

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Reliant Energy Services, Inc.	Docket Nos. EL03-59-000
Reliant Energy Coolwater, Inc.	IN03-10-000
Reliant Energy Ellwood, Inc.	PA02-2-000
Reliant Energy Etiwanda, Inc.	
Reliant Energy Mandalay, Inc.	
Reliant Energy Ormond Beach, Inc.	

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued October 2, 2003)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Staff of the Division of Enforcement, Office of Market Oversight and Investigations (OMOI) and Reliant Energy Services, Inc. (RES), Reliant Energy Coolwater, Inc., Reliant Energy Ellwood, Inc., Reliant Energy Etiwanda, Inc., Reliant Energy Mandalay, Inc., and Reliant Energy Ormond Beach, Inc. (collectively, Reliant).

2. The Agreement resolves all outstanding issues with respect to Reliant arising from the investigation in Docket No. PA02-2-000, including issues in the Final Report on Price Manipulation in Western Markets, filed in Docket No. PA02-2-000 (Final Report), in Docket No. EL03-59-000 (Show Cause Order), the Fact-Finding Investigation of Entities that Controlled California Generators (Physical Withholding Investigation), and Docket No. IN03-10-000 (Anomalous Bidding Investigation).¹ The Agreement does not, however, affect any obligations that Reliant may have with respect to Docket EL00-95-000 (the Refund Proceeding).

¹ Issues regarding alleged gaming practices with respect to Reliant arising from the Final Report are the subject of a separate agreement and stipulation filed in Docket No. EL03-170-000.

I. Background

3. On February 13, 2002, the Commission directed Staff to commence a fact-finding investigation in Docket No. PA02-2-000 into whether any entity manipulated short-term prices for electric energy or natural gas in the West or otherwise exercised undue influence over these prices, between January 1, 2000 and June 20, 2001. On March 26, 2003, the Staff's Final Report was issued in Docket No. PA02-2-000. The Final Report discussed instances in which a trader for BP Energy Company (BP) and a trader for RES engaged in coordinated trades. Specifically, the Final Report discussed three occasions on which a trader for BP called a trader at RES and asked him to buy electricity in response to an offer he was going to post on the Bloomberg electronic trading platform. The BP trader would then sell the power back to the RES trader at the same price, but the transaction would not take place on the electronic trading platform. RES's tapes of recorded telephone conversations of RES's power traders, as well as transaction records, indicate that the BP trader and the RES trader entered into such transactions on April 24, 2000 and April 28, 2000, each for delivery of 25 megawatts of electricity at the Palo Verde trading hub for October 2000.

4. On the same date the Final Report issued, the Commission initiated a show cause proceeding in Docket No. EL03-59-000, directing RES to show cause why its authority to sell power at market-based rates should not be revoked in light of the Palo Verde trading hub transactions. The Show Cause Order established a refund effective date of June 2, 2003, pursuant to Section 206 of the Federal Power Act (FPA).

5. On April 16, 2003, RES filed an Answer to the Show Cause Order, in which RES acknowledged the seriousness of the allegations and that the conduct of its trader was wrong. RES explained that it had fired the trader involved several months before the Show Cause Order issued, shortly after discovery of the tapes containing the subject conversations. RES noted that the trader's conduct was contrary to the policies RES had in place at the time. RES also provided an explanation of comprehensive changes in its organization and training and in the management of RES and its parent company, Reliant Resources, Inc. (RRI), and its internal reforms to enhance internal controls, improve accountability and supervision of trading activity and instill in its employees a commitment to the highest ethical standards.

6. In its Answer, RES also argued that the conduct of its trader, while inappropriate, did not affect the market prices. RES also noted in its Answer that there is no evidence that the conduct at issue constituted market manipulation and that there was no legal basis for revoking RES's market-based rate authority. RES argued that the proposed remedy of market-based rate authority revocation would be disproportionate to the offense, particularly given RES's efforts to uncover and disclose improper conduct and its companion efforts to reform its trading operations so as to help ensure the compliance by every RES employee with the reformed and strengthened company policies.

7. In the Final Report, Staff concluded that the Market Monitoring and Information Protocols (MMIP) contained in the tariffs of the California Independent System Operator Corporation (CAISO) and the California Power Exchange Corporation (PX) put participants in the CAISO and PX markets on notice that misconduct that arose from abuses of market power and that adversely affected the efficient operations of the CAISO and PX markets would be a violation of the CAISO and PX tariffs. The Final Report further stated that Staff's preliminary analysis of spot-market clearing prices, when compared to generation input costs during May to October 2000, reveals what appear to be instances of potential anomalous bidding behavior, as defined in the MMIP.

8. On June 25, 2003, the Commission issued an Order in Docket No. IN03-10-000, responding to the Final Report's recommendation that the MMIP prohibits the bidding behavior discussed in the final report and directed OMOI to investigate anomalous bidding behavior and practices in the Western markets at the individual market participant level. The Commission adopted the recommended market-wide screen that required an examination of all bids in the CAISO and PX markets above \$250/MWh as excessive as a prima facie matter. The Commission therefore directed OMOI to investigate all parties who bid in the CAISO and PX markets above the level of \$250/MWh to determine whether these parties may have violated the provision in the MMIP against anomalous bidding behavior. We stated that parties with bids identified by this screen would be required to demonstrate to OMOI why their bidding behavior did not violate the MMIP. We further instructed OMOI to report to the Commission regarding its findings.

9. On July 2, 2003, OMOI issued data requests to Reliant in Docket No. IN03-10-000, regarding Reliant's bidding behavior and practices. Reliant responded to these data requests on July 24, 2003, providing responses and documents. OMOI has conducted follow-up telephone conferences and meetings and requested and received additional materials regarding Reliant's responses to OMOI's data requests, to further investigate these matters. Reliant has fully cooperated with OMOI in the course of its investigation.

10. In addition to reviewing responses from Reliant in its investigation in the Anomalous Bidding Investigation, OMOI reviewed evidence submitted by the parties in the 100 Days Evidence,² held meetings with and reviewed materials submitted by

² On November 20, 2002, the Commission issued an order that allowed parties in Docket Nos. EL00-95-000, EL00-95-048, EL00-98-000, and E100-98-042 to conduct additional discovery into market manipulation by various sellers during the western power crisis of 2000 and 2001. *See San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services, et al.*, 101 FERC ¶ 61,186 (2002).

representatives of the California Parties.³ Moreover, OMOI conducted extensive analysis of the CAISO and PX bidding data for the relevant period of time.

11. The Final Report also noted that various entities have submitted evidence of alleged incidents of physical withholding of generation resources from the California markets. The Final Report did not address these allegations. Concurrent with the issuance of the Final Report, the Commission directed OMOI to conduct an investigation into the existence of any physical withholding of power from California during the period from May 1, 2000 to June 30, 2001.

12. Pursuant to that directive, OMOI issued data requests to generators selling into the CAISO or PX markets, including Reliant, on March 26, 2003. Reliant responded to those data requests on April 29, 2003, providing its explanations and documents regarding the circumstances surrounding the alleged activity.

13. On August 1, 2003, OMOI issued its Initial Report on Physical Withholding by Generators Selling into the California Market and Notification to Companies (Initial Report) in these proceedings. Based on OMOI's analysis of the responses to the data requests, the Initial Report included an appendix listing those entities that will not be investigated further with respect to physical withholding unless information comes to light that indicates that further analysis of their actions is needed. Reliant was not listed in that appendix and therefore was subject to further investigation with respect to physical withholding.

14. OMOI issued supplemental data requests to Reliant on August 7, 2003. On August 29, 2003, Reliant filed responses and documents, including operations logs and transcripts of dispatchers' telephone conversations, regarding the circumstances of the alleged physical withholding. OMOI also reviewed the parties' submissions in the 100 Days Evidence with respect to alleged physical withholding and spoke with and considered materials provided by the California Parties relating to alleged physical withholding. Based on Reliant's responses, OMOI determined that Reliant need not be investigated further with respect to physical withholding.

15. In Chapter II of the Final Report, there are allegations that Reliant's gas trading at Topock contributed to the increased price of natural gas in California. As the Final Report notes, the trading activity of Reliant's gas buyer was not prohibited by the Commission's regulations. *See* Final Report at II-61.

³ The California Electricity Oversight Board, the California Public Utilities Commission, the California Attorney General, Southern California Edison Company, and Pacific Gas and Electric Company.

