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AMERICAN ARBITRATION ASSOCIATION
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RELIANT ENERGY POWER GENERATION,
INC., a Delaware Corporation; RELIANT
ENERGY ETIWANDA, LLC, a Delaware
Limited Liability Company; RELIANT ENERGY
MANDALAY, LLC, a Delaware Limited Liability
Company; and RELIANT ENERGY SERVICES,
INC., a Delaware Corporation,

Claimants,

v.

CALIFORNIA INDEPENDENT SYSTEM
OPERATOR CORPORATION, a California
Nonprofit Public Benefit Corporation; and DOES
1-500.

Respondents.

CASE NO.

CLAIM FOR DAMAGES,
DECLARATORY AND
INJUNCTIVE RELIEF

1. Breach of Written Contract
2. Breach of Implied Covenant of Good Faith and Fair Dealing
3. Misrepresentation
4. Declaratory Relief
5. Unfair Business Practices (Cal. Bus. Prof. Code § 17200)

INTRODUCTION AND SUMMARY

1. The Reliant claimants (“Reliant”) provide energy and other energy related services, called “ancillary services,” to respondent California Independent System Operator Corporation (“CAISO”). Under certain circumstances, CAISO procures such services from Reliant under a form of contract known as a “Reliability Must Run (RMR) Contract.” The core issue in this arbitration is simple and straightforward: when Reliant provides

these services to CAISO does CAISO have an obligation to pay Reliant for these services, or must Reliant provide these services for free?

2. CAISO contends that Reliant must provide those services without compensation. But, as is the case with respect to virtually every other business in our country, Reliant is entitled to be paid for the services it provides, and CAISO cannot force Reliant to provide valuable services without paying for them. This common sense result will be demonstrated at the arbitration in at least the following ways:

a. When the parties began their contractual relationship, CAISO did indeed pay Reliant for providing ancillary services under the RMR contract. At no time did CAISO indicate that Reliant had any obligation to refund those payments. In fact, CAISO repeatedly and publicly confirmed that providers of such services, such as Reliant, with the form of RMR contract used by Reliant had no such obligation to refund such payments. Now, CAISO has “changed its mind,” and seeks to implement a *revised* interpretation of the RMR contract which would require that (a) Reliant refund all of the payments previously made, the (b) CAISO need not pay Reliant for services already provided by Reliant, and the (c) CAISO need not pay for future such services provided by Reliant.

b. The written contract and CAISO Tariffs and Protocols, under which the parties operate, support Reliant’s position, and not CAISO’s.

c. Should CAISO implement its “revised interpretation,” third party *purchasers* of such services will be *paid for receiving* such services and the party who actually provided the service will be forced to provide the services *without compensation*.

PARTIES

3. Claimant Reliant Energy Power Generation, Inc. (“REPG”) is a Delaware corporation. REPG is a signatory to one of the documents relevant to the dispute herein, is the indirect parent of claimants Reliant Energy Mandalay, LLC and Reliant Energy Etiwanda, LLC, and is an interested party in the outcome of this claim.

4. Claimant Reliant Energy Etiwanda, LLC (“Etiwanda”) is a Delaware limited

Liability company, and owns and operates a power generation plant in the State of California.

5. Claimant Reliant Energy Mandalay, LLC (“Mandalay”) is a Delaware limited liability company, and owns and operates a power generation plant in the State of California.

6. Claimant Reliant Energy Services, Inc. (“RES”) is a Delaware corporation, and is engaged in the purchase and sale of gas and electricity in the State of California.

7. Claimants REPG, Etiwanda, Mandalay and RES are hereinafter sometimes referred to as the “Reliant Claimants” or as “Reliant.”

8. Respondent California Independent System Operator Corporation (hereinafter referred to as “CAISO”) is a nonprofit public benefit corporation organized pursuant to the California Corporations Code for the purposes set forth in Chapter 2.3, Part 1, Division 1 of the California Public Utilities Code.

