

AMERICAN ARBITRATION ASSOCIATION
BEFORE INTERIM ARBITRATOR JOHN T. COUGHLIN

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

Respondent.

INTERIM
PROCEDURAL
ORDER

Case No.
71 198 00295 99

I.

BACKGROUND

On July 14, 1999, John T. Coughlin was notified by the American
Arbitration Association's (hereinafter referred to as "AAA) Vice President
of Case Management Molly Bargaenquest (hereinafter referred to as
"Bargaenquest"). and its Senior Case Manager Nicolle L. Billmyre.

(hereinafter referred to as "Billmyre") that he was being appointed Interim Arbitrator in a case involving the above-captioned parties.

II.
ISSUES

1. Initial Proper Statement of Claim

The first procedural issue that arose in this case was a request for a decision by the Interim Arbitrator as to what constituted an initial proper Statement of Claim under the FERC Tariff and/or under Schedule K and on what date was such a claim submitted.¹

The Interim Arbitrator instructed the parties to file briefs on this issue on July 19, 1999. The Interim Arbitrator received those briefs.

2. Schedule K/ FERC Tariff SECTION 13

Subsequent to the receipt of briefs on July 19, 1999, an issue arose as to whether the Statement of Claim language contained in Section 13.2.2 of Respondents' FERC Tariff or Section 1.4.2 of Schedule K should be applied by the Interim Arbitrator to the facts in this in case..

¹ The Interim Arbitrator is only deciding procedural matters, not substantive issues.

The parties had not briefed this issue in their respective July 19, 1999 briefs. The Respondent in its July 21, 1999 correspondence to Bargenquest and Billmyer made it clear that the application of Schedule K to this dispute would be improper and that the Interim Arbitrator should base his decision on Section 13 of the ISO Tariff.

Claimants' position as expressed in its July 21 letter to Billmyre was that, "This arbitration was properly commenced *either* under Schedule K, or Section 13 of the Tariff."

On July 21, 1999, the Interim Arbitrator was informed by the aforesaid Billmyre that in her discussions with the parties she learned that there might be procedures other than Schedule K or Section 13 of the Tariff that could be applied to the Statement of Claim issue noted above.

3. Extension of Time FOR RESPONSIVE STATEMENT OF CLAIM

Respondent has requested an extension of time for the submission of a responsive Statement of Claim under 13.2.2 of the Tariff.

Respondent on July 21, 1999, in a letter to Bargenquest and Billmyre requested that:

. . .the American Arbitration Association (“AAA”), acting in its capacity as the ISO ADR Committee for the above-referenced dispute, permit a longer period of time for the submission of statements of claim from responding parties. Pursuant to Section 13.2.2 of the ISO Tariff, responding parties have 14 days from the filing of the initial statement of claim to provide a response unless the ISO ADR Committee permits a longer period upon application.

In the underlying dispute, Reliant submitted its statement of claim on July 9, 1999, making responses due on July 23, 1999. However, the current intervening dispute concerning the date on which Reliant effectively complied with section 13.2.2 may result in a decision by the recently appointed interim arbitrator in favor of an earlier date of effective compliance, such as March 3, 1999 or June 24, 1999. If that occurs, then the 14 days permitted for a response will have already expired by the time the interim arbitrator reaches a decision. Therefore, to ensure a full and fair opportunity for all potential responding parties to provide a statement of claim, the ISO asks that the AAA extend the time period until seven days following the issuance of the interim arbitrator's decision.

Complainants in a July 21, 1999 reply to the aforementioned letter stated:

As you know, Reliant's position is that the Initial statement of claim was filed in March, and that the 14-day period has long since run. CAISO's position is that the initial statement of claim was filed on July 9, 1999, which would make the responses due on July 23, 1999. CAISO has been on notice that the *latest date* upon which responses would be due would be July 23, 1999. CAISO admits as much in its

letter. And, in its brief filed only two days ago, CAISO argued "...to properly move forward with the underlying dispute, all other parties should now have until July 24, 1999 to submit their own statement of claim," and that Southern California Edison, a potential intervenor, "believes it has until July 24, 1999 to submit its response." CAISO Brief at pp. 9-10. Having worshiped at the altar of technicality, CAISO should be forced to tithe.

Thus, even if CAISO wins the "commencement date" argument, the responses are due, at the latest, on Friday, July 23, 1999. CAISO should follow the rules that CAISO contends apply. By interpreting the Tariff as it sees fit, and by employing the Tariff's rules only when it benefits CAISO, CAISO seeks to have its cake and eat it too. Since July 23, 1999 is the response date for which CAISO argued, Reliant is unable to understand why that date should be extended.