16. Reliant submitted a Supplement to Request for Rehearing and Request for Clarification or, in the Alternative, Request for Rehearing, in Docket Nos. EL00-95-045, et al., on April 25, 2003, and a Memorandum of Fact and Law in Response to Chapter II of the Final Report, in Docket No. PA02-2-000, on May 9, 2003.

17. The investigation in Docket No. PA02-2-000 found no evidence that Reliant or Reliant's trader intended to manipulate gas prices. Reliant's trading activity was an attempt to obtain gas at the lowest possible price.

II. The Agreement

18. Reliant has entered into the Agreement with OMOI, which would resolve all issues with respect to Reliant arising from the Final Report, including issues in the Show Cause Order, the Physical Withholding Investigation and the Anomalous Bidding Investigation, except that it does not affect any obligations that Reliant may have with respect to the Refund Proceeding.⁴

19. Within 30 days of the Effective Date, Reliant agrees to pay \$15 million into a deposit fund account established by the United States Treasury on behalf of the Commission for ultimate distribution for the benefit of California and Western electricity consumers ("Deposit Fund"). Additionally, Reliant agrees to pay an additional \$5 million into the Deposit Fund on September 30, 2005 and an additional \$5 million into the Deposit Fund on September 30, 2006.

20. The Agreement requires that following the issuance of this Order (Effective Date), for a period of twelve months, RES's sales of electricity in the United States portion of the Western Electricity Coordinating Council (WECC) will be subject to review by the Commission and potential refunds. Specifically, RES agrees to provide monthly reports to OMOI pursuant to the confidentiality provisions of 18 C.F.R. § 388.112 (2003). On a transaction-by-transaction basis, RES agrees to provide data on all completed electricity trades in the United States portion of the WECC. The data shall include counter-party name and buy-sell indication, and if executed on an electronic trading platform, the name of the electronic trading platform. The report shall further provide price, quantity, transaction date, start and end date, and delivery point for each transaction. Reliant also agrees to provide any additional information regarding such trades as OMOI reasonably requests.

21. The Agreement further provides that, for a period of twelve months following the Effective Date, RES will provide OMOI, pursuant to the confidentiality provisions of

⁴ In addition, as earlier noted, issues regarding alleged gaming practices with respect to Reliant arising from the Final Report are the subject of a separate agreement and stipulation filed in Docket No. EL03-170-000.

18 C.F.R. § 388.112 (2003), with copies of emails, instant messages (e.g., AOL Instant Messages) and telephone conversations of RES's power traders with market participants for transactions in the United States portion of the WECC that OMOI randomly or otherwise requests for review by OMOI. To facilitate OMOI's review, RES will retain copies of emails of employees trading electricity in the United States portion of the WECC beginning on the Effective Date and continuing thereafter on a rolling six-month basis. Reliant also will retain for three years from the Effective Date copies of telephone conversations of employees trading electricity. In addition, RRI's Compliance Director for Trading and Compliance Manager for Trading will be located on the trade floor(s) to monitor trading activity, and will also randomly monitor emails, instant messages and telephone conversations and will provide to OMOI monthly reports of this monitoring activity.

22. The Agreement provides that Reliant will auction the capacity from certain of Reliant's gas-fired electric generation facilities, totaling 824 MW of capacity, located in California, for three twelve-month periods. The capacity will be offered on a unit-contingent, gas tolling basis. The Agreement establishes a minimum contract price, well below the full embedded cost of service, for each unit or group of units from which Reliant is offering capacity, based on the projected "to go" cash costs of keeping the units in service.⁵ To the extent that bids are received and capacity is awarded at prices above the minimum contract price, the differential (Net Value) will be paid into the Deposit Fund up to a maximum of \$25 million and the auction will continue for three calendar years unless the Net Value reaches \$25 million before each of the three annual auctions have occurred.

23. Under the terms of the auction, a Qualified Buyer is (i) an investor-owned utility, municipal utility or irrigation district, based in California (LSE); and (ii) any other entity that has a credit rating (not supported by third-party enhancement) of at least investment grade by one credit rating agency (BBB-/Baa3). Any Qualified Buyer may bid in any of these auctions and the capacity shall be awarded to the bidder who submits the highest bid at or above the minimum contract price; provided, however, that the highest bid at or above the minimum contract price submitted by an LSE will confer upon that LSE a right of first refusal to purchase the capacity at the highest price bid in the auction.

24. Reliant shall file a report with OMOI, pursuant to the confidentiality provisions of 18 C.F.R. § 388.112, within 30 days of the conclusion of each auction summarizing the bids received, the capacity awarded and the calculated Net Value achieved through the auction.

⁵ Such costs exclude allocated general and administrative costs and any return of or on historical capital.

25. The Agreement states that the Commission does not accept all of the propositions stated in Reliant's submission on April 16, 2003, in the Show Cause Order proceeding, in Reliant's pleading submitted April 11, 2003, in Docket No. PA02-2-000, or in its responses to the data requests submitted in the Physical Withholding Investigation and Anomalous Bidding Investigation and that Reliant does not admit that any of the Reliant activities described in the Final Report and the Show Cause Order issued March 26, 2003 constituted a violation of any state or federal statute, or of any Commission rule, regulation, or order issued thereunder, or adversely affected the price formation process, or constituted physical withholding or anomalous bidding behavior in violation of the MMIP.

III. Discussion

26. All of the matters resolved by the Agreement involve wholesale sales of electricity that are within the exclusive jurisdiction of the Commission over wholesale electricity rates and any rule, regulation, practice or contract affecting such rates, 16 U.S.C. § 824e, and over trading in the wholesale gas market undertaken pursuant to a blanket marketing certificate issued by the Commission. 15 U.S.C. § 3301(21). The Commission finds that the Agreement provides an equitable resolution of this matter and is in the public interest.⁶

27. The Agreement resolves all outstanding issues with respect to Reliant arising from the investigation in Docket No. PA02-2-000, including issues in the Final Report, the Show Cause Order, the Physical Withholding Investigation and the Anomalous Bidding Investigation, as described herein. However, the Agreement does not affect any obligations that Reliant may have with respect to Refund Proceeding.

⁶ Our providing for interventions in Docket No. EL03-59-000 does not alter the fact that the Commission is conducting investigations in Docket No. PA02-2-00, the Physical Withholding Investigation, and the Anomalous Bidding Investigation in which the Commission has enforcement discretion. Indeed, even though the Commission has, albeit rarely, allowed interventions in Part 1b investigations, 18 CFR Part 1b (2003), those interventions did not transform the investigation into an adjudication. *See Baltimore Gas & Electric v. FERC*, 252 F.3d 456 (D.C. Cir. 2001) (holding that notwithstanding the participation of intervenors in a Section 1b investigation, the Commission had exercised unreviewable discretion in approving a settlement with the company under investigation over the objections of those intervenors) (*see generally Fact-Finding Investigation into Possible Manipulation of Electric and Natural Gas Prices*, 103 FERC ¶ 61,019 (2003)). Accordingly, requests for rehearing of this order would not lie.

28. With respect to the Final Report's discussion of Reliant's natural gas trading activity at Topock, California, we note that, since the publication of the Final Report, Reliant has produced evidence challenging the findings of the Final Report. There were many causes for high prices in the California market and the Commission has identified those activities that resulted in unjust and unreasonable rates for electricity and has considered those activities in ordering refunds. The Commission agrees with the Final Report that Reliant's trading activity at Topock did not violate either the Natural Gas Act or the Commission's regulations.

29. The Commission has jurisdiction over Reliant's trades at Topock and has exercised that jurisdiction in reviewing such trades. Reliant's trading at Topock on EnronOnline ("EOL") constituted trading in the wholesale gas market and was undertaken pursuant to a blanket marketing certificate issued by the Commission. This blanket certificate has the same legal effect as the market based rate authority granted to sellers in the wholesale electric market. During 2000 and 2001, Reliant was an affiliate of an interstate pipeline and thus its sales were not "first sales" as defined in Section 2 (21) of the Natural Gas Policy Act of 1978 ("NGPA"), 15 U.S.C. § 3301 (21) (1994). Similarly, as noted in our decision in Enron Power Marketing, Inc., 103 FERC ¶ 61,343 at 62,296 n.9, (2003), the EOL system was administered by Enron Networks, an Enron Corp. subsidiary. EOL sales by Enron Gas Marketers are also subject to the Commission's jurisdiction. Only "first sales" as defined in the NGPA are exempt from the Commission's exclusive jurisdiction over the wholesale rates of natural gas.

