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ex rel. Bill Lockyer, Attorney General of the State of California

13 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE COUNTY OF SAN FRANCISCO

15
16 PEOPLE OF THE STATE OF CALIFORNIA *ex rel.*
BILL LOCKYER, ATTORNEY GENERAL OF THE
17 STATE OF CALIFORNIA,

18 Plaintiffs,

19 v.

20 RELIANT ENERGY, INC.; RELIANT ENERGY
SERVICES, INC.; RELIANT ENERGY POWER
21 GENERATION, INC.; RELIANT RESOURCES,
INC.; RELIANT ENERGY COOLWATER, L.L.C.;
22 RELIANT ENERGY ELLWOOD, L.L.C.; RELIANT
ENERGY ETIWANDA, L.L.C.; RELIANT ENERGY
23 MANDALAY, L.L.C.; RELIANT ENERGY
ORMOND BEACH, L.L.C.; and DOES 1-100,

24
25 Defendants.

Case No.: CGC 02-4054-35

**COMPLAINT FOR
RESTITUTION, CIVIL
PENALTIES, INJUNCTION,
AND OTHER EQUITABLE AND
ANCILLARY RELIEF**

(California Business & Professions
Code § 17200)

26
27 The People of the State of California *ex rel.* Bill Lockyer, Attorney General of the State
28 of California, allege the following on information and belief:

INTRODUCTION

1 1. This action seeks to remedy numerous acts of unfair competition dating back to June
2 of 1998 by the defendants, who are major participants in wholesale electricity markets
3 administered by the California Independent System Operator Corporation (the “ISO”).
4 Defendants have conspired to engage in, and have engaged in, a scheme to violate the rules of the
5 ISO market and to tortiously convert property to which the ISO has an exclusive possessory right,
6 all to the detriment of the reliability of the California electricity market and California’s residents
7 and ratepayers. In particular, defendants have repeatedly sold electricity generating capacity to
8 the ISO for use as a reserve and in the event of a system emergency, and subsequently, and
9 unlawfully, sold the *same* capacity into the lucrative “spot” market for wholesale power. As a
10 result, defendants have unlawfully collected millions of dollars. The loss and misuse of these
11 critically important reserves has posed, and continues to pose, a serious threat to the safety and
12 reliability of the transmission grid. Plaintiff seeks an injunction requiring defendants to cease
13 and desist from committing further acts of unfair competition. Plaintiff also seeks an Order
14 imposing restitution, disgorgement, and civil penalties.

PARTIES

16 2. Plaintiff Bill Lockyer is the Attorney General of the State of California and is the
17 chief law officer of the State (Cal. Const., art. 5, § 13). He is authorized by California Business
18 and Professions Code § 17204 to prosecute any unlawful, unfair or fraudulent business act or
19 practice which is prohibited by California Business and Professions Code § 17200 in a court of
20 competent jurisdiction. For any such violation, he is also authorized to seek injunctive relief,
21 civil penalties not to exceed two thousand five hundred dollars (\$2,500) for each violation, and
22 any orders or judgments, including the appointment of receivers, as may be necessary to prevent
23 the use or employment by any person of any unlawful, unfair, or fraudulent business act or
24 practices.

25 3. Defendant Reliant Energy Coolwater, L.L.C. (together with its predecessor and
26 successor entities, “RELIANT COOLWATER”), formerly Alta Power Generation, L.L.C., is a
27 limited liability company formed under the laws of the State of Delaware. On or about February
28 1998, RELIANT COOLWATER acquired from Southern California Edison Company an

1 electricity generation facility located in Daggett, California. The facility consists of four separate
2 electricity generating units with a combined capacity of approximately 628 megawatts (“MW”).

3 RELIANT COOLWATER is a wholly-owned, indirect subsidiary of defendant Reliant Energy
4 Power Generation, Inc.

5 4. RELIANT COOLWATER entered into a Participating Generator Agreement with
6 the ISO on or about February 12, 1998. This Participating Generator Agreement, as amended,
7 governs the rights and responsibilities of RELIANT COOLWATER with respect to the conduct
8 alleged in this Complaint.

9 5. Defendant Reliant Energy Ellwood, L.L.C. (together with its predecessor and
10 successor entities, “RELIANT ELLWOOD”), formerly Oeste Power Generation, L.L.C., is a
11 limited liability company formed under the laws of the State of Delaware. On or about February
12 1998, RELIANT ELLWOOD acquired from Southern California Edison Company an electricity
13 generation facility located in Goleta, California. The facility consists of a single electricity
14 generating unit with a capacity of approximately 48 MW. RELIANT ELLWOOD is a wholly-
15 owned, indirect subsidiary of defendant Reliant Energy Power Generation, Inc.