9. Under California law, a person bringing a lawsuit is entitled to name, as defendants, persons whose name, or whose role in the transaction at issue, are not known to the plaintiff at the time of filing. Because the identity of these defendants is not known at the time of filing, they are referred to as “fictitiously named defendants,” and are customarily designated as “defendants Doe 1 through 100.” Later, after the action has commenced, when, and if, the plaintiff discovers the identity of a defendant not known at the time of filing, the plaintiff may then substitute the real name for that defendant in place of one of the fictitiously named defendants. This procedure is used because, for statute of limitations purposes, the date the statute commences to run against a later-added defendant “relates back” to the date of the original filing. Customarily, in the initial pleading, the plaintiff alleges that these Doe defendants were legally responsible in some manner for the transactions and the damages caused thereby, and that each such fictitiously named defendant was the agent, servant or employee of other defendants. Thus, in keeping with California practice, Reliant names herein Does 1-100, as fictitiously named defendants.

a. The true names and capacities, whether individual, corporate, associate, or otherwise, of the respondents named herein under the fictitious names of DOES 1 through 100,

inclusive, are unknown to claimants, who therefore sue said respondents by such fictitious names. Claimants will ask leave to amend this Claim and insert the true names and capacities of said respondents when the same have been ascertained. Claimants are informed and believe, and thereon allege, that each of the respondents designated herein as a “DOE” is legally responsible in some manner for the events and happenings herein alleged, and that claimants’ damages as alleged herein were proximately caused by such respondents.

b. At all times material as alleged herein, each respondent was the agent, servant and employee of each of the remaining respondents, and acted within the purpose, scope and course of said agency, service and employment, with the express and/or implied knowledge, permission and consent of the remaining respondents, and each of them, and each of said respondents ratified and approved the acts of the other respondents.

THE STATE COURT ACTION

10. Reliant has brought an action against CAISO in the Superior Court for the State of California, seeking declaratory and injunctive relief arising out of the same transactions complained of herein. Reliant Energy Power Generation, Inc., et al. v. California Independent Service Operator Corporation, San Francisco Superior Court, No. 301717 (the “Action”). To the extent that the Action has been stayed, Reliant, by initiating this arbitration proceeding, does not waive any right to challenge the stay of the Action, or to seek, by appellate review or otherwise, to have the Action proceed in the Superior Court.

BACKGROUND

11. As part of the recent deregulation of the California electric power system, CAISO was established to insure efficient use and reliable operation of the electric transmission power grid through major parts of the State of California, including San Francisco County. Power transmission owners have transferred operational control of their power transmission facilities to CAISO (the “CAISO Control Area”). In that regard, one of CAISO’s responsibilities is to provide or obtain adequate “ancillary services” for the CAISO Control Area, and to dispatch such services as necessary.

12. The claims at issue here relate to amounts due Reliant for ancillary services, which essentially are “reserves” that can be called upon to help maintain appropriate voltage levels and frequency in the CAISO Control Area. There are four types of ancillary services purchased through the market by CAISO: spinning reserves, nonspinning reserves, replacement reserves and regulation. Spinning reserves is additional generating capacity available within 10 minutes from a unit that is operating at less than full capacity. Nonspinning reserves refers to capacity which is not delivering electricity to the grid but can do so within 10 minutes. Replacement reserves represent additional generating capacity that can be made available within 60 minutes; and regulation refers to services provided by units which are electronically connected to CAISO dispatchers and in response to computer control signals will instantaneously increase or reduce generation to match changing loads.

13. Ancillary Services are acquired by CAISO in two ways:

a. CAISO conducts hourly auctions through which it acquires ancillary services from willing sellers at market prices established through the auction process. In this regard the owners of RMR units may determine to “sell” their ancillary services into the market. In general, those owners “bid” what services they wish to provide, for which time periods, and at which price they are prepared to provide those services. Through a market-clearing process, administered by CAISO, ancillary services bid into the market are either accepted or rejected. If the bids are accepted, the ancillary services are provided to the market, and CAISO receives payment therefor, at the market clearing price, from the beneficiaries of the services. CAISO then remits the funds to each of the RMR owners who have sold their services into the market via a payment to the “Scheduling Coordinator” described below.

b. If the supplies available through the market auction are inadequate, CAISO acquires the remaining requirements by issuing a dispatch notice under the RMR Contract.