30. In approving the Agreement, the Commission has determined that there was no regulation prohibiting Reliant's trading activity at Topock and no violation of Reliant's blanket certificate. Therefore, with respect to Reliant's trading activity at Topock, no remedy is appropriate.

The Commission orders:

(A) The attached Stipulation and Consent Agreement is approved in its entirety without modification.

(B) The Commission's approval of the attached Stipulation and Agreement does not constitute approval of, or precedent regarding, any principle or issue in these dockets.

(C) The proceeding in Docket No. EL03-59-000 and the investigations in Docket Nos. IN03-10-000 and PA02-2-000 with respect to Reliant are terminated, but any obligations that Reliant may have with respect to the Refund Proceeding are not affected.

(D) Reliant is hereby directed to provide certain data and monthly reports to OMOI and conduct random monitoring, as set forth in the attached Stipulation and Consent Agreement.

(E) Reliant is hereby directed to auction the capacity of certain of its generating units located in California and provide the Net Value realized from the auctions to the Deposit Fund, as set forth in the attached Stipulation and Consent Agreement, and shall file a report with OMOI, pursuant to the confidentiality provisions of 18 C.F.R. § 388.112, within 30 days of the conclusion of each auction summarizing the bids received, the capacity awarded and the Net Value achieved through the auction.

(F) Reliant is hereby directed to make payments of \$15 million to the Deposit Fund within 30 days of the date of this Order and an additional \$5 million to the Deposit Fund on September 30, 2005, and an additional \$5 million to the Deposit Fund on September 30, 2006, and file reports of such payments with the Commission within fifteen (15) days thereafter.

By the Commission. Commissioner Massey concurring with a separate statement attached.

(S E A L)

Linda Mitry,
Acting Secretary

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

The Staff of the Division of Enforcement, Office of Market Oversight and Investigations (“OMOI”) of the Federal Energy Regulatory Commission (the “Commission”) and Reliant Energy Services, Inc. (“RES”), Reliant Energy Coolwater, Inc., Reliant Energy Ellwood, Inc., Reliant Energy Etiwanda, Inc., Reliant Energy Mandalay, Inc., and Reliant Energy Ormond Beach, Inc. (collectively, “Reliant”) enter into this Stipulation and Consent Agreement (“Agreement”) to resolve all outstanding issues of fact and law with respect to Reliant arising from the investigation in Docket No. PA02-2-000, including issues in the Final Report on Price Manipulation in Western Markets, filed in Docket No. PA02-2-000 (“Final Report”), the Order Proposing Revocation of Market-Based Rate Authority in Docket No. EL03-59-000 (“Show Cause Order”), the Fact-Finding Investigation of Entities that Controlled Generators Selling into the California Market (“Physical Withholding Investigation”), and Docket No. IN03-10-

000 (“Anomalous Bidding Investigation”).¹ This Agreement does not, however, affect any obligations that Reliant may have with respect to Docket No. EL00-95-000 (the “Refund Proceeding”).

II. STIPULATION

The facts stipulated herein are stipulated solely for the purpose of resolving between Reliant and OMOI the matters discussed herein and do not constitute stipulations or admissions for any other purpose. OMOI and Reliant hereby stipulate and agree to the following:

1. On February 13, 2002, the Commission directed Staff to commence a fact-finding investigation in Docket No. PA02-2-000 into whether any entity manipulated short-term prices for electric energy or natural gas in the West or otherwise exercised undue influence over these prices between January 1, 2000, and June 21, 2001. On March 26, 2003, the Staff’s Final Report was issued in Docket No. PA02-2-000. The Final Report discussed instances in which a trader for BP Energy Company (“BP”) and a trader for RES engaged in coordinated trades. Specifically, the Final Report discussed three occasions on which a trader for BP called a trader at RES and asked him to buy electricity from an offer he was going to post on the Bloomberg electronic trading platform. The BP trader would then sell the power back to the RES trader at the same price, but the transaction would not take place on the electronic trading platform. RES’s tapes of recorded telephone conversations of RES’s power traders, as well as transaction

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records, indicate that the BP trader and the RES trader entered into such transactions on April 24, 2000 and April 28, 2000, each for delivery of 25 megawatts of electricity at the Palo Verde trading hub for October 2000.

2. On the same date the Final Report was issued, the Commission initiated a show cause proceeding in Docket No. EL03-59-000, directing RES to show cause why its authority to sell power at market-based rates should not be revoked in light of the Palo Verde trading hub transactions. The Show Cause Order established a refund effective date of June 2, 2003, pursuant to Section 206 of the Federal Power Act (“FPA”).

3. On April 16, 2003, RES filed an Answer to the Show Cause Order, in which RES acknowledged the seriousness of the allegations and that the conduct of its trader was wrong. RES explained that it had fired the trader involved several months before the Show Cause Order was issued, shortly after discovery of the tapes containing the subject conversations. RES noted that the trader’s conduct was contrary to the policies RES had in place at the time the conduct occurred. RES also provided an explanation of changes in the management of RES and its parent company, Reliant Resources, Inc. (“RRI”) and its internal reforms to enhance internal controls, improve accountability and supervision of trading activity, and instill in its employees a commitment to the highest ethical standards.

4. In the Final Report, Staff concluded that the Market Monitoring and Information Protocols (“MMIP”) contained in the tariffs of the California Independent System Operator Corporation (“CAISO”) and the California Power Exchange Corporation (“PX”) put participants in the CAISO and PX markets on notice that misconduct that

arose from abuses of market power and that adversely affected the efficient operations of the CAISO and PX markets were violations of the CAISO and PX tariffs. The Final Report further stated that Staff's preliminary analysis of spot-market clearing prices as compared to generation input costs during May to October 2000 reveals what appear to be instances of potential anomalous bidding behavior, as defined in the MMIP.

5. On June 25, 2003, the Commission issued an Order in Docket No. IN03-10-000, responding to the Final Report's recommendation that the MMIP prohibits the bidding behavior discussed in the Final Report and directed OMOI to investigate anomalous bidding behavior and practices in the Western markets at the individual market participant level. The Commission adopted the recommended market-wide screen that required an examination of all bids in the CAISO and PX markets above \$250/MWh as excessive as a *prima facie* matter. The Commission therefore directed OMOI to investigate all parties who bid in the CAISO and PX markets above the level of \$250/MWh to determine whether these parties may have violated the provision in the MMIP against anomalous bidding behavior. The Commission stated that parties with bids identified by this screen would be required to demonstrate to OMOI why their bidding behavior did not violate the MMIP. The Commission also instructed OMOI to report to the Commission regarding its findings.

6. On July 2, 2003, OMOI issued data requests to Reliant in Docket No. IN03-10-000, regarding Reliant's bidding behavior and practices. Reliant responded to these data requests on July 24, 2003, providing responses and documents. OMOI has conducted follow-up telephone conferences and meetings with Reliant and requested and received

additional materials regarding Reliant's responses to OMOI's data requests to further investigate these matters. Reliant has fully cooperated with OMOI in the course of its investigation.

7. The Final Report also noted that various entities have submitted evidence of alleged incidents of physical withholding of generation resources from the California markets. The Final Report did not address these allegations. Concurrent with the issuance of the Final Report, the Commission directed OMOI to conduct an investigation into the existence of any physical withholding of power by California generators during the period from May 1, 2000, to June 30, 2001.

8. Pursuant to that directive, OMOI issued data requests to California generators selling into the CAISO or PX markets, including Reliant, on March 26, 2003. Reliant responded to those data requests on April 29, 2003, providing its explanations and documents regarding the circumstances surrounding each instance of the alleged activity.

9. On August 1, 2003, OMOI issued its Initial Report on Physical Withholding by Generators Selling into the California Market and Notification to Companies. Based on the analysis of the responses to OMOI's data requests, the Initial Report included an appendix listing those entities that will not be investigated further with respect to physical withholding unless information comes to light that indicates that further analysis of their actions is needed. Reliant was not listed in that appendix and was therefore subject to further investigation with respect to physical withholding.

