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18 **AMERICAN ARBITRATION ASSOCIATION**
19 **DALLAS OFFICE**

20 RELIANT ENERGY POWER GENERATION,
21 INC., et al.,

22 Claimants,

23 vs.

24 CALIFORNIA INDEPENDENT SYSTEM
25 OPERATOR CORPORATION, et al.,

26 Respondents.

27 SAN DIEGO GAS AND ELECTRIC
28 COMPANY and PACIFIC GAS AND
ELECTRIC COMPANY

Counter-Claimants,

vs.

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

Counter-Respondents.

CASE NO. 7119829599

RESPONSE TO CLAIM AND COUNTERCLAIM

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I.

**SAN DIEGO GAS & ELECTRIC COMPANY'S
AND PACIFIC GAS AND ELECTRIC COMPANY'S
RESPONSE TO CLAIM**

1. Reliant Energy Power Generation, Inc., *et al.* (“Reliant”) is not entitled to be paid twice for ancillary service capacity, as it seeks in its claim. Neither the federally regulated tariff upon which it relies nor its separate rate schedule for service to the California Independent System Operator Corporation (“CAISO”) establishes its right to a double payment. More specifically, the CAISO Operating Agreement and Tariff (“Tariff”), filed with and subject to the jurisdiction of the Federal Energy Regulatory Commission (“FERC”), is contrary to Reliant’s claim because it does not authorize, let alone require, payment for ancillary service capacity provided at the direction of CAISO under a “Reliability Must Run” (“RMR”) rate schedule. By contrast, Reliant already receives payments for this ancillary service capacity under its rate schedule for RMR service to CAISO, which is an unexecuted agreement filed with FERC (“RMR Contract”). Without legal authority, however, CAISO has paid Reliant substantial amounts under the Tariff, in error, for ancillary service capacity provided and paid for under the RMR Contract.¹

2. Since CAISO began commercial operation on April 1, 1998, San Diego Gas & Electric Company (“SDG&E”) and Pacific Gas and Electric Company (“PG&E”) have been charged by CAISO, and have paid for ancillary service capacity provided under a set of federally regulated rate schedules, the RMR Contracts with RMR generating plant owners, including Reliant. In addition, CAISO improperly charged for the same RMR ancillary service capacity in other bills issued to SDG&E’s and PG&E’s Scheduling Coordinator, the California Power Exchange Corporation (“PX”); the PX, in turn, passed a portion of these charges through to SDG&E and PG&E, based on their

¹ SDG&E and PG&E believe that issues concerning charges and payments for RMR ancillary service capacity, under RMR Contracts or the Tariff, are already pending in, and subject to the jurisdiction of, another forum, the Federal

1 respective end-use electric load.² These improper charges are the basis for the counterclaim asserted
2 along with this Response. As load-serving entities improperly billed under the CAISO Tariff for RMR
3 ancillary service capacity, SDG&E and PG&E have a direct interest in the outcome of Reliant’s Claim.
4

5 3. Whether payment is required for ancillary services capacity provided under the RMR
6 Contract is at the heart of Reliant’s claim against CAISO. Reliant incorrectly asserts that it must be
7 paid under the Tariff because it is not being paid for ancillary service capacity under its RMR
8 Contracts. However, the Tariff does not authorize, let alone mandate, what amounts to a double
9 payment for RMR ancillary service capacity. The reason is quite simple: Reliant’s RMR “contracts”,
10 which until at least June 1, 1999, were not bilateral contracts at all but only rate schedules filed with
11 FERC, already provide payments which cover RMR unit operators’ cost of providing energy and
12 ancillary service capacity called by CAISO through RMR dispatch notices issued pursuant to that rate
13 schedule.³ Therefore, RMR operators have already been paid for providing ancillary service capacity
14 and there is no requirement, or reason, to pay them again.
15

16 **II.**

17 **STATUS OF SDG&E**

18 4. Counter-claimant SDG&E is a California corporation. Under CAISO’s Tariff, SDG&E
19 is both a load-serving entity, obligated to pay for ancillary service capacity, and an owner of electric
20 transmission facilities controlled by CAISO (“Transmission Owner”), obligated to pay for
21

22 ///

23 RMR services from RMR owners whose units are located in the SDG&E service area. As such, it is
24 an interested party in the outcome of this claim.
25

26 Energy Regulatory Commission. By this response and counterclaim, SDG&E and PG&E do not waive the right that to
27 assert that Reliant’s claims are already pending before FERC, or, if not already pending, are subject to its jurisdiction.