14. CAISO has designated units at Mandalay and Etiwanda as RMR units, and thus CAISO may *require* those units to provide energy and ancillary services when required for

maintenance of system reliability. The reliability must run services are provided pursuant to RMR Contracts originally filed with the Federal Energy Regulatory Commission (“FERC”) by Southern California Edison Company (“SCE”), the prior owner of the units. Reliant assumed those SCE contracts upon purchase of the power units.

15. Under CAISO rules all sales and purchases of electricity and ancillary services with CAISO much be made through a “Scheduling Coordinator.” Pursuant to a Scheduling Coordinator Agreement between claimant RES and CAISO, claimant RES serves as a Scheduling Coordinator to schedule energy and ancillary services for claimants Etiwanda and Mandalay. RES is entitled to be paid by CAISO the payments that are at issue here. Pursuant to the terms of the Scheduling Coordinator Agreement, those payments, in whole or in part, are required to be paid into RES’s bank account at the Wells Fargo Bank in San Francisco, California.

16. Under the billing and payment procedures which are part of the CAISO Tariff approved by the FERC and incorporated into the RES Scheduling Coordinator Agreement with CAISO, CAISO pays each “selling” Scheduling Coordinator for all ancillary services, at the appropriate “market price,” provided by the generating units the Scheduling Coordinator represents, whether those services were provided as a result of successful bids in the ancillary service auction or pursuant to calls under the RMR Contracts.

a. CAISO then recovers the cost of the ancillary services by collecting from each “purchasing” Scheduling Coordinator a *pro rata* share of the total cost of ancillary services acquired by CAISO. This *pro rata* share is calculated based upon the ratio of the energy purchased by a particular Scheduling Coordinator to the total energy purchased by all Scheduling Coordinators.

b. Each unit of ancillary service capacity is charged at the relevant market clearing price as was determined through the ancillary service auction. The market clearing price is charged whether the ancillary services are acquired by CAISO solely through the market or, in part, from calls under RMR Contracts.

17. Under most RMR Contracts, CAISO pays a specific contract price for ancillary services. However, the RMR Contracts inherited by Reliant (and others) from SCE are different. For Mandalay and Etiwanda there is a contract payment specified for energy, but the contract does not specify a payment for ancillary services.

18. For sales of *energy* under the RMR contracts, it may appear there is a double recovery because Reliant receives both the market clearing price *and* the contract price. However, this potential double recovery is eliminated by contract language requiring Reliant to credit all *market* revenues Reliant receives from its Scheduling Coordinator for *energy* against CAISO's payment obligations under the RMR Contract.¹ As a result, Reliant retains only the *contract* payment, but not the market payment.

19. With respect to sales of *ancillary services*, the methodology is different. There is no contract payment to Reliant in connection with the furnishing of ancillary services under the RMR contract. Consequently, unlike the contract language with respect to *energy*, the RMR contracts *do not* contain a clause requiring that the market payment be credited. Otherwise, Reliant would receive no payment for furnishing ancillary services.

20. CAISO's RMR Contracts with certain other generation owners (those with units originally owned by Pacific Gas and Electric and San Diego Gas and Electric) treated related ancillary service payments differently. Those contracts mirror the energy related portion of the Mandalay/Etiwanda contracts. They provide a payment for ancillary services capacity and then include explicit language requiring a credit for Scheduling Coordinator ancillary service revenues. As a result, under these other RMR contracts, the RMR owners retain only the contract payment. CAISO is attempting to engraft the credit, but not the payment, aspect of this other

¹ a. Reliant Etiwanda and Reliant Mandalay's RMR Contracts provide, in pertinent part:
"When calculating the amount due in an invoice, Owner shall credit the payment amount due from the ISO for payments received from Owner's Scheduling Coordinator for the Delivered MWhs in accordance with a Dispatch Notice or ISO's Request, based on actual receipts from the Scheduling Coordinator." (emphasis added)

b. "Delivered MWhs" in turn is defined as the "MWs or MWhs of Energy, as the case may be, Delivered by Owner pursuant to [CAISO's] Request."

form of RMR Contract onto Mandalay and Etiwanda's RMR Contracts despite the clear difference in contract language. Selective application of the crediting language used in other contracts to the Mandalay and Etiwanda agreements would mean that Mandalay and Etiwanda would not receive *any* payment for ancillary services provided under the RMR Contracts.

