UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Independent Energy Producers Association	)	
Complainant	)	
v.	)	Docket No. EL05-146-000
California Independent System Operator Corporation	)	
Respondent	)	

REPLY COMMENTS
OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

Pursuant to Rule 602 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.602 (2005) and the Commission's April 17, 2006, Notice in this proceeding, the California Independent System Operator Corporation ("CAISO") submits these Reply Comments regarding the Offer of Settlement filed on March 31, 2006 ("Settlement").

I. INTRODUCTION

This proceeding arises from a Complaint filed by the Independent Energy Producers' Association ("IEP") regarding Generator compensation for reliability services provided under the CAISO Must-Offer Obligation ("MOO"). The Must-Offer Obligation was imposed by the Commission as part of a wide range of responses to the 2000 California energy crisis. IEP asserted that, in the context of the existing CAISO market power mitigation measures, Generators did not have a reasonable opportunity to recover their fixed costs. Thus, the proceeding raised issues concerning the justness and reasonableness of the mechanism(s) through which the ISO will fulfill its reliability responsibilities. IEP proposed an alternative mechanism to the MOO by which the

CAISO would have available the necessary capacity to respond to contingencies, namely a Reliability Capacity Services Tariff.

The Settlement Agreement in this proceeding is the product of intense negotiations among the Settling Parties and reflects input not only of the Settling Parties, but also of other parties to the proceeding, as well. The Settlement addresses numerous issues regarding the CAISO's fulfillment of its reliability functions during the period between the commencement of State of California's Resource Adequacy[1] requirements and the implementation of the CAISO's Market Redesign and Technology Update ("MRTU") Tariff. It resolves numerous highly contested issues, including the compensation of Generators for capacity made available to the CAISO for reliability purposes, the interplay between California Resource Adequacy requirements and the CAISO's reliability functions, and the allocation of costs for capacity necessary to maintain system, zonal, and local reliability.

A number of parties have filed comments opposing the settlement in whole or part.[2] The primary focus of these parties is that they either do not want to pay any costs

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[1] Capitalized terms and acronyms in this pleading have the meaning given them in the Offer of Settlement, the pro forma tariff sheets filed with the Offer of Settlement, and, when not inconsistent with the foregoing, Appendix A, Master Definitions Supplement, of the ISO Tariff.

[2] Motions to Intervene without comments were filed by Energy Users Forum (which also signed on to Joint Parties' Comments, as noted below), PPM Energy, Inc., and Sempra Global. Comments in support of the Settlement were filed by Calpine Corporation and Mirant Energy Trading, LLC, Mirant Energy California, LLC, Mirant Energy Delta, LLC, and Mirant Potrero, LLC. Comments opposing the Settlement in whole or in part were filed by the Alliance for Retail Energy Markets, the California Large Energy Consumers Association, the California Manufacturers and Technology Association, and the Energy Users Forum (together, "Joint Commenters"); the California Department of Water Resources State Water Project ("SWP"); the California Electricity Oversight Board ("CEOB"); the California Municipal Users Association ("CMUA"); the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California ("Six Cities"); the City of Santa Clara, California d/b/a Silicon Valley Power ("SVP"); the City of Vernon, California ("Vernon"); Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc. ("Constellation"); Metropolitan Water District ("MWD"); Modesto Irrigation District ("MID"); the Northern California Power Agency ("NCPA"); Powerex Corp. ("Powerex"); the Sacramento Municipal Utility District ("SMUD"); and West Coast Power ("WCP").

associated with capacity that is needed for purposes of maintaining local reliability or they want a different cost allocation methodology. In any event, none of these comments undermines the reasonableness of the compromise, integrated approach set forth in the Settlement. The CAISO believes that the package viewed as a whole is a just and reasonable resolution of the reliability and compensation issues presented. The Commission may approve it if it agrees that the package as a whole is just and reasonable. *San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services*, 108 FERC ¶ 61,002 at 61,011 (2004) (citing *Trailblazer Pipeline Company*, 85 FERC ¶ 61,345 (1998), *order on reh'g,* 87 FERC ¶ 61,110 (1999), *reh'g denied* 88 FERC ¶ 61,168 (1999)). The CAISO submits that the Commission can, and should, make such a finding in this instance.

The opposing parties also fail to consider potential alternatives to the Settlement that would be less favorable. Absent the Settlement, the Commission would have to consider and rule on IEP's complaint.

The Commission could deny IEP's complaint based on the pleadings and continue the must-offer obligation as it currently exists. If, alternatively, the Commission granted IEP's complaint, the opposing parties would be subject to the costs imposed by IEP's proposed RCST. That proposal provided for a target capacity price of $78/kW-year (as opposed to $73/kW-year in the Settlement), a 10,800 BTU/kwh heat rate for the proxy unit (as opposed to 10,500 BTU/kwh in the Settlement) and a 92% Availability level (as opposed to 95% in the Settlement). IEP's proposal also provided the CAISO with unlimited discretion to make RCST designations (whereas the Settlement only permits RCST designations for local and system reasons – not for zonal reasons – and places

numerous other restrictions on the CAISO's discretion). Also, under IEP's proposal, unlike the Settlement, Load-Serving Entities would not have the ability to reduce their share of the costs of the backstop capacity program by demonstrating their own procurement of capacity that will be available to meet the CAISO's reliability needs (*i.e.*, by "self-provision."). IEP's proposal also raised issues regarding the appropriate criteria for zonal designations and the potential for duplicative payments for the resolution of zonal needs. The Settlement resolves this issue by allowing the CAISO to use the FERC Must-Offer Obligation for any zonal needs that remain after Load-Serving Entities have the opportunity to eliminate those needs by scheduling the necessary resources. The elimination of zonal RCST will result in significant savings for ratepayers.

Finally, the Commission could set the IEP complaint for hearing. The hearing and decision making process could go on for a considerable period, during which time the current Must-Offer Obligation would continue, but, because of the refund effective date associated with Section 206 complaints, the potential would exist for additional costs to be imposed on Market Participants retroactively for capacity payments to Must-Offer Generators). Under these circumstances, no party would have any certainty regarding the eventual scope of the reliability program and the level of potential costs that it might be incurring, other than the fact that it would be too late for Load-Serving Entities to take self-help steps to reduce their potential exposure to such costs. The Settlement avoids the costs, risks, and time and resource commitments associated with litigation and will enable the CAISO and its Market Participants to focus their efforts on implementing MRTU and putting an effective long-term market design into place.

Moreover, the agitated rhetoric of some commenters is highly disproportionate to their potential cost exposure. They fail to appreciate that the Settlement provides for RCST only as a *backstop* mechanism. Its use will be rare, if it is used at all. Indeed, as discussed in the Joint Comments of Settling Intervenors filed on May 28, 2006, the CAISO has already determined that based on the information provided to the CAISO, there would be no forward local designation for 2006 in accordance with the terms of the Settlement (*i.e.,* Section 43.2.1 of the *pro forma* tariff sheets), and the Settling Parties have requested that the Commission's approval of the Settlement be conditioned upon the removal of the provisions related to the 2006 Local RCST Designation.[3] This moots the majority (and the most vocal) of the comments opposing the Settlement. With respect to 2007 Local RCST and System RCST, Load-Serving Entities can avoid all costs for any such RCST designations by simply complying with the requirements**, if any,** established by the CPUC or their Local Regulatory Authority. Other, non-RCST, payments to Generators under the terms of the Settlement will also be minimal. The capacity payment for FERC Must-Offer Generators, for example, will be infrequent. As explained in the declaration of Mark Rothleder, attached as Exhibit A, based on expected Resource Adequacy designations, of the 1287 unit-days of must-offer waiver denials during 2005, only 218 unit-days involved units that will be FERC must-offer resources, and eligible for the additional capacity payment, in 2006. The remainder would be Resource Adequacy Resources – ineligible for the capacity payment and eligible for Minimum Load Costs Compensation only to the extent necessary based on the imbalance energy

[3] The CAISO could still designate RCST capacity for local reasons in the case of a Significant Event. *See* § 43.4 of the *pro forma* tariff pages. The costs of such a designation are allocated according to the Load Share Percentage in the TAC Area. *See* § 43.8(5) of the *pro forma* tariff pages.

payments. The CAISO also notes that, under the Settlement, the CAISO must call on Resource Adequacy, RCST and RMR resources (as applicable under the contract) before it denies the waiver request of a FERC Must-Offer Generator. Under these circumstances, the CAISO anticipates a significant reduction in the amount of waiver denials granted to FERC Must-Offer Generators. Finally, it should be noted that the Settlement will only be in effect until the earlier of MRTU implementation or December 31, 2007.

The Settlement represents a reasonable, negotiated compromise that avoids the problems with continued litigation. Not every element represents the CAISO's preferred resolution of the issues, and the same likely can be said for each of the Settling Parties. Nonetheless, the CAISO believes that the Settlement, as a package, is just and reasonable and not unduly discriminatory. The Commission should approve the Settlement without further proceedings. None of the opposing parties has raised a genuine issue of material fact, but only policy issues.[4] To the extent that the Commission concludes that any of the comments do raise an issue of material fact, it can be resolved on the record, based on the information contained in IEP's complaint, as well as parties' initial and reply comments on the Settlement. Accordingly, the Commission may decide the contested issues without hearing. 18 C.F.R. §385.602(h).

The CAISO will discuss a number of the issues presented in Intervenors' comments below. The CAISO expects that the remainder of the issues will be addressed by other Settling Parties.

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[4] For example, although Six Cities asserts that it identifies material issues of fact, Six Cities at 3 and n.2, a review of the filing reveals that the issues actually involve policy issues.

II. PROCESS ISSUES

A number of parties vigorously argue that they were improperly excluded from the settlement process. These contentions provide no basis for rejection of the Settlement. In any event, as discussed in greater detail below, all parties were provided opportunities to provide input into the Settlement – and the input of many non-settling parties is in fact reflected in the Settlement. Also, many parties failed fully to avail themselves of the opportunities to provide input to the process. The merits of these arguments aside, the tone of one set of comments warrants particular mention.