10. OMOI issued supplemental data requests in its physical withholding investigation to Reliant, on August 7, 2003. On August 29, 2003, Reliant provided responses and

documents, including operations logs and transcripts of dispatchers' telephone conversations, regarding the circumstances of the alleged physical withholding. Based on Reliant's responses, OMOI has determined that Reliant need not be investigated further with respect to physical withholding.

11. In Chapter II of the Final Report, there are allegations that Reliant's gas trading at Topock contributed to the increased price of natural gas in California. As the Final Report notes, the trading activity of Reliant's gas buyer was not prohibited by the Commission's regulations. *See* Final Report at II-61.

12. Reliant submitted a Supplement to Request for Rehearing and Request for Clarification or, in the Alternative, Request for Rehearing, in Docket Nos. EL00-95-045, et al., on April 25, 2003, and a Memorandum of Fact and Law in Response to Chapter II of the Final Report, in Docket No. PA02-2-000, on May 9, 2003.

13. The investigation in Docket No. PA02-2-000 found no evidence that Reliant or its gas trader intended to manipulate gas prices. Reliant's trading activity was an attempt to obtain gas at the lowest possible price.

14. All of the foregoing matters involve wholesale sales that are within the exclusive jurisdiction of the Commission over wholesale electricity rates and any rule, regulation, practice or contract affecting such rates, and over trading in the wholesale gas market undertaken pursuant to a blanket marketing certificate issued by the Commission. 16 U.S.C. § 824e and 15 U.S.C. § 3301(21).

III. REPRESENTATIONS

OMOI states:

1. OMOI does not accept all of the propositions stated in Reliant's submission on April 16, 2003, in Docket No. EL03-59-000, in Reliant's pleading submitted April 11, 2003, in Docket No. PA02-2-000, or in its responses to the data requests submitted in the physical withholding investigation and in the anomalous bidding investigation in Docket No. IN03-10-000.
2. OMOI believes that this Agreement is an equitable resolution of the outstanding matters at issue with respect to Reliant in the physical withholding investigation, the anomalous bidding investigation in Docket No. IN03-10-000, and in Docket Nos. EL03-59-000 and PA02-2-000.

Reliant states:

1. Reliant does not admit that any of the Reliant activities described in the Final Report and the Show Cause Order issued March 26, 2003, in Docket No. EL03-59-000 constituted a violation of any state or federal statute, or of any Commission rule, regulation, or order issued thereunder, or adversely affected the price formation process, or constituted physical withholding or "anomalous bidding behavior" in violation of the MMIP.
2. RRI has implemented wide-ranging changes in the senior management team of RRI, its Wholesale Group (of which RES is a part) and RES. These include both personnel changes and the establishment of new lines of authority and accountability. Much of the RRI and RES senior management team that was in place at the time of the

conduct at issue is gone. RRI has redrawn reporting responsibilities in its Wholesale Group to further enhance the accountability of trading personnel and management. The Wholesale Group's Accounting and Risk Control officers now report directly to the Corporate Accounting and Risk Control officers. This ensures that the persons who monitor and report on trading activities have a broad, corporate-level perspective. RRI also has changed the membership of, redefined the scope of authority and responsibility of, and increased the frequency of meetings of, its Commitment Review Committee and Risk Oversight Committee and established new, clearer risk control guidelines (e.g., the new guidelines specify particular transactions and products that are authorized).

3. In July 2002, after extensive consultation with outside experts, RRI instituted a code of conduct, the "Best Principles and Practices," for its trading employees. The Best Principles and Practices define the parameters for acceptable and unacceptable trading transactions, based on established and successful policies existing in the regulated commodities sector. RRI's "Best Principles and Practices" require that any transaction entered into by a RRI employee have a bona fide business purpose for the benefit of RRI and expressly forbid both physical withholding of generation capacity to increase prices and prearranged buy/sell transactions such as the BP trades at issue.

4. RRI has also undertaken a review and strengthening of its Corporate Compliance Program. RRI has established three new positions, the Chief Compliance Officer ("CCO"), the Compliance Director for Trading and the Compliance Manager for Trading. RRI's CCO (1) reports to the CEO and the Chairperson of the Audit Committee; (2) chairs RRI's Ethics and Compliance Council; and (3) is charged with ensuring that RRI's

policies are being consistently followed. RRI's CCO was hired from an internationally recognized public accounting firm where she was an audit partner responsible for the audits of several large energy trading clients. In addition to having executive management responsibility for compliance, the CCO will perform an annual review for changes and additions to RRI's Corporate Compliance Program based on, among other factors, best practices in the industry.

5. The Compliance Director for Trading reports directly to the CCO and is located on the trading floor. Her responsibilities include monitoring RES's trading activities in accordance with the "Best Principles and Practices." The Compliance Director for Trading and the Compliance Manager for Trading (who reports to the Compliance Director for Trading) each randomly review and monitor telephone calls, emails, instant messages (e.g., AOL instant messaging), reports, violation logs and trading records. The violation logs are derived from the new policy compliance screens that RRI has implemented to identify certain trading activity, as discussed below. The Compliance Director and Compliance Manager also distribute Compliance Alerts to apprise trading employees about compliance concerns and are available to answer questions traders may have prior to execution of transactions.

6. RRI has improved and expanded its risk control policies and procedures in other ways as well. During the past year, RRI has significantly refined its policy compliance screens and re-configured its systems to produce a number of new reports that RRI's Risk Control group and management can use to identify violations of policies and procedures and potentially problematic transactions. RRI began the reforms in the first quarter of

2002 by implementing a new transactions database that maintains transaction data in a manner that allows for easier review of data and more flexible formatting of data in reports. The new reports include: daily review of transactions at a net and notional level; daily review of mark-to-market book profit and loss; review of any buy/sell transactions flagged through automated processes; daily evaluation of transaction intent; daily review of significant deals, as measured both by volume and dollar value; and a daily credit review at a counter-party level. As a result of the new database and new reports, transactions executed in the same manner as the BP trades should not occur now without being detected.

7. Finally, in early 2003, Reliant ceased speculative trading and now trades predominantly in support of its generating assets to optimize its fuel procurement and hedge its power sales. This substantial cutback in trading activity has resulted in numerous layoffs of trading personnel and management. As a consequence, the increased controls RRI has implemented are being applied across a reduced level of trading activity, which enhances the effectiveness of the controls.

8. In its Answer, RES also presented evidence showing that the conduct of its trader, while inappropriate, did not affect market prices. RES offered testimony from Mr. Cliff Hamal, which included an analysis finding that the trades at issue were conducted at market prices during a period of relatively depressed market prices. Mr. Hamal concluded that the referenced trades had no impact on the market and did not benefit RES and further noted that the referenced trades could not have had broad market influence, given the relatively obscure nature of the product being traded.

9. RES also noted in its Answer that there is no evidence that the conduct at issue constituted market manipulation and that there was no legal basis for revoking RES's market-based rate authority. RES argued that the proposed remedy of market-based rate authority revocation would be disproportionate to the offense, particularly given RRI's efforts to uncover and disclose improper conduct and its companion efforts to reform its trading operations to help ensure the compliance by every RRI employee with the reformed and strengthened company policies.

IV. REMEDIES

For purposes of settling any and all civil and administrative disputes, and in lieu of any other remedy or penalty that the Commission might assess or determine concerning any of the matters arising from or related to Docket Nos. PA02-02-000, EL03-59-000, the Final Report, the physical withholding investigation, and the anomalous bidding investigation in Docket No. IN03-10-000, Reliant and OMOI agree that:

1. With respect to the actions of RES's trader referenced in the Order issued in Docket No. EL03-59-000 on March 26, 2003, RES has acknowledged that its trader's conduct was plainly wrong and has acknowledged the seriousness of the allegations stemming from this conduct.

2. RRI's strengthened policies described in Section III above expressly prohibit the type of conduct at issue in Docket No. EL03-59-000. RRI has also implemented controls designed to address the type of conduct at issue in Docket No. EL03-59-000. RRI commits to continue to strengthen and improve its policies and procedures to ensure that

it is conducting power trading in a manner consistent with the Commission's regulations and orders.

