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AMERICAN ARBITRATION ASSOCIATION

RELIANT ENERGY POWER) CASE NO. 71 198 00295 99
GENERATION, INC., a Delaware)
Corporation; RELIANT ENERGY) **CLAIM FOR DAMAGES AND**
ETIWANDA, LLC, a Delaware Limited) **DECLARATORY RELIEF**
Liability Company; RELIANT ENERGY)
MANDALAY, LLC, a Delaware Limited) 1. Breach of Written Contract
Liability Company; and RELIANT ENERGY)
SERVICES, INC., a Delaware Corporation,) 2. Declaratory Relief
Claimants,)
v.)
CALIFORNIA INDEPENDENT SYSTEM)
OPERATOR CORPORATION, a California)
Nonprofit Public Benefit Corporation; and)
DOES 1-500,)
Respondents.)

SOUTHERN CALIFORNIA EDISON)
COMPANY, a California corporation,)
Claimant,)
v.)
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,)
CALIFORNIA INDEPENDENT SYSTEM)
OPERATOR CORPORATION, a California)
Nonprofit Public Benefit Corporation; and)
DOES 500-600,)
Respondents.)

1 Claimant, Southern California Edison Company (“Edison”), for its claims against
2 the Respondents California Independent System Operator Corporation (“ISO”),
3 Reliant Energy Power Generation, Inc., Reliant Energy Etiwanda, LLC, Reliant
4 Energy Mandalay, LLC, and Reliant Energy Services, Inc. (collectively, “Reliant”)
5 and Does 500-600, alleges as follows:

6 **I.**

7 **SUMMARY**

8 1. Reliant submitted by facsimile to members of the ISO Governing
9 Board, on July 9, 1999, a Claim for Damages against the ISO for breach of
10 contract and other causes of action (“Reliant Claim”). Reliant asserts that the
11 core issue is straightforward – should it be paid for certain services it provides
12 under two contracts, or must it provide the services for free? The answer is also
13 straightforward, but not as Reliant asserts. Contrary to Reliant’s claims, the
14 ISO’s tariffs, protocols, and the Federal Energy Regulatory Commission (“FERC”)-
15 jurisdictional contracts at issue specify the compensation Reliant is to receive for
16 the fixed and variable costs of the energy and related services (“ancillary
17 services”) it supplies under those contracts. The Reliant claims for damages of
18 approximately \$8 million should be denied. The approximately \$8 million held by
19 the ISO for the period April through September, 1998 should be paid to Edison in
20 accord with the ISO’s FERC-jurisdictional tariffs for return to Edison’s customers
21 through California Public Utilities Commission-approved ratemaking
22 mechanisms.

23 **II.**

24 **INTRODUCTION**

25 2. Edison is a California utility providing energy and other services to
26 customers in Southern and Central California. Edison owns and maintains
27 electric transmission facilities and transferred operational control of those
28 facilities to the ISO effective April 1, 1998. Reliant and other owners of electric
29 generating facilities sell energy and ancillary services and earn revenue for doing
30 so from several sources. For Reliant, two of those sources are from the ISO: (1)
31 supplying energy and ancillary services to the ISO under market transactions;

1 and (2) supplying energy and ancillary services under Reliability Must-Run
2 Agreements (“RMR Contracts”) between Reliant and the ISO. The rates, terms,
3 and conditions of the Reliant RMR Contracts are subject to the jurisdiction of the
4 FERC and are not under the jurisdiction of this arbitration. Under FERC-
5 jurisdictional tariffs and protocols (“ISO Tariff and Protocols”), the ISO recovers
6 the costs of the Reliant RMR Contracts from Edison. Edison’s customers pay the
7 Reliant RMR Contract costs through California Public Utilities Commission-
8 approved tariffs. Edison’s claims for damages herein are limited to the period
9 April through September, 1998, when Reliant provided service pursuant to the
10 RMR Contract under Conditions of Must-Run Agreement “A”.

11 3. The RMR Contracts between Reliant and the ISO specify the
12 compensation that Reliant is to receive for providing energy and ancillary services
13 pursuant to dispatch notices under the RMR Contracts. However, Reliant
14 contends that, “There is no contract payment to Reliant in connection with the
15 furnishing of ancillary services under the RMR contract.” Reliant Claim,
16 paragraph 19. Proceeding from this incorrect premise, Reliant claims that when
17 it is dispatched to provide ancillary services under the RMR Contracts, it should
18 receive market revenues as if it had participated in the market. If the relief
19 demanded by Reliant were granted, it would receive not only the market
20 revenues, but also the compensation specified in the RMR Contract.