PRIOR PERFORMANCE

22. Claimants contend that they are entitled to be paid for ancillary services provided to CAISO when called by CAISO under the RMR Contract and furnished by claimants Etiwanda and Mandalay.

a. During 1998, CAISO did in fact make such payments to RES with respect to ancillary services called by CAISO and furnished by claimants Etiwanda and Mandalay. The payments were consistent with claimants' position here, and with the applicable contracts and tariffs, and were in an amount equal to the market price established for those services, as of the time the services were rendered. CAISO did not request any credit in connection therewith, but, to the contrary, stated that no credit was required. Those payments (the "**Course of Conduct Payments**") demonstrate the meaning of the contracts, as ascribed by the parties, before any dispute arose. The **Course of Conduct Payments** amounted to approximately \$1 million.

b. In addition to furnishing ancillary services that resulted in the **Course of Conduct Payments**, the claimants Etiwanda and Mandalay have thereafter throughout 1998, furnished ancillary services called by CAISO in the additional amount of approximately \$7 million. CAISO was initially "slow" in remitting payment in connection therewith (the "**Past Services Payments**"). When claimants inquired about those payments, CAISO repeatedly assured claimants that delay in making the payments was a function of problems with CAISO's billing and payment systems which did not recognize that the services had in fact been requested and provided, and that the **Past Services Payments** would be made promptly to claimants after the reason for the failure to pay had been identified and corrected. CAISO has now confirmed

and agreed that the disputed services had been requested and provided, and have represented to RES that they have collected payment for those services.

23. On frequent occasions throughout the summer of 1998, Reliant made market bids to provide ancillary services which CAISO arbitrarily elected not to accept, even though CAISO knew that the market would thus be undersupplied. Then, after rejecting Reliant's bids to provide these services through the market system, CAISO would then call, under a dispatch notice, for the *same ancillary services* from Reliant under the RMR Contract.

a. When Reliant questioned why its market bids were being rejected, but the same services were being virtually simultaneously called for under a dispatch notice by CAISO, CAISO admitted that CAISO knew that the actual demand for these services would exceed the scheduled loads (and that rejecting market bids would result in the necessity for calling for services under dispatch notices), but maintained that, under its tariff, CAISO could only accept market bids with respect to scheduled loads, even though the actual forecast loads required significantly more services. Thus, CAISO's position was that CAISO would not, or could not, accept market bids for services that CAISO *knew* would be required, but rather had to wait a short period, and then obtain those same services by means of an RMR dispatch. Reliant disputed the CAISO interpretation of its Tariff, which resulted in bypassing legitimate market bids and pointed out that the CAISO Tariff clearly allows CAISO to procure whatever amount of ancillary services it deems necessary.

b. In response to Reliant's objections to the deliberate bypassing of legitimate market bids, CAISO represented to Reliant the Reliant would be paid the same market payment whether the services were furnished under a market bid or pursuant to a dispatch notice. Explicit in these statements was a representation that there would be no requirement to credit market payments for ancillary services received by the Scheduling Coordinator, and thus, Reliant would be able to retain the market payment just as though its bid had been selected through the market bid process rather than the services obtained under the RMR Contract.