3. For a period of 12 months following the issuance of an order by the Commission approving this Agreement in its entirety and without modification (the "Effective Date"), RES will sell power (other than that power to be the subject of the auction described in Section IV, paragraph 4 below) at market-based rates subject to the following conditions:

a. RES's sales of electricity in the United States portion of the Western Electricity Coordinating Council ("WECC") will be subject to review by the Commission. During this 12-month period, RES agrees to provide monthly reports to OMOI, including the information in Section IV, paragraph 3b below, pursuant to the confidentiality provisions of 18 C.F.R. § 388.112 (2003). Such reports shall be provided to OMOI within ten (10) business days of the end of each calendar month.

b. On a transaction-by-transaction basis, RES agrees to provide data on all its completed electricity trades in the United States portion of the WECC. The data shall include counter-party name and buy-sell indication, and if executed on an electronic trading platform, the name of the electronic trading platform. The reports shall further provide price, quantity, transaction date, start and end date, and delivery point for each transaction. RES shall provide any additional information regarding such trades as OMOI reasonably requests.

c. RES will provide OMOI, pursuant to the confidentiality provisions of 18 C.F.R. § 388.112 (2003), with copies of emails, instant messages (e.g., AOL

Instant Messages) and telephone conversations of RES's power traders with market participants for transactions in the United States portion of the WECC that OMOI randomly requests for review by OMOI. To facilitate OMOI's review, RES will retain copies of emails of employees trading electricity in the United States portion of the WECC beginning on the Effective Date and continuing thereafter on a rolling six-month basis. Beginning with the Effective Date and continuing for three years thereafter, RES will also retain copies, in audiotape or electronic audio file format, of all telephone conversations of employees trading electricity in the United States. In addition, Reliant's Compliance Director for Trading and Compliance Manager for Trading will be located on the trade floor(s) to monitor trading activity and will also randomly monitor emails, instant messages and telephone conversations and will provide to OMOI monthly reports of this monitoring activity, pursuant to the confidentiality provisions of 18 C.F.R. § 388.112 (2003).

4. Reliant agrees to auction the capacity from certain of Reliant's gas-fired electric generation facilities, totaling 824 MW of capacity, located in California, for three twelve-month periods. The capacity will be offered on a unit-contingent, gas-tolling basis. This Agreement establishes a minimum contract price, well below the full embedded cost of service, for each unit or group of units from which Reliant is offering capacity, based on the projected "to go" cash costs of keeping the units in service.² To the extent that bids

² Such costs exclude allocated general and administrative costs and any return of or on historical capital.

are received and capacity is awarded at prices above the minimum contract price, the differential (the “Net Value”) will be paid into a deposit fund account established by the United States Treasury on behalf of the Commission for ultimate distribution for the benefit of California and Western electricity consumers (“Deposit Fund”) up to a maximum of \$25 million under the terms and procedures specified herein.

- a. Beginning January 2, 2005, Reliant will make annual payments of the collected Net Value. Once the accumulated auction results yield a calculated \$25 million of Net Value, the requirement to conduct future auctions will terminate, provided, however, that Reliant shall not be relieved of any commitment respecting the capacity from these units entered into prior to reaching the \$25 million of Net Value.
- b. The first auction, for power to be delivered during the period from April 1, 2004 through March 31, 2005, shall take place in October 2003. If required, a second auction will be held in September 2004, for power to be delivered during the period from April 1, 2005, through March 31, 2006, and a third auction will be held in September 2005, for power to be delivered during the period from April 1, 2006, through March 31, 2007.
- c. A Qualified Buyer is (i) an investor-owned utility, municipal utility or irrigation district, based in California (“LSE”); or (ii) any other entity that has a credit rating (not supported by third-party enhancement) of at least investment grade (BBB-/Baa3) by either Standard & Poor’s or Moody’s.

- d. Any Qualified Buyer may bid in any of these auctions and the capacity shall be awarded to the bidder who submits the highest bid at or above the minimum contract price; provided, however, that the highest bid at or above the minimum contract price submitted by an LSE will confer upon that LSE a right of first refusal (“ROFR”) to purchase the capacity at the highest price bid in the auction. If the LSE does not exercise its ROFR before 5 p.m. Central Time on the second business day following notification of the auction results, the capacity will be awarded to the highest bidder.
- e. Reliant will use its best efforts to obtain bids from Qualified Buyers. However, if, during an auction, there are no bids from Qualified Buyers at or above the minimum contract price for any of the offered units, Reliant shall have no further obligation under this Agreement with respect to such unit for that year and may, at its sole discretion, determine whether to operate such unit and sell its capacity and electrical output consistent with applicable laws, rules, regulations or tariffs.
- f. The Specified Auction Terms are attached hereto and made a part of this Agreement.
- g. Reliant shall file a report with OMOI, pursuant to the confidentiality provisions of 18 C.F.R. § 388.112 (2003), within 30 days of the conclusion of each auction summarizing the bids received, the capacity awarded and the calculated Net Value achieved through the auction.

5. Within 30 days of the Effective Date, RES agrees to pay \$15 million into the Deposit Fund.
6. Reliant agrees to pay into the Deposit Fund an additional \$5 million on September 30, 2005, and an additional \$5 million on September 30, 2006.
7. Upon approval by the Commission, this Agreement terminates with respect to Reliant the show cause proceeding in Docket No. EL03-59-000, the physical withholding investigation, the anomalous bidding investigation in Docket No. IN03-10-000, and Docket No. PA02-2-000. This Agreement does not, however, affect any obligations that Reliant may have with respect to the Refund Proceeding.

V. TERMS

1. OMOI and Reliant state that they enter into this Agreement voluntarily and that, other than the agreements provided herein, no tender, offer, or promise of any kind whatsoever has been made by any party to this Agreement or by any member, officer, agent or representative thereof, to induce the other party to enter into this Agreement.
2. OMOI and Reliant acknowledge and agree that this Agreement is a settlement of claims investigated by the Commission under its plenary authority over rates for wholesale electricity sales in interstate commerce and its authority over trading in the wholesale natural gas market undertaken pursuant to a blanket marketing certificate issued by the Commission, and is a compromise and settlement of disputed claims. This Agreement and any Commission order approving this Agreement shall not be deemed or construed as an admission or as evidence of any violation of any law or regulation, or any Commission rule, regulation or order issued thereunder, by Reliant.

3. As a condition to the Agreement, it is understood that the Commission will find in its Order approving the Agreement that:

- a. With respect to the Final Report's discussion of Reliant's natural gas trading activity at Topock, California, since the publication of the Final Report, Reliant has produced evidence challenging the findings of the Final Report. There were many causes for high prices in the California market and the Commission has identified those activities that resulted in unjust and unreasonable rates for electricity and has considered those activities in ordering refunds. Reliant's trading activity at Topock did not violate either the Natural Gas Act or the Commission's regulations.
- b. The Commission has jurisdiction over Reliant's trades at Topock and has exercised that jurisdiction in reviewing such trades. Reliant's trading at Topock on EnronOnline ("EOL") constituted trading in the wholesale gas market and was undertaken pursuant to a blanket marketing certificate issued by the Commission. This blanket certificate has the same legal effect as the market based rate authority granted to sellers in the wholesale electric market. During 2000 and 2001, Reliant was an affiliate of an interstate pipeline and thus its sales were not "first sales" as defined in Section 2 (21) of the Natural Gas Policy Act of 1978 ("NGPA"), 15 U.S.C. § 3301 (21) (1994). Similarly, as noted in *Enron Power Marketing, Inc.*, 103 FERC 61,343 at 62,296, n. 9 (2003), the EOL system was administered by Enron Networks, an Enron Corp. subsidiary. EOL sales by Enron Gas

Marketers are also subject to the Commission's jurisdiction. Only "first sales" as defined in the NGPA are exempt from the Commission's exclusive jurisdiction over the wholesale rates of natural gas.

- c. There was no regulation prohibiting Reliant's trading activity at Topock and no violation of Reliant's blanket certificate. Therefore, with respect to Reliant's trading activity at Topock, no remedy is appropriate.

Unless the Commission issues an Order approving this Agreement in its entirety, including these findings, without modification, this Agreement shall be null and void and of no effect whatsoever, and shall not be used in any proceeding, and neither OMOI nor Reliant shall be bound by any of its provisions or terms, unless they agree otherwise in writing.

