

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  
AWARD

Case No.  
71 198 00295 99

I.

SEQUENCE OF PROCEDURAL EVENTS

On July 14, 1999, the American Arbitration Association (hereinafter referred to as "AAA") notified John T. Coughlin that he was being appointed Interim Arbitrator in a case involving the above-captioned parties.

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

The parties were ordered to file briefs on July 19, 1999, which briefs were received by the Interim Arbitrator. Subsequent to the receipt of the briefs, another issue

arose as to whether the Statement of Claim language contained in Section 13.2.2 of Respondent's FERC Tariff or Section 1.4.2 of Schedule K should be applied by the Interim Arbitrator to the facts in this case?

Four days subsequent to the aforementioned submission of briefs, the Interim Arbitrator on July 23, 1999 rendered an INTERMIN PROCEDURAL ORDER.

A part of that ORDER was that the parties had until July 30, 1999 to simultaneously submit briefs to one another, the Interim Arbitrator and to AAA on the above-noted FERC Tariff/Schedule K issue and that oral argument on August 3, 1999 be held on the following matters:<sup>1</sup>

- a) "Additional argument and/or clarification as to the Statement of Claim issue;
- b) Additional argument and/or clarification of the Schedule K/FERC Tariff Section 13 issue."

During the aforementioned telephone conference call, the Interim Arbitrator requested that the parties file letter briefs by August 5, 1999 as to matters that arose during the oral argument. The Interim Arbitrator received those letter briefs on the aforementioned date.

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<sup>1</sup> Subsequent to the issuance of the Interim Procedural Order it was agreed by all parties that the oral argument would be conducted *via* a telephone conference call. It was further agreed that the Interim Arbitrator would issue his Award in seven days in order to expedite this matter.

II.  
BACKGROUND INFORMATION

The California Independent System Operator Corporation (hereinafter referred to as “Respondent” or “CAISO”) is a California non-profit public benefit corporation. The CAISO was created as part of the restructuring of the State of California’s electric power system and it is regulated by FERC.<sup>2</sup>

Reliant Energy Power Generation, Inc., *et al.* (hereinafter referred to as “Reliant” or “Claimants”) provides Ancillary Services to Respondent.<sup>3</sup>

As part of the aforementioned restructuring, the CAISO assumed operational control of the transmission system of the State of California’s Investor-Owned Utilities: Pacific Gas & Electric Company, San Diego Gas & Electric Company and Southern California Edison. Another part of the restructuring was the acquisition of Southern California Edison’s generating facilities by Reliant Energy Etiwanda, LLC and Reliant Energy Mandalay, LLC.

The underlying substantive dispute in this case concerns Reliant’s claim that it is entitled to receive \$8 million from Respondent for providing Ancillary Services arising out of transactions in which the CAISO purchased those Services from Reliant’s Reliability Must Run units.<sup>4</sup>

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<sup>2</sup> Pacific Gas & Electric Co., San Diego Gas & Electric Co. and Southern California Edison Co., Docket Nos. EC96-19-001 thru -005, ER96-222-000, ER96-1663-001 thru -006, *et al.*

<sup>3</sup> Ancillary Services are essentially reserves that can be called up to help maintain voltage levels and frequency in the CAISO Control Area.

<sup>4</sup> The Interim Arbitrator’s jurisdiction in this matter is solely and exclusively limited to deciding procedural, not substantive, issues.

III.  
RELEVANT LANGUAGE

A. CAISO FERC Tariff

13.2.2 Statement of Claim

In the event a dispute is not resolved through such good-faith negotiations, any one of the parties may submit a statement of claim, in writing, to each other disputing party, the ISO ADR committee, and the ISO Governing Board, which submission shall commence the ISO ADR Procedures. The statement of claim shall set forth in reasonable detail (i) each claim, (ii) the relief sought, including the proposed award, if applicable, (iii) a summary of the grounds for such relief and the basis for each claim, (iv) the parties to the dispute, and (v) the individuals having knowledge of each claim. The other parties to the dispute shall similarly submit their respective statements of claim within fourteen (14) days of the date of the initial statement of claim or such longer period as the chair of the ISO ADR Committee may permit following an application by the responding party. If any responding party wishes to submit a counterclaim in response to the statement of claim, it shall be included in such party's responsive statement of claim. A summary of the statements of claim shall be published by the ISO in the ISO newsletter or WEnet, and any other method adopted by the ISO ADR Committee. No market Participant shall be considered as having received notice of a claim decided or relief granted by a decision made under these procedures unless the summary of the statements of claim published by the ISO includes such claim or relief.

