

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