The CAISO expects parties to advocate their interests with zeal and vigor. There is a line, however, between vigorous argument and *ad hominem* defamatory attacks that do not aid the Commission's decision-making process. In its comments, NCPA has crossed that line. There is no place in filings before this Commission for accusations of theft, conspiracy, and iniquity that border on libel, particularly when they are factually and legally insupportable. For example, the statement that providing an entity that has paid for RMR Generation capacity with credit for that capacity in the RCST mechanism constitutes theft from the owner of the Generating Unit –who received the payment – is both unfounded and beyond the bounds of reasonable advocacy. *See* NCPA at 4.[5] It approaches, if not constitutes, calumny. Likewise, NCPA's claim that the proposed Settlement is "the product of a cabal of some competitors" in violation of Section 1 of the Sherman Act (NCPA at 7, 32) (discussed below) is equally frivolous and, but for its defamatory aspect, would hardly even deserve a response.

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[5] NCPA would deny PG&E and other entities credit for the capacity of an RMR Unit for which they directly or indirectly pay NCPA, and claim the capacity for itself. RMR Contracts are intended to cover the fixed costs (or a portion thereof, taking into account market revenues of a Condition 1 Unit) of a unit, and represent payment for the Generating Unit owner making the capacity available to the CAISO.

In short, florid rhetoric and insulting attacks on the Settling Parties cannot substitute for reasoned debate on the issues and reliance on facts and the law. The inappropriate and unfounded tone of NCPA's comments cannot make up for the factual and legal invalidity of its assertions. The Commission should provide assurance that such attacks have no place in its deliberations and give them the consideration they are due – none.

A. NCPA's Assertion that the Settlement Is Equivalent to a Criminal Conspiracy Is Spurious.

Citing the Sherman Act, NCPA proclaims that the Settlement is "basically a straightforward violation of law" that "in any other context would put the participants in jail." NCPA at 9. The Commission long ago disposed of such claims, holding that "participation in Commission settlement discussions is protected by the Supreme Court's *Noerr-Pennington* doctrine, under which competitors may join together to influence public officials." *Tennessee Gas Pipeline Co.*, 20 FERC ¶ 61,096 at 61,208 (1982), citing *Eastern R.R. Presidents Conf. v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961); *California Motor Transp. v. Trucking Unlimited*, 404 U.S. 508 (1972).

NCPA tries to avoid the *Noerr-Pennington* doctrine by asserting that "the conspiracy occurred outside the official processes" of the Commission (NCPA at 7), but that assertion would be irrelevant, even if it were true. *First*, the Supreme Court has expressly rejected "a 'conspiracy' exception to *Noerr*.'' *City of Columbia v. Omni Outdoor Adver., Inc.*, 499 U.S. 365, 382 (1991). *Second*, litigation settlements involving state agencies are immune from antitrust liability, even if reached outside a tribunal's official processes. *See A.D. Bedell Wholesale Co. v. Philip Morris, Inc.*, 263 F.3d 239254 (3rd Cir. 2001), *cert. denied*, 534 U.S. 1081 (2002) ("Freedom from the threat of

antitrust liability should apply to settlement agreements as it does to other more traditional petitioning activities."); *Sanders v. Lockyer*, 365 F. Supp.2d 1093, 1101-02 (N.D. Cal. 2005); *PTI, Inc. v. Philip Morris, Inc.*, 100 F. Supp.2d 1179, 1192-95 (C.D. Cal. 2000). *Third*, NCPA would suffer the harm it alleges from the proposed settlement only if its terms were implemented following the Commission's approval. Even setting aside the fact that any challenge to such Commission-approved terms would be barred by the filed rate doctrine, *e.g., Pub. Util. Dist. No. 1 of Snohomish County v. Dynegy Power Mktg., Inc.*, 384 F.3d 756 (9th Cir. 2004), *cert. denied*, __ U.S. __, 125 S.Ct. 2957 (2005), any harm would result from the Commission's adoption of the proposed Settlement, rather than from the Settlement itself, and would not give rise to antitrust liability. *See Massachusetts School of Law at Andover, Inc. v. American Bar Ass'n*, 107 F.3d 1026, 1036 (3rd Cir.), *cert. denied*, 522 U.S. 907 (1997).

B. The Settling Process Provided Ample Opportunities for Participation and Input by Non-settling parties.

Even if there were a requirement to allow all intervenors in proceedings before the Commission to be participate in any settlement negotiations that take place, which, as discussed below, there is not, all intervenors in this proceeding, including such municipal entities as those represented by NCPA and CMUA, were afforded a number of opportunities to provide input to discussions, to raise and state their positions on issues, and to comment on the settlement principles that resulted in the filing of the Settlement. Indeed, as discussed below, the Settlement is responsive to many of the issues raised by non-settling parties. There is a big difference between not "being at the table" and not being provided with an opportunity to provide input and comments.

On November 18-19, 2005, parties to this proceeding attended the technical conference at FERC and conducted initial settlement discussions. Starting on November 29, 2005, there was an all-day, all-parties settlement conference. On December 5, 2005, there was an all-parties teleconference to discuss settlement and identify parties' positions. On January 10, 2006, there was a call between the CAISO and representatives of the municipal utilities to discuss local RCST, the CAISO's LCR study, and cost allocation issues.

On January 20, 2006, the CAISO initiated a call to engage municipal utilities in discussions regarding settlement of the RCST proceeding. Based on subsequent communications, it was decided that IEP, the CAISO and the municipal utilities would discuss RCST issues at one large meeting, rather than have IEP and the CAISO meet with municipal utilities individually.

In response to inquiries, on January 29, 2006, the CAISO provided to the municipal utilities examples of the proposed allocation of local RCST costs. On January 30, 2006, there was a conference call between the CAISO, IEP, and the municipal utilities to discuss (1) the high-level settlement principles upon which the CAISO was prepared to settle the case and (2) local RCST cost allocation.[6]

On February 28, 2006, the Settling Parties circulated proposed RCST settlement principles to all parties in the case. On March 3, 2006, there was a conference call with all parties to discuss the proposed RCST settlement principles. On that call, some intervenors requested that *pro forma* tariff language to be circulated to the parties in

[6] In the January-March timeframe, the CAISO and IEP also had several calls with other parties to discuss RCST settlement and seek input regarding parties' positions and concerns.

advance of any filing. In response to those requests, proposed *pro forma* tariff language was circulated to all parties in the proceeding on March 24.

In short, all interested intervenors, including the municipals, had an opportunity to provide input to the settlement discussions in this proceeding and to state their positions and concerns and, in fact, the Settlement reflects a lot of that input. In addition to the process described above, some parties contacted the CAISO or IEP independently to raise their specific issues with respect to any RCST settlement. Other parties did not, and many of these parties now claim that they were shut out of the process. None of the municipal utilities, for example, circulated any counter offers, alternative proposals, or comments on the *pro forma* tariff language; or did they circulate any settlement offers of their own.

Nonetheless, the Settlement includes numerous provisions that respond to the interests of municipal utilities and other Load-Serving Entities. For example:

- The System Resource Deficiencies of Scheduling Coordinators for non-CPUC jurisdictional utilities are determined not according to CAISO standards, but according to standards, if any, set by the Local Regulatory Authorities;

- The 2007 local capacity allocations for non-CPUC jurisdictional utilities are determined not according to CAISO standards, but according to standards, if any, set by the Local Regulatory Authorities;

- Nothing in the Settlement contravenes the provisions of Metered Subsystem Agreements, and the Settlement did not contain any proposed unilateral amendments to any MSS agreement;

- The Settlement provides greater transparency and reporting requirements regarding the CAISO's reliability procurement and dispatch, a goal long sought by municipal utilities;

- Allocation of Tier 2 costs is based on contribution to peak load methodology;

- RCST costs (and costs incurred by the Participating Transmission Owners to procure resources to meet local reliability requirements) are not identified as

Reliability Services Costs that Participating Transmission Owners could see to pass through to transmission customers;

- Over-procurement by the CAISO is prevented by limiting designations to residual needs and allowing only a "slight" margin of additional procurement to accommodate the full capacity of designated units;

- In 2006, the benefit of one party's over-procurement goes toward reducing the total residual need, thereby reducing potential RCST costs;

- The scope of the new Must-Offer Capacity Payments is limited by requiring reliance on Resource Adequacy Capacity, RCST capacity, and RMR capacity before the use of FERC Must-Offer Generation; and

- The 2006 Local RCST Designation process permits LSEs to "self supply" local resources and required the CAISO to determine whether there were any residual needs before the CAISO could procure any local RCST resources. This process "worked" because, under the terms of the Settlement, there will be no 2006 Local RCST Designations. As the Commission can tell by parties' comments, this was the most hotly contested issue of the RCST Settlement. These comments (and concerns) are now mooted by the fact there will not be any RCST local procurement for 2006. The safeguards included in the settlement precluded any excess Local RCST Designations by the CAISO -- a fact that benefits all LSEs.

Under these circumstances, there is little else that the Settling Parties could have done other than provide municipal utilities with a blanket exemption from all RCST and FERC MOO costs that are incurred to ensure the reliable operation of the Control Area.

C. Settlement Discussions Need Not Include All Parties to a Proceeding.

Several commenters complain that the negotiation process resulting in the filing of the Settlement was exclusionary, to the point that its results are somehow not a proper settlement agreement for purposes of filing with the Commission. *See* CMUA at 2-3; MWD at 3-4; NCPA at 2; Six Cities at 2, 23-24; SMUD at 1, n.2. Indeed, one commenter goes so far as to put the word "settlement" in quotation marks when discussing the filing in their comments, perhaps hoping that what their legal arguments could not convey, their punctuation could. *See, e.g.*, NCPA at 1-3, 5, 7-9, 13-14, 23-26,

28, and 32.[7] As explained above, these complaints are baseless as a factual matter: all parties were given a fair opportunity to provide input in the settlement discussions.

