

106 FERC ¶ 61,207
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, and Joseph T. Kelliher.

Reliant Resources, Inc., Reliant Energy
Power Generation, Inc., and Reliant Energy
Services, Inc.

Docket No. EL03-170-000

ORDER APPROVING CONTESTED SETTLEMENT AGREEMENT

(Issued March 4, 2004)

1. On August 29, 2003, Commission Trial Staff (Trial Staff) and Reliant Resources, Inc., Reliant Energy Power Generation, Inc., Reliant Energy Services, Inc., Reliant Energy Coolwater, Inc., Reliant Energy Ellwood, Inc., Reliant Energy Etiwanda, Inc., Reliant Energy Mandalay, Inc., and Reliant Energy Ormond Beach, Inc. (collectively, Reliant) filed a Settlement Agreement. The Settlement Agreement resolves all issues related to Reliant that were set for hearing in Docket No. EL03-170-000 in the Commission's Order to Show Cause Concerning Gaming and/or Anomalous Market Behavior (Gaming Order).¹
2. On September 30, 2003, the California Independent System Operator Corporation (ISO) filed comments supporting the Settlement Agreement in part. On September 30, 2003, the California Parties² and the Port of Seattle, Washington (Seattle) filed comments opposing the Settlement Agreement.
3. On October 20, 2003, the California Parties filed reply comments in response to the initial comments of Seattle. Also on October 20, 2003, Trial Staff filed general reply comments addressing the California Parties' objections. On October 20, 2003, Trial Staff also filed specific reply comments in support of the Settlement Agreement. On October 22, 2003, Trial Staff filed a motion to supplement its general reply comments in order to address the "Information to be Provided with Settlement Agreements," as

¹ American Electric Power Service Corp., et al., 103 FERC ¶ 61,345 (2003), reh'g denied, 106 FERC ¶ 61,020 (2004).

² The California Parties are the People of the State of California ex rel. Bill Lockyer, Attorney General; the California Electricity Oversight Board; the California Public Utilities Commission; Pacific Gas and Electric Company; and Southern California Edison Company.

described in a Notice to the Public issued by the Chief Administrative Law Judge on October 15, 2003. Also on October 20, 2003, Reliant filed reply comments responding to the objecting parties' comments. On December 9, 2003, the presiding judge certified the Settlement Agreement to the Commission as contested, but recommending its approval.³

4. The Settlement Agreement constitutes a reasonable resolution of this proceeding and will be approved. The Settlement Agreement reasonably addresses and resolves the charges against Reliant that were set for hearing in the Gaming Order. In this regard, Reliant will be returning \$836,000.16, the total revenues (and not merely the profits—and thus more than could be achieved in litigation⁴) associated with Reliant's alleged participation in the gaming practice of Double Selling. Furthermore, given our determination in our order on rehearing not to expand the scope of this proceeding, the release provision in Article IV, section 4.5, of the Settlement Agreement, releasing Reliant from further scrutiny of its trading activities in California during the period January 1, 2000 through June 20, 2001 (with the exception of the ongoing proceeding in Docket No. IN03-10-000) is reasonable.⁵

5. Issues raised by the ISO, the California Parties and Seattle go to the scope of these proceedings, are thus essentially requests for rehearing of the Gaming Order, and, in fact, were addressed in the rehearing order issued on January 22, 2003.⁶ Such matters thus need not be further addressed here.

³ The terms of the Settlement Agreement and these various pleadings are described in more detail in the presiding judge's certification. See Reliant Resources, Inc., et al., Docket No. EL-03-170-000 (Dec. 9, 2003) (certification of contested settlement) (unpublished) (Certification).

⁴ See Gaming Order, 103 FERC ¶ 61,345 at P 1, 2, 71.

⁵ Compare Certification at P 29, 40, 44, 70, with supra note 1. Reliant is not a respondent in Docket No. EL03-180-000, et al., and since has separately settled Docket No. IN03-10-000. In this regard, Reliant differs from Idaho Power Company, whose settlement we are addressing contemporaneously. See Idaho Power Company, 106 FERC ¶ 61,208 (2004) (Docket No. EL03-156-000). However, as we do not read the release provision as excusing Reliant from any refunds it may owe in Docket No. EL00-95-000, et al., we do not here excuse Reliant from any refunds it may owe in that proceeding.

⁶ See supra note 1. To the extent that these issues are addressed in the rehearing order, we incorporate by reference the discussion of these issues in that order.

Docket No. EL03-170-000

- 3 -

6. This order terminates Docket No. EL03-170-000.

By the Commission. Commissioner Kelly not participating.

(S E A L)

Linda Mitry,
Acting Secretary.