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13.2.5 Demand for Arbitration

If the disputing parties have not succeeded in negotiating a resolution of the dispute within thirty (30) days of the initial statement of claim or, if within that period the parties agreed to mediate, within thirty (30) days of the parties first meeting with the mediator, such parties shall be deemed to be at impasse and any such disputing party may then commence the arbitration process, unless the parties by mutual agreement agree to extend the time. A party seeking arbitration shall provide notice of its demand for arbitration to the other disputing parties, the ISO ADR Committee and the ISO Governing Board, which

shall publish notice of such demand in the ISO newsletter or electronic bulletin board, and any other method adopted by the ISO ADR Committee.

**B. Schedule K**

**1.4.2 Statement of Claim**

In the event a dispute is not resolved through such good-faith negotiations, any party may submit a statement of claim, in writing, to each other disputing party, which submission shall commence the ADR Procedures. The statement of claim shall set forth in reasonable detail (i) each claim, (ii) the relief sought, including the proposed award, if applicable, (iii) a summary of the grounds for such relief and the basis for each claim, (iv) the parties to the dispute, and (v) the individuals having knowledge of each claim. The other parties to the dispute shall similarly submit their respective statements of claim within 14 days of the date of the initial statement of claim or such longer period as the AAA may permit following an application by the responding party. If any responding party wishes to submit a counterclaim in response to the statement of claim, it shall be included in such party's responsive statement of claim. No party shall be considered as having received notice of a claim decided or relief granted by a decision made under these procedures unless the statement of claim includes such claim or relief.

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**1.4.6 Demand for Arbitration**

If the disputing parties have not succeeded in negotiating a resolution of the dispute within 30 days of the initial statement of claim or, if within that period the parties agreed to mediate, within 30 days of the parties' first meeting with the mediator, such parties shall be deemed to be at impasse and any such disputing party may then commence the arbitration process, unless the parties by mutual agreement agree to extend the time. A party seeking arbitration shall provide notice of its demand for arbitration to the other disputing parties.

IV.

ISSUE No 1: WHETHER THE STATEMENT OF CLAIM LANGUAGE FOUND AT 13.2.2 UNDER THE FERC TARIFF OR THE 1.4.2 STATEMENT OF CLAIM LANGUAGE FOUND UNDER SCHEDULE K SHOULD BE APPLIED BY THE INTERIM ARBITRATOR TO THE FACTS IN THE INSTANT CASE

A. Reliant's Position

- That AAA, after consultation with FERC, had determined that Schedule K should be applied.
- That Schedule K applied to Reliant's claims retrospectively and prospectively.
- That Reliant is owed \$8 million for providing Ancillary Services.
- That Reliant is seeking declaratory and injunctive relief that commences in June of 1999.
- That during the term of the arbitration until its conclusion, the CAISO will apparently continue its practice of not paying Reliant for providing these Ancillary Services.
- That Reliant's damages will grow and that portions of these damages relate to the post-May 1999 time frame which is clearly covered by Schedule K.<sup>5</sup>
- That pursuant to paragraph 27 of Reliant's Demand for Arbitration filed with AAA, Reliant will be obligated to provide Ancillary Services over a long period of time and that it addresses issues as to what terms the CAISO will be required to remit payment to claimants with respect to the future furnishing of Ancillary Services.

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<sup>5</sup> Reliant uses the May 28, 1999 date when FERC accepted the Stipulation and Agreement which includes Schedule K as its benchmark for its future damages. The Interim Arbitrator is using June 1, 1999, the date the Stipulation and Agreement became effective, to be the benchmark date. The different dates are not significant as to this ruling.