16 6. RELIANT ELLWOOD entered into a Participating Generator Agreement with the
17 ISO on or about February 12, 1998. This Participating Generator Agreement, as amended,
18 governs the rights and responsibilities of RELIANT ELLWOOD with respect to the conduct
19 alleged in this Complaint.

20 7. Defendant Reliant Energy Etiwanda, L.L.C. (together with its predecessor and
21 successor entities, “RELIANT ETIWANDA”), formerly Mountain Vista Power Generation,
22 L.L.C., is a limited liability company formed under the laws of the State of Delaware. On or
23 about February 1998, RELIANT ETIWANDA acquired from Southern California Edison
24 Company an electricity generation facility located in Rancho Cucamonga, California. The
25 facility consists of five separate electricity generating units with a combined capacity of
26 approximately 1,044 MW. RELIANT ETIWANDA is a wholly-owned, indirect subsidiary of
27 defendant Reliant Energy Power Generation, Inc.

28 8. RELIANT ETIWANDA entered into a Participating Generator Agreement with
the ISO on or about February 12, 1998. This Participating Generator Agreement, as amended,

1 governs the rights and responsibilities of RELIANT ETIWANDA with respect to the conduct
2 alleged in this Complaint.

3 9. Defendant Reliant Energy Mandalay, L.L.C. (together with its predecessor and
4 successor entities, "RELIANT MANDALAY"), formerly Ocean Vista Power Generation, L.L.C.,
5 is a limited liability company formed under the laws of the State of Delaware. On or about
6 February 1998, RELIANT MANDALAY acquired from Southern California Edison Company an
7 electricity generation facility located in Oxnard, California. The facility consists of three
8 separate electricity generating units with a combined capacity of approximately 560 MW.
9 RELIANT MANDALAY is a wholly-owned, indirect subsidiary of defendant Reliant Energy
10 Power Generation, Inc.

11 10. RELIANT MANDALAY entered into a Participating Generator Agreement with
12 the ISO on or about February 12, 1998. This Participating Generator Agreement, as amended,
13 governs the rights and responsibilities of RELIANT MANDALAY with respect to the conduct
14 alleged in this Complaint.

15 11. Defendant Reliant Energy Ormond Beach, L.L.C. (together with its predecessor
16 and successor entities, "RELIANT ORMOND"), formerly Ormond Beach Power Generation,
17 L.L.C., is a limited liability company formed under the laws of the State of Delaware. On or
18 about June 1998, RELIANT ORMOND acquired from Southern California Edison Company an
19 electricity generation facility located in Oxnard, California. The facility consists of two separate
20 electricity generating units with a combined capacity of approximately 1,475 MW. RELIANT
21 ORMOND is a wholly-owned, indirect subsidiary of defendant Reliant Energy Power
22 Generation, Inc.

23 12. RELIANT ORMOND entered into a Participating Generator Agreement with the
24 ISO on or about June 4, 1998. This Participating Generator Agreement, as amended, governs the
25 rights and responsibilities of RELIANT ORMOND with respect to the conduct alleged in this
26 Complaint.

27 13. Defendant Reliant Energy Services, Inc. (together with its predecessor and
28 successor entities, "RELIANT ENERGY SERVICES"), formerly NorAm Energy Services, Inc.,
is a corporation formed under the laws of the State of Delaware. RELIANT ENERGY

1 SERVICES entered into a Scheduling Coordinator Agreement with the ISO on or about
2 December 11, 1997. This Scheduling Coordinator Agreement, as amended, governs RELIANT
3 ENERGY SERVICES' rights and responsibilities with respect to the conduct alleged in this
4 Complaint. At all relevant times alleged in this Complaint, RELIANT ENERGY SERVICES
5 acted in the capacity of ISO-certified scheduling coordinator for itself and for defendants
6 RELIANT COOLWATER, RELIANT ELLWOOD, RELIANT ETIWANDA, RELIANT
7 ORMOND, and RELIANT MANDALAY.

8 14. Defendant Reliant Energy Power Generation, Inc. ("RELIANT ENERGY
9 POWER GENERATION") is a corporation formed under the laws of the State of Delaware
10 which, through its subsidiaries, does business in the State of California. RELIANT POWER
11 GENERATION's subsidiaries include RELIANT COOLWATER, RELIANT ELLWOOD,
12 RELIANT ETIWANDA, RELIANT MANDALAY, and RELIANT ORMOND. RELIANT
13 ENERGY POWER GENERATION is a wholly-owned subsidiary of defendant Reliant
14 Resources, Inc.

