FILED
03-18-10
02:41 PM

APPENDIX

SETTLEMENT AGREEMENT BETWEEN CONSUMER PROTECTION AND SAFETY DIVISION AND CALPINE POWERAMERICA-CA, LLC

In order to avoid the costs and risks of further litigation and to more expeditiously resolve this matter, the parties agree to the following terms and conditions as a complete and final resolution of all issues in California Public Utilities Commission docket No. I.09-01-017.

1. RECITALS

1.1 The parties to this Settlement Agreement ("Settlement Agreement") are Calpine PowerAmerica-CA, LLC ("CPA") and the Consumer Protection and Safety Division ("CPSD") of the California Public Utilities Commission ("Commission") (CPA and CPSD are collectively referred to as the "Parties").

1.2 On February 16, 2006, CPA submitted a Resource Adequacy ("RA") compliance filing which referenced a liquidated damages ("LD") contract that CPA represented qualified for RA compliance purposes under Commission Decision 05-10-042.

1.3 On October 31, 2007, CPA submitted a year-ahead compliance filing for 2008 System RA compliance and 2008 Local RA compliance.

1.4 On December 5, 2008, CPSD submitted an Investigation Report, which alleged that CPA failed to comply with RA procurement obligations, as required by Commission Decision 05-10-042 and Decision 06-06-064.

1.5 The CPSD Investigation Report alleged that CPA's 2008 Year-Ahead System RA compliance filing submitted on October 31, 2007 included procurement from an expired LD contract for the months of July, August and September 2008 causing a total system deficiency of 70.37 MW. CPSD alleged that CPA's February 16, 2006 RA compliance filing indicated that the LD contract at issue would expire on June 30, 2008. CPSD further alleged that e-mails on

December 13, 2007, between Energy Division Staff and a Calpine employee supported CPSD's allegation that the LD contract would expire on June 30, 2008.

1.6 The CPSD Investigation Report also alleged that CPA used incorrect monthly demand response ("DR") allocation values for Local RA compliance purposes resulting in a Local RA deficiency totaling 10.76 MW-month for 2008.

1.7 On February 2, 2009, the Commission issued an order instituting investigation to determine whether CPA violated Commission RA program rules, regulations, or orders in CPA's October 31, 2007 Year-Ahead System and Local RA compliance filings ("I.09-01-017").

1.8 On May 11, 2009, CPA submitted Direct Testimony responding to and disputing the allegations in CPSD's Investigation Report and I.09-01-017.

1.9 With respect to the alleged System RA deficiency, CPA's Direct Testimony stated that the LD contract at issue did not expire on June 30, 2008 as alleged in the CPSD Investigation Report and that CPA had no system RA deficiencies for the time period at issue in I.09-01-017.

1.10 With respect to the alleged Local RA deficiency, CPA's Direct Testimony stated that, based on the Commission's guidelines and other information related to the Year-Ahead Local RA compliance filing, CPA believed it was using the correct DR allocations at the time it made the compliance filing.

1.11 CPA's Direct Testimony further stated that CPA promptly, in an amended filing on December 21, 2007, responded to the CPUC Energy Division staff's concerns in December 2007 regarding CPAs's 2008 Year-Ahead RA compliance filing and supplemented its filing in a manner that it believed fully and timely addressed the concerns raised by Energy Division.

1.12 On June 12, 2009, CPSD submitted Rebuttal Testimony responding to CPA's

Direct Testimony. CPSD's Rebuttal Testimony disputed CPA's position that CPA had correctly completed its February 16, 2006 RA compliance filing.

2. AGREEMENT

2.1 The Parties agree that this Settlement Agreement represents a compromise, and except as otherwise stated in sections 2.2 and 2.3, nothing herein constitutes an admission, agreement or endorsement of any disputed issue of fact or law. The Parties further agree that this Settlement Agreement does not constitute a precedent regarding any principle or issue in this proceeding or any future proceeding.

2.2 The Parties agree that the way in which CPA completed its February 16, 2006 RA compliance filing led the Commission's Energy Division and CPSD to believe that the LD contract at issue would expire on June 30, 2008 and that, because of this, CPA had not timely procured the capacity needed to meet its 2008 Year-Ahead System RA obligation.

2.3 For settlement purposes only, CPSD accepts CPA's assertion that the LD contract at issue did not in fact expire on June 30, 2008 and that CPA had timely acquired the capacity needed to meet its 2008 Year-Ahead System RA obligation consistent with Commission Decision 05-10-042 and Decision 06-06-064.

2.4 CPA shall make a settlement payment to the State of California General Fund in the amount of $225,000. The settlement amount shall be paid within 60 days of the issuance of a final non-appealable decision by the Commission approving the Settlement Agreement without material change.

2.5 The Parties agree that this Settlement Agreement is a release of all claims as between CPSD and CPA relating to I.09-01-017 and releases CPA, its officers, directors, employees, affiliates, and successors from all claims regarding this matter.