- That in its fourth cause of action, filed with AAA as part of Reliant’s Demand for Arbitration, Reliant seeks declaratory relief as to Future Ancillary Service Payments.
- That in its fifth cause of action which relates to unfair business practices, Reliant specifically seeks to enjoin the CAISO from engaging in unfair competition in the future.
- That Reliant in its prayer for relief prays “For a declaration that the Claimants are entitled to be paid Future Service Payments....”
- That section 11.1, of the Dispute Resolution portion of the Pro Forma Must Run Service Agreement and Schedule K clearly supersede the ADR procedures in Tariff Section 13 with respect to post-May 1999.

B. CAISO’s Position

- That during the oral argument on August 3, 1999, Reliant conceded that neither Schedule K nor the related Pro Forma Reliability Must Run Agreements could have any possible application to any claims based on events occurring prior to June 1, 1999.
- That this conclusion is dispositive regarding the inapplicability of Schedule K in that all the claims at issue in this arbitration case arise under the rate schedules and related agreements in effect for periods prior to June 1, 1999.
- That the Stipulation and Agreement entered into by Reliant which included the Pro Forma RMR Agreement and Schedule K was signed by Reliant and was accepted by FERC on May 28, 1999 to be effective June 1, 1999.

- That among the issues specifically reserved for the determination in the FERC proceedings are the precise post-June 1 claims that Reliant now asserts as the reason that Schedule K should apply:
  11. Should RMR Owners be required to credit to the Responsible Utility any amounts paid by the ISO to the RMR Owner's Scheduling Coordinator for Ancillary Services provided pursuant to an ISO instruction to the RMR Owner?
  12. Should there be a payment to the RMR Owner for Ancillary Services capacity provided pursuant to an ISO instruction to the RMR Owner, and, if so, how should that payment be calculated?<sup>6</sup>
- That Reliant's entitlement to collect and retain capacity payments subsequent to June 1, 1999 are issues that Reliant explicitly has agreed shall be resolved by FERC, either through settlement or litigation; that as a result, they are not subject to this arbitration.

C. Discussion of Issue No. 1

1. Pre-June 1, 1999 Events:

It is undisputed that Schedule K was drafted as a set of dispute resolution procedures solely in conjunction with the Pro Forma Must Run Service Agreements.

The aforesaid Pro Forma Agreement was part of the Stipulation and Agreement signed by Reliant and Respondent, which agreement was filed with FERC on April 2, 1999 and accepted by FERC on May 28, 1999. The Pro Forma Agreement, including Schedule K, were part of the Stipulation and Agreement which became effective on June

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<sup>6</sup> Stipulation and Agreement, Article X, subsection C, 11 & 12.



1, 1999. Therefore, Schedule K became effective on June 1, 1999 for disputes originating and occurring after that date. Consequently, it is pellucidly clear that the events occurring prior to June 1, 1999 are not covered by Schedule K.

Therefore, based upon the above, the Interim Arbitrator finds that Section 13 of the CASIO FERC Tariff, not Schedule K, applies to all arbitration related events that occurred prior to June 1, 1999.

2. Post-June 1, 1999 Events:

Reliant's argues that events occurring after May 28, 1999 should be covered prospectively under Schedule K. However, the Interim Arbitrator finds that Article X, subsection C, paragraphs 11 and 12 of the aforementioned Stipulation and Agreement as accepted by FERC is controlling, not Schedule K.

Specifically, Article X ("Resolved and Unsettled Issues") states at subsection C ("Issues for Resolution under the Revised RMR Rate Schedules) that:

The following items were not resolved with respect to the Revised RMR Rate Schedules and it is agreed that these issues will be resolved in these procedures and in accordance with procedures specified herein. (Emphasis supplied).

The relevant paragraphs under this subsection are paragraphs 11 and 12 quoted above. In addition, it was uncontested during the August 5, 1999 oral argument that the parties have entered into settlement negotiations on a number of issues and that there has been a tentative settlement on issues related to subsection C, 11 and 12 and that the settlement will be filed with FERC in a few weeks. It is further uncontested that if the settlement is not finalized for whatever reason, the parties will litigate at FERC the

issues surrounding events occurring after June 1, 1999 as they relate to subsection C, 11 and 12.