c. Representation by CAISO to Reliant included numerous group and private discussions which occurred during meetings and negotiations regarding FERC approval of the RMR contracts. During most of these discussions CAISO was represented by Beth Emery (General Counsel), Kellan Fluckiger (Vice President of Operations) and Brian Theaker (Manager of Operations and Engineering). There was considerable discussion of exactly how RMR owners would be compensated for providing energy and ancillary services, including the market payments made to the Scheduling Coordinators, and the fact that the SCE contract was different from the other RMR contracts in that it did not require crediting of market revenues for ancillary services. CAISO also represented that the reason the SCE contract did not require crediting was the fact that it did not include payment when ancillary services were provided. Brian Theaker started on several occasions that it would be unfair to expect credits when there were no payments.

d. Of particular significance were two discussions relating to CAISO's by passing of legitimate market bids in favor of RMR calls. The first occurred during the summer of 1998 and involved Brian Theaker and John Stout (Vice President of Reliant Energy Power Generation). This conversation centered around the complaint voiced by Reliant regarding the bypass problem. Brian Theaker addressed Reliant's concerns by stating that the end result was the same whether or not CAISO obtained the services through market bids or under the RMR contract. His logic was based on the fact that CAISO would pay the market price to RES, and RES would not be obligated to refund this payment. When pressed as to why he was sure this was the case, he cited the paragraph quoted above (21a) and even located it in the contract to clearly demonstrate his rationale. By making such representations, CAISO avoided further complaint and arbitration regarding their practice of bypassing legitimate market bids.

e. A subsequent conversation occurred on January 26, 1999 and involved both Kellan Fluckiger and Brian Theaker of CAISO. Reliant Energy was represented by John Stout and David Bobo (Manager of Planning and Coordination). During this conversation, the practice of bypassing market bids was brought up along with the issue of crediting. John Stout

stated that Kellan and Brian had repeatedly represented that crediting of market revenue for ancillary services was not required under the Etiwanda and Mandalay form of the RMR contract and that by doing so, CAISO had avoided arbitration and potential reimbursement of bypassed market revenues. Kellan Fluckiger then acknowledge that such representations had been made, but that a change in position had occurred, one that he did not necessarily agree with or have control over.

CAISO'S REPUDIATION

24. However, after having provided these assurances about claimants' entitlement to the **Past Services Payments**, CAISO now asserts that CAISO is not obligated to make, and will not make, those payments to claimants.

a. CAISO's refusal to pay is contrary to the language of the contracts and tariffs, as well as to the parties' prior course of performance.

b. CAISO's refusal to pay is based upon CAISO's attempt to require claimants to "credit back" payments received, from CAISO via RES, in connection with ancillary services furnished pursuant to a CAISO call. To the contrary, the Etiwanda/Mandalay RMR Contracts **do not** contain any such requirement, and CAISO's position seeks to manufacture contractual terms only under contracts applicable to other parties.

c. CAISO's refusal to pay the amounts in dispute herein is contrary to its contractual agreement to first pay dispute amounts pending final resolution of any such dispute.

d. The effect of CAISO's action is to deny RES the market payments it is entitled to receive (and which scheduling coordinators representing other generators do receive) and to effectively require Reliant Etiwanda and Reliant Mandalay to provide ancillary services without any payment for the services.

25. CAISO's "new" position that Reliant is not entitled to retain these market payments is not only in breach of the relevant contracts between Reliant and CAISO, but also arises out of CAISO's failure, on frequent occasions, to properly follow its tariff, because CAISO, under those tariffs, should have obtained those ancillary services from Reliant through the market

process in the first place, rather than first rejecting the bids for those services, and then immediately obtaining the same services through a dispatch notice.

26. In addition to failing and refusing to pay the **Past Services Payments**, CAISO's current position is that, in connection with *future* ancillary services rendered under a call by CAISO, neither RES, as Scheduling Coordinator, nor the Reliant claimants will be paid *anything* for the furnishing of those services.

a. Additionally, CAISO has withheld from Claimants amounts that claimants are otherwise entitled to be paid in order to effect a setoff against the **Course of Conduct Payments** that previously has been made to claimant.

b. By so doing, CAISO is attempting to "reverse, without any right or justification to do so, the approximately \$1 million previously paid, and referred to herein as **the Course of Conduct Payments**.

