

June 6, 2003

VIA TELECOPY AND U.S. MAIL

STATEMENT OF CLAIM PURSUANT TO THE ISO TARIFF § 13.2.2

TO: California Independent System Operator Corporation  
Charles Robinson, General Counsel  
151 Blue Ravine Road  
Folsom, CA 95630

California Independent System Operator Corporation  
Board of Governors  
Kim Hubner, Executive Assistant to Office of Corporate Secretary  
151 Blue Ravine Road  
Folsom, CA 95630

American Arbitration Association (as delegated agent for the ISO  
ADR Committee)  
Ms. Molly Bargaquest, Vice President—Case Management  
Center  
1750 Galleria Tower  
13455 Noel Road  
Dallas TX 75240-6636

From: Mark C. Zebrowski  
Mark H. Harner  
Attorneys for Williams Energy Marketing & Trading Co.

Re: Statement of Claim of Williams Energy Marketing & Trading Co.  
Pursuant to the ISO Tariff § 13.2.2

INTRODUCTION

Claimant Williams Energy Marketing & Trading Co. ("Williams") submits this Statement of Claim pursuant to Section 13.2.2 of the California Independent System Operator Corporation ("ISO") Operating Agreement and Tariff.

### CLAIM

1. Between December 8, 2000, and May 31, 2001, the ISO improperly imposed penalties on Williams under Amendment 33, section 5.6.3.1 of the ISO Tariff, in the amount of \$25,512,238.54.

### GROUND S FOR RELIEF AND BASIS FOR CLAIM

2. On December 8, 2000, the ISO filed proposed Amendment No. 33 ("Amendment 33") to the ISO Tariff with the Federal Energy Regulatory Commission ("FERC"). When submitting Amendment 33, the ISO represented to FERC that Amendment 33 was intended, inter alia, to address the problem of suppliers who, as a result of a \$250 price cap, were unwilling, declined, or refused to respond to the ISO's Out Of Market Dispatch Instructions when there was a System Emergency or when the ISO was acting to avoid an imminent or threatened System Emergency. The ISO requested that FERC expedite implementation of Amendment 33, waive FERC's 60-day notice requirement, and allow the ISO to effect the Amendment virtually immediately. On the same day the ISO filed Amendment 33, FERC approved the Amendment, with respect to the issue presented here, on an emergency basis, effective that same day.

3. With the approval of Amendment 33, the ISO immediately began imposing penalty charges on Williams for alleged failure to meet Supplemental Energy Dispatch Instructions issued through the ISO's Automated Dispatch System ("ADS System"). These charges were classified by the ISO as Charge Type 485 penalties. The ISO imposed the penalties under the purported authority of section 5.6.3.1 of its Tariff, which was added to the ISO Tariff as a result of Amendment 33.

4. Williams first learned the ISO was imposing Charge Type 485 penalties against Williams in February 2001 when it received the ISO's preliminary statement for December 2000 trading activity. This preliminary statement revealed the ISO started imposing penalties on Williams on December 8, 2000. By the time Williams first learned

the ISO was assessing such penalties against Williams, Williams' time to seek a FERC rehearing on Amendment 33 had expired.

5. In connection with the transactions as to which the ISO was attempting to impose Charge Type 485 penalties, Williams had not declined or refused to respond to any ISO Dispatch Instruction issued during a System Emergency. Therefore, promptly after learning of the ISO penalties, Williams advised the ISO the penalties were improperly assessed against Williams. However, the ISO continued improperly penalizing Williams any time the ISO unilaterally concluded Williams failed to meet a Supplemental Energy Dispatch Instruction from the ISO through ADS.

6. Between December 8, 2000, and May 31, 2001, the ISO improperly imposed penalties on Williams under Amendment 33, section 5.6.3.1 of the ISO Tariff, in the amount of \$25,512,238.54.

7. The penalties are improper for at least the following reasons:

A. Williams never violated section 5.6.3.1 of the ISO Tariff, as added by Amendment 33.

B. Some ISO penalties were imposed when Williams fully complied with the ISO's Dispatch Instruction or complied within the ten percent variance the ISO allowed.

C. To the extent Williams was ever unable to comply with any part of an ISO dispatch order during a system emergency, this was generally because of the physically inherent delay associated with ramp up of Generating Units. Inherent ramp up delay is unavoidable, well-known to the ISO, and not a basis for penalties under Amendment 33.