Based upon the above, the Interim Arbitrator specifically finds that neither Section 13 of the CAISO FERC Tariff or Schedule K applies to post-June 1, 1999 arbitration related events but that these events are governed by the aforementioned FERC procedures.

V.

ISSUE No. 2: WHAT CONSTITUTED AN INITIAL  
PROPER STATEMENT OF CLAIM AND  
WHEN WAS IT SUBMITTED

A. CAISO's Position

- That Section 13.2.2 in the CAISO Tariff provides that a Statement of Claim must be in writing “to each other disputing party, the ISO ADR Committee and the ISO Governing Board.”
- That a Statement of Claim must set forth in reasonable detail “(i) each claim, (ii) the relief sought, including the proposed award, if applicable, (iii) a summary of the grounds for such relief and the basis for each claim, (iv) the parties to the dispute, and (v) the individuals having knowledge of each claim.”
- That once a proper Statement of Claim is submitted, other potential parties to the dispute have 14 days in which to submit their own Statement of Claim.
- That the CAISO Tariff recognizes that claims made by one market participant will often have impacts on other market participants or the public; consequently, the CAISO is required to publish summaries of Statements of a Claim in the CAISO

Newsletter or on the internet so that any such affected market participant can seek to participate in the proceeding.

- That the role of the CAISO as a non-profit public benefit corporation is to act as an intermediary in the electricity market place and that consequently disputes involving the ISO will almost invariably involve other participants who will have a direct interest in the dispute.
- That charged with this role, the CAISO is merely seeking to perform its functions correctly within the requirements of the CAISO Tariff and insure that the underlying dispute, which is the first dispute to be run under the CAISO's ADR procedures, takes place properly.
- That the CAISO has no authority to waive any of the steps required in the CAISO Tariff.
- That the Statement of Claim requirement in Section 13.2.2 applies not only to disputes involving the CAISO but to all disputes involving market participants; therefore, strict adherence to the requirements of 13.2.2 is essential if there is to be uniform application of those requirements.
- That strict compliance with the Tariff is necessary to insure that it is administered in a non-discriminatory way in order to avoid the claim of favoritism in the delivery of public services.
- That Reliant's filing and service on March 3, 1999 of the State Court Complaint on CAISO did not comply with Section 13.2.2 of the Tariff.

- (a) That the complaint did not even purport to be a Statement of Claim under Section 13.2.2 but was in fact a lawsuit seeking equitable relief and not an action to initiate ADR under Section 13 of the CAISO Tariff.
- (b) That Reliant by presenting their claim in the context of a State Court Complaint sought to invoke California Court Procedures thereby giving the CAISO 30 days to respond *vis-à-vis* the 14 day time period to respond to a Statement of Claim found in the Tariff.
- (c) That rather than giving the CAISO 30 days to demand arbitration, Reliant sought to avoid arbitration.
- (d) That Section 13.2.2 requires that a Statement of Claim include a description of each claim being asserted and the relief sought; contrariwise, Reliant's Complaint sought only injunctive and declaratory relief.
- (e) That Reliant in its Demand for Arbitration has added additional claims not included in their March 1999 State Court Complaint.
- (f) That the Statement of Claim is used to give notice to all market participants and to determine whose interests might be impacted by settlement, mediation or arbitration.
- (g) That to allow a party to expand significantly both the number of claims being asserted and the remedy being sought would completely undermine the purpose of a Statement of Claim of requirement.

- (h) That the service of the March 1999 Complaint on the CAISO did not meet the express requirements found in Section 13.2.2 in that Reliant did not submit the complaint to the CAISO ADR Committee and the Governing Board as Section 13.2.2 requires.
- That Reliant's June 24, 1999 filing with AAA does not comply with Section 13.2.2 as a Statement of Claim.
  - (a) That under Section 13.2.5 a Demand for Arbitration cannot be submitted unless the parties are unable to resolve the dispute within 30 days after submission of a Statement of Claim.
  - (b) That a Statement of Claim must be submitted first and that a Demand for Arbitration and a Statement of Claim cannot be submitted simultaneously.
  - (c) That because Reliant had not filed a Statement of Claim as of May 24, 1999, their Demand for Arbitration was premature and not in accordance with the CAISO Tariff.
  - (d) That Reliant failed to submit their June 24, 1999 materials to the CAISO itself and the CAISO Governing Board.
- That on July 9, 1999 Reliant submitted its Statement of Claim to all the proper parties in accordance with Section 13.2.2.