Even if it were true that the Settling Parties had rejected any input from or denied the participation of some parties, this would not constitute any procedural shortcoming of the settlement process. Simply stated, any party to a proceeding has a right to attempt to reach a settlement with any other party or parties: no individual party has a right to be included in settlement discussions among other parties, let alone to veto any agreement they reach. Indeed, the entire premise of Commission regulations for the submission and consideration of contested settlements is that a settlement need not be signed or supported by all parties to a proceeding, as long as other parties have the right to make their views known for consideration by the Commission. *See* 18 C.F.R. § 385.602(f).

In *New York Power Authority*, 105 FERC ¶ 61,102 (2003) ("*NYPA*"), Niagara Power Coalition ("NPC") complained that they were excluded from settlement negotiations (as it appears they were, contrary to the circumstance here). The Commission was unmoved by NPC's objection to such treatment, however, finding that

> When a proceeding has begun (in this case, when the application was filed), the parties are free to communicate among themselves off the record in whatever manner they deem appropriate, and no party is compelled to engage in settlement negotiations with all parties to a proceeding. There was therefore no impropriety in NYPA electing not to attempt settlement with NPC or any other Entity.

105 FERC ¶ 61,102 at P 82.

CMUA singled out the CAISO for disapprobation with regard to the "exclusive" negotiations, arguing that such tactics might be understandable for private entities, but

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7 NCPA even includes the disparaging punctuation in the text of their witness's affidavit, although the witness himself does not discuss the merits of the settlement process. *See* Affidavit of Les Pereira at PP 11-12.

not for a non-profit public benefit corporation. CMUA at 3. As *NYPA* demonstrates, however, no different standard is dictated by the participation of non-profit entities – NYPA itself is a non-profit, public-benefit corporation.[8] As the respondent to IEP's complaint, whose tariff provisions were being challenged, the CAISO had every right to try to reach a mutually acceptable accommodation with IEP – in fact, FERC's complaint procedures encourage such efforts. *See* 18 C.F.R. § 385.206(b)(9). CAISO's status as a non-profit, independent Entity in no way detracts from its right and obligation to try to settle complaints against it.

There is simply no basis for the claims of some commenters that their exclusion from settlement negotiations (if that had in fact occurred) denied them due process (*see, e.g.*, NCPA at 9). The "due process" to which parties opposed to a settlement are entitled is the very process of which they avail themselves in filing their comments -- that dictated by the Commission's regulations, 18 C.F.R. §385.602(f), once a settlement has been filed. Any arguments they care to make can be made now that the Settlement has been filed. The Commission will approve the Settlement or reject it after evaluating such comments.

In sum, whether all parties participated in the process through which the Settling Parties reached agreement simply is not determinative: it is the result of that process – the Settlement Agreement as filed – that warrants the scrutiny of the Commission. Objecting parties' rights are fully and amply protected by their ability to raise their concerns for the Commission's consideration.

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[8] *See* <http://www.nypa.gov/about/whoweare.htm>.

D. The Settlement Imposes No Requirements Prior to Commission Approval.

CMUA, NCPA, and SVP contend that the Settlement imposes requirements on Market Participants prior to Commission approval. CMUA at 3-4; NCPA at 12-13; SVP at 5-6. This is a red-herring argument. No new rates have been put into effect, and no new jurisdictional services contemplated under the Settlement have been implemented. The CAISO is awaiting Commission approval of the Settlement before such new RCST and MOO and Frequently Mitigated Adder rates and RCST services will be implemented.[9] Further, the Settlement imposes no other requirements on Market Participants prior to approval of the Settlement. Under the Settlement, parties had an opportunity to provide information to the CAISO to assist the CAISO in preparing a study to determine if its local area needs were being satisfied by existing procurement, lessening or eliminating the need for RCST designations, but no one was required to provide the CAISO with such information. Many entities did, but others did not provide such information.[10] Market Participants were also able to take unilateral action in anticipation of local RCST requirements, in the event such requirements were approved by the Commission, but no party was required to go out and procure local resources. As described above, all parties to the proceeding have been provided advance notice that the approval of the Settlement would impose costs on resource-deficient entities, and cannot

[9] The circumstances are similar to those in the settlement of the CAISO's 2004 Grid Management Charge. In that settlement, the CAISO agreed to conduct a stakeholder process regarding the 2005 Grid Management Charge. The stakeholder process took place in the summer of 2004, even though that settlement was not approved until 2005.

[10] It is interesting that CMUA complains about this process which was intended to protect Load Serving Entities, including the municipal utilities, by preventing the CAISO from over-procuring RCST or procuring unneeded RCST. Indeed, the process worked as intended because it resulted in CMUA's members (and all other LSEs) not having to bear any local RCST costs for 2006.

complain that they have been unfairly surprised by the proposed requirement.[11] In any event, to the extent these arguments concern the Local RCST, they have been mooted by the Settling Parties' request that 2006 Local RCST provisions be removed from the Settlement. To the extent they are concerned with System designations, CMUA's and NCPA's complaints are with the Interim Reliability Requirements tariff amendment, which directs the provision of the demonstrations according to which System designations are determined, not with the Settlement.

NCPA also off-handedly contends that the Settlement is a "stealth" rate increase, without the supporting materials required by Commission regulation for a rate increase. (NCPA at 4.) NCPA offers no support for its suggestion that the requirements of Part 35 of the Commission's regulations regarding a rate increase should apply to the settlement of a complaint, nor could it. This is just another effort by NCPA to deflect attention from the lack of substance in its comments.

E. The Settlement Does Not Exceed the Scope of the Complaint.

The CEOB states that "the Commission is dutybound to reject any material term in the proposed Settlement that bears no direct relation to the issue raised in the IEP Complaint," *citing Cal. Indep. Sys. Operator Corp*., 108 FERC ¶ 61,022 at P 111. CEOB at 5. That case, however, does not stand for the proposition stated. The issue addressed there was the appropriate scope of the issues that the Commission could address in connection with a Section 205 filing. The Commission recognized that it could not, in the course of a Section 205 proceeding, address issues that were not raised by the filing.

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[11] Further, all parties have been put on notice since the filing of IEP's complaint in August 2005 -- in conjunction with the refund effective date provisions of Section 206 of the Federal Power Act -- that they could bear increased costs associated with the reliability services provided by Generators.

That case does not address the range the issues that can be resolved in settlement of a Section 206 complaint.

IEP's complaint alleged that the Must-Offer Obligation provided compensation, in the context of the CAISO's market mitigation scheme, which was inadequate for existing Generators and inadequate to provide an incentive for the construction of new Generation. For example, IEP stated:

> The Commission has provided guidance on the types of market design modifications that it will consider to resolve reliability compensation issues. For example, in its RCI policy, the Commission observed that: "Market Power Mitigation (which impacts revenue received by units need to ensure reliability) can conflict with the longer term goal of attracting and retaining necessary infrastructure to assure long-term reliability in such markets." The CAISO market – through MOO, AMP, and RMR – is subject to just the type of market power mitigation pricing impacts that the Commission identified.

IEP Complaint at 23.

IEP proposed an alternative compensation scheme for Generation that the ISO needs to have available to meet Reliability Criteria. The Settlement, in turn, adopts aspects of IEP's proposal and makes certain revisions to the types of market power mitigation that IEP and the Commission identified. It revises the ISO Tariff, consistent with the goals of IEP's complaint, to ensure that Generation continues to be available for the ISO's reliability and that such Generation overall has the opportunity to obtain a return that will allow existing Generating Units to remain in operation and will reassure potential new Generators that they can earn a reasonable return in the CAISO Control Area. The Commission has allowed issues that are outside the scope of a complaint into even contested settlements. *See, e.g., Kentucky West Virginia Gas Company, et al.*, 62 FERC ¶ 61,153, 62,085-87 (1993). In this case, even assuming *arguendo* that some

terms of the Settlement go beyond the technical scope of IEP's complaint, approval is appropriate because the issues resolved are integrally related to the complaint; they are all portions of a compromise that addresses the central concern that gave rise to the complaint.

The real issue is whether the Settlement, as a package, is just and reasonable and in the public interest.

III. MOOT ISSUES.

In Joint Reply Comments filed on April 28, 2006, the Settling Parties informed the Commission that the CAISO had determined that there would be no need for Local RCST Designations for 2006. They asked the Commission to approve the Settlement conditioned upon the removal of provisions for the designation of Local RCST and the allocation of the costs of such designations. It should also be noted that, under the Settlement, the CAISO's authority to designate Local RCST for 2007 is limited to deficiencies under the criteria established by the CPUC or Local Regulatory Authority, and the allocation of the costs of any such designations is reserved. Accordingly, as a result of the fact that there will not be any 2006 Local RCST Designations under the proposed terms of the Settlement, the following issues raised by commenters are moot:

- Joint Commenters' argument that Local RCST imposes a Local Resource Adequacy Requirement on Load-Serving Entities in conflict with orders of the CPUC (Joint Commenters at 4-14);
- Joint Commenters' arguments regarding load migration and crediting to RCST capacity toward CPUC Resource Adequacy Requirements, to the extent that they are directed at Local RCST (Joint Commenters at 14-16);
- All of Constellation's arguments;
- All of MWD's arguments;

- NCPA's argument that the CAISO has not complied with the terms of the Settlement (NCPA at 10);
- NCPA's argument regarding the need for Local RCST (NCPA at 13-16);
- NCPA's and SVP's arguments regarding the Reliability Criteria on which the CAISO relied in determining LARN (NCPA at 16-23; SVP at 8);
- NCPA's argument regarding the crediting of RMR Units against LARN (NCPA at 23-26);
- NCPA's argument that the Settlement is discriminatory because SWP is excluded from a LARN obligation (NCPA at 26-28);
- NCPA's arguments regarding the allocation of Local RCST costs (NCPA at 28-29);
- Powerex's arguments regarding the timing and term of Local RCST Designations (Powerex at 5-9);
- Six Cities' argument about a cost-benefit analysis (Six Cities at 15-16);
- SWP's arguments regarding cost causation (SWP 2-19);
- SVP's and SWP's arguments that the entities were provided insufficient time to respond to LARN (SVP at 4-6, SWP at 29-33);
- SVP's argument that the Settlement provides the CAISO with too much discretion in determining the effectiveness of resources (SVP at 6-7);
- SVP's and Powerex's arguments on the restriction on the use of System Resources to meet LARN (SVP at 13, Powerex at 4-5); and
- NCPA's, SVP's, Vernon's, and Six Cities' Metered Subsytem issues to the extent they address the designation and allocation of Local RCST (NCPA at 27-28, SVP at 9-14, Vernon at 2, Six Cities at 15, 17-18).

