102 FERC ¶ 61,108

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Fact-Finding Investigation into Possible Manipulation of Electric and Natural Gas Prices | Docket No. PA02-2-001

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued January 31, 2003)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Staff conducting the investigation in this proceeding (Staff) and Reliant Resources, Inc.; Reliant Energy Coolwater, Inc.; Reliant Energy Ellwood, Inc.; Reliant Energy Etiwanda, Inc.; Reliant Energy Mandalay, Inc. and Reliant Energy Ormond Beach, Inc. (Reliant). The Agreement resolves all issues arising from a non-public investigation conducted by Staff with respect to certain actions taken by Reliant's employees on June 20 and 21, 2000 in the California Power Exchange Corporation (CalPX) day-ahead market for delivery days June 21 and 22, 2000.

2. We emphasize that this settlement of approximately $13.8 million to be paid to customers of the CalPX immediately is for two days only: June 21 and 22, 2000. Our investigations in the above-captioned docket and other dockets are continuing and our acceptance of this settlement in no way affects findings or remedies for other days or other activities. In addition, Reliant's agreement to pay customers $13.8 million is in addition to any potential refunds owed by Reliant in the refund proceeding in Docket No. EL00-95-045, et al.

BACKGROUND

3. On February 13, 2002, the Commission issued an order directing Staff to conduct an investigation to determine whether any entity manipulated short-term prices for electric energy or natural gas in the West, or otherwise exercised undue influence over

wholesale electric prices in the West.[1] In the course of this investigation, Staff collected data and conducted discovery concerning the functioning of energy markets in the Western United States during 2000 and 2001. As a follow-up to discovery, Staff directed Reliant to review and submit for Staff analysis market data and transcripts of telephone conversations of its energy traders.

4. Late in 2002, Reliant informed Staff that, in performing the review, it identified two days in June 2000 when certain employees reduced the quantity of megawatts offered to the CalPX on a day-ahead basis below the amount that normally would have been offered under the existing market conditions. Reliant later met with Staff to discuss the incident, providing Staff with market data, transcripts of relevant telephone conversations of Reliant traders, and Reliant's explanation of the motive for the withholding strategy.

5. According to Reliant, on June 19, 2000, it had a long position for the third quarter of 2001, and an unexpected drop for the forward prices used to value this caused a loss in its existing forward position. Reliant's Vice President of Power Trading (who is no longer with the company) directed Reliant's west desk traders to respond to this loss. Accordingly, on Monday, June 20, Reliant reduced the capacity it bid into the CalPX for delivery on June 21 by approximately 1,000 MW to see if PX prices would increase and thus also raise forward prices. Reliant increased only slightly the amount of capacity it bid into the CalPX on June 21 for delivery on June 22. Reliant elected to perform discretionary maintenance on generating units whose output otherwise would have been offered to the CalPX for those days.

THE AGREEMENT

6. Reliant has entered into an Agreement with Staff which, if approved by the Commission, would resolve all disputes within the purview of the Commission arising from the traders' actions of June 20 and 21, 2000 with respect to sales that would have occurred in the day-ahead market. In the Agreement, Reliant agrees to pay approximately $13.8 million directly to customers of the CalPX that purchased energy in the CalPX's day-ahead market on June 21 and 22. This payment reflects the worst case scenario of the effect of Reliant's withholding on the California market. Staff has based this payment on a calculation of the maximum possible difference in CalPX clearing

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[1]Fact-Finding Investigation into Possible Manipulation of Electric and Natural Gas
Prices, 98 FERC ¶ 61,165 (2002).

prices between the actual case and the hypothetical case. For the hypothetical case, Staff calculated the average amount of MWs that Reliant bid into the CalPX for each weekday hour for the prior two weeks. The difference between the theoretical bid quantities and Reliant's actual MWs sold was used and assigned an offer price of zero. The payment amount, calculated in this manner, puts CalPX customers in the position they would have been in had Reliant bid in the additional MWs as a "price taker." This payment will be in addition to any refund ultimately owed by Reliant as part of the refund proceeding in Docket No. EL00-95-045, et al.

7. In addition, under the Agreement, Reliant agrees to abide by a must offer obligation to submit bids for all uncommitted, available capacity from its plants located in the State of California into a day-ahead market (once established) or the California Independent System Operator Corporation (CAISO) ancillary services and/or real-time markets one additional year following termination of the existing must offer obligation or until December 31, 2006, whichever is later. This requirement will be implemented through a condition in Reliant's market-based rate tariffs.