4. On the Effective Date, this Agreement shall resolve any and all administrative or civil claims the Commission has or may have against Reliant, its parents and affiliates, their successors and assigns, and the officers, directors or employees of each, arising from or related to the captioned proceedings, except for those matters subject to the agreement and stipulation pending in Docket No. EL03-170-000. Further, this Agreement does not affect any obligations that Reliant may have with respect to the Refund Proceeding. In addition, this Agreement shall not bar Commission action in the event that the Commission determines that Reliant has failed to comply with Part IV of this Agreement or the directives contained in any order approving this Agreement.
5. With respect to the representations by Reliant set forth herein, the undersigned representative of Reliant represents and warrants that he has read them and knows the

contents thereof, that all the statements and matters set forth are true and correct to the best of his knowledge, information and belief, and that he understands that OMOI enters into this Agreement in express reliance on those representations.

6. The provisions of this Agreement are binding on Reliant, its parents and affiliates and their successors and assigns, and the officers, directors or employees of each.

7. The Commission's approval of the Agreement shall not constitute precedent regarding any principle, issue, or methodology underlying its provisions, nor shall this Agreement establish a "settled practice."³

8. Each of the undersigned warrants that he or she is an authorized representative of the party designated, is authorized to bind such party, and accepts this Agreement on behalf of that party.

Agreed to and accepted:

William Hederman
Director, Office of Market Oversight
and Investigations

Date

Daniel N. Hannon
President, Western Region,
Reliant Energy Wholesale Group
on behalf of

Date

³ *Public Service Commission v. Federal Energy Regulatory Commission*, 642 F.2d 1335 (D.C. Cir. 1980).

Reliant Energy Coolwater, Inc.,
Reliant Energy Ellwood, Inc.,
Reliant Energy Etiwanda, Inc.,
Reliant Energy Mandalay, Inc.,
Reliant Energy Ormond Beach, Inc. and
Reliant Energy Services, Inc.

Reliant Energy
Etiwanda Units 3 & 4, Mandalay Unit 3, Ellwood Unit
Specified Auction Terms
For Unit-Contingent Capacity Auction

Capacity Auction
Provisions:

Auction Process: Reliant Energy Services, Inc. ("Reliant") and its affiliates will auction the electric generation capacity from certain Reliant electric generation facilities to all Qualified Buyers, as defined below. The auctions will be for 824 MW of unit-contingent electric generation capacity, divided into three separate Unit Portfolios, located in southern California.

Auctions will be conducted for three consecutive twelve-month Delivery Periods beginning April 1, 2004. The auction for the Delivery Period April 1, 2004, through March 31, 2005, will be held in October of 2003 and the auctions for the two subsequent Delivery Periods will be held in September of 2004 and 2005, respectively.

Qualified Buyers may bid on one or more of the following Unit Portfolios:
Unit Portfolio #1: Etiwanda Unit 3 & Unit 4 (100% of both units)
Unit Portfolio #2: Mandalay Unit 3
Unit Portfolio #3: Ellwood Unit

Reliant will award the capacity of each Unit Portfolio to a single Qualified Buyer. A Qualified Buyer may be awarded capacity from one or more Unit Portfolios.

Any Qualified Buyer may bid in any of these auctions and the capacity shall be awarded to the bidder who submits the highest bid at or above the Minimum Contract Price, provided however, that the highest bid at or above the Minimum Contract Price submitted by an LSE, as defined below, will confer upon that LSE a right of first refusal ("ROFR") to purchase the capacity at the highest bid in the auction. If the LSE does not exercise its ROFR before 5:00 p.m. Central Prevailing Time on the second business day following notification of the auction results, the capacity will be awarded to the highest bidder.

Seller: Reliant or an affiliate to be determined by Reliant.

Qualified Buyer: Qualified Buyers are defined as (i) an investor-owned utility, municipal utility or irrigation district, based in California ("LSE"), and (ii) any other entity that has a credit rating (not supported by third-party enhancement) of at least investment grade (BBB-/Baa3) by either S&P or Moody's (each a "Buyer" or "Buyers").

Facilities: Reliant Energy Etiwanda Unit 3 & Unit 4, Mandalay Unit 3 and the Ellwood Unit and associated equipment and components of each, including interconnection facilities (each a "Facility" and collectively the "Facilities").

Etiwanda Unit 3, located near Rancho Cucamonga, San Bernardino County, California, consists of a natural gas-fired, drum-type unit and has a Facility rating of 320 MW, at average annual conditions.

Etiwanda Unit 4, located near Rancho Cucamonga, San Bernardino County, California, consists of a natural gas-fired, drum-type unit and has a combined Facility rating of 320 MW, at average annual conditions.

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For the purposes of bidding the auction, Etiwanda Unit 3 & Unit 4 will be auctioned as one Unit Portfolio (i.e., Buyer must bid on 100% of both units), however for all other purposes, including calculation of the Availability Factor, scheduling, and determination of Contract Capacity Payments, Etiwanda Unit 3 & Unit 4 will be treated as separate Facilities.

Mandalay Unit 3, located near Oxnard, Ventura County, California, consists of a natural gas-fired turbine unit and has a Facility rating of 130 MW at average annual conditions.

Ellwood Unit, located near Goleta, Santa Barbara County, California, consists of a natural gas-fired turbine unit and has a Facility rating of 54 MW at average annual conditions.

Definitive Agreement: Seller will furnish a tolling agreement based upon the terms and conditions in this term sheet and standard commercial terms and Buyer(s) will be required to accept the terms of such tolling agreement. Non-conforming bids will not be accepted.

Delivery Periods: A Delivery Period shall be each year as set forth below:
Delivery Period 1: April 1, 2004 through March 31, 2005.
Delivery Period 2: April 1, 2005 through March 31, 2006.
Delivery Period 3: April 1, 2006 through March 31, 2007.

Type of Service: Unit-contingent capacity from each Facility and associated unit-contingent energy (“Unit-contingent Energy”) and Ancillary Services associated with such capacity (collectively the “Product”).

“Unit-contingent” shall mean that if the capacity available from the Facility is reduced due to an Excused Event, Buyer’s rights to the Contract Capacity and associated Unit-contingent Energy may be reduced to the available capacity from the Facility and Seller shall have no obligation to compensate Buyer for such reduced amount. If the available capacity from the Facility is reduced for a reason other than an Excused Event, any amounts due to Buyer for such unavailability of capacity shall be reflected in the rebate of Contract Capacity Payments, if any, as set forth in the Availability Target section.

Product Description: Buyer shall have full dispatch rights over the Facility, limited by the rules of the California Independent System Operator (“CAISO”) under its Federal Energy Regulatory Commission (“FERC”) Electric Tariff, as may be amended from time to time, and subject to the Operational and Environmental Limitations, Contractual Limitations and physical limitations of each Facility (Please see the attachment “Reliant Energy Unit Characteristics”, which are provided for indicative purposes only and is not intended as a guarantee of performance). Buyer may dispatch the Product for hour-ending (“HE”) 0100 through HE 2400 Pacific Prevailing Time (“PPT”), Monday through Sunday, including NERC holidays.

Ancillary Services: Buyer may schedule the Contract Capacity of the applicable Facility for spinning reserve (“Spin”), non-spinning reserve (“Non-Spin”), regulation up (“Reg Up”), regulation down (“Reg Down”) and replacement reserve (“Replacement”) in compliance with and as defined in the rules of the CAISO under its FERC Electric Tariff, as may be amended from time to time, and within the operational parameters and/or physical limitations of each Facility.

Contract Capacity: Based on the Facilities selected, the Contract Capacity for each Facility, at average annual conditions, shall be equal to:

Etiwanda Unit 3:	320 MW
Etiwanda Unit 4:	320 MW
Mandalay Unit 3:	130 MW

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Ellwood Unit: 54 MW

Contract Price: Based on the Facilities selected, Buyer shall pay Seller, in twelve monthly payments, a Contract Price that shall be equal to or exceed the Minimum Contract Price below (in \$ per kW-month):

	<u>Delivery Period 1</u>	<u>Delivery Period 2</u>	<u>Delivery Period 3</u>
Etiwanda Unit 3:	\$1.69	\$1.48	\$1.45
Etiwanda Unit 4:	\$1.69	\$1.48	\$1.45
Mandalay Unit 3:	\$0.92	\$1.22	\$0.71
Ellwood Unit:	\$1.28	\$0.85	\$0.82

If, during any Delivery Period, the Contract Capacity for a given Facility is not awarded to any Buyer, the Minimum Contract Price for such Facility for such Delivery Period will be “rolled forward” to the following Delivery Period and all the Minimum Contract Price for all subsequent Delivery Periods will also be “rolled forward”. For example, if the Contract Capacity for the Ellwood Unit is not awarded for Delivery Period 1, the Minimum Contract Price for Delivery Period 2 shall become \$1.28 per kW-month and the Minimum Contract Price for Delivery Period 3 shall become \$0.85 per kW-month.