28 ² A Scheduling Coordinator, whose role is described in detail in the Tariff, is an agent for power sellers, buyers,
or both for transactions with CAISO.

³ FERC policy requires pricing for RMR services to be cost based, not market based.

1 **III.**
2 **STATUS OF PG&E**

3 5. Counter-claimant PG&E is a California corporation. Under CAISO's Tariff, PG&E is
4 both a load-serving entity, obligated to pay for ancillary service capacity, and a Transmission Owner,
5 obligated to pay for RMR services from RMR owners whose units are located in the PG&E service
6 area. As such, it is an interested party in the outcome of this claim.⁴
7

8 **IV.**
9 **BACKGROUND**

10 6. CAISO commenced commercial operations on April 1, 1998, under its Tariff and
11 related protocols that are filed with FERC and subject to its jurisdiction. Among other duties, CAISO
12 is charged with maintaining the reliability of the transmission grid within its electrical control area. A
13 vital tool to maintain grid reliability is the use of RMR units that provide electric services through
14 dispatch notices issued by CAISO under the RMR Contract. When dispatch notices are given to
15 operators of RMR plants, they must provide a specified amount of electric energy, capacity, or both,
16 within a specified time period.⁵ In exchange for responding to dispatch notices, RMR plant owners
17 receive payments which compensate them for the cost of providing all dispatched services. Rates, as
18 well as terms and conditions, for these services set forth in the RMR Contract are filed with and
19 accepted by FERC. There are no obligations under either the RMR Contracts or the Tariff to make
20 additional payments to RMR unit owners or their Scheduling Coordinators for ancillary services
21 capacity supplied in response to RMR dispatch notices.
22

23 7. CAISO's Tariff authorizes payment at market clearing prices only for ancillary service
24 capacity purchased in its competitive ancillary services auctions, and not for ancillary service capacity
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26 _____
27 ⁴ Although SDG&E and PG&E have joined in this Response and Counter-Claim, each reserves the right to
participate in this proceeding individually rather than jointly, as may be desirable.

28 ⁵ Capacity, which includes ancillary services, represents the ability of a generator or system of generators to
provide energy when needed or called upon.

1 furnished under RMR Contracts for which the RMR owner has already been paid. Despite the lack of
2 Tariff authorization to pay for ancillary service capacity dispatched under RMR Contracts, CAISO has
3 paid again for such services ever since FERC authorized market prices for ancillary services capacity
4 delivered from RMR units through the CAISO's competitive auctions. Thus, the Scheduling
5 Coordinators of those RMR unit owners with market based ancillary service rate authorization from
6 FERC have erroneously received the market clearing price for all ancillary service capacity provided to
7 CAISO, even capacity provided under RMR dispatch notices for which RMR owners have already
8 been paid under the RMR Contract.

10 8. In turn, CAISO recovered its Tariff payments since April 1, 1998, for all (RMR and
11 market) ancillary service capacity from Scheduling Coordinators in proportion to each Scheduling
12 Coordinator's demands during the hour in which the capacity was provided.⁶ Accordingly, each
13 Scheduling Coordinator responsible for load has borne a portion of the excessive payments received
14 by RMR owners. SDG&E's and PG&E's Scheduling Coordinator, the PX, in turn assigned SDG&E
15 and PG&E their shares of the PX's ancillary service capacity cost in proportion to SDG&E's and
16 PG&E's respective demand. SDG&E and PG&E are uncertain of the amount they have overpaid as
17 the result of CAISO's erroneous practice because information upon which to base an accurate
18 calculation is available only from it. Although CAISO has thus far declined to furnish this information,
19 SDG&E and PG&E believe that the amount of overpayment is at least several million dollars and may
20 be in the tens of millions.

23
24 **V.**
COUNTERCLAIM

25 9. Based upon the foregoing, SDG&E and PG&E are entitled to relief in this matter.

27 ⁶ When transmission limitations (congestion) have required CAISO to divide its control area into transmission
28 zones, the costs of ancillary service capacity in each zone have been allocated only to Scheduling Coordinators
representing load in that zone.