8. Further, the Agreement requires that for a period of twenty-four months following the issuance of this Order, Reliant will retain an independent engineering company to perform semi-annual audits of outages at Reliant's generating plants in California to determine that any outages, and the duration thereof, are legitimate. The Agreement specifies that the audits will be provided directly to the Commission prior to review by Reliant.

9. Reliant neither admits nor denies that its actions affected prices in any market, or violated the FPA, its own market-based rate tariffs, the tariffs of the CalPX or CAISO, or any other law or regulation. Nevertheless, Reliant has fully cooperated with Staff in this investigation and has consented to the Agreement described above in an effort to resolve, in good faith, any possibility that Reliant's actions may have resulted in rates that harmed customers in the CalPX on June 21 and 22, 2000.

10. The Agreement is to be a settlement of all claims that the Commission may have relating to the actions described above. The Agreement does not address any other issues pending in any other proceeding, nor does it preclude any potential relief or remedy in any other proceeding, including the refund proceeding in Docket No. EL00-95-045, et al.

DISCUSSION

11. The matters addressed in the Agreement 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 (2000); accord 16 U.S.C. § 824d (2000). With respect to these matters, the Commission finds that the Agreement is fair and reasonable and is in the public interest. 18 C.F.R. § 385.602(g)(3) (2000).

12. The amounts bid into the CalPX day-ahead market reveal the extent of Reliant's withholding. For the weekdays of the prior two-week period, Reliant bid an average of approximately 1130 MW in the CalPX day-ahead market with a high of 1800 MW and a low of 950 MW. On June 21 and 22, 2000, Reliant sold an average of approximately 130 MW in the CalPX day-ahead market with a high of 550 MW and a low of zero in 25 of the hours.

13. Statements made by some of Reliant's traders demonstrate that the reason for reducing capacity bids was to increase CalPX day-ahead prices in order to mitigate losses in Reliant's existing forward positions.[2] The transcripts clearly state the market manipulation strategy and goal, including the use of such terms as: (1) "market manipulation attempts on our part;" (2) "we decided that the prices were too low on the daily market so we shut down . . .;" and (3) "everybody thought it was really exciting that we were gonna play some market power." Thus, Reliant employees intentionally withheld capacity from the day-ahead market to manipulate prices. Reliant has agreed to pay the CalPX customers who suffered financially as a result of the Reliant traders' actions and to ensure that similar trading activities will not recur. The Agreement addresses only the events described herein which occurred on June 20-22, 2000, and does not resolve any other issues or matters. Staff has not concluded its investigation into the Western energy markets.

14. In order to distribute the payment, Reliant will need additional data from CalPX. Therefore, we will direct the CalPX to supply Reliant with the following data. For each of the forty-eight hours at issue, the CalPX shall provide the identity of individual buyers together with the MWs purchased by each buyer in each hour. (The sum of the individual amounts must equal the aggregated hourly MW values used to calculate the total amount.) The hourly MWs of each customer multiplied by the change in the CalPX clearing price will be used to calculate the payment to each CalPX customer. Also, the CalPX shall forward to Reliant the most current mailing address and contact information for the individual buyers identified above. These data will form the basis for calculating

[2]Transcripts of these conversations will be made available on the Commission's website at http://www.ferc.gov/Electric/bulkpower/PA02-2/preliant-transcript.pdf.

the individual payment amounts as well as provide underlying support for the subsequent payment report.

The Commission orders:

(A) The Commission hereby approves the attached Stipulation and Consent Agreement without modification.

(B) The Commission's approval of the Agreement does not constitute precedent regarding any principle or issue in this docket.

(C) Reliant Energy Coolwater, Inc.; Reliant Energy Ellwood, Inc.; Reliant Energy Etiwanda, Inc.; Reliant Energy Mandalay, Inc. and Reliant Energy Ormond Beach, Inc. are hereby directed to modify their market-based rate tariffs to reflect the must offer condition set forth in Part IV, paragraph 2 of the Agreement. Each company must file under FPA section 205 a revised tariff to comply with Part IV, paragraph 2 of the Agreement within fifteen (15) days of the date of this order.

(D) The CalPX is hereby directed to provide to Reliant the data described in the body of this order within seven (7) days of the date of this order.