2.6 The Parties intend that in accordance with the Commission Rules of Practice and Procedure, Rule 12.5, Commission adoption of this Settlement Agreement will be binding on CPA and CPSD, including their legal successors, assigns, partners, members, agents, parent or subsidiary companies, affiliates, officers, directors, and/or employees.

2.7 The Parties agree that no signatory to the Settlement Agreement or any employee thereof assumes any personal liability as a result of this Settlement Agreement.

3. RECORD

3.1 The Parties agree that the reports, filings, testimony, attachments and other exhibits identified in Appendix A to this Settlement Agreement should be identified as exhibits in this proceeding and received in evidence, without cross-examination, for the sole and limited purpose of facilitating a determination by the Commission of whether the Settlement Agreement is reasonable in light of the whole record, consistent with the law, and in the public interest.

3.2 In the event that this Settlement Agreement is not approved by the Commission and the issues in this proceeding proceed through further discovery and evidentiary hearings, the Parties reserve the right to object to the admissibility of any of these reports, filings, testimony, attachments and other exhibits, or any portion thereof.

4. REASONABLENESS

4.1 The Parties agree that they have independently evaluated the terms and conditions of the Settlement Agreement and notwithstanding the settlement discussions among the Parties, which shall remain confidential pursuant to Commission Rules, no Party has relied or presently relies upon any statement, promise or representation by any other Party, whether oral or written, except as specifically set forth in this Settlement Agreement.

4.2 The Parties acknowledge and stipulate that they are agreeing to this Settlement Agreement freely, voluntarily, and without any fraud, duress, or undue influence by any other

Party. Each Party hereby states that it has read and fully understands its rights, privileges, and duties under this Settlement Agreement, including each Party's right to discuss this Settlement Agreement with its legal counsel, and has exercised those rights, privileges, and duties to the extent deemed necessary.

4.3 In executing this Settlement Agreement, the Parties agree that the Settlement Agreement is reasonable in light of the whole record, consistent with the law, and in the public interest.

5. SEVERABILITY

5.1 The provisions of this Settlement Agreement are not severable. If the Commission or any court of competent jurisdiction overrules or modifies as legally invalid any material provision of this Settlement Agreement, this Settlement Agreement may, at the discretion of either of the Parties, be considered rescinded as of the date such ruling or modification becomes final.

6. COMMISSION APPROVAL

6.1 The Parties agree that this Settlement Agreement is subject to approval by the Commission. As soon as practicable after the Parties have signed the Settlement Agreement, a Motion for Commission Approval and Adoption of the Settlement Agreement will be filed.

6.2 The Parties agree to support the Settlement Agreement, recommend that the Commission approve it in its entirety without change and use their best efforts to secure Commission approval of it in its entirety without modification.

6.3 The Parties agree that, if the Commission fails to adopt the Settlement Agreement in its entirety without material change, the Parties shall convene a settlement conference within 15 days thereof to discuss whether they can resolve any issues raised by the Commission's actions. If the Parties cannot mutually agree to resolve the issues raised by the Commission's

actions, the Settlement Agreement shall be rescinded and the Parties shall be released from their obligation to support this Settlement Agreement. Thereafter, the Parties may pursue any action they deem appropriate, but agree to cooperate to establish a procedural schedule for the remainder of the proceeding.

7. GOVERNING LAW

7.1 This Settlement Agreement shall be governed by the laws of the State of California as to all matters, including, but not limited to, matters of validity, construction, effect, performance and remedies.

8. ENTIRE AGREEMENT

8.1 This Settlement Agreement constitutes the Parties' entire agreement, which cannot be amended or modified without the express written and signed consent of all the Parties hereto.

9. COUNTERPARTS

9.1 This Settlement Agreement may be executed in separate counterparts with the same effect as if the Parties had signed one and the same document. All such counterparts shall be deemed to be an original and shall together constitute one and the same Settlement Agreement.

10. EFFECTIVE DATE

10.1 This Settlement Agreement shall become effective and binding on the Parties as of the date it is approved and the Commission's decision becomes final and non-appealable.

In witness whereof, the Parties have duly executed this Settlement Agreement.

Respectfully submitted,

_____

Richard Clark
Director
CONSUMER PROTECTION AND SAFETY DIVISION
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102-3298

_____, 2010

Respectfully submitted,

_____

CALPINE POWERAMERICA-CA, LLC
Thad Hill
President
717 Texas Avenue, Suite 1000
Houston, TX 77002

_____, 2010

Respectfully submitted,

_____

Travis Foss
Staff Counsel
CONSUMER PROTECTION AND SAFETY DIVISION
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102-3298

_____, 2010

In witness whereof, the Parties have duly executed this Settlement Agreement.

Respectfully submitted,

Richard Clark
Director
CONSUMER PROTECTION AND SAFETY DIVISION
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102-3298

1/8, 2010

Respectfully submitted,

_____

CALPINE POWERAMERICA-CA, LLC

_____, 2010

Respectfully submitted,

Travis Foss
Staff Counsel
CONSUMER PROTECTION AND SAFETY DIVISION
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102-3298

1/8, 2010

(END OF APPENDIX)