1 10. First, they are entitled to a determination that CAISO has breached the Tariff
 2 provisions applicable to ancillary services capacity payments and to an order that the CAISO
 3 recalculate the amounts payable by all Scheduling Coordinators for load for each hour in which
 4 CAISO called on RMR units for ancillary service capacity since April 1, 1998. That recalculation
 5 should remove all amounts previously paid for ancillary service capacity provided pursuant to RMR
 6 dispatch notices, leaving only charges for ancillary services obtained through CAISO’s auction.
 7
 8 Second, following this determination, SDG&E and PG&E through their Scheduling Coordinator, the
 9 PX, are entitled to reimbursement with interest of the unwarranted payments each has made to CAISO
 10 through the PX. Third, SDG&E and PG&E are entitled to an order that, until such time as the Tariff
 11 may be amended to provide payments at market prices to RMR owners in connection with ancillary
 12 service capacity furnished under RMR dispatch notices and such amendment is accepted by FERC,
 13 CAISO cease issuing any bill to a Scheduling Coordinator for such RMR ancillary service
 14 capacity.⁷

15
 16 **VI.**
 17 **FIRST CLAIM FOR RELIEF**
 18 **(Breach of Contract)**

19 11. Counter-claimants incorporate each and every allegation contained in Paragraphs 1
 20 through 10, inclusive, of this Response to Claim and Counterclaim, as though set forth herein.

21 12. As stated above, CAISO has breached its Tariff by making payments to the Scheduling
 22 Coordinators of RMR owners or operators for ancillary service capacity provided under RMR
 23 dispatch notices, and by charging the cost of these unauthorized payments to Counter-claimants’
 24 Scheduling Coordinator, the PX, which in turn billed Counter-claimants for these improper charges.
 25
 26

27 ⁷ To avoid creating the double payment problem, any such amendment must be consistent with a uniform
 28 obligation of RMR owners or operators to credit any such amounts received under the Tariff against charges under the RMR Contract.

1 13. Counter-claimants have performed all promises, conditions, and covenants required of
2 them.

3 14. As a direct and proximate result of CAISO's breaches, Counter-claimants have been
4 damaged in an amount as yet undetermined but to be proven at arbitration.
5

6 **VII.**

7 **SECOND CLAIM FOR RELIEF**
8 **(Declaratory Relief)**

9 15. Counter-claimants incorporate each and every allegation contained in Paragraphs 1
10 through 14, inclusive, of this Response to Claim and Counterclaim, as though set forth herein.

11 16. An actual controversy has arisen and now exists between Counter-claimants and
12 CAISO concerning the respective rights, duties, and obligations with respect to payments regarding
13 ancillary service capacity made by CAISO and collected from Counter-claimants.

14 17. Counter-claimants desire a determination of their rights, duties, and obligations, past,
15 present, and future. A declaration of rights, duties, and obligations is necessary and appropriate at this
16 time under these circumstances in order that the parties may ascertain their rights and duties in
17 connection with the payments made in the past, and to be made in the future, for ancillary service
18 capacity under conditions where those services have been, or may be, called for by CAISO through
19 RMR dispatch notices.
20

21
22 Based upon the foregoing, Counter-claimants ask for relief against Respondents as follows:

- 23 1. For compensatory damages according to proof;
24
25 2. For a declaration that CAISO has improperly charged SDG&E's and PG&E's
26 Scheduling Coordinator, the California Power Exchange Corporation, which in turn
27
28

1 invoiced Counter-claimants for these improper charges for RMR ancillary service
2 capacity, and that it will not do so in the future;

- 3
4 3. For an order enjoining CAISO from billing any Scheduling Coordinator for
5 RMR ancillary service capacity until such time as the CAISO Tariff may be lawfully
6 amended to require market price payments to RMR owners in connection with such
7 service;
- 8 4. For costs associated with the filing and prosecution of this counterclaim; and
9
10 5. For such other and further relief as this panel deems just and proper.

11
12 DATED: July 30, 1999

OFFICE OF THE GENERAL COUNSEL

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16 Beth Eagleson
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18 SAN DIEGO GAS & ELECTRIC COMPANY
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20 PACIFIC GAS AND ELECTRIC COMPANY

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