(E) Reliant is hereby directed to make payments based on the information provided by the CalPX within fifteen (15) days of its receipt of the data from the PX, and file a report on such payments with the Commission within fifteen (15) days thereafter.

(F) The Commission reserves the right to undertake additional review of Reliant's records in the future as deemed necessary in the course of ongoing or future investigations or proceedings.

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

(S E A L)

Magalie R. Salas
Secretary

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Fact-Finding Investigation into Possible Manipulation of Electric and Natural Gas Prices

Docket No. PA02-2-001

Stipulation and Consent Agreement

The Staff conducting the investigation in Docket No. PA02-2-000 (Staff) and Reliant Resources, Inc.; Reliant Energy Coolwater, Inc.; Reliant Energy Ellwood, Inc.; Reliant Energy Etiwanda, Inc.; Reliant Energy Mandalay, Inc. and Reliant Energy Ormond Beach, Inc. (Reliant) enter into this Stipulation and Consent Agreement (Agreement) to resolve all issues of fact and law arising from a non-public investigation relating to the facts stipulated below. These facts are stipulated solely for the purpose of resolving between Reliant and Staff the matters discussed herein and do not constitute stipulations or admissions for any other purpose. Not all facts pertinent to the matters set forth herein are stipulated, but only facts sufficient to support this Stipulation and Consent Agreement.

I. Background

1. On February 13, 2002, the Commission instructed Staff to undertake a "Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices," later assigned Docket No. PA02-2-000.[3] In that proceeding, Staff collected information about the functioning of the Western United States electricity and natural gas markets in 2000-2001 through data requests, depositions, and informal investigation. Staff sought discovery from market participants, including Reliant, and as a follow-up to discovery, directed Reliant to review and submit for Staff analysis market data and transcripts of telephone conversations by its energy traders.

2. In the course of review of its records in response to that request, Reliant informed Staff of certain actions taken by its employees responsible for sales from generating facilities located in California. Subsequently, Staff conducted further investigation, and

[3] See Order Directing Staff Investigation, 98 FERC ¶ 61,165 (2002); Notice of Docket Designation, Docket No. PA02-2-000 (issued Feb. 26, 2002).

Reliant has fully cooperated with the Staff in the course of that investigation. This Agreement, if approved by Commission order, represents the final resolution between Staff and Reliant with respect to the events referred to herein. The payment to be made by Reliant will be in addition to any refund ultimately owed by Reliant as part of the refund proceeding in Docket No. EL00-95-045, et al.

II. Relevant Tariffs

1. The California Power Exchange Corporation (CalPX) was a nonprofit corporation established for the purpose of providing an auction for physical energy commitments. Among its functions, the CalPX accepted hourly bids and offers on a day-ahead basis and matched the supply and demand curves to establish a market-clearing price for the day-ahead market for physical delivery of energy. The CalPX then functioned as the billing entity for the buyers and sellers and as scheduling coordinator to schedule physical delivery of the power. The CalPX ceased operation of its day-ahead market on January 31, 2001.

2. The California Independent System Operator Corporation (CAISO) operates and controls a substantial portion of the electric transmission grid in the state of California and is responsible for balancing generation and load within its control area. To achieve this objective, the CAISO coordinates scheduling of physical delivery of energy and operates day-ahead and hour-ahead clearing markets for ancillary services. The CAISO also operates an imbalance energy market for real-time dispatch of energy. Qualified market participants may submit price and quantity bids and offers into the CAISO markets, and the CAISO issues dispatch instructions for physical delivery based on those submissions.

3. Creation of the CalPX and the CAISO and their jurisdictional tariffs were approved in FERC Docket Nos. EL96-19 and ER96-1663, et al.[4]

4. Reliant Energy Coolwater, Inc.; Reliant Energy Ellwood, Inc.; Reliant Energy Etiwanda, Inc.; Reliant Energy Mandalay, Inc. and Reliant Energy Ormond Beach, Inc. are exempt wholesale generators under the Public Utility Holding Company Act and, pursuant to Commission-accepted tariffs under the Federal Power Act (FPA), they sell energy and ancillary services in wholesale electricity markets at market-based rates.[5]

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[2]See, e.g., Pacific Gas and Electric Co., et al., 77 FERC ¶ 61,204 (1996).

[5]See Ocean Vista Power Generation, L.L.C., et al., 82 FERC ¶ 61,114 (1998);
(continued...)