B. Reliant's Position

- That the essence of arbitration is to provide an expeditious and cost-effective dispute resolution mechanism.
- That the CAISO seeks to turn the arbitration procedure on its head and encumber it with unnecessary costs and delay.
- That the question to be decided is whether Reliant has provided the CAISO with sufficient "pre-filing" notice of Reliant's claims so as to allow Reliant to commence the arbitration.
- That this dispute was not "sprung" on the CAISO in that the parties had exchanged correspondence on this dispute since late 1998 and that a settlement meeting was held on March 3-4, 1999; that on March 4, 1999, Reliant filed and served a Complaint on CAISO in State Court and that said Complaint sought relief arising out of the transactions that are now at issue before AAA.
- That Respondent CAISO successfully moved to stay Reliant's lawsuit and compel this arbitration and that accordingly Reliant filed its arbitration demand on June 24, 1999.
- That the AAA proceeding was filed almost 120 days after the lawsuit had been brought, well beyond any 30 days "notice" period.
- That given the well-publicized nature of the dispute and the filing and service of the lawsuit certainly provided sufficient notice of the claims so that an additional written notice would be unnecessary.

- That it would have been superfluous to submit any document denominated “Statement of Claim” along with the lawsuit, which commenced the litigation process.
- That once the CAISO was successful in having the lawsuit “moved” to arbitration, it would hardly make any sense to go back to square one and file a Statement of Claim indicating that arbitration was in the offing.
- That in light of these circumstances, any deviation from the precise language of Section 13.2.2 is simply immaterial and does not constitute a material failure to comply with the preconditions for arbitration.
- That there is no requirement for service of the CASIO ADR Committee and Governing Board but that the claim need only be “submitted” in writing.
- That, moreover, service of the claim in the form of a State Court Complaint was made on Susan Schneider, Registered Agent for service of process and an officer of the CAISO.
- That the substance of the Demand for Arbitration, filed on June 24, 1999, complied with the requirement of a Statement of Claim.
- That Reliant by submitting a copy of the June 24, 1999 Demand for Arbitration to outside counsel Mr. Yuhas was effectively submitting it to the CAISO General Counsel and Corporate Secretary, Beth Emery, because undoubtedly Mr. Yuhas (who was hired by Ms. Emery) forwarded it to the aforesaid Emery.

- That at a minimum, the Arbitrator should determine that the Statement of Claim was submitted no later than June 24, 1999 and thus the filing of the Demand for Arbitration was effective no later than the 30 days thereafter, on July 24, 1999.

C. Discussion of Issue No. 2

1. Reliant's Filing of a Complaint in State Court on March 4, 1999

Reliant throughout this proceeding has stated that the ultimate issue to be decided is whether its actions have provided the CAISO with sufficient “pre-filing” notice as to allow Reliant to commence the arbitration or is it regulated to CAISO’s version of “chutes and ladders?”

Reliant vigorously argues that this dispute was not “sprung” on the CAISO in that the parties had exchanged correspondence in late 1998 and that settlement meetings were held on March 3 and 4, 1999. This pre-filing notice culminated in Reliant’s filing a Complaint in civil court on March 4, 1999 seeking relief on the very issues that are now before the AAA.

The Interim Arbitrator rejects this version of what constitutes adequate notice as being myopic. Section 13.2.2 of the CAISO Tariff states with great clarity and specificity what is required.

Section 13.2.2 mandates that a claim be made in writing and that it be submitted to “each other disputing party, the ISO ADR Committee and the ISO Governing Board.” It also states that the “submission shall commence the ISO ADR Procedures.” (emphasis supplied).