The Interim Arbitrator notes that the Respondent at page 9 of its July 19, 1999 brief stated that:

D. The Statement of Claim Which Claimants Provided on July 9, 1999 Did Comply With Section 13.2.2. of the ISO Tariff, Making This the Effective Compliance.

The Respondent at the bottom of page 9 and top the of page 10 of the aforementioned brief argued that:

To properly move forward with the underlying dispute, all other parties should now have until July 24, 1999 to submit their own statement of claim.

At the bottom of page 10 of the aforesaid brief, Respondent's averred that:

In sum, the effective date on which Claimants' properly submitted a statement of claim in the underlying dispute was July 9, 1999. Therefore, going forward with the underlying dispute, all dates measured from the submission of a statement of claim should be measured from July 9, 1999. (Emphasis supplied)

The Interim Arbitrator is sympathetic to Claimants' argument in its July 21, 1999 letter brief that Respondent by its own words agreed that "all other parties should now have until July 24, 1999 to submit their statement of claim" and that consequently Respondent should now be foreclosed from arguing for any sort of extension of time for such a submission.²

However, to accept the July 23, 1999 as the date responsive Statements of Claim must be submitted is for the Interim Arbitrator to *de facto* conclude that Claimants submitted the initial proper Statement of Claim 14 days earlier on July 9, 1999.

² The fact that the Respondent interchangeably used the dates of July 23 and July 24, 1999 as the date on which responding parties must submit their responsive Statement

As noted previously, the first issue before the Interim Arbitrator is what constitutes an initial proper Statement of Claim and on what date was such a claim submitted to Respondent? Claimants' argued that, "...the initial statement of this claim was made no later than March 4, 1999, with Reliant's filing and service of the state court lawsuit." (Emphasis supplied; Claimants' brief p. 7)

Contrary wise, Respondent states unequivocally that "...the effective date on which Claimants' properly submitted statement of claim in the underlying dispute was July 9, 1999." (Emphasis supplied; Respondent's brief, p. 10)

For the Interim Arbitrator to Order as argued by Claimants that responding parties submit a responsive Statement of Claim by July 23, 1999 would be to prejudge that an initial proper Statement of Claim was filed on July 9, 1999. The Interim Arbitrator has not made any judgment as to whether March 4, 1999 or July 9, 1999 or some other date is the date an initial proper Statement of Claim was submitted.

of Claim has no impact on the Interim Arbitrator's decision on this issue. The correct date is July 23, 1999.

The Interim Arbitrator rejects Respondent's request that responding parties have until seven days following the issuance of the interim arbitration award to respond to the initial proper Statement of Claim.

The Interim Arbitrator is mindful of the desirability of having as timely as possible a proper response to the claims made by the Claimants. For the Interim Arbitrator to Order a response date seven days following the issuance of his Award would delay this matter for too long a period of time. Therefore, in an attempt to fashion a remedy equitable to all concerned the Interim Arbitrator is going to Order that all responsive Statements of Claim be filed by the close of business on July 30, 1999.

This date fashioned by the Interim Arbitrator is not in anyway connected or related to any of the dates involved in the instant case. In addition, this date is of absolutely no impact or significance relative to the Interim Arbitrator's eventual decision concerning the date of the initial proper Statement of Claim.

III.
INTERIM PROCEDURAL ORDER

The Interim Arbitrator hereby renders the following INTERIM
PROCEDURAL ORDER:

1. That the parties have until July 30, 1999 to simultaneously submit
briefs to the one another, the Interim Arbitrator and to AAA as to Issue
2 (Schedule K/FERC Tariff Section 13).
2. That all responding parties involved in the instant dispute have until
the close of business on July 30,1999 to submit a responsive
Statement of Claim.
3. That Respondent's written request of July 21,1999 that responding
parties have until seven days following the issuance of the interim
arbitration award to respond to the initial proper Statement of Claim is
hereby rejected.
4. That there shall be oral argument at 10:00 a.m. on Tuesday, August
3,1999 on the following matters:

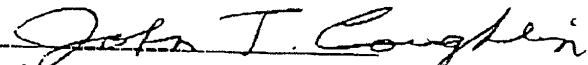
a) Additional argument and/or clarification as to the Statement of
Claim issue;

b) Additional argument and/or clarification on the Schedule K/FERC
Tariff Section 13 issue.

The Interim Arbitrator suggests that the aforesaid oral argument take
place in a suitable location in either San Diego or San Francisco.

Finally, the Interim Arbitrator requires that the oral argument be
transcribed by a court reporter that is able to provide a transcript on an
expedited basis.

Dated this 23rd day of July, 1999.

BY: 
John T. Coughlin
Interim Arbitrator