Together these companies own, operate and control fifteen generating units located in the CAISO control area with a total of approximately 3,800 MW of capacity.[6] Reliant's bids in the CalPX day-ahead market were pursuant to jurisdictional tariffs on file at the Commission. The matters discussed in Part III 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. 16 U.S.C. § 824e.

III. Stipulated Facts

1. On June 20 and 21, 2000, Reliant's traders intentionally reduced the quantity of megawatts offered to the CalPX on a day-ahead basis (for delivery dates of June 21 and June 22) below the amount that normally would have been offered under the existing market conditions.

2. Certain evidence indicates that a significant motivation for some traders for this action was to attempt to increase CalPX day-ahead prices in the belief that this might mitigate losses in Reliant's existing forward positions. Reliant elected to perform discretionary maintenance on generating units whose output otherwise normally would have been offered to the CalPX on a day-ahead basis.

3. For the weekdays of the prior two-week period, Reliant bid an average of approximately 1130 MW in the CalPX Day-Ahead market with a high of 1800 MW and a low of 950 MW. On June 21 and 22, 2000, Reliant sold an average of approximately 130 MW in the CalPX Day-Ahead market with a high of 550 MW and a low of zero in 25 of the hours.

4. Review of publicly-available CAISO documents confirms that there were no emergency declarations or supply shortages on the CAISO grid on June 21 and 22, 2000.

(...continued)
Ormond Beach Power Generation, L.L.C., 83 FERC ¶ 61,306 (1998); and Ocean Vista Power Generation, L.L.C., et al., 84 FERC ¶ 61,013 (-1998), order on reh'g, 85 FERC ¶ 61,123 (1998).

[4]This represents less than three percent of the total capacity in the Western interconnection and less than seven percent of the approximately 54,500 MW of generating capacity physically located in California in the relevant time period.

IV. Remedies

For purposes of settling any and all issues arising from the facts stipulated in Part III of the Agreement, Reliant and Staff agree that:

1. In light of its actions on June 20 and 21, 2000 with respect to sales that would normally have occurred in the day-ahead market, Reliant shall pay $13,817,274 directly to customers of the CalPX that purchased energy in the CalPX's day-ahead market on June 21 and 22. This payment reflects the worst case scenario of the effect of Reliant's withholding on the California market. Staff has based this payment on a calculation of the maximum possible difference in CalPX clearing prices between the actual case and the hypothetical case. For the hypothetical case, Staff calculated the average amount of MWs that Reliant bid into the CalPX for each weekday hour for the prior two weeks. The difference between the theoretical bid quantities and Reliant's actual MWs sold was used and assigned an offer price of zero. The payment amount, calculated in this manner, puts CalPX customers in the position they would have been in had Reliant bid in the additional MWs as a "price taker." This payment will be in addition to any refund ultimately owed by Reliant as part of the refund proceeding in Docket No. EL00-95-045, et al. (Distribution of specific amounts to individual customers shall be in accordance with the directives in any Commission order approving this Agreement).

2. Until twelve months following the date that the existing must offer obligation is terminated, or until December 31, 2006, whichever is later, Reliant shall be subject to a must-offer obligation to submit bids for all uncommitted, available capacity from its plants located in the State of California into a day-ahead market (once established) or the CAISO ancillary services and/or real-time markets (or a successor California spot market).

3. The obligation listed in Part IV, paragraph 2, shall be implemented through a condition on Reliant's market-based rate tariffs; violation of the condition would constitute a violation of Reliant's market-based rate schedules, which the Commission could address through the imposition of refunds or such other remedies as may be appropriate, beginning the day of any such violation. Within 15 days of Commission approval of this settlement, Reliant must file under FPA section 205 to revise its tariffs accordingly.

4. For a period of twenty-four months following issuance of an Order approving this Agreement, Reliant shall retain an independent engineering company to perform semi-annual audits of outages at Reliant's generating plants in California. The findings of the audit shall be provided directly by that company to the Commission's Office of Market

Oversight and Investigation, prior to review by Reliant, and shall be provided simultaneously to Reliant. The purpose of such audits shall be to determine that outages are legitimate and are of an appropriate duration under the circumstances. The first such audit shall be submitted no later than six months following the issuance of an order approving this Agreement.

5. Reliant agrees that the Commission reserves the right to undertake additional review of Reliant's records in the future as deemed necessary in the course of ongoing or future investigations or proceedings.