Section 13.2.2 then goes on to describe the specific elements of the claim that must be set forth in reasonable detail. It also allows for other parties to the dispute to submit their respective Statements of Claim within 14 days of the initial Statement of Claim. Finally, it mandates that “a summary of the statements of claim shall be published by the ISO in the ISO newsletter or WEnet.”

Reliant’s filing of a Complaint in State Court fails to fulfill the requirements noted above in that it did not submit the claim to all the parties noted in Section 13.2.2, nor did it in reasonable detail specify the particular elements of the claim as required by that Section of the Tariff.

The Interim Arbitrator is somewhat perplexed as to why Reliant’s complaints were filed in Civil Court in the first place, *vis-à-vis* proceeding to arbitration pursuant to Section 13 of the CAISO Tariff. The FERC’s strong support of Alternative Dispute Resolution (ADR) is well established by its listing ADR as one of the 11 principles that must be part of any ISO when it stated in Order No. 888 that:

An ISO should provide for a voluntary dispute resolution process that allows parties to resolve technical, financial, and other issues without resort to filing complaints at the Commission. We would encourage the ISO to establish rules and procedures to implement alternative dispute resolution processes.<sup>7</sup>

In addition, the FERC in its recent Notice of Proposed Rulemaking (NOPR) on Regional Transmission Organizations (RTOs) stated:

An independent RTO with an impartial dispute resolution mechanism would resolve disputes without resort to the Commission complaint process. The Commission has demonstrated its willingness to defer to such mechanisms. It is

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<sup>7</sup> Final Rule Order 888. Dockets RM95-8-00 and RM94-7-00, at page 286.

generally more efficient for these organizations to resolve many disputes internally rather than bringing every dispute to the Commission.<sup>8</sup>

Furthermore, the Interim Arbitrator finds Reliant's assertion that its Complaint filed on March 4, 1999 fulfills the requirements of Section 13.2.2 of the Tariff as a proper Statement of Claim to stretch the membrane of credulity beyond its breaking point. The Honorable Judge David Garcia in his May 24, 1999 Order To Compel Arbitration stated that the "Plaintiffs' refuse to arbitrate." No amount of legerdemain can change this civil Complaint, which has as its basis a refusal to arbitrate, into a Statement of Claim under Section 13.2.2 of the CAISO's arbitration procedures.

2. Reliant's Filing of a Demand for Arbitration on June 24, 1999

Reliant's filing of a Demand for Arbitration with AAA on June 24, 1999 was insufficient for the following reasons:

- a) It had not submitted a prior proper Statement of Claim under 13.2.2 in that the Interim Arbitrator has already concluded that Reliant's filing of a Complaint in Civil Court on March 4, 1999 did not constitute a valid Statement of Claim.
- b) That the CAISO's ADR procedure has, therefore, not been properly commenced. As noted previously, 13.2.2 states that, "...which submission (referring to the Statement of Claim submission) shall commence the ISO ADR Procedures." (Emphasis supplied).

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<sup>8</sup> Notice of Proposed Rulemaking. Regional Transmission Organizations. Docket RM99-2-000, at page 102.

- c) That under 13.2.5, Demand for Arbitration, the submitting of a Statement of Claim and the passage of 30 days from the filing of that claim are conditions precedent to submitting a Demand for Arbitration. Specifically, Section 13.2.5 states, “If the disputing parties have not succeeded in negotiating a resolution of the dispute within thirty (30) days of the initial statement of claim...any such disputing party may then commence the arbitration process...” (Emphasis supplied).
- d) Finally, Reliant’s July 24, 1999 filing of an arbitration demand does not constitute a proper Statement of Claim in that it was not submitted to the ISO Governing Board as required by Section 13.2.2. The Interim Arbitrator does not find that submitting the June 24, 1999 arbitration demand to outside counsel, Mr. Yuhas, was a proper submission to CAISO’s Corporate Secretary, Beth Emery.<sup>9</sup>

The Interim Arbitrator is constrained from modifying what he believes to be the intent of the parties relative to submitting a matter to the CAISO Governing Board. Section 13.2.2 lists the CAISO Governing Board as the party to submit claims made by disputing parties. However, that Governing Board requirement has been modified in Supplemental Procedure 2.1 to be the Corporate Secretary. If the parties modifying this language had intended further modifications to “Governing Board” they would have

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<sup>9</sup> The Governing Board is defined in Supplemental Procedure 2.1 to be the Corporate Secretary.

naturally included such a further modification in 2.1 in addition to the Corporate Secretary modification.