21 4. Contrary to Reliant’s claims, the RMR Contracts specify Reliant’s
22 compensation for providing ancillary services. Under the ISO Tariff and
23 Protocols, if the ISO (1) collects market revenues for ancillary services supplied
24 pursuant to dispatch under Reliant’s RMR Contracts, and (2) pays such revenues
25 to Reliant, then the amount of such payments should be deducted from the RMR
26 Contract invoices before they are forwarded to Edison. In the alternative, if the
27 ISO collects market revenues for ancillary services supplied pursuant to dispatch
28 under Reliant’s RMR Contracts, it should pay those revenues directly to Edison.
29 Likewise, market revenues which are being held by the ISO for ancillary services
30 supplied pursuant to past dispatch notices under Reliant’s RMR Contracts should
31 be immediately paid to Edison. Under protest, Edison paid past Reliant RMR
32 Contract invoices (forwarded to Edison by the ISO) even though the ISO had

1 neither deducted the market revenues for ancillary services as required by the
2 ISO Tariff and Protocols nor paid such revenues directly to Edison.

3
4 **III.**

5 **GENERAL ALLEGATIONS**

6 **A. Parties**

7 5. Claimant Southern California Edison Company is a California public
8 utility corporation primarily engaged in the business of supplying electric energy
9 in an area of Central and Southern California, excluding the City of Los Angeles
10 and certain other cities.

11 6. Respondent California Independent System Operator Corporation is
12 a California non-profit, public benefit corporation.

13 7. Edison is informed and believes, and on that basis alleges, that the
14 Reliant Claim alleges the identity and corporate status of the Reliant
15 respondents. Therefore, Edison incorporates by reference herein the allegations
16 of paragraphs three through six of the Reliant Claim concerning the identity and
17 corporate status of Reliant Energy Power Generation, Inc., Reliant Energy
18 Etiwanda, LLC, Reliant Energy Mandalay, LLC, and Reliant Energy Services,
19 Inc. Edison will amend this Claim to allege the true names and capacities of the
20 Reliant respondents, if necessary.

21 8. Edison is ignorant of the true names and capacities of respondents
22 Does 500 through 600, inclusive, and therefore names said respondents by such
23 fictitious names pursuant to California Code of Civil Procedure Section 474.
24 Edison will amend this Claim to allege the true names and capacities when they
25 are ascertained. Edison is informed and believes that Does 500 through 600,
26 inclusive, are responsible in some manner for the actions complained of herein or
27 contributed to the damages suffered by Edison. Whenever in this Claim any
28 allegation of wrongdoing is made against one or more of the named respondents,
29 it shall be deemed alleged against Does 500 through 600, inclusive, as well.

30 9. Edison is informed and believes, and on that basis alleges, that at all
31 relevant times, each of the respondents, including Does 500 through 600,

1 inclusive, was the agent, servant and employee of each of the remaining
2 respondents and that the acts, omissions, and other conduct alleged herein were
3 done within the course and scope of the agency, service, and employment, with the
4 express and implied knowledge, permission, and consent of the remaining
5 respondents, and each of the respondents ratified and approved the acts of the
6 other respondents.

7 **B. Background**

8 10. Edison transferred operational control of specified transmission
9 facilities to the ISO effective April 1, 1998, and thereby became a Participating
10 Transmission Owner under the ISO Tariffs and Protocols. Edison continues to
11 own and maintain its transmission system.

12 11. The ISO has operational control of the transmission facilities of
13 Edison and two other investor-owned utilities in the State of California under
14 (1) state statutes and (2) tariffs and contracts subject to the jurisdiction of FERC.