D. Although ramp up delay is inherent, unavoidable, well-known to the ISO, and not within the penalty provisions of Amendment 33, nonetheless promptly after learning of the ISO's penalties, Williams expressly informed the ISO the Generating Units were constrained by the physical limitations of ramping up and consequently

cannot always meet their actual integrated MWh total at all times. Thus, even if Amendment 33 penalties would otherwise have been applicable, Williams would not be subject to penalty because it gave the ISO advance notice of inability to comply pursuant to section 5.6.3.2 of Amendment 33. It is not possible to give such notice every time a Dispatch Instruction was issued because it is not possible to know in advance when or to what extent ramp up will actually impact delivery.

8. The penalties improperly imposed on Williams total \$25,512,238.54 between December 8, 2000 and May 31, 2001. Williams reserves the right to amend the claim to include any later-discovered penalties. Williams claims all such penalties were improperly imposed and seeks return of all penalties, plus interest, attorneys' fees and costs incurred in connection with the improper penalties and pursuit of this claim.

9. Williams has exhausted good faith negotiations with the ISO on the issues presented here.

#### **RELIEF REQUESTED**

Williams requests the following relief:

10. Reimbursement of all improper penalties charged by the ISO against Williams under Amendment 33 in the amount of \$25,512,238.54.
11. Interest on the improperly charged penalty amounts from the date charged by the ISO through the date paid or reimbursed to Williams.
12. Attorneys' fees and costs as may be incurred through the resolution of this claim.
13. Any further relief deemed just and reasonable.

#### **PARTIES TO DISPUTE**

14. Williams, a wholly-owned subsidiary of The Williams Companies, Inc. ("TWC"), is a Delaware corporation with its principal place of business at One Williams Center, Tulsa, Oklahoma. Williams is an electric power marketer and an energy and ancillary services marketer in the California wholesale electric market, selling energy and

ancillary services at wholesale pursuant to market-based rate authority granted by the FERC. Pursuant to contractual arrangements between Williams and three subsidiaries of the AES Corporation,<sup>1</sup> Williams has the right and responsibility to market and dispatch the electrical output of generating units located at three southern California electric generating stations formerly owned by Southern California Edison. Williams does not own or operate the generating stations.

15. Respondent the ISO is a nonprofit, public benefit corporation organized pursuant to the California Corporations Code for the purposes set forth in Chapter 2.3, Part 1, Division 1 of the California Public Utilities Code.

#### INDIVIDUALS HAVING KNOWLEDGE OF CLAIM

16. The following individuals are believed to have knowledge of the claim:

Williams:	Dennis Elliott Kerry James	Dwayne Burks Erin Gustafson
ISO:	James Detmers David Timson Don Fuller Randall T. Abernathy Bill Hayes Eric Lenze Jennie Vidov Julietta Gill Roger Smith (former employee)	Kenneth Jaffe Michael Ward Sean Atkins Charles Robinson Edward Berlin Ali Miremadi Anjali Sheffrin Eric Hildebrandt
Structure Consultants:	Shonda Meyer Dave Shephard	James Harvey

<sup>1</sup> The AES Subsidiaries are (a) AES Alamosa, L.L.C., (b) AES Huntington Beach, L.L.C., and (c) AES Redondo Beach, L.L.C.

Gray Cary\SD\1539454.2

2102289-14

**SERVICE**


Williams requests the following individuals be designated for communications:

Mark C. Zebrowski  
Mark H. Hamer  
Gray Cary Ware & Freidenrich LLP  
4365 Executive Drive, Suite 1100  
San Diego, CA 92121  
mzebrowski@graycary.com  
mhamer@graycary.com  
858-638-6758  
858-677-1401 (fax)

David A. Priebe  
Gray Cary Ware & Freidenrich LLP  
400 Capitol Mall, Suite 2400  
Sacramento, CA 95814  
dpriebe@graycary.com  
916-930-3200  
916-930-3201 (fax)

Alex A. Goldberg  
John Gammie  
Tim W. Muller  
Counsel  
The Williams Companies, Inc.  
One Williams Center, Suite 4100  
Tulsa, OK 74172-0152  
alex.goldberg@williams.com  
john.gammie@williams.com  
tim.muller@williams.com  
918-573-3901  
918-573-6928 (fax)

Dennis Elliott  
Executive Director, Energy Resources  
The Williams Companies, Inc.  
One Williams Center  
Tulsa, OK 74172-0152  
dennis.elliott@williams.com  
918-573-5854  
918-573-6928 (fax)

  
\_\_\_\_\_  
Mark C. Zebrowski, Esq.  
GRAY CARY WARE & FREIDENRICH LLP  
Attorneys for Williams

**CALIFORNIA INDEPENDENT SYSTEM OPERATOR****WILLIAMS ENERGY MARKETING & TRADING CO.'S NOTICE OF SUBMISSION  
AND SUMMARY OF STATEMENT OF CLAIM PURSUANT TO THE ISO  
TARIFF § 13.2.2**