IV. JURISDICTIONAL ISSUES.

NCPA contends that the Settlement would override the decisions of the "Local Resource Agencies" as well as of the CPUC. It asserts that "the development of municipal standards and the incorporation of requirements into the [ISO Tariff] goes

beyond what state law requires of municipal utilities and attempts to federalize the procurement decisions of all LSEs . . . to an unprecedented degree." It asserts that the Settlement is inconsistent with state law A.V. 380. NCPA at 30.

Contrary to these arguments, the CAISO's authority provided under the settlement is just a fulfillment of the CAISO's reliability responsibilities and is fully consistent with state law. Indeed, the CAISO's responsibilities are imposed by state law as well as by the Commission.[12]

In 1996, the State of California established the CAISO, in Assembly Bill 1890, it entrusted the CAISO with the responsibility of operating the transmission system reliably. AB 1890 recognized that "electric industry restructuring should enhance the reliability of the interconnected regional transmission system, and provide strong coordination and enforceable protocols for all users of the power grid" and that "[i]t is important that sufficient supplies of electric generation will be available to maintain reliable service." AB 1890 provided that the proposed restructuring of the electricity industry would broaden responsibility for ensuring short- and long-term reliability to include the Independent System Operator and it various market-based mechanisms in addition to electric utilities and regulatory bodies. AB 1890 thus established market mechanisms to provide incentives for the development of greater supply, but also placed the significant responsibility on the CAISO. It directed the CAISO "to ensure efficient

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[12] The CAISO notes that NCPA's arguments are essentially the same arguments that certain parties have made in response to the CAISO's Interim Reliability Requirements Program tariff amendment filing in Docket No. ER06-723. On April 19, 2006, the CAISO filed a *Motion for Leave out of Time and Answer to Motions to Intervene, Comments and* Protests" that addressed and thoroughly rebutted jurisdictional arguments similar to those raised by NCPA and demonstrated that the Commission has the jurisdiction to approve reliability-related requirements for all entities that receive services under the CAISO tariff, including non-FERC jurisdictional entities. *See* Answer at 4-16. Those arguments are incorporated herein by reference, and there is no need to repeat them here.

use and reliable operation of the transmission grid consistent with achievement of planning and operating reserve criteria no less stringent than those established by the Western Systems Coordinating Council and the North American Electric Reliability Council," and to obtain from FERC the authority needed "to secure generating and transmission resources necessary to guarantee" achievement of such criteria.

In addition, the Commission's fourth ISO principle, as stated in Order No. 888,[13] is that "An ISO should have the primary responsibility in ensuring short-term reliability of grid operations. Its role in this responsibility should be well-defined and comply with applicable standards set by NERC and the regional reliability council." Order No. 888 at 31,731. The Commission's approval of the CAISO's operations in 1997 was premised on its recognition of the CAISO's responsibility to fulfill that role. *Pacific Gas and Electric Company, et al.,* 81 FERC ¶ 61,122, 61,456 (1997). Subsequently, the Commission has often acted in recognition of the CAISO's responsibility, as Control Area Operator, for maintaining reliability. *See, e.g.*, *California Independent System Operator Corporation*, 103 FERC ¶ 61,114 (2003); *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services, et al.*, 95 FERC ¶ 61,115 (2001).

The ISO Tariff establishes the means by which the CAISO performs these reliability functions. For example, it establishes the CAISO's responsibility to procure adequate Ancillary Services and the criteria under which Generators may provide

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[13] *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in part and rev'd in part sub nom. Transmission Access Policy Study Group, et al. v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

Ancillary Services. It also includes methods for allocating the costs of fulfilling these functions as part of the CAISO cost of service. For example, a Scheduling Coordinator may avoid the costs of Ancillary Services by self-provision, but only if it demonstrates to the CAISO that its self-provision meets the CAISO's criteria for Ancillary Services.

During the California energy crisis, the Commission recognized that, in order to fulfill its reliability functions, the CAISO must have available capacity from which to respond to its Energy needs. The Commission therefore instituted the Must-Offer Obligation. To this date, the Must-Offer Obligation remains the mechanism by which the CAISO ensures that there are adequate Generation resources available on a Control Area basis to allow the CAISO to respond to critical contingencies and that there are similarly adequate Generation resources available in constrained local areas to respond to contingencies in those areas. RCST is essentially a replacement for the MOO. If the Commission has the jurisdiction to approve MOO, it similarly must have the jurisdiction to approve RCST. Likewise, RCST can be viewed as a supplement to RMR. If the Commission has the authority to approve RMR for the CAISO, it similarly must have the authority to approve RCST.

More recently, the California legislature enacted AB 380, which directs the California Public Utilities Commission ("CPUC") to promulgate resource procurement (or "Resource Adequacy") requirements for utilities subject to its jurisdiction and requires that the regulatory authorities for other California utilities develop plans to ensure the adequacy of resources to serve load. Notably, nothing in AB 380 purports to diminish or substitute for the CAISO's reliability responsibilities. Although the legislation requires the CPUC to consult with the CAISO in the development of its

requirements, the CPUC and CAISO responsibilities are separate and distinct. In any event, AB 380 cannot take away from the CAISO or the Commission any jurisdiction or authority vested under the Federal Power Act.

The Commission has already made it clear that the CAISO cannot abdicate these responsibilities to the CPUC. In its July 22, 2003, MRTU filing, the CAISO omitted resource adequacy provisions in light of the on-going CPUC proceedings on resource adequacy, noting that the Commission had indicated that the assurance of resource adequacy was a state responsibility. In response, the Commission stated:

> We are encouraged that the State has undertaken a procurement proceeding, and that the CAISO supports an obligation on load-serving entities. However, the lack of a resource adequacy proposal in the CAISO's proposed comprehensive market design leaves a critical balancing element of the market subject to the outcome of the CPUC proceeding. We believe that issues such as resource adequacy and mitigation should not be dealt with in isolation. Without the benefit of a complete market redesign proposal, the Commission cannot make informed decisions on all aspects of this proposal -- decisions that impact the ability and incentive to forward contract, the reliable operation of the grid, and the ability to attract and retain investment. In considering the proposal, we need to ensure that the CAISO has the appropriate tools at its disposal to address resource adequacy and protect against the exercise of market power.

California Independent System Operator Corporation, 105 FERC ¶ 61,140 (2004) at P 215. Subsequently, in response to questions about the continuation of the Must-Offer Obligation under MRTU, the Commission stated that the CAISO must review the sufficiency of the CPUC resource adequacy program to meet the CAISO's needs in the context of MRTU; the Commission proposed the implementation of a flexible Must-Offer Obligation if the CAISO were to conclude that the CPUC program was not sufficient. *California Independent System Operator Corporation*, 107 FERC ¶ 61,274

(2004) at P 27; *California Independent System Operator Corporation*, 108 FERC ¶ 61,254 (2004) at P 10.

Even though the CPUC is implementing a Resource Adequacy program, the CAISO must still ensure that its reliability requirements are met. The implementation of the California resource adequacy requirements will undoubtedly facilitate the CAISO's fulfillment of its responsibilities. Indeed, upon evaluation of the implementation of the requirements by Load-Serving Entities under the direction of the CPUC and Local Regulatory Authorities, the CAISO may conclude that it has minimal, or even no, additional needs. However, the CAISO must have "the appropriate tools at its disposal to address resource adequacy and protect against the exercise of market power." The RCST provides those backstop reliability tools.

In doing so, the RCST does not interfere with the programs implemented by the CPUC and Local Regulatory Authorities. It simply provides for the CAISO to determine its reliability needs, to evaluate the degree to which those needs are being met by requirements independent of the ISO Tariff, and to take steps to fulfill any residual need. The RCST does not impose any procurement responsibilities on Load-Serving Entities. It simply (1) sets forth the parameters under which the CAISO can designate units under the RCST and (2) allocates the costs of such procurement – part of the CAISO's cost of service – in a manner that credits Scheduling Coordinators for actions that their Load-Serving Entities have taken to reduce the CAISO's needs. Clearly, neither the CPUC nor LRAs can dictate the conditions under which the CAISO can acquire backstop reliability services and how the costs of such services are allocated.

The Settlement does not "federalize" any procurement decisions. The requirements of the RCST (and the Interim Reliability Requirements) are not imposed by the Commission. They are imposed by the CAISO as conditions of transmission service under the ISO Tariff. Although *Bonneville Power Administration v. FERC,* 422 F.3d 908 at 926 (2005), defines limits on the Commission's jurisdiction over municipalities and State governmental entities, it does not limit the CAISO's ability to establish just and reasonable terms of service. For example, a tariff may impose an enforceable refund requirement on governmental entities even though the Commission cannot direct refunds. *Alliant Energy v. Nebraska Public Power District*, 347 F.3d 1046, 1050 (8th Cir. 2003).

As the Court of Appeals for the Eighth Circuit has stated, "When a contract provides that its terms are subject to a regulatory body, all parties to that contract are bound by the actions of the regulatory body." *Id.; see also Inter-City Gas Corp. v. Boise Cascade Corp.,* 845 F.2d 184, 187 (8th Cir. 1988). In this case, the RCST applies to Scheduling Coordinators, all of which are parties to Scheduling Coordinator Agreements. Section 8 of the Scheduling Coordinator Agreement incorporates the ISO Tariff, which in turn relies upon the Commission for effectiveness and amendment. *See, e.g.,* ISO Tariff § 11.24.5. If the Commission approves the Interim Reliability Requirements and the RCST as part of the ISO Tariff, all Scheduling, regardless of whether they come within the Commission's jurisdiction, will be contractually bound by the terms of the Interim Reliability Requirements and the RCST.

