

**AMERICAN ARBITRATION ASSOCIATION**

**DALLAS OFFICE**

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RELIANT ENERGY POWER )  
GENERATION, INC., a Delaware )  
Corporation; RELIANT ENERGY )  
ETIWANDA, LLC, a Delaware )  
Corporation; RELIANT ENERGY )  
MANDALAY, LLC, a Delaware )  
Corporation; and RELIANT ENERGY )  
SERVICES, INC., a Delaware Corporation, )

Case No. 71 198 00295 99

Claimants,

v.

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

Respondents.

**CALIFORNIA INDEPENDENT SYSTEM OPERATOR'S  
MOTION TO STRIKE DEMAND FOR ARBITRATION**

On October 8, 1999, Southern California Electric Company ("SCE") filed a "Demand for Arbitration" under caption of the arbitration earlier commenced by Reliant Energy Power Generation, Inc., *et al.* ("Reliant"). SCE's Demand for Arbitration must be struck. SCE lacks standing to assert any claim against the California Independent System Operator Corporation ("ISO") since (1) it failed timely to protest the relevant "Settlement Statements" as required by the ISO Tariff; and (2) SCE failed to follow and exhaust the applicable ADR Procedures established by that same tariff prior to making a demand for arbitration.

## DISCUSSION

In late August 1999, SCE sought to intervene in the captioned action, the same action in which the October 8<sup>th</sup> Demand has been filed.<sup>1</sup> ISO timely filed and caused to be served its "Comments On and Partial Opposition to Petitions For Intervention." That Opposition opposed SCE's intervention to the extent it sought to raise and pursue claims not previously raised in accordance with the ISO Tariff. The Opposition stated: "Under sections 11.6.1.2 and 11.7.2 of the ISO Tariff, however, disputes concerning Settlement Statements must be raised within 10 days of receipt of the Settlement Statement." Since SCE's Demand for Arbitration filed on October 8, 1999, seeks to pursue the same matters as it had earlier raised in its Petition for Intervention, it too must be struck to the extent it seeks to raise claims barred by SCE's failure to dispute any settlement statement within 10 days as required by the ISO Tariff.<sup>2</sup>

Even had SCE timely raised its claims in accordance with the schedule established by the ISO Tariff, SCE still could make no demand for arbitration. Prior to making a demand for arbitration, SCE must file a dispute, timely, with the ISO and thereafter follow the "Negotiation and Mediation" procedures established in Section 13.2 of the ISO Tariff. Those procedures mandate "good faith efforts to negotiate to resolve any disputes"; require presentment of a claim

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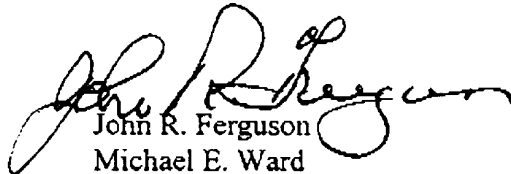
<sup>1</sup> SCE's "Demand" is a puzzlement. Filed in the *Reliant* arbitration, it presumably seeks to commence a new, separate arbitration. And, since it presents, by express incorporation, the same claims as those asserted in its Petition to Intervene which was also captioned "Demand for Arbitration," SCE's October 8<sup>th</sup> filing is redundant at best.

<sup>2</sup> Since no arbitrator has yet been selected in the *Reliant* proceeding, there has been no ruling on SCE's Petition for Intervention. Accordingly, SCE has no present standing for any purpose in the *Reliant* proceeding. Thus, *inter alia*, SCE has no standing to participate in the selection of an arbitrator. Moreover, even had SCE already achieved intervenor status, that status still would not permit SCE, or any other intervenor, to participate in the selection of an arbitrator. Under the ISO Tariff, only the original parties to the arbitration may participate in the selection of an arbitrator.

to "the ISO ADR Committee, and the ISO Governing Board"; and provide the opportunity for mediation prior to the initiation of arbitration. SCE has taken none of these steps prior to its present demand for arbitration.

Since SCE neither preserved any claim against the ISO, nor exhausted the prearbitration requirements found in the ISO Tariff governing disputes, it has no standing to make any demand for arbitration. Accordingly, its demand dated October 8, 1999, must be struck. Moreover, to the extent that SCE's Demand has been filed under the *Reliant* caption, it must be struck as redundant in view of SCE's earlier petition for intervention, a petition which has neither been granted nor denied and awaits decision by an arbitrator yet to be selected by Reliant and the ISO in accordance with the ISO Tariff procedures.

Respectfully submitted,



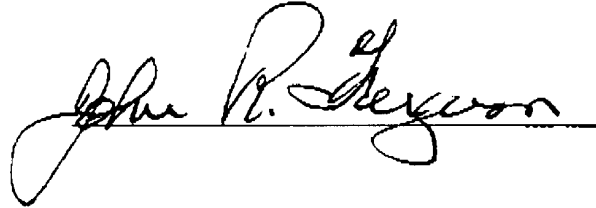
John R. Ferguson  
Michael E. Ward  
Zoë Allen

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP  
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Washington, DC 20007-5116

October 21, 1999

CERTIFICATE OF SERVICE

I hereby certify that a copy of CALIFORNIA INDEPENDENT SYSTEM OPERATOR'S MOTION TO STRIKE DEMAND FOR ARBITRATION was transmitted on this 21<sup>st</sup> day of October, 1999, by Telecopy only, as indicated on the attached facsimile cover sheet.

A handwritten signature in black ink, reading "John R. Peterson", is written over a horizontal line. The signature is cursive and includes a small "g" above the "t" in "Peterson".