The Interim Arbitrator is constrained to expand or force a definition of Governing Board to now include outside counsel. The Interim Arbitrator is compelled to follow the well-established “intent of the parties’ rule.”

Whatever may be the inaccuracy of expression or the inaptness of words used in an instrument in a legal view, if the intention of the parties can be clearly discovered, the court will give effect to it and construe the words accordingly. It must not be supposed, however, that an attempt is made to ascertain the actual mental processes of the parties to a particular contract. The law presumes that the parties understood the import of their contract and that they had the intention which its terms manifest. It is not within the function of the judiciary to look outside of the instrument to get at the intention of the parties and then carry out that intention regardless of whether the instrument contains language sufficient to express it; but their sole duty is to find out what was meant by the language of the instrument. This language must be sufficient, when looked at in the light of such facts as the court is entitled to consider, to sustain whatever effect is given to the instrument. (Emphasis supplied).<sup>10</sup>

### 3. The July 9, 1999 Action By Reliant

It is uncontested that Reliant faxed its June 24, 1999 Demand for Arbitration to every member of CAISO’s Governing Board on July 9, 1999. The Interim Arbitrator finds that this action by Reliant satisfies the requirements of 13.2.2 and hence it is a valid and proper Statement of Claim.

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<sup>10</sup> 12 *American Jurisprudence*, Section 227, pp. 746–748 (citations omitted).

VI.  
IMPORTANCE OF THIS CASE

Reliant in its August 5, 1999 brief stated that it “emphasizes with the understandable desire to construct a careful and thoughtful opinion” but is concerned “that the legacy of that decision will be ‘justice delayed, justice denied.’” It goes on to note that “an advisory opinion is of limited, if any, utility.” Finally, it observes that, “We note that the issuance of a TRO enjoining the dynamiting of a dam is of no significance if issued the day after the dam has been destroyed.”

The Interim Arbitrator having practiced law for over 30 years, 20 of those years in the private practice of law, has some awareness of the legitimate frustrations a client and his attorney would have in a case involving a claim of \$8 million. However, this arbitration case is a case of first impression that tests the arbitration procedures governing disputes involving the CAISO and one of its members. These arbitration procedures will in all probability be involved in other cases involving the CAISO. It should be carefully noted that Section 13.3.11.1 of CAISO’s arbitration procedure lists as one of the factors an arbitrator may take into consideration in making his/her decision is “relevant decisions in previous arbitration proceedings.” Consequently, it is hoped that this decision will give some guidance as to the requirements of those arbitration procedures to future CAISO involved arbitrators and to the approximately thirty members of the CAISO if they ever become involved in an arbitration case originating within the CAISO Control Area.

VII.  
FINDINGS OF FACT AND LAW

Pursuant to the mandate found in Section 13.3.11.1 of CAISO's FERC Tariff the Interim Arbitrator makes the following FINDINGS OF FACT AND LAW.

A. Findings of Fact

1. That Respondent California Independent System Operator Corporation is a California non-profit public benefit corporation.
2. That Respondent was created as part of the restructuring of the State of California's electric power system and is regulated by FERC.
3. That Reliant Energy Power Generation, Inc. *et al.* are Delaware corporations which provide Ancillary Services to Respondent.
4. That Reliant operates generating facilities previously owned by Southern California Edison.
5. That the underlying substantive dispute in this case concerns Reliant's claim for payment of \$8 million from Respondent for Reliant's providing Ancillary Services arising out of transactions in which Respondent purchased those Services from Reliant's Reliability Must Run units.
6. That on July 14, 1999, the American Arbitration Association notified John T. Coughlin that he was being appointed Interim Arbitrator in a case involving Respondent and Reliant and that he was only to decide procedural, not substantive, issues arising in the case.