V. DESIGNATION ISSUES

Six Cities contend that RCST allocations should be limited to one month because it is not reasonable to allocate the costs for the entire term of an RCST designation to

RA-SCs that were deficient during the month in which the allocation was made (for month-ahead System RCST) or the peak month (for Local RCST). Six Cities at 17-18. Six Cities are conflating designation issues with allocation issues. The designation period takes into account both the duration of the CAISO's reliability needs, the Generators' need for stability, and administrative efficiency (*i.e.,* not having to make designation decisions each and every month). A reasonable designation period reduces the likelihood that marginal but needed Generating Units will be mothballed or shut down and unavailable when needed. Multi-month designations are certainly not without precedent, as evidenced by the CAISO's previous Summer Reliability Contract program.

Six Cities err when they contend that the Settlement is not clear regarding the determination of System RCST requirements. *Id.* at 21. Under Section 43.3.1, the CAISO can only designate System RCST to meet Month-Ahead and Year-Ahead System Resource Deficiencies. The Month-Ahead System Resource Deficiency is defined as "The monthly deficiency in meeting the Month-Ahead System Resource Adequacy Requirements as determined by the CPUC and applicable Local Regulatory Authorities for each RA Entity subject to their jurisdiction." The Year-Ahead System Resource Deficiency is defined in a parallel manner. Thus, the limit on System designations is unambiguously determined by the CPUC and Local Regulatory Authority requirements.

Joint Commenters assert that the CAISO designation and allocation of RCST must take into account load migration. Joint Commenters at 15-16. The elimination of Local RCST procurement for 2006 should address these concerns. Load migration in connection with System RCST is addressed by the provision for separate Year-Ahead and Month-Ahead designation and allocation, consistent with the CPUC requirements that

Joint Parties cite. *See pro forma* tariff §§ 43.3.1 and 43.3.2. Allocation with respect to any 2007 RCST Local designations will be addressed in a future, separate tariff filing and is not at issue here.

VI. COST ISSUES

Six Cities argue that the Settlement will allow incumbent generators to exercise market power to demand compensation in excess of cost. Six Cities at 7-10.[14] As an initial matter, Six Cities' market power argument is based on the ISO studies of local area capacity requirements. Because there will be no 2006 Local RCST designations, there can be no market power issues for 2006. For 2007, there will be a much longer time line for LSEs to procure resources necessary to meet any local capacity requirements established by the CPUC or Local Regulatory Authorities, if either establishes such a requirement. Further, local RCST designations in 2007 will be limited to deficiencies based on requirements established by the CPUC and Local Regulatory Authority. This will serve to shield LSEs from the any exercise of marketing power. In any event, Six Cities' argument is mere speculation.

Six Cities also alleges that the proposed $73kW-year RCST capacity payment is substantially lower than the capacity costs for incumbent generators. Six Cities' argument is based on a comparison on the $73/kW-year price to the Annual Fixed Revenue

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[14] In evaluating Six Cities' opposition, the Commission must keep in mind that there will not be any local RCST designations for 2006. For 2007, Six Cities would potentially be subject to the costs of local RCST designations only if the Six Cities respective Local Regulatory Authorities set specific local capacity requirements and the Six Cities are deficient in meeting such local capacity requirements. Similarly, Six Cities would potentially be subject to System RCST costs only if the Six Cities respective LRAs set system capacity requirements and the Six Cities are deficient in meeting such requirements. Even if the LRAs were to set system or local requirements applicable to the Six Cities, it would be completely within the Six Cities' control whether they would be subject to 2007 local or 2006/2007 system RCST costs. The only other types of possible RCST designations are those that are caused by a Significant Event and those RCST costs are allocated on a load share basis. Their opposition should be evaluated accordingly.

Requirements ("AFRR") of seven RMR units. However, there are far more than seven RMR units. The annual fixed revenue requirements that of RMR Units with contracts on file with the Commission range from \$0.39/kW-year to \$247.02/kW year. *See* Exhibit B. Thus, Six Cities' own logic – when applied to all of the RMR units – supports a conclusion that a \$73/kW-year RCST payment is not unreasonable. The CAISO submits that \$73/kW-year RCST capacity payment is supportable whether the Commission determines that the payment should be based on the costs of building a new unit[15] or be within the range of the fixed costs of existing units.

The \$73/kW-year capacity payment is a negotiated compromise amount. It is less than the typical cost of a new frame combustion turbine unit as estimated in the affidavit accompanying IEP's complaint and reflected in the 2005 Annual Report of the ISO Department of Market Monitoring.[16] It is high enough, however, to demonstrate to potential new Generators that the California environment is not hostile to new Generation, and allows a reasonable opportunity for the recovery of total fixed costs. The CAISO also notes that the Commission has approved an ICAP \$6.66/kW-month deficiency charge for ISO New England. *New England Power Pool and ISO New*

15 As indicated in the 2005 Annual Report of the CAISO Department of Market Monitoring, filed with the Commission on April 11, 2006 ("Annual Report"), the annualized fixed cost for a new combustion turbine is \$78/kW-year (and the cost for a new combined cycle unit is \$90/kW-year). Annual Report at 2-31. The capacity payment in the Settlement is \$73/kW-year, and the level of that payment is reduced by a peak energy rent, which results in a significantly lower payment.

16 < http://www.caiso.com/17d5/17d58bdd1270.html>.

England, 100 FERC ¶ 61,287 at P 97 (2002).[17] That is equivalent to $79.72/kW-year. Thus, the $73/kW-year RCST payment is within the range of reasonableness.

The Commission should also consider the fact that the $73/kW-year capacity payments are reduced by the amount of the peak energy rent ("PER") that reflects revenues that a proxy unit would receive from the sale of Energy and Ancillary Services. The Annual Report provides data from which to estimate the PER. Table 2-11 of the report shows the estimated net revenues that a hypothetical combustion turbine would have earned by participating in the CAISO markets, based on the Energy and Ancillary Services revenues less operating costs. For example, for 2005, the net revenues for a proxy unit with a heat rate of 9300 BTU/kwh are $44.1/kW-year and $43.1/kW-year for SP-15 and NP-15 respectively. Using the same methodology outlined in the Annual Report, if the analysis were performed for a 10,500 BTU/kwh unit, the net revenues would be $43.1 kW-year for SP-15, and $43.75 kw-year for NP-15.

Six Cities also contend that the 10,500 BTU heat rate used for the PER is unreasonably high. However, neither Six Cities nor any other party has offered evidence in support of a lesser heat rate or to even suggest what the appropriate lower heat rate should be. IEP proposed a heat rate of 10,817, and the Settlement resulted in a heat rate of 10,500 BTU/kwh. That is a reasonable compromise. Six Cities suggest that the market likely will not clear above the 10,500 BTU/kwh heat rate for many hours of the year, thereby limiting the effect of the PER offsets. However, the actual effect of the proxy

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[17] A $73/kW-year fixed cost is well below the annual fixed cost levels used for purposes of calculating the NYISO's Installed Capacity Demand Curves. *New York Independent System Operator, Inc.* 111 FERC ¶ 61,117 (2005). The CAISO also notes that the Initial Decision on ISO New England's LICAP proposal found that it was appropriate to use the costs of a new entry frame combustion turbine as the benchmark technology for purposes of calculating the Estimated Cost of Capacity. *ISO New England,* 111 FERC ¶ 63.063 at PP 348, 381 (2005). The Settlement is consistent with that approach.

unit's heat rate on the PER will be minimal. Six Cities ignores the fact that the PER has two components, which would vary in opposite directions with changes in the heat rate: (1) Energy component made up of difference between in the operating cost of the proxy resource and the Hourly Energy price when the Hourly Energy price is greater than the operating costs of proxy unit, and (2) the non-spinning reserve capacity payment for any hour that Hourly Energy price is less the proxy units operating costs. As a result, when the proxy unit is not infra-marginal the resource is still assumed to be earning revenues from non-spinning reserve market. The Annual Report indicates that about half the revenues come from the non spinning reserve component of PER. This component of the PER would increase as the energy component decreases for a higher heat rate unit. As shown above, the effect on the net revenue of a proxy unit is minimal.

In any event, the proper level of the heat rate is not a material fact that results in the Settlement being unjust and unreasonable. The heat rate only matters for purposes of determining the PER. As discussed above, it has already been established that a $73/kW-year RCST capacity price is well within the zone of reasonableness. The PER only serves to reduce that capacity payment, thereby making it even more just and reasonable.

Six Cities and the CEOB contend that the Settlement does not justify the increase in the System AMP trigger to $200. Six Cities at 22, CEOB at 10. The increase is simply a negotiated compromise in response to the concerns about the limits on Generator compensation included in IEP's complaint. System AMP, as CEOB recognizes, is rarely triggered. Indeed, as revealed in the CAISO's April 24, 2006 AMP report to the Commission in Docket No. ER02-1656 System AMP has only resulted in mitigation for three hours during the three-and-one-half years in which it has been in

effect. The increase will thus not have a significant market effect and is thus a reasonable component of the package. Moreover, System AMP will be eliminated with the implementation of MRTU. In light of the fact that System AMP is rarely the increase represents a reasonable transition during the period preceding the implementation.

Six Cities and the CEOB also contend that the incremental payment for Frequently Mitigated Units is too great. Six Cities at 18-19, CEOB at 7-8. Although the amount of the frequently mitigated adder is greater than the amount proposed in connection with the frequently mitigated adder mechanism under MRTU, it is the same amount that the Commission approved for PJM. *PJM Interconnection, LLC,* 110 FERC ¶ 61,053 at P 113 (2005). The adder will only apply for an interim period. The CAISO anticipates that such payments will be rare because the CAISO must call on Resource Adequacy, RCST, and RMR units before it denies the waivers of FERC Must Offer Generators. Moreover, the price paid to a Frequently Mitigated Units – even with the adder -- can never exceed its bid price. In addition, under the terms of the Settlement, there are other limits on the amount of revenues that a Generating Unit can receive under the Frequently Mitigated adder provisions. *See* Settlement Section 5.3, 5.3.1. Finally, the adder provision will not even be triggered until a unit is mitigated four times previously in the course of a Trading Day. Like the remainder of the Settlement package, it is the product of compromise and is a reasonable component of a just and reasonable package.