Please take notice that on June 6, 2003, Williams Energy Marketing & Trading Co. ("Williams") submitted to the California Independent System Operator ("ISO"), the ISO Governing Board, and the American Arbitration Association a Statement of Claim pursuant to the ISO Tariff § 13.2.2. The Statement of Claim alleges that from December 8, 2000 to May 31, 2001, the ISO improperly imposed penalties of \$25,512,238.54 on Williams. The penalties were classified as Charge Type 485 penalties and were purportedly imposed under section 5.6.3.1 of the ISO Tariff, added pursuant to Amendment 33, for Williams' alleged failure to meet Supplemental Energy Dispatch Instructions issued through the ISO's Automated Dispatch System.

The Statement of Claim alleges that Williams never violated section 5.6.3.1; that the penalties were improperly imposed when Williams fully complied with the ISO's dispatch instructions or complied within the ten percent variance allowed by the ISO; that to the extent Williams was unable to comply with any part of an ISO dispatch instruction during a system emergency, it was due to the physically inherent delay associated with ramp up, which was well-known to the ISO and not contemplated as a subject of Amendment 33 penalties; and that even if the penalties were applicable, Williams would not be subject to them because it gave the ISO advance notice of inability to comply under section 5.6.3.2.

Williams seeks reimbursement of all improper penalties, plus interest, costs, and attorney's fees, together with any further relief deemed just and reasonable.

Please address notices and communications regarding this claim to the following individuals:

Mark C. Zebrowski  
Mark H. Hamer  
Gray Cary Ware & Freidenrich LLP  
4365 Executive Drive, Suite 1100  
San Diego, CA 92121-2133  
mzebrowski@graycary.com  
mhamer@graycary.com  
858-638-6758  
858-677-1401 (fax)

Alex A. Goldberg  
John Gammie  
Tim W. Muller  
The Williams Companies, Inc.  
One Williams Center, Suite 4100  
Tulsa, OK 74172-0152  
alex.goldberg@williams.com  
john.gammie@williams.com  
tim.muller@williams.com  
918-573-3901  
918-573-6928 (fax)

David A. Priebe  
Gray Cary Ware & Freidenrich LLP  
400 Capitol Mall, Suite 2400  
Sacramento, CA 95814  
dpriebe@graycary.com  
916-930-3200  
916-930-3201 (fax)

Dennis Elliott  
The Williams Companies, Inc.  
One Williams Center  
Tulsa, OK 74172-0152  
dennis.elliott@williams.com  
918-573-5854  
918-573-6928 (fax)

**DECLARATION OF SERVICE**

I am a resident of the state of California, over the age of eighteen years, and not a party to the within action. My business address is Gray Cary Ware & Freidenrich, 4365 Executive Drive, Suite 1100, San Diego, California 92121. On June 6, 2003, I served the within document(s):

- 1. STATEMENT OF CLAIM PURSUANT TO THE ISO TARIFF § 13.2.2**
- 2. WILLIAMS ENERGY MARKETING & TRADING CO.'S NOTICE OF SUBMISSION AND SUMMARY OF STATEMENT OF CLAIM PURSUANT TO THE ISO TARIFF § 13.2.2**
- 3. DECLARATION OF SERVICE**

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Diego, California addressed to defendants as set forth below.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

California ISO  
 Charles Robinson, General Counsel  
 151 Blue Ravine Road  
 Folsom, CA 95630  
 Phone: 916-351-4400  
 Fax: 916-351-2350

California ISO  
 Board of Governors  
 Kim Hubner, Executive Assistant to Office  
 of Corporate Secretary  
 151 Blue Ravine Road  
 Folsom, CA 95630  
 Phone: 916-351-4400  
 Fax: 916-351-2350

American Arbitration Association  
 Ms. Molly Bargaquest  
 Vice President – Case Management Center  
 1750 Galleria Tower  
 13455 Noel Road  
 Dallas, TX 75240-6636  
 Phone: 972-774-6912  
 Fax: 972-490-9008

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S.

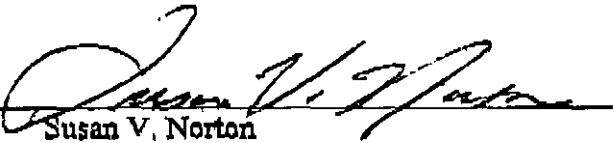


Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the Bar of or permitted to practice before this Court at whose direction the service was made.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 6, 2003, at San Diego, California.

  
Susan V. Norton