7. That the first procedural issue that arose was a request for a decision by the Interim Arbitrator as to what constitutes an initial Statement of Claim under the FERC Tariff and/or Schedule K and on what date was such a claim submitted?
8. That briefs were filed by the parties on this issue on July 19,1999.
9. That subsequent to the filing of those briefs, another issue arose as to whether the Statement of Claim language contained in Section 13.2.2 of Respondent's FERC Tariff or Section 1.4.2 of Schedule K should be applied by the Interim Arbitrator to the facts in this case?
10. That on July 23, 1999 the Interim Arbitrator rendered a Interim Procedural Order, which Order instructed the parties to file briefs on the above-noted FERC Tariff/Schedule K issue by July 30,1999 and that oral argument would be held on 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 of the Schedule K/FERC Tariff Section 13 issue.
11. That the July 30,1999 briefs were timely filed with the Interim Arbitrator and that letter briefs concerning matters that arose during the August 3,1999 oral argument were received on August 5,1999.
12. That Section 13 of Respondent's FERC Tariff, not Schedule K, applies to all arbitration related events that occurred prior to June 1,1999 for the reasons set forth above.

13. That neither Section 13 of Respondent's FERC Tariff or Schedule K applies to post-June 1, 1999 arbitration related events but that these events are governed by the procedures flowing from the FERC Stipulation and Agreement's Article X, subsection C (Issues For Resolution Under the Revised RMR Rate Schedule) as to those issues articulated in subsection C, paragraphs 11 and 12 of Article X for the reasons set forth above.
14. That Reliant and the CAISO were signatories to the aforementioned FERC Stipulation and Agreement that was filed with FERC on April 2, 1999 and accepted by FERC on May 28, 1999, with an effective date of June 1, 1999.
15. That Reliant's filing of a Complaint in State Court on March 4, 1999 did not satisfy the requirements of Section 13.2.2 (Statement of Claim) of Respondent's FERC Tariff for the reasons set forth above.
16. That Reliant's filing of its June 24, 1999 arbitration demand with the American Arbitration Association did not satisfy the requirements of Section 13.2.2 or of Section 13.2.5 (Demand for Arbitration) of Respondent's FERC Tariff for the reasons set forth above.
17. That Reliant's faxing of its June 24, 1999 Demand for Arbitration to all the members of Respondent's Governing Board did satisfy the requirements of Section 13.2.2 of Respondent's FERC Tariff for the reasons set forth above.



B. Findings of Law

1. That Reliant's filing of a Complaint in State Court did not satisfy the requirements of Section 13.2.2 of Respondent's FERC Tariff.
2. That Reliant's filing of its June 24, 1999 Demand for Arbitration with the American Arbitration Association did not satisfy the requirements of Sections 13.2.2 or Section 13.2.5 of Respondent's FERC Tariff.
3. That Reliant's faxing of its June 24, 1999 Demand for Arbitration to all the members of Respondent's Governing Board did satisfy the requirements of Section 13.2.2 of Respondent's FERC Tariff.

VIII.  
AWARD

That based on the evidence in the record, the terms of Respondent's FERC Tariff, Section 205 and other relevant sections of the Federal Power Act, FERC regulations and decisions relating to Independent System Operators and Regional Transmission Organizations, applicable state of California and federal law, and the aforesaid FINDING OF FACT AND LAW, the Interim Arbitrator renders the following Interim Award:

1. That Reliant has fully satisfied the requirements of Section 13.2.2 of Respondent's FERC Tariff by its July 9, 1999 faxing of its June 24, 1999 Demand for Arbitration to all the members of Respondent's Governing Board.

2. That with Reliant's satisfaction of the requirements of submitting a proper Statement of Claim pursuant to Section 13.2.2 of Respondent's FERC Tariff on July 9, 1999, coupled with the passage of 30 days from that submission of that Statement of Claim, Reliant has satisfied the conditions precedent to filing a Demand for Arbitration under Section 13.2.5 and, therefore, is in a position to immediately file that arbitration demand with the American Arbitration Association upon receipt of this Award.

Submitted this 13<sup>th</sup> day of August, 1999.

BY: /s/ John T. Coughlin  
John T. Coughlin  
Interim Arbitrator