Six Cities further contend that the use of monthly shaping factors is inappropriate when the procurement of capacity does not differ month-to-month. (Six Cities at 22). Although the capacity may not differ month-to-month, the likelihood that the capacity

will be called upon is greatest during the peak months. The monthly shaping factors increase the incentive for Generators to ensure that their units are available during the peak months when they are needed the most. To the extent RCST units are not available during peak times, they will lose a greater percentage of their payments.

Six Cities argue that there is no justification for the target RCST Availability of 95%. However, Six Cities do not suggest any alternative level of Availability. The 95% Availability reflects a negotiated number that is higher than the 92% Availability proposed by IEP in its compliant.

In summary, the compensation provisions of the Settlement, including the RCST Target payment, MOO Capacity Payment and Frequently Mitigated Adder are necessary to support Generators fixed cost recover, incent new Generation, and reduce the possibility that existing Generating Units will mothball or retire. Generators, many of whom are in bankruptcy, may not continue to operate indefinitely absent improved opportunities to recover fixed costs.

VII. ALLOCATION ISSUES

SMUD and MID argue that no RCST costs should be allocated to wheel through transactions. SMUD at 5-7, MID at 2-3. The costs to which SMUD and MID would potentially be exposed, the must-offer capacity payment and minimum load and start-up costs for RCST, are billed in the same manner as minimum load and start-up costs for must-offer units. SWP similarly argues that Existing Contract transactions should not be allocated such costs. SWP at 10-12. The allocation of must-offer costs is currently before the Commission in Docket No. ER04-835, which concerns Amendment No. 60 to the ISO Tariff. SMUD and MID have presented their argument in that proceeding, which

is current pending a ruling on exceptions. The Commission's decision in Docket No. ER04-835 will determine the allocation under the Settlement. This ensures that the allocation of the costs of which SMUD, MID, and SWP are concerned will be just and reasonable.

SWP's raises a number of other issues concerning cost allocation, but notes that it would not object to the Settlement if it is not subject to RCST costs. SWP at 2, 4-10. As noted above, there will be no local RCST costs in 2006; so SWP's arguments regarding the allocation of local RCST are moot. For 2007, the allocation of local costs is deferred, and parties can argue the merits of the allocation when it is proposed. Regardless of the 2007 allocation, it will not affect SWP. For 2007, the Settlement simply requires that work with the CAISO to develop a program that ensures that it will not unduly rely on the local resources procured by other entities. This provision recognizes that A.B. 380 imposes no Resource Adequacy requirements on SWP and therefore will have no 2007 local requirements imposed by the CPUC or a Local Regulatory Authority and cannot be deficient. With respect to System RCST, in its Answer to Comments and Protests in Docket No. ER06-723, concerning the CAISO's Interim Reliability Requirements Program, the CAISO has agreed to revise the amendment to exclude SWP from the definition of Load-Serving Entity in that section. SWP would thus have no requirement to file a Resource Adequacy Plan. Because SWP will not have any Resource Adequacy Requirements, it cannot have any Month-Ahead or Year-Ahead System Resource Deficiency and, consequently, cannot have any allocation of System RCST costs.

As noted above, Six Cities contend that RCST allocations should be limited to one month because it is not reasonable to allocate the costs for the entire term of an

RCST designation to SC-RA Entities that were deficient during the month in which the allocation was made (for month-ahead System RCST) or the peak month (for Local RCST). Six Cities at 17-18. The CAISO discusses the length of the designation above. The proposed allocation is not dictated by the length of the designation, and should be evaluated independently. Such an evaluation demonstrates that the allocation is just and reasonable and consistent with cost causation principles. Under the proposed allocation, the costs are allocated to those SC-RA Entities that are responsible for the incurrence of the cost, *i.e.*, the entities that triggered the RCST designation in the first instance. SC-RA Entities can avoid these costs by ensuring that they are not deficient. The Commission should approve the allocation as a reasonable part of the Settlement package.

Six Cities also contend that the Settlement cannot be approved in the absence of the allocation methodology for 2007 local RCST because, in its absence, the Commission cannot judge whether the Settlement is just and reasonable. Six Cities at 15. Six Cities know better; the Commission frequently approves settlements with reserved issues. Indeed, the settlement of the Transmission Revenue Requirement filing of two of the Six Cities was approved while reserving issues concerning the treatment of certain facilities. *City of Azusa, et al.*, 105 FERC ¶ 61,293 (2003). In this instance, the CAISO will need to make a tariff filing containing the proposed allocation for 2007 local RCST costs prior to making any such allocation. The CAISO cannot make such allocation proposal at this time because it does not have all the relevant information. The manner in which deficiencies are measure and the allocation will be affected by the local capacity requirements, if any, that the CPUC and Local Regulatory Authorities establish for LSEs

subject to their jurisdiction and the cost allocation of those requirement. The Commission will, at that time, ensure that the allocation is just and reasonable.

VIII. METERED SUBSYSTEM ISSUES

SVP objects to the allocation of RCST costs to load-following Metered Subsystems because they are obligated under Section 23 of the ISO Tariff "to provide adequate resources to ensure that load-following [Metered Subsystems] should all their appropriate burdens regarding system reliability." SVP at 10. To the extent that SVP is concerned with the costs of Local RCST, that concern is mooted by the Settling Parties request that the Commission direct the removal from the Settlement of authority to designate RCST for local reliability in 2006.

SVP's objections with regard to System RCST (or 2007 Local RCST) are unfounded. Section 4.9 of the currently effective ISO Tariff (which replaced former section 23 governing the CAISO relation with Metered Subsystems) actually imposes no resource adequacy requirements on Metered Subsystems, but merely reporting requirements about resources. SVP is correct that its MSS Agreement imposes penalties for scheduling deviations outside of a prescribed range. An MSS is also able to avoid certain payments for reliability programs if it has secured capacity that is at least 115% of its peak Demand. The RCST programs, however, is designed to ensure that the CAISO has sufficient capacity to address System contingencies that would affect all users in the Control Area, including SVP or Local contingencies. As long as SVP contributes to reliability by complying with any Resource Adequacy requirements established by its own Local Regulatory Authority, it will not be subject to any costs for RCST. To the

extent it fails to do so, it is only reasonable that it bear the costs of the ISO's backstop procurement.

SVP and Vernon, based on their MSS Agreements, contend that they should not be allocated Minimum Load, Emissions, and Start-Up costs. (SVP at 12, Vernon at 2). The Settlement, however, allocates Minimum Load, Emissions, and Start-Up costs for RCST capacity in the same manner as those costs are allocated for Resource Adequacy capacity under the Interim Reliability Requirements Program. Neither the Settlement nor the Interim Reliability Requirements Tariff purports to modify the responsibility of Metered Subsystems for Minimum Load, Emissions, and Start-Up costs as provided in the Sections 13.10 (including subsections) of the Anaheim, NCPA, SVP and Vernon, MSS and MSSA Agreements. Under those provisions, Metered Subsystems pay such costs on a net basis unless they seek similar compensation for their units. Vernon also protests any responsibility for the Frequently Mitigated Bid adder and for additional Must-Offer costs with regard to load that is served by internal generation. Under section 33.1.2.1.2 as set forth in the pro forma tariff sheets, the Frequently Mitigated Bid adder is allocated in the same manner as the Grid Operations Charge. Section 10.3 of Vernon's MSS Agreement (and the other MSS Agreements) provides that Vernon will only be liable for the Grid Operations charge on the basis of net load – *i.e.*, load served by the ISO Controlled Grid. Vernon's concerns are therefore unfounded. The capacity payment for FERC Must-Offer Generators is allocated in the same manner as Minimum Load Cost Compensation. Thus, unless an MSS requests such payments for its Generators, it will only be responsible for the costs on a net basis.

SVP notes that under its MSS Agreement, the CAISO can only dispatch its units under certain circumstances in a System Emergency. SVP at 13-14. NCPA argues, without citing any provision of the MSS agreement, that the Settlement would subject NCPA's generation to CAISO controls that are inconsistent with the obligations of NCPA to meet its own loads. NCPA at 28. SVP's concern is misplaced and NCPA is incorrect. Nowhere does the Settlement even remotely suggest that MSS resources will be subject to CAISO controls. Indeed, the definition of Eligible Capacity (*i.e.,* capacity that is subject to RCST designation) expressly excludes MSS resources, and the Settlement expressly provides that it is not intended to expand the scope of units subject to the existing Must Offer Obligation. *See* Explanatory Statement at 15, n. 18. The Settlement does not contain any proposed unilateral amendments to MSS or MSSA Agreements and nothing in the Settlement would violate the provisions of such Agreements. The CAISO fully intends to honor the intent of all MSS agreements and has not said anything to the contrary; nor does the settlement. To the extent that NCPA Generation has any must-offer obligations, they are unaffected by the Settlement.

SVP complains that, while the Settlement excludes generation resources within the physical boundary from the definition of Eligible Capacity (and thus from RCST designation with the concomitant must-offer obligation), it does not exclude resources located outside the physical boundary of the Metered Subsystem, including System Resources. SVP at 13-14. SVP is incorrect. Nothing in the Settlement refers to physical boundaries; indeed, the only reasonable interpretation of the Settlement Agreement is consistent with the provisions of SVP's MSS Agreement. Section 10.3 of the SVP MSS Agreement limits the CAISO's ability to dispatch "any Generating Unit of SVP."