15 12. The ISO buys energy and ancillary services to ensure short-term
16 system reliability through both market transactions and under contracts with
17 specified generation facilities, called Reliability Must-Run Agreements ("RMR
18 Contracts"). The ISO recovers the costs of the energy and ancillary services
19 obtained through market transactions from buyers. The RMR Contracts are
20 between (1) the ISO and (2) the owner or other entity entitled to dispatch and
21 market the energy and ancillary services from the specified generation facilities
22 ("RMR Owners"). The ISO and RMR Owners recover the costs of services
23 provided under RMR Contracts from Participating Transmission Owners through
24 several steps. First, RMR Owners submit invoices for the costs of energy and
25 ancillary services they supply under the RMR Contracts to the ISO. Second, in
26 accord with its Tariffs and Protocols, the ISO is to review the invoices, calculate
27 the invoices based on information available to it, and deduct specified amounts
28 from the invoices. Third, the ISO is to submit the adjusted invoices to the
29 Participating Transmission Owner in whose service territory the generation
30 facilities are located, collect the revenue from such Participating Transmission

1 Owners, and ultimately pass the revenue collected to the RMR Owners. In
2 addition, the ISO has in the past collected and, Edison is informed and believes,
3 continues to collect from buyers, the costs of energy and ancillary services
4 supplied pursuant to RMR Contract dispatches *as if the energy and ancillary*
5 *services were delivered pursuant to participation in the ISO's market.* The ISO
6 has in the past paid such market revenue to Reliant. Under the ISO Tariff and
7 Protocols, the ISO is to deduct such revenues from the RMR Contract invoices
8 before the ISO submits the invoices to the Participating Transmission Owner if
9 such revenues have not already been deducted by the RMR Owners. In the
10 alternative, such revenues can be paid directly to the Participating Transmission
11 Owner. Edison is informed and believes that the ISO is holding on deposit
12 amounts equivalent to the market revenues for ancillary services supplied
13 pursuant to Reliant RMR Contract dispatches.

14 13. Reliant, in particular, Reliant Energy Etiwanda, LLC and Reliant
15 Energy Mandalay, LLC, directly and through their agent ("Scheduling
16 Coordinator"), supply energy and ancillary services to the ISO under both market
17 transactions and RMR Contract calls from plants designated as reliability must-
18 run generation facilities.

19 14. The FERC-jurisdictional RMR Contracts between Reliant and the
20 ISO specify the compensation for providing energy and ancillary services when
21 requested under an RMR Contract. If the RMR Owner delivers energy from a
22 specific unit at the generating facility pursuant to a dispatch notice or ISO
23 request under the RMR Contract, the contract provides for a dispatch payment
24 related to the fixed and variable costs of the specific unit, and if applicable, a start
25 up payment. If the RMR unit was not scheduled in the market to provide energy
26 or ancillary services before the ISO issues a dispatch notice for ancillary services
27 under the RMR Contract, the contract provides for payments related to the costs
28 of operating the specific generating unit. If the RMR unit was scheduled to
29 provide energy or ancillary services in the market before the ISO issues a
30 dispatch notice for ancillary services under the RMR Contract, the contract

1 provides for an opportunity cost payment related to the market revenues the RMR
2 Owner would have earned had it operated the RMR unit in the market as
3 originally scheduled. The RMR Contract does not provide for the payment of
4 market revenues to Reliant for energy and ancillary services supplied pursuant to
5 RMR Contract dispatches.

6 15. Under the ISO Tariff and Protocols, the ISO is to review the invoice
7 provided by the Reliant RMR Owner and calculate the amount due. Under the
8 ISO Tariff, the ISO recovers the costs from Edison (the Participating
9 Transmission Owner in whose service territory the Reliant RMR generating
10 facilities are located) either after deducting market revenues the Reliant RMR
11 Owners received for energy and ancillary services supplied pursuant to RMR
12 Contract dispatches or after paying such market revenues directly to Edison.

13 16. In the past, the ISO has failed, and at times continues to fail, to
14 (1) properly and adequately review the invoices provided by Reliant, (2) calculate
15 the amount due, and (3) deduct the market revenues Reliant received for ancillary
16 services provided pursuant to RMR Contract dispatches.

17 17. The ISO presently holds approximately \$8 million of market
18 revenues for ancillary services supplied by Reliant pursuant to RMR Contract
19 dispatches during the period April through September, 1998. The amount was
20 determined as if the ancillary services were supplied pursuant to participation in
21 the ISO's market.

22 18. The Reliant Claim asserts breach of contract, among other claims,
23 and damages in an amount in excess of \$8 million, primarily for the market
24 revenues related to ancillary services supplied by Reliant pursuant to RMR
25 Contract dispatches.

26 **FIRST CAUSE OF ACTION FOR BREACH OF CONTRACT,**
27 **TARIFFS, AND PROTOCOLS**

1 19. Edison realleges and incorporates by reference each and every
2 allegation contained in Paragraphs 1 through 18, inclusive, of this Claim, and the
3 Second Cause of Action for Declaratory Relief as though set forth herein.