V. Terms

1. Staff 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. By this Agreement, Staff and Reliant evidence their intention to settle only the matters referred to herein, specifically, any claims that the Commission may have with respect to the facts stipulated in Part III of this Agreement. The payment to be made by Reliant will be in addition to any refund ultimately owed by Reliant as part of the refund proceeding in Docket No. EL00-95-045, et al.

3. Reliant neither admits nor denies that its actions affected prices in any market, or violated the FPA, its own market-based rate tariffs, or the tariffs of the CalPX or CAISO, or any other law or regulation. Nevertheless, Reliant has fully cooperated with Staff in this investigation and has consented to the Agreement in an effort to resolve, in good faith, any possibility that Reliant's actions on June 20-22, 2000 may have resulted in rates that harmed customers.

4. Unless the Commission issues an Order approving this Agreement in its entirety without modification and issues an Order(s) accepting the report of payment of $13,817,274 and accepting implementation of the tariff condition discussed in Part IV, paragraph 3, this Agreement shall be null and void and of no effect whatsoever, and shall not be used in any proceeding, and neither Staff nor Reliant shall be bound by any of its provisions or terms, unless they agree otherwise in writing.

5. On the date the Commission approves this Agreement without modification, this Agreement shall resolve as to Reliant, its parents and affiliates, their successors and assigns, and the officers, directors or employees of each, any claims that the Commission

may have with respect to the facts set forth in Part III of this Agreement. 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.

6. 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 Staff enters into this Agreement in express reliance on those representations.

7. 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.

8. Reliant waives judicial review by any court of any Commission order approving this Agreement, accepting the remittance, and/or accepting the tariff conditions discussed herein, without modification.

9. 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:

______________________________ ____________________

Donald J. Gelinas, Associate Director Date
Office of Markets, Tariffs and Rates

______________________________ ____________________

Curt A. Morgan Date
President, East Region
Reliant Energy Wholesale Group
on behalf of Reliant Resources, Inc.;
Reliant Energy Coolwater, Inc.;
Reliant Energy Ellwood, Inc.;
Reliant Energy Etiwanda, Inc.;
Reliant Energy Mandalay, Inc. and
Reliant Energy Ormond Beach, Inc.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Fact-Finding Investigation into Possible Manipulation of Electric and Natural Gas Prices | Docket No. PA02-2-001

(Issued January 31, 2003)

MASSEY, Commissioner, concurring:

Although I am voting for this order, I have mixed feelings regarding the agreement and am writing separately to set out my reservations.

I am concerned that we are evaluating the agreement in a vacuum. I expect staff to report to us in the near future the results of the fact finding investigation the Commission ordered in this docket into potential manipulation of electric and natural gas prices. I also expect that we will soon be presented with additional evidence and proposed findings on this same issue by parties to other proceedings as a result of an extensive discovery process. Thus, I am concerned that we are entering this agreement without the benefit of the more complete record that will soon be available, and would prefer that we address Reliant's behavior in a more open context.

In addition to the conditions that we are approving, I would prefer that we also limit for some period of time going forward Reliant's ability to sell from its California generators at market-based prices. Such a limitation would provide an appropriate deterrent for the type of egregious conduct Reliant engaged in.

Notwithstanding these reservations, I am persuaded to vote for this order for two reasons. First, this agreement may be the best way to quickly get some money back into the hands of customers that paid the exorbitant prices of California's dysfunctional market. It is unclear that the Commission would prevail in court if we claimed legal entitlement to the $13.8 million that Reliant will pay to buyers to make the market whole. Moreover, this payment is in addition to any potential refunds owed by Reliant in Docket No. EL00-95-045, et al. and does not affect in any way potential findings or remedies for other days or other activities on the part of Reliant. This order slices off two days of misbehavior by a single company and compensates customers accordingly.

Second, this agreement may be the most expeditious way to release to the public the evidence of Reliant's egregious behavior. This evidence was provided to the Commission's staff under a claim of confidentiality, which is withdrawn if the Commission approves the agreement. Without this release, I understand that the Commission's regulations require that we give five days notice to Reliant before releasing the evidence.[7] During that time, Reliant could ask a court to stop its release. Thus, the agreement allows us to avoid a delay in bringing this evidence to the light of day. The Commission makes the right decision to make the smoking gun evidence of the physical withholding of generation available to the public immediately.

With these reservations and this rationale for supporting today's order, I respectfully concur.

William L. Massey
Commissioner

[7] 18 CFR § 388.1b.20 and 388.112.