27. Claimants will be obligated to furnish, and CAISO will require, ancillary services pursuant to CAISO call and dispatch notices over a long period of time. The parties now have a ripe and justiciable dispute as to the interpretation of contractual language regarding whether CAISO is entitled to impose a requirement that claimants credit to CAISO revenues received from RES, and thus, on what terms CAISO will be required to remit payment to claimants with respect to the future furnishing of ancillary services pursuant to CAISO calls (the "**Future Services Payments**").

FIRST CAUSE OF ACTION
(Breach of Written Contract)

28. Claimants incorporate herein, as if fully set forth, each and every allegation contained in Paragraph 1 through 27, inclusive, of this Claim, as well as each and every other allegation contained in each other Cause of Action contained in this Claim.

29. As alleged hereinabove, CAISO has breached, and is continuing to breach, the written RMR contracts, and applicable tariffs, by refusing and failing to pay the **Past Services Payments** to claimants, by repudiating its obligation to make the **Future Services Payments**,

and by withholding other amounts otherwise due and owing to claimants in order to wrongfully recoup the **Course of Conduct Payments** previously made to claimants.

30. Claimants have performed all promises, conditions and covenants required of them (except to the extent CAISO's breaches have prevented such performance).

31. As a direct and proximate result of CAISO's breaches, claimants have been damaged in an amount in excess of \$8,000,000 and will continue to be damaged in increasing amounts due to CAISO continuing breaches of its future payment obligations.

SECOND CAUSE OF ACTION
(Breach of Implied Covenant of Good Faith and Fair Dealing)

32. Claimants incorporate herein, as if fully set forth, each and every allegation contained in Paragraphs 1 through 31, inclusive, of this Claim as well as each and every other allegation contained in each other Cause of Action contained in this Claim.

33. As alleged hereinabove, CAISO has refused and failed to pay the **Past Services Payments**, has repudiated its obligation to make the **Future Services Payments**, and has withheld other amounts due and owing to claimants in order to recoup the **Course of Conduct Payments**, previously made to claimants of the benefits of the contractual agreement entered between claimants and CAISO, in breach of the covenant of good faith and fair dealing implied by law.

34. Claimants have performed all promises, conditions and covenants requires of them (except to the extent CAISO's breaches have prevented such performance).

35. As a direct and proximate result of CAISO's breaches, claimants have been damaged in an amount in excess of \$8,000,000 and will be damages in increasing amounts due to CAISO's concerning breaches of its future payment obligations.

THIRD CAUSE OF ACTION
(Misrepresentation)

36. Claimants incorporate herein, as if fully set forth, each and every allegation contained in Paragraphs 1 through 35, inclusive, of this Claim, as well as each and every other allegation contained in each other Cause of Action contained in this Claim.

37. As is elsewhere herein alleged CAISO made untrue and/or misleadingly incomplete representation, or failed to state material facts concerning, *inter alia*, Reliant's entitlement to the payments sought here, and, including, without limitation, (i) whether Reliant was entitled to retain, without any obligations to credit, make payments received for ancillary services furnished after receipt of a dispatch notice from CAISO, and (ii) whether Reliant would be damaged, or disadvantaged, by CAISO's rejection of Reliant's offers to supply ancillary services through the market bid process, when, substantially simultaneous therewith, CAISO obtained those same services through dispatch notices pursuant to the RMR Contracts.

38. The representations of CAISO to Reliant as alleged herein were not true, accurate and complete for the reasons elsewhere herein alleged. CAISO made these inaccurate and misleading representations without reasonable grounds for believing them to be true, and with the intent to induce Reliant to rely upon them.

39. Reliant was unaware of the falsity of those representations and believed them to be true and acted in justifiable reliance upon those representations.

40. As a direct, proximate and foreseeable result of the inaccurate and misleading representations of CAISO as alleged herein, Reliant has suffered actual damages in an amount subject to proof at the hearing herein.

FOURTH CAUSE OF ACTION
(Declaratory Relief)

41. Claimants incorporate herein, as if fully set forth, each and every allegation contained in Paragraphs 1 through 40, inclusive, of this Claim, as well as each and every other allegation contained in each other Cause of Action contained in this Claim.