4 20. The ISO has breached, and continues to breach, the ISO Tariffs and
5 Protocols by: (1) not reviewing adequately and properly the invoices provided by
6 Reliant under the RMR Contracts, (2) not calculating accurate RMR Contract
7 invoices for Reliant based on the information available to the ISO and the
8 provisions of the ISO Tariff and Protocols, (3) not deducting the market revenues
9 received by the Reliant RMR Owners for ancillary services supplied pursuant to
10 RMR Contract dispatches, and (4) not paying to Edison the approximately \$8
11 million now held by the ISO for the period April through September, 1998.

12 21. Edison has performed all promises, conditions, and covenants
13 required of it except to the extent the ISO's breaches have prevented such
14 performance.

15 22. As a direct and proximate result of the ISO's breaches, Edison has
16 been damaged in an amount of approximately \$8 million for the period April
17 through September, 1998, plus interest.

18 **SECOND CAUSE OF ACTION FOR DECLARATORY RELIEF**

19 23. Edison realleges and incorporates by reference each and every
20 allegation contained in Paragraphs 1 through 22, inclusive, of this Claim, as
21 though set forth herein.

22 24. An actual controversy has arisen and now exists between Edison and
23 respondent ISO and respondent Reliant concerning the respective rights, duties,
24 and obligations with respect to invoices and payments under Reliant RMR
25 Contracts.

26 a. Edison contends that the ISO should review Reliant invoices,
27 calculate accurate and appropriate invoices, and either deduct from the invoices
28 or pay directly to Edison the market revenues for energy and ancillary services

1 provided pursuant to RMR Contract dispatches to the extent these deductions are
2 not reflected in the invoices submitted by Reliant;

3 b. Edison further contends that the amounts the ISO is holding
4 on deposit which are market revenues for ancillary services (and for market
5 revenues for energy, if any) provided by Reliant pursuant to RMR Contract
6 dispatches should be paid to Edison;

7 c. In contrast to Edison's contentions, Reliant contends that the
8 ISO should not deduct from RMR Contract invoices or pay to Edison market
9 revenues for ancillary services provided pursuant to RMR Contract dispatches.
10 Reliant also contends that the ISO should pay to Reliant revenues the ISO is
11 holding on deposit.

12 d. In contrast to Edison's contentions, the ISO contends that it
13 need not calculate revised or adjusted RMR Contract invoices before forwarding
14 them to Edison.

15 e. Edison desires a judicial determination of its rights, duties,
16 and obligations, and a declaration with respect to Edison's rights to receive
17 adjusted invoices and to receive market revenues for energy and ancillary services
18 provided pursuant to Reliant RMR Contract dispatches. A judicial determination
19 is necessary and appropriate at this time so that the parties may ascertain their
20 rights and duties.

21 WHEREFORE, Edison prays for judgment against respondents as follows:

- 22 1. For compensatory damages according to proof;
- 23 2. For costs of suit incurred herein, including attorneys fees in accord
24 with the ISO Tariff Title 13;
- 25 3. For a declaration that the ISO shall (1) review the Reliant RMR
26 Contract invoices, (2) calculate the amount due based on the information
27 available to it and the ISO Tariffs and Protocols, (3) deduct from the Reliant RMR

1 contract invoices the market revenues for energy and ancillary services provided
2 pursuant to Reliant RMR Contract dispatches if not already deducted by Reliant
3 or pay such revenues directly to Edison, and (4) pay to Edison the approximately
4 \$8 million held by the ISO on deposit for the period April through September,
5 1998; and

6 4. For such and further relief, including injunctive relief, as may be
7 determined herein.

8 DATED: July 30,1999

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By: _____
Michael D. Mackness
Attorney for
SOUTHERN CALIFORNIA
EDISON COMPANY

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county aforesaid; I am over the age of 18 years and not a party to the within action; my business address is 2244 Walnut Grove Avenue, Rosemead, California 91770. On July 30, 1999, I served the documents listed below on the parties in this action as follows:

DOCUMENT(S) SERVED: **CLAIM FOR DAMAGES AND
DECLARATORY RELIEF**

**SUMMARY OF CLAIM FOR DAMAGES AND
DECLARATORY RELIEF**

SERVED UPON:

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