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November 1, 1999

Via Facsimile

Ms. Nicolle Billmyre
Senior Case Manager
American Arbitration Association
13455 Noel Road, Suite 1750
Dallas, Texas 75240-6636

Re: *Reliant Energy Power Generation, Inc., et al. v. California Independent System Operator Corporation*

Dear Ms. Billmyre:

This responds to the October 25, 1999 letter from PG&E and SDG&E regarding the process for selection of arbitrators. Simply put, the AAA is proceeding correctly in allowing the arbitrators to be selected by Reliant, the claimant, and CAISO, the respondent.

The Protocol clearly supports this view. Indeed, in the litigation context, the plaintiff decides when and where to file, and whom to sue. Although other parties may, by leave of the court, intervene, in doing so, those intervenors place themselves before the jurisdiction of the court *selected by plaintiff*, in the place where plaintiff has filed suit.

Thus, it should come as no surprise that the Protocol envisions selection of arbitrators *only* by the original parties to the arbitration: the claimant and the respondent. This is clear from the language of section 13.3.1.2 of the Protocol. The selection process is predicated upon a two-sided approach (claimant v. respondent), *not* a multi-sided approach. The claimant side picks a single arbitrator and the respondent side picks a single arbitrator. Thus, the Protocol provides "the *two* arbitrators so chosen shall then choose a third arbitrator." Section 13.3.1.2.

For reasons of their own choosing, SDG&E and PG&E have voluntarily *elected* to join this proceeding. They did so with full knowledge that the claimant was Reliant, that the respondent was CAISO, and that each side would pick a single arbitrator, who would in turn pick a third. Having elected to join in this proceeding, which by definition had already commenced, the intervenors may not seek to change the fundamental line-up of the parties

here: the only claimant is Reliant, the only respondent is CAISO. If SDG&E and PG&E are displeased about being involved in arbitration where they do not select the arbitrator, they should seek to extricate themselves.

Indeed, it is impossible to see how the arbitrator selection process could reasonably work in a matter with multiple intervenors, where those intervenors may not accept the position of either the claimant or the respondent. What is it that SDG&E and PG&E want? Do they want to pick a third arbitrator, or even a fourth? Do they wish to expand the arbitration panel beyond the three envisioned by the Protocol to five? If there are ten intervenors, does it mean that the panel consists of 13 arbitrators—12 party arbitrators and one mutually-selected arbitrator?

Having invited themselves to this party, SDG&E and PG&E may not now be heard to object to the time, place or guest list. This result is not only mandated by the Protocol, it is also entirely fair to intervenors. This matter was brought by Reliant, and Reliant only, against CAISO, and CAISO only. Although the intervenors may have economic interest in the outcome of this matter, it is *their* decision to intervene here. Intervenors had several options, one of which was to institute *their own* proceeding against CAISO with respect to the issues that are important to them. Alternatively, intervenors had the option of doing what they did—that is, seeking to participate in *somebody else's* proceeding—the proceeding brought by Reliant.

Sincerely,

Michael Q. Eagan

MQE/jd

cc: M. Jines, Esq.
J. Golub, Esq.
Attached Distribution List

Reliant Energy Power Generation, Inc., et al. v. California Independent System Operator Corporation

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