

108 FERC ¶ 61,278
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

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 GRANTING REQUEST FOR PARTIAL WAIVER AND
MODIFICATION OF STIPULATION AND CONSENT AGREEMENT

(Issued September 22, 2004)

1. In this order, the Commission grants a partial waiver and modification of Article IV, section 4 of the 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., Reliant Energy Coolwater, Inc., Reliant Energy Ellwood, Inc., Reliant Energy Etiwanda, Inc., Reliant Energy Mandalay, Inc., and Reliant Energy Ormond Beach, Inc. (collectively, Reliant).¹

Background

Stipulation and Consent Agreement

2. The Agreement resolved all outstanding issues with respect to Reliant arising from the following proceedings: (1) the investigation in Docket No. PA02-2-000; (2) Docket No. EL03-59-000, the fact-finding investigation of entities that controlled California generators; and (3) Docket No. IN03-10-000, relating to staff's investigation of anomalous bidding. Among other remedies, Article IV, section 4 of the Agreement

¹ In an October 2, 2003 order, the Commission approved the Agreement. Reliant Energy Services, Inc., *et al.*, 105 FERC ¶ 61,008 (2003) (October 2 Order). In Reliant Energy Services, Inc., *et al.*, 105 FERC ¶ 61,253 (2003), the Commission dismissed a request for rehearing filed by an entity other than Reliant, explaining that there are no parties to the enforcement action and requests for rehearing would not lie.

requires Reliant to auction the capacity from four specific generation facilities, located in California, for three twelve-month periods. The four units are Etiwanda Units 3 and 4, Mandalay Unit 3 and the Ellwood Unit. Further, Article IV, section 4 of the Agreement provides:

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. [footnote omitted] To the extent that bids 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. . . .

The Agreement did not guarantee payment of \$25 million Net Value but, rather, created the possibility to the extent that bids exceed the minimum contract price.

Reliant’s Request for Waiver

3. On September 7, 2004, as supplemented on September 9, 2004, Reliant submitted a request for partial waiver of Article IV, section 4 of the Agreement with regard to the auction requirements. Reliant states that it conducted the first auction in October 2003 and that no bids were received in that auction. Subsequently, Reliant entered into a Must-Run Service Agreement with the California Independent System Operator Corporation (CAISO) for Etiwanda Units 3 and 4. According to Reliant, the contract with the CAISO specifies an initial term through the end of 2004.

4. Reliant further explains that it is required to conduct the second of the three auctions set forth in the Agreement by September 30, 2004. However, Reliant states that it has entered into a bilateral contract with Southern California Edison Company (SCE) pursuant to which SCE will purchase the capacity of Etiwanda Units 3 and 4.² The effectiveness of the contract is conditioned on the Commission granting partial waiver of Article IV, section 4, and further conditioned on the CAISO agreeing to the switch and SCE receiving approval of the contract from the California Public Utilities Commission (CPUC). Reliant indicates that, by entering into the contract with SCE, it is not avoiding the terms of the Agreement but, rather, will apply the proceeds of the contract toward the

² In its supplemental filing, Reliant submitted the contract and requested confidential treatment as commercially sensitive information pursuant to 18 C.F.R. § 388.112 (2004).

Net Value under the same terms as the Agreement. Reliant does not guarantee payment of the full Net Value of \$25 million but represents that the consideration contained in the contract will likely result in payment of the entire \$25 million over the term of the contract.

5. Further, in order to provide the opportunity to secure a bilateral contract for the Mandalay and Ellwood Units, which are currently “mothballed” pending the results of the second auction, Reliant requests a modification of Article IV, section 4 of the Agreement to delay the date of the second auction for these units from September 2004 to January 2005. Reliant states that, if it is unable to secure a contract for these units, it will conduct the required auction no later than January 31, 2005. Likewise, Reliant proposes that, if either the CAISO or the CPUC do not provide the necessary approvals for the contract with SCE, it will conduct an auction for the Etiwanda Units 3 and 4 no later than January 31, 2005.

Discussion

6. Reliant explains that the partial waiver is necessary because it cannot commit the capacity from the Etiwanda Units to SCE while still obligated to auction the same capacity over the same period of time pursuant to the Agreement. In support of its request, Reliant states that the consideration contained in the contract with SCE will enable Reliant to pay into the Deposit Fund up to \$25 million in Net Value, contemplated under the Agreement. Further, it claims that granting the partial waiver will ensure that the output of the Etiwanda Units is not contracted to an out-of-state purchaser, thus helping to ensure reliability in California. The requested modification of the Agreement to postpone the auction for the Mandalay and Ellwood Units would provide Reliant the opportunity to secure a bilateral contract and avoid the risk of having another auction with no bidders.

7. The Commission grants Reliant’s request for partial waiver and modification of Article IV, section 4 of the Agreement. There is a risk of having no bidders in the required second and third auction in light of the fact that Reliant received no bids in response to the first auction held last year. If no bids are received, no payments are made into the Deposit Fund, and the capacity of these units lies idle. The contract with SCE will guarantee that these units will be activated, and also provide the possibility of at least partial or even full payment of the \$25 million into the Deposit Fund. As mentioned above, while Reliant does not guarantee full payment, neither does the Agreement. Moreover, Reliant represents that the consideration contained in the contract should allow payment of the entire \$25 million over the term of the contract.³ These funds are

³ Reliant, at page 3 of its filing, indicates that the consideration contained in the contract will allow it to pay the entire \$25 million into the Deposit Fund. *See also* affidavit of David Manceor, Reliant Vice President, at P 3.

designated for ultimate distribution for the benefit of California and western electricity customers.

8. Likewise, providing Reliant with the opportunity to seek a bilateral contract for the Mandalay and Ellwood Units is also desirable. Reliant's obtaining a contract for these units would, combined with proceeds from the Etiwanda contract, increase the likelihood of payment of the full Net Value and more quickly. Ultimately, if Reliant is unable to find a purchaser for the capacity of these units, or if the CAISO or CPUC withholds approval for the contract between Reliant and SCE, Reliant will conduct the second auction, albeit delayed, pursuant to the terms of the Agreement. In these circumstances, we conclude that Reliant's request should be approved.

The Commission orders:

The Commission hereby grants Reliant's request for partial waiver and modification of Article IV, section 4 of the Agreement, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.