

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION  
105 FERC ¶ 61,008

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).<sup>1</sup> The Agreement does not, however, affect any obligations that Reliant may have with respect to Docket EL00-95-000 (the Refund Proceeding).

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<sup>1</sup> 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,<sup>2</sup> held meetings with and reviewed materials submitted by

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<sup>2</sup> 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 EL00-98-042 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.<sup>3</sup> 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.

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<sup>3</sup> 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.<sup>4</sup>

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

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<sup>4</sup> 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.<sup>5</sup> 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.

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<sup>5</sup> 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.<sup>6</sup>

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.

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<sup>6</sup> 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

Reliant Energy Services, Inc.	)	
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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”).<sup>1</sup> 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,