"SVP's System" is defined to include all generating facilities owned or controlled by SVP, each of which is identified in Schedule 1 to the MSS Agreement. The ISO Tariff defines Metered Subsystem in reference to an MSS Agreement. The scope of the exclusion from Eligible Capacity of generation resources "within a Metered Subsystem" is thus coextensive with the of generation resources within "SVP's System." Moreover, under section 3.1, the terms of the MSS Agreement prevail over inconsistent terms. SVP's argument is a red herring.

Miscellaneous Arguments

Six Cities assert that the Settlement provides "an additional mechanism for ISO procurement of resources for reliability purpose on top of three currently effect mechanisms and a fourth being proposed" and asserts that it would be "another layer of overlapping and inconsistent mechanisms." Six Cities 10-14. They identify RMR, Market Procedure M-438, the must-offer obligation, and the proposed Interim Reliability Requirements program. Six Cities mischaracterize the ISO's operations. Market Procedure M-438 simply provides and implements the CPUC's interim local reliability requirements. The proposed Interim Reliability Requirement Program integrates the CAISO's operations with California's Resource Adequacy requirements. It does not establish independent CAISO reliability requirements (other than informational requirements) and does not overlap with the RMR provisions. The FERC Must-Offer Obligation acts as a backstop to these programs, ensuring that the CAISO has capacity to draw upon in the event capacity available through the other programs is inadequate to resolve reliability requirements. Must-offer waiver denials are decided taking into account the other resources available. *See* Market Procedure M-432; *pro forma* tariff

§§ 40.6A.6, 40.7.6. There is thus no overlap. Under RMR and the CPUC programs, Generators receive capacity payments. Under the Must-offer Obligation, while they receive a contribution to fixed costs, they do not receive a capacity payment. The Settlement is a step toward resolving this inconsistency, ensuring that Generators acting as backstops receive the fair compensation of a capacity payment. There is no overlap because RMR Units and capacity committed under Resource Adequacy requirement are not eligible for RCST designation.[18] Although the FERC must-offer obligation would remain a backstop primarily for zonal needs and unanticipated needs, its use will be severely circumscribed. In that regard, the CAISO must commit RA, RCST, and RMR units before it issues MOO waiver denials to FERC Must Offer Generator units. For the reasons set forth in the attached affidavit, the CAISO expects a significant reduction in the amount of MOO waiver denials. The entire purpose of the IEP complaint was to eliminate inconsistency presented by the must-offer obligation, which the Settlement accomplishes. Moreover, there is no overlap due to the continued but significantly reduced FERC must-offer obligation; under the Settlement, the CAISO cannot rely upon the FERC must-offer obligation unless capacity is unavailable under the other programs. Under Six Cities' logic, in order to be an acceptable means for ensuring reasonable compensation for Generators, the Settlement would have to replace RMR and California's Resource Adequacy with a single CAISO-imposed capacity program. This is simply not possible because the Resource Adequacy program is dictated by state law.

Six Cities also point to inconsistencies in the allocation of the costs of the cited reliability programs. Six Cities at 11-13. Although RMR, CPUC interim capacity

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[18] There is no potential for inconsistency between RMR and RCST, because RCST designations can only be made after the RMR process is complete. *See pro forma* tariff § 2.2.4.

requirement costs, and local must-offer costs are, indeed, incurred by the relevant Investor Owned Utility in its capacity as a Participating Transmission Owner, those costs are eventually passed through to various Load-Serving Entities (including the Participating Transmission Owner's own retail load) as such costs are included in the Reliability Services rates in the Transmission Owner Tariff of such PTO (and some such costs may be recovered more broadly through the impacts of the PTO's Transmission Revenue Balancing Account Adjustment on the CAISO's transmission Access Charge). RCST, like the CPUC Resource Adequacy requirement, simply skips the middleman. The only difference is that, while some entities may be exempt from pass-through, RCST imposes the costs on those entities that should have borne them through Resource Adequacy procurements. The CAISO fails to see how Six Cities can assert that these allocations, particularly when combined with the hierarchy of reliability designations discussed above, present an "obvious" potential for over-procurement, gaming, and inconsistent incentives.

Six Cities go on to contend that the CAISO has not demonstrated the need for an additional procurement program such that the Commission can evaluate the costs and benefits. Six Cities at 14-15. Six Cities fail to understand that the very nature of the RCST program ensures that there will be no costs unless there are concomitant benefits. Under the program, the CAISO will only procure RCST capacity when Load-Serving Entities have failed to meet pre-established reliability criteria. If there is no need for the additional procurement, there will be no procurement. Conversely, if there is RCST procurement, it is because a reliability need has been demonstrated. The CAISO's determination that 2006 Local RCST designations are unnecessary is illustrative of this

fact. Six Cities present evidence that there is no local reliability need in the L.A. Basin in 2006. *Id.* Consistent with the facts that there would be no benefit from Local RCST designations, there will be no designations and no Local RCST costs. There are simply no RCST costs imposed by the program unless there is a reliability need.

NCPA contends that the Settlement is inconsistent with the firm transmission rights of entities with long term generation assets. NCPA insists that out-of-state generation rights, coupled with firm transmission rights, should be sufficient to fulfill resource adequacy requirements. (NCPA at 31.) Such rights, of course, are useless for addressing local reliability concerns, and their treatment as local resources would defeat the purpose of local RCST. Because there will be no 2006 Local RCST Designations, however, NCPA's argument is moot. System Resource Deficiencies and 2007 local requirements are based on the criteria established by the CPUC and the Local Regulatory Authorities. Those criteria – not the Settlement – will determine the degree to which out-of-state generation can serve Resource Adequacy requirements.

Joint Commenters argue that the Commission should make the Settlement contingent on the CPUC providing credit for RCST capacity against Resource Adequacy requirements so that there is no duplicative procurement. Joint Commenters at 14-15. The CAISO, however, will only designate System RCST after review of the Year-Ahead and Month-Ahead demonstrations, so Load-Serving Entities can avoid duplicative procurement simply by fulfilling their CPUC requirements. The decision whether to allow deficient Load-Serving Entities to "lean on" the CAISO rather than fulfill their requirement in subsequent Month-Ahead demonstrations should be with the CPUC. The Settlement thus allows, but does not require, such credit.

Finally, Powerex claims that the methodology for making System RCST designations is vague and could result in discrimination against System Resources. Powerex at 8. This is without merit. The Settlement's requirement that the CAISO "make System designations by assessing the cost and benefits of such designation to total grid reliability based on the unit's effectiveness at resolving local and zonal constraints and the overall cost of the designation" is intended to provide for the maintenance of reliability at the lowest cost. There is nothing vague about the provision. It simply directs the CAISO to consider factors that can prevent unnecessary costs or duplicative designation. If the CAISO can designate a RCST unit to meet a System deficiency that also can satisfy any zonal or potential local needs, the CAISO will reduce the aggregate cost of the program by reducing the potential for must-off waiver costs and Significant Event designations. Although local designation are, as Powerex notes, determined prior to System designations, the local designation will not address zonal concerns that could require must-offer generation or subsequent events that could trigger a Significant Event designation for local reasons. The failure to take these factors into account would be irrational. Nonetheless, they are only one portion of the overall cost-benefit analysis in connection with System Designations. System Resources can compete fairly with other resources; there can be no discrimination when the decision is made according to overall costs and benefits.

IX. CONCLUSION

For the reasons stated above, the CAISO respectfully requests that the Commission accept the Settlement with only the condition specified in the Joint Reply Comments of the Settling Parties.

Respectfully submitted,

/s/ Michael E. Ward

Charles F. Robinson
General Counsel
Anthony J. Ivancovich
Assistant General Counsel – Regulatory
California Independent System
Operation Corporation
151 Blue Ravine Road
Folsom, CA 95630
916-608-7135 – telephone
916-608-7296 - facsimile

Kenneth G. Jaffe
Michael E. Ward
Julia Moore
Alston & Bird LLP
601 Pennsylvania Avenue, NW
Washington, DC 20004-2601
202-756-3300 – telephone
202-756-3333 - facsimile

Attorneys for the California Independent System
Operation Corporation

EXHIBIT A

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Independent Energy Producers Association,	)	
Complainant	)	
v.	)	**Docket No. EL05-146-000**
California Independent System Operator Corporation,	)	
Respondent.	)	

DECLARATION OF MARK ROTHLEDER
ON BEHALF OF
THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

1. My name is Mark A. Rothleder. I hold the title of Principal Market Developer for the California Independent System Operator Corporation ("CAISO"). I have held this position since Summer 2006. As Principal Market Developer, I generally play a lead role in the design and implementation of market rules and operating procedures for the CAISO and acted as the lead negotiator for the CAISO in the above-referenced proceeding. I also played the lead in designing the CAISO's proposed changes to its Tariff, filed in *California Independent System Operator Corporation,* FERC Docket No. ER06-723-000 (March 13, 2006), to implement its Interim Reliability Requirements Program ("IRRP"), as well as its resource adequacy related provisions of its February 9, 2006, Market Redesign and Technology Upgrade Tariff filing before this Commission (*California Independent*

System Operator Corporation, FERC Docket No. ER06-615-000 (February 9, 2006). Prior to my current position, I held the position of Director of Market Operations for the CAISO.