VOM Charges: Based on the Facilities selected, Buyer shall pay Seller a variable operations and maintenance (“VOM”) payment for each MWh delivered equal to:

Etiwanda Unit 3:	\$2.00 per MWh
Etiwanda Unit 4:	\$2.00 per MWh
Mandalay Unit 3:	\$2.00 per MWh
Ellwood Unit:	\$2.00 per MWh

Emissions Credits: Seller will provide the appropriate NOx credits, up to a 75% capacity factor, for Etiwanda Unit 3 and Etiwanda Unit 4.

Start Charges: For each start of each Facility beyond the applicable Start Threshold for each Delivery Period, Buyer shall pay Seller a Start Charge payment equal to the amount set forth below:

	<u>Start Threshold (per unit)</u>	<u>Start Charge Beyond Threshold</u>
Etiwanda Unit 3:	12	\$29,100 per start
Etiwanda Unit 4:	12	\$29,100 per start
Mandalay Unit 3:	25	\$1,000 per start
Ellwood Unit:	25	\$399 per start

Contract Capacity Payment: The Contract Capacity Payment is defined as the product of i) the Contract Capacity, and ii) the Contract Price, and iii) 1,000 kW per MW. The Contract Capacity Payment shall be paid monthly from Buyer to Seller in advance on the first (1st) business day of each month during the Delivery Period.

Variable Payment: The Variable Payment is the sum of the payments set forth below and will be paid in arrears on the fifth (5th) business day of the month immediately following each month during the Delivery Period:

VOM Charge payment: Buyer shall pay Seller an amount equal to product of a) the VOM Charge and b) the amount of Delivered Energy (expressed in MWh) delivered during the applicable month; and

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Start Charge payment: Buyer shall pay Seller an amount equal to any Start Charges incurred during the applicable month, calculated as described above; and

Intrastate Gas Transportation Charge payment: Buyer shall pay Seller an amount equal to product of a) the prevailing SoCal Gas Co. intrastate gas transportation tariff (currently equal to \$0.37 per MMBtu) and b) the amount of natural gas transported on SoCal Gas Co. intrastate pipeline system on behalf of Buyer by Seller from the Gas Delivery Point to the Facility during the applicable month. If the pending SoCal Gas “Comprehensive Rate Settlement” is implemented, Buyer shall reimburse Seller for all demand and variable charges incurred by Seller in transporting natural gas from the Gas Delivery Point to the Facility during the applicable month.

Fuel Supply: Buyer shall be responsible for delivering the quantity of natural gas in any day required to produce the amounts of the Product requested, including start fuel, if applicable, for each hour of such day during the Delivery Period, plus any amounts for losses as mandated by the applicable tariff (such aggregate metered amount for such day, the “Daily Natural Gas Quantity”) at the Gas Delivery Point. In addition to the Intrastate Gas Transportation Charge, Buyer shall be responsible for any transportation fees, taxes or assessments imposed or associated with the delivery of natural gas to the Facility, including any imbalances caused by Buyer (“Intrastate Gas Transportation Charge”).

For informational purposes only, please see the attachment “Reliant Energy Unit Characteristics” for fuel requirements.

Gas Delivery Point: Buyer shall deliver the applicable Daily Natural Gas Quantity to Seller at any point on the SoCal Gas Co. system or other mutually agreed upon delivery point(s), or, in the event the Comprehensive Rate Settlement is implemented, at the citygate of the SoCal Gas Co. system.

Power Delivery Point: Seller shall deliver the Product at the interconnection between the busbar of the applicable Facility and the SoCal Edison transmission system.

Transmission: Seller will be responsible for any transmission arrangements and costs to deliver the Product to the Power Delivery Point. Buyer will be responsible for any transmission arrangements and costs, including losses or generator meter multipliers, to receive and transmit the Product at and from the Power Delivery Point.

Delivered Energy: The amount (expressed in MWh) of Product delivered in accordance herewith by Seller for Buyer’s account at the Power Delivery Point.

Requested Energy: The amount (expressed in MWh) of Product requested by Buyer pursuant to the Power Scheduling Procedures for delivery at the Power Delivery Point. Amounts of Requested Energy requested by Buyer must adhere to the operational parameters and physical limitations of the Facility.

Available Energy: The sum of the Capacity available for dispatch of the Product for each hour of the relevant Delivery Period.

Total Energy: The product of Contract Capacity and all the hours in the relevant Delivery Period.

Availability Factor: The Availability Factor for each Delivery Period shall be the quotient of a) the sum of Available Energy and Excused Energy, divided by b) the Total Energy.

Availability Factors for Etiwanda Unit 3 and Unit 4 will be calculated independently.

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Availability Target: Based on the Facilities selected, the Availability Target for each Delivery Period shall be:

Etiwanda Unit 3:	90%
Etiwanda Unit 4:	90%
Mandalay Unit 3:	85%
Ellwood Unit:	85%

For each percentage amount the Availability Factor during the Delivery Period is below the Availability Target, Seller will pay Buyer an amount equal to the product of such percentage amount and the Contract Capacity Payment made by Buyer to Seller during such Delivery Period. For example, if the Availability Factor for the Ellwood Unit for a given Delivery Period is 84%, then the Seller would reimburse to the Buyer an amount equal to 1% of the total Contract Capacity Payments made during that Delivery Period

Such payment shall be Buyer's exclusive remedy and Seller's exclusive liability for any failure by Seller to meet the Availability Target or otherwise to operate and maintain the Facility.

Excused Energy: The sum of the Capacity not available for dispatch of the Product for each hour due to an Excused Event during the relevant Delivery Period.

Excused Events: Excused Events include: (1) a Force Majeure Event affecting the applicable Facility, (2) failure of Buyer to make necessary electric transmission arrangements, (3) Scheduled Maintenance, (4) conditions on the electric transmission system (including a Force Majeure Event, congestion, transmission constraints and the unwillingness of a transmission provider to accept energy), (5) conditions on the gas pipeline network (including a Force Majeure Event, lack of pressure and curtailment of firm natural gas transportation service), (6) failure of Buyer to deliver natural gas, (7) Environmental and Operational Limitations, and (8) Contractual Limitations.

Credit: Neither party shall be required to provide collateral or other security to the other party to secure its performance of its obligations hereunder.

Termination Upon Non-payment: If Buyer defaults in its obligation to make Contract Capacity Payments or Variable Payments in accordance with the Definitive Agreement, Seller will have the right to terminate the Definitive Agreement for the remainder of the applicable Delivery Period and any subsequent Delivery Periods.

Force Majeure Event: Force Majeure Event shall mean causes or events beyond the reasonable control of, and without the fault or negligence of, the Party claiming such Force Majeure Event, including, without limitation, catastrophic equipment failure; acts of God; unusually severe or extreme actions of the elements such as floods, earthquakes, hurricanes or tornadoes; sabotage; terrorism; war; riots or public disorders; strikes and other work stoppages; fire; explosions; and actions or failures to act of any government agency (including expropriation, requisition, change-in-law or change in any governmental approval or environmental constraints lawfully imposed by any government agency) preventing, delaying or otherwise adversely affecting performance of a party hereto.

Force Majeure Event shall not include (i) changes in market conditions that affect the cost or availability of supply of goods or services, (ii) the unavailability of equipment, except to the extent directly caused by an event fitting the definition of Force Majeure Event set forth above, which could reasonably have been avoided by compliance with Good Utility Practices, (iii) changes in market conditions that affect the price of energy or capacity or fuel, and (iv)

the delay or failure of Buyer in performing any material obligations under this tolling agreement.

Operational Provisions

Scheduling Coordinator: At least thirty days prior to the first (1st) day of the Delivery Period, Buyer shall designate a Scheduling Coordinator for each Facility for purposes of scheduling the Product. Failure of Buyer to obtain proper certification as a Scheduling Coordinator or designate a certified Scheduling Coordinator shall not relieve Buyer of its obligations hereunder during the Delivery Period.

Power Scheduling Procedures: Except during Scheduled Maintenance, by 6:15 a.m., PPT, on the applicable WECC pre-scheduling day, Buyer shall submit an indicative schedule to Seller indicating the amount of the Product that Buyer requests to be delivered to or made available at the Power Delivery Point for the applicable day.