42. An actual controversy has arisen and now exists between claimants and respondent CAISO concerning the respective rights, duties and obligations with respect to payments regarding ancillary service capacity called by CAISO and furnished by claimants.

a. With respect to the **Future Services Payments**, claimants contend that they are entitled to be paid for such future services at the market rate prevailing at the time the

services are furnished, as is consistent with the obligations and prior conduct of the parties, and representations and assurances of CAISO.

b. Claimants further contend the CAISO's current practice of recouping for payments otherwise due to Reliant, amounts paid in connection with the **Past Services Payments** is unauthorized, and should be immediately terminated, and refunds made to Reliant with regards to all amounts sought to be recouped thereby.

c. On the other hand, respondent CAISO disputes claimants' position and contends that (I) claimants are not entitled to receive **Future Services Payments**, and must, in the future, continue to furnish ancillary service capacity without payment therefor, (ii) claimants are required, despite the language of the RMR contracts, to "credit back" payments received in connection with the furnishing of those ancillary payments, (iii) claimants are not entitled to be paid the **Past Services Payments**, and (iv) that CAISO may recoup the **Past Services Payments** from sums otherwise due to Reliant.

43. Claimants desire a judicial determination of their rights with respect to (I) **Past Services Payments** and (ii) **Future Services Payments**. A judicial declaration is necessary and appropriate at this time under these circumstances in order that the parties may ascertain their rights and duties in connection with the payment with respect to past and future furnishing of ancillary services under conditions where those services have been, or may be, called for by CAISO under dispatch notices.

FIFTH CAUSE OF ACTION
(Unfair Business Practices)
(Cal. Bus. Prof. Code § 17200)

44. Claimants incorporate herein, as if fully set forth, each and every allegation contained in Paragraphs 1 through 43, inclusive, of this Claim, as well as each and every other allegation contained in each other Cause of Action contained in this Claim.

45. As elsewhere set forth herein, acts and omissions of respondent CAISO include, without limitation, (I) requiring Reliant claimants to furnish ancillary services, but refusing to pay for those services, in direct derogation of binding obligations and after having given assurances

that those services would be paid for, (ii) attempting to coerce claimants Etiwanda and Mandalay to issue credits for payments that were received without any contractual basis to require such credits, and (iii) the unilateral withholding of amounts due to claimants in direct derogation of contractual agreements to pay the amounts pending the resolution of any underlying dispute. The acts, misrepresentations and omissions of respondent CAISO as alleged above constitute unfair business practices.

46. Respondent CAISO should be permanently enjoined from engaging in such unlawful, unfair and/or fraudulent business practices. In addition, claimants are entitled to equitable relief in the form of restitution and disgorgement of all earnings, profits, compensation and benefits obtained by respondent CAISO as a result of such unfair business practices.

WHEREFORE, claimants pray for judgment against respondents as follows:

1. For compensatory damages according to proof;
2. For a declaration that claimants are entitled to be paid **Future Services Payments** computed at the market rates for the services prevailing at the time of the service in the manner by which the **Course of Conduct Payments** were computed and paid;
3. For a declaration that CAISO is not entitled to withhold, from payments otherwise due to claimants, any amount previously paid to claimants in connection with the **Course of Conduct Payments**.
4. For a declaration that claimants are not required to credit any amount to CAISO in connection with the furnishing of ancillary services by claimants in response to a call by CAISO pursuant to the Dispatch Notice;
5. For a declaration that respondent CAISO must remit to claimants all **Past Services Payments** computed in the manner by which the **Course of Conduct Payments** were computed and paid;

6. For restitution and disgorgement of all earnings, profits, compensation and benefits obtained by respondent CAISO through unfair business practices, as determined at the hearing herein;

7. For an order permanently enjoining respondent CAISO from engaging in such unfair business practices;

8. For costs of suit incurred herein; and

9. For such and further relief, including injunctive relief, as this Panel deems just and proper.

DATED: June 24, 1999

MICHAEL Q. EAGAN
Attorneys for Claimants