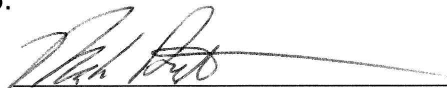
2. The purpose of my declaration is to provide information on Must-Offer Waiver Denials ("MOWDs") by the CAISO in 2005 in relation to resources designated as resource adequacy resources ("RAR") by certain California load serving entities ("LSEs") that can be used to inform the Commission and other parties to this proceeding as to the potential scope of anticipated capacity payments for generators in 2006 under article 7 of the Offer of Settlement.
3. Based on an analysis of available data, I have determined that, of the 1287 unit-days of MOWDs during 2005, only 218 unit-days involved units that are not currently designated as resource adequacy resources. Under the CAISO's proposed IRRP, resource adequacy resources are ineligible for capacity payments as a result of MOWDs and are eligible for Minimum Load Cost Compensation only to the extent such payments exceeded minimum load energy payments.
4. To perform this analysis, I compiled confidential data maintained by the CAISO in the ordinary course of business that identifies the generating resources for which the CAISO issued MOWDs in 2005, the number of MOWDs by reason (i.e., local, system, zonal) per resource, and the total MOWDs for the particular resource. I obtained the data on 2005 MOWDs from those individuals at the CAISO responsible for tracking such information.
5. I then determined whether the resource is subject to a Reliability Must-Run

("RMR") agreement with the CAISO for 2006, and whether the particular resource has been included in certain LSE's California Public Utilities Commission ("CPUC") resource adequacy year-ahead showing as provided to the CAISO. I say "certain" LSEs because it is not a comprehensive review of all CPUC jurisdictional LSEs. Under rules adopted by the CPUC, CPUC jurisdictional LSEs are required to include in their year-ahead resource adequacy showings, all resources, including specific physical generating units, that they intend to rely upon to meet ninety percent (90%) of their coincident peak load, plus a fifteen percent (15%) planning reserve margin. The CAISO is provided with these resource adequacy showings. I have access to all showings pursuant to a protective order adopted by the CPUC. The use of the data is limited under that protective order. However, I have the ability to utilize relevant resource adequacy information for this proceeding pursuant to separate Non-disclosure Agreements executed bilaterally between the CAISO and certain LSEs. The information reflected in the spreadsheet is limited to those LSEs that have consented to use in this proceeding.

6. In addition, I personally reviewed and utilized information on 2006 RMR units as well as LSE designated resource adequacy resources as discussed above.

I declare under penalty of perjury that the foregoing is true to the best of my knowledge.

Executed this First day of May, 2006.



Mark A. Rothleder

EXHIBIT B

2006 RMR Fixed Cost per Kw-Yr (Sorted by AFRR/Kw-Yr)

Trans Owner	Unit	Capacity (MW)	AFRR or AFRC	Fixed Option Payment $ (FOP)	RMR Rate (FOP/KW-Yr)	RMR Rate (AFRR/KW-Yr)	Docket No.
SDG&E	Palomar EC 2x1	541	$86,630,665	$17,320,000	$32.01	$160.13	ER06-577-000
SDG&E	South Bay 1	145	$10,525,748	$10,525,748	$72.59	$72.59	ER06-115-000
SDG&E	South Bay 2	149	$10,461,566	$10,461,566	$70.21	$70.21	ER06-115-000
SDG&E	Encina 5	330	$17,343,963	$9,400,428	$28.49	$52.56	ER06-426-000
SDG&E	Encina 4	300	$14,857,119	$8,052,558	$26.84	$49.52	ER06-426-000
SDG&E	South Bay 3	174	$8,151,036	$8,151,036	$46.85	$46.85	ER06-115-000
SDG&E	Cab 2, Miramar	34	$1,348,880	$1,348,880	$39.67	$39.67	ER06-197-000
SDG&E	Encina 3	110	$4,318,525	$4,318,525	$39.26	$39.26	ER06-426-000
SDG&E	Cab 2, Kearney 2	55	$1,712,457	$1,712,457	$31.14	$31.14	ER06-197-000
SDG&E	Cab 2, Kearney 1	17	$515,452	$515,452	$30.32	$30.32	ER06-197-000
SDG&E	Cab 2, Kearney 3	57	$1,566,704	$1,566,704	$27.49	$27.49	ER06-197-000
SDG&E	Encina 2	104	$2,599,810	$2,599,810	$25.00	$25.00	ER06-426-000
SDG&E	South Bay 4	221	$5,454,353	$5,454,353	$24.68	$24.68	ER06-115-000
SDG&E	South Bay CT	14	$320,907	$320,907	$22.92	$22.92	ER06-115-000
SDG&E	Encina 1	107	$2,311,248	$2,311,248	$21.60	$21.60	ER06-426-000
SDG&E	Cab 2, El Cajon	17	$356,507	$356,507	$20.97	$20.97	ER06-197-000
SDG&E	Calpeak, Border	42	$414,400	$414,400	$9.87	$9.87	ER06-91-000
SDG&E	Calpeak, El Cajon	42	$414,400	$414,400	$9.87	$9.87	ER06-90-000
SDG&E	Calpeak, Escondido	42	$414,400	$414,400	$9.87	$9.87	ER06-92-000
SDG&E	Miramar EC	47	$416,190	$416,190	$8.93	$8.93	ER06-108-000
SDG&E	Calpeak, Vaca Dixon	42	$331,520	$331,520	$7.89	$7.89	ER06-93-000X
SDG&E	Encina CT	16	$69,333	$20,800	$1.30	$4.33	ER06-426-000
					Average $33 /MW	Average $65 /MW	
SCE	Huntington Beach 2	215	$8,280,000	$2,898,000	$13.48	$38.51	ER05-406-000
SCE	Huntington Beach 1	215	$8,280,000	$103,500	$0.48	$38.51	ER05-406-000
SCE	Alamitos 3	320	$9,225,000	$4,151,250	$12.97	$28.83	ER05-406-000
							ER05-138
SCE	Etiwanda 3	320	$8,284,020	$0	$0.00	$25.89	ER06-113-000
							ER05-138
SCE	Etiwanda 4	320	$7,515,679	$0	$0.00	$23.49	ER06-113-000
					Average $5 /MW	Average $30 /MW	
PG&E	Los Esteros 1-4	180	$44,463,794	$33,347,846	$185.27	$247.02	ER06-268-000
PG&E	Geysers 7	38	$6,757,876	$3,378,938	$88.92	$177.84	ER06-217-00X
PG&E	Geysers 12	40	$6,529,236	$3,264,618	$81.62	$163.23	ER06-217-00X
PG&E	Geysers 6	40	$6,243,311	$3,121,656	$78.04	$156.08	ER06-217-00X
PG&E	Geysers 17	51	$7,255,435	$3,627,718	$71.13	$142.26	ER06-217-00X
PG&E	DEC	845	$103,752,212	$51,876,106	$61.39	$122.78	ER06-261-000
PG&E	Geysers 18	60	$7,291,947	$3,645,974	$60.77	$121.53	ER06-217-00X
PG&E	Geysers 11	60	$7,285,837	$3,642,919	$60.72	$121.43	ER06-217-00X
							ER05-343-000
PG&E	Potrero 3	206	$17,908,424	$8,954,212	$43.47	$86.93	ER06-111-000
							ER05-113
							ER06-99-000
PG&E	Hunters Point 4	160	$6,122,425	$6,122,425	$38.27	$38.27	ER06-341-000
							ER04-227-000
							ER05-343-000
PG&E	Contra Costa 7	345	$22,237,027	$11,118,514	$32.23	$64.46	ER06-110-000
PG&E	Pittsburg 5	312	$15,157,190	$7,578,595	$24.29	$48.58	ER05-343-000
PG&E	Pittsburg 6	317	$15,157,190	$7,578,595	$23.91	$47.81	ER05-343-000
PG&E	Oakland 1	55	$1,450,000	$1,087,500	$19.77	$26.36	ER06-266-000
PG&E	Oakland 2	55	$1,450,000	$1,087,500	$19.77	$26.36	ER06-266-000
PG&E	Oakland 3	55	$1,450,000	$1,087,500	$19.77	$26.36	ER06-266-000
PG&E	Creed	45	$300,000	$300,000	$6.67	$6.67	ER06-101-000
PG&E	Gilroy Peakers 1-2	90	$600,000	$600,000	$6.67	$6.67	ER06-98-000
PG&E	Gilroy Peakers 3-4	45	$300,000	$300,000	$6.67	$6.67	ER06-98-000
PG&E	Gilroy, Feather River	45	$300,000	$300,000	$6.67	$6.67	ER06-98-000
PG&E	Gilroy, Lambie	45	$300,000	$300,000	$6.67	$6.67	ER06-98-000
PG&E	Gilroy, Riverview	45	$300,000	$300,000	$6.67	$6.67	ER06-98-000
PG&E	Gilroy, Yuba City	45	$300,000	$300,000	$6.67	$6.67	ER06-98-000
	Gilroy, Wolfskill	45	$300,000	$300,000	$6.67	$6.67	ER06-98-000
PG&E	Goosehaven	45	$300,000	$300,000	$6.67	$6.67	ER06-112-000
							ER05-113
							ER06-99-000
PG&E	Hunters Point 1	52	$308,337	$308,337	$5.93	$5.93	ER06-341-000
							ER06-99-000
PG&E	San Joaquin Watershed	215	$1,263,160	$1,263,160	$5.88	$5.88	ER06-341-000
							ER06-99-000
PG&E	Humboldt Bay Mobiles	30	$157,895	$157,895	$5.26	$5.26	ER06-341-000
							ER05-343-000
PG&E	Potrero 6	52	$461,284	$230,642	$4.44	$8.87	ER06-111-000
							ER05-343-000
PG&E	Potrero 5	52	$451,175	$225,588	$4.34	$8.68	ER06-111-000
							ER05-343-000
PG&E	Potrero 4	52	$338,285	$169,143	$3.25	$6.51	ER06-111-000
							ER06-99-000
PG&E	Humboldt Bay 1	52	$157,895	$157,895	$3.04	$3.04	ER06-341-000
							ER06-99-000
PG&E	Humboldt Bay 2	53	$157,895	$157,895	$2.98	$2.98	ER06-341-000
							ER06-99-000
PG&E	Kings River Watershed	336	$947,370	$947,370	$2.82	$2.82	ER06-341-000
							ER06-99-000
PG&E	Helms 1	404	$157,895	$157,895	$0.39	$0.39	ER06-341-000
							ER06-99-000
PG&E	Helms 2	404	$157,895	$157,895	$0.39	$0.39	ER06-341-000
							ER06-99-000
PG&E	Helms 3	404	$157,895	$157,895	$0.39	$0.39	ER06-341-000
					Average $29 /MW	Average $52 /MW	
					State Average $27 /MW	State Average $52 /MW	

Certificate of Service

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

Dated this 1st day of May, 2006 at Folsom in the State of California.

/s/ Charity Wilson

Charity Wilson
(916) 608-7147

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