Gas Scheduling: No later than 7:30 a.m. PPT on the day prior to each delivery day, Buyer shall submit a schedule (“Gas Schedule”) of anticipated gas nominations for the Daily Natural Gas Quantity, provided that, final nominations must be submitted by Buyer to Seller no later than two (2) hours prior to the daily nomination close as set by the Gas Industry Standards Board. Buyer shall specify each Gas Delivery Point into the SoCal Gas Co. system and corresponding volume of scheduled gas quantity to be delivered to such Gas Delivery Point in the Gas Schedule.

Any changes to the Gas Schedule for gas deliveries on an intra-day basis will be subject to the gas scheduling protocols of the gas pipeline.

Operations and Scheduled Maintenance: During the Delivery Period, each Facility will be operated and maintained in accordance with Good Utility Practices, technical limits and all applicable laws and permits.

It is anticipated that Seller will perform required scheduled maintenance (“Scheduled Maintenance”) on each Facility. The time period allocated for Scheduled Maintenance is listed below (in hours):

	<u>Delivery Period 1</u>	<u>Delivery Period 2</u>	<u>Delivery Period 3</u>
Etiwanda Unit 3:	888	552	552
Etiwanda Unit 4:	552	1,440	552
Mandalay Unit 3:	384	384	384
Ellwood Unit:	384	0	0

Operational and Environmental Limitations: The following operational and environmental limitations apply:

Mandalay Unit 3: Due to environmental restrictions, the dispatch of Mandalay Unit 3 is limited to 100 full load operating hours per year, calculated as a rolling twelve month total. Seller will provide dispatch hours of the Facility for the period of April 1, 2003 through the auction date for each Delivery Period.

Ellwood Unit: Due to environmental restrictions, the dispatch of the Ellwood Unit is limited to 400 hours per calendar year.

Contractual Limitations: The following contractual limitations apply:

Mandalay Unit 3: Unless instructed by the CAISO during emergency conditions, Buyer shall

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not dispatch the Facility during the months of October through March of each Delivery Period.

Unless instructed by the CAISO, Seller commits to not dispatch the Facility during the months of October 2003 through March 2004. If instructed by the CAISO to dispatch the Facility during such time, Seller will make a payment to the applicable Buyer equal to the following:

$$\text{Payment} = \text{Sum of } [R - (((I + T) \times \text{HR}) + V) \times \text{MWh}] \text{ for each day the Facility is dispatched}$$

Where:

R = Revenue received from the CAISO for dispatch of the Facility (\$),

I = SoCal Border gas index for the dispatch day (\$/MMBtu),

T = \$0.37 per MMBtu for gas transportation (\$/MMBtu),

HR = the actual heat rate of the Facility (MMBtu/MWh),

V = \$2.00 (\$/MWh), and

MWh = the amount, expressed in of MWh's, dispatched.

Ellwood Unit: Unless instructed by the CAISO during emergency conditions, Buyer shall not dispatch the Facility during the months of January through March of each Delivery Period.

Unless instructed by the CAISO, Seller commits to not dispatch the Facility during the months of January through March 2004. If instructed by the CAISO to dispatch the Facility during such time, Seller will make a payment to the Buyer equal to the following:

$$\text{Payment} = \text{Sum of } [R - (((I + T) \times \text{HR}) + V) \times \text{MWh}] \text{ for each day the Facility is dispatched}$$

Where:

R = Revenue received from the CAISO for dispatch of the Facility (\$),

I = SoCal Border gas index for the dispatch day (\$/MMBtu),

T = \$0.37 per MMBtu for gas transportation (\$/MMBtu),

HR = the actual heat rate of the Facility (MMBtu/MWh),

V = \$2.00 (\$/MWh), and

MWh = the amount, expressed in of MWh's, dispatched.

Good Practices:	<p>Utility Any of the practices, methods and acts engaged in or approved by a significant portion of the electric generation industry in the southwestern United States operating facilities similar to the applicable Facility during the relevant time period or any of the practices, methods and acts, which, in the exercise of reasonable judgment in light of the facts known, or that reasonably should have been known, at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, applicable laws and codes, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be acceptable practices, methods and acts generally accepted in the southwestern United States.</p>
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Miscellaneous Provisions:

Legal and Regulatory Changes:

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RELIANT ENERGY UNIT CHARACTERISTICS

UNIT PARAMETERS (Net MWs)							
	HR @ Min Capacity (MMBtu/MWh)	HR @ Max Capacity (MMBtu/MWh)	Min Capacity (MW)	Max Capacity (MW)	Operating Times (hours)		
					Min Up	Min Down	Start-up
ETW-3	22.7	9.8	20	320	64	32	9
ETW-4	22.0	10.1	20	320	64	32	9
MAN-3	29.4	15.9	10	130	1	.16	.16
ELW	25.0	13.1	6	56.1	1	.16	.08

ISO CERTIFIED RATES						
P-min (MW)	P-max (MW)	Max (MW/Min)	30 Min	10 Min	10 Min	60 Min
			Reg	Spin	Non-Spin	Replacement
20	320	10.20	***LR/7.03HR	10.2	10.2	4.17
20	320	10.28	***LR/7.38HR	10.28	10.28	10.28
10	130	12.52		12.52	12.52	12.52
6	56.1	10.69		10.69	5.28	5.28

PHYSICAL RAMP RATES							
	Emergency Ramp Rate (MW/Min)	OPERATING RANGE					
		Range(MW)	Rate	Range(MW)	Rate	Range(MW)	Rate
ETW-3	10.2	20-70	2.0	70-300	7.0	300-320	2.0
ETW-4	10.2	20-70	2.0	70-300	7.0	300-320	2.0
ETW-3	12.5	10-130	13.0				
ELW	5.6	6-56.1	5.6				

Other Parameters		Hot Start		Cold Start	
Unit	\$/Start	Hours Offline (hours)	Start Fuel (MMBtu)	Hours Offline (hours)	Start Fuel (MMBtu)
ETW-3	\$ 29,100	5	339	50	3386
ETW-4	\$ 29,100	5	339	50	3386
MAN-3	\$ 1,000	0	0	0	0
ELW	\$ 399	0	0	0	0

The information contained in this attachment, Reliant Energy Unit Characteristics, represents Reliant's forward-looking estimate of the figures represented. This information is provided for reference use only. NO WARRANTY, EXPRESS OR IMPLIED, concerning this information is intended or given.

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Reliant Energy Services, Inc.	
Reliant Energy Coolwater, Inc.	Docket Nos.EL03-59-000
Reliant Energy Ellwood, Inc.	IN03-10-000
Reliant Energy Etiwanda, Inc.	PA02-2-000
Reliant Energy Mandalay, Inc.	
Reliant Energy Ormond Beach, Inc.	

(Issued October 2, 2003)

MASSEY, Commissioner, concurring:

Although I am voting with the majority, I am concerned that the Stipulation and Consent Agreement we approve today is based on the narrow parameters established in the Commission's order establishing the Anomalous Bidding Investigation.¹ That order adopted a \$250 screen to identify questionable bids. This screen is too high and may sanction inappropriate behavior by bidders in a single price auction. The investigation order also stated that the Commission would limit the monetary penalty for violating the MMIP contained in the ISO and PX tariffs to disgorgement of profits. Such a remedy does not make the market whole and may not be an adequate deterrent to future misbehavior. The reasons for my concerns are set out in my dissenting and concurring statement accompanying the investigation order.²

Despite these concerns, I am voting to approve the Stipulation and Consent Agreement because it moves toward resolving some limited issues arising from the Western energy crisis while clearly preserving for future resolution the liability of Reliant that may arise in the Refund Proceeding that is now on appeal in the Ninth Circuit Court of Appeals. The Agreement states that it "does not affect any obligations that Reliant

¹Investigation of Anomalous bidding Behavior and Practices in the Western Markets, 103 FERC ¶ 61,347 (2003).

²103 FERC at 62,362.

may have with respect to Docket No. EL00-95-000 (the "Refund Proceeding"). Thus, any liability of Reliant arising from any behavior (including market manipulation) at issue in the Refund Proceeding now on appeal remains open and is not resolved by today's order.

For these reasons, I concur with today's order.

William L. Massey
Commissioner