15 15. Defendant Reliant Resources, Inc. ("RELIANT RESOURCES") is a corporation
16 formed under the laws of the state of Delaware which, through its subsidiaries, does business in
17 the State of California. RELIANT RESOURCES owns RELIANT ENERGY POWER
18 GENERATION.

19 16. RELIANT ENERGY, INC. ("RELIANT") is a corporation formed under the laws
20 of the State of Delaware which, through its subsidiaries, does business in the State of California.
21 RELIANT's subsidiaries include: RELIANT RESOURCES, RELIANT POWER
22 GENERATION, RELIANT ENERGY SERVICES, RELIANT COOLWATER, RELIANT
23 ELLWOOD, RELIANT ETIWANDA, RELIANT MANDALAY, and RELIANT ORMOND.

24 17. The true names and capacities of defendants used in this Complaint under the
25 fictitious names of Does 1 through 100, inclusive, are unknown to the plaintiff, who sues such
26 defendants by such fictitious names. Each of the fictitiously named defendants is responsible in
27 some manner for acts, occurrences, or omissions which caused the violations of law alleged.

28 18. Unless otherwise alleged, whenever reference is made in this Complaint to any act
of the defendants, such allegation shall mean that each defendant acted individually and jointly

with the other defendants named in the Complaint.

1
2 19. Unless otherwise alleged, whenever reference is made in this Complaint to any act
3 of any corporate or other business defendant, such allegation shall mean that such corporation or
4 other business defendant did the acts alleged in this Complaint through its officers, directors,
5 employees, agents, and/or representatives while they were acting within the actual or ostensible
6 scope of their authority.

7 20. At all relevant times alleged in this Complaint, each of the defendants has acted as
8 an agent, representative, or employee of each of the other defendants and has acted within the
9 course and scope of said agency or representation.

10 21. At all relevant times alleged in this Complaint, each of the defendants has
11 conspired, aided and abetted, or acted in concert with each other, in causing defendants
12 RELIANT ENERGY SERVICES, RELIANT COOLWATER, RELIANT ELLWOOD,
13 RELIANT ETIWANDA, RELIANT MANDALAY, and RELIANT ORMAND to commit acts of
14 unfair competition, including engaging in a common plan, scheme, or design to violate the rules
15 of the ISO market and the terms of applicable laws and agreements, and to tortiously convert
16 property to which the ISO had an exclusive right of possession. Through their acts alleged
17 herein, each of the defendants acted with knowledge of said conspiracy, common plan, scheme,
18 or design, and with the intent of carrying out such conspiracy, common plan, scheme, or design,
19 all to the detriment of the reliability of the California electricity market, the ISO, the major
20 investor-owned utilities, the municipal utility districts, and California's residents and ratepayers.

JURISDICTION

21 22. This Court has jurisdiction to hear the claims alleged in this Complaint and is a
22 court of competent jurisdiction to grant the relief requested.

23 23. This Court has jurisdiction over the defendants named above because they do
24 sufficient business in California, or otherwise have sufficient minimum contacts with California,
25 to render the exercise of jurisdiction over them by the California courts consistent with
26 traditional notions of fair play and substantial justice.

VENUE

1 24. Venue is proper in this Court because the cause of action alleged in this
2 Complaint, and the liability arising therefrom, arose in part in the City and County of San
3 Francisco, and because many of the violations of law alleged herein occurred in the City and
4 County of San Francisco.

5 **FACTUAL ALLEGATIONS**

6 **Deregulation of California's Electricity Generation Market**

7 25. Prior to 1996, California's major investor-owned utilities owned and controlled
8 facilities used for the generation, transmission, and distribution of electricity to retail customers.
9 The utilities' operations were regulated by the California Public Utilities Commission ("CPUC"),
10 which set retail rates for each of these services pursuant to its authority under the California
11 Constitution and the California Public Utilities Code.

12 26. In September 1996, the California Legislature enacted Assembly Bill 1890 ("AB
13 1890") in order to restructure the electric industry and bring competition to California's
14 electricity generation market by, among other things, requiring utilities to separate their
15 electricity generation operations from their electric power transmission and distribution
16 operations. After the adoption of AB 1890, the utilities sought and received approval from the
17 CPUC to divest themselves of a number of their electricity generating plants. Defendants
18 RELIANT COOLWATER, RELIANT ELLWOOD, RELIANT ETIWANDA, RELIANT
19 MANDALAY, and RELIANT ORMOND purchased the generating facilities they now own and
20 operate from Southern California Edison Company.

21 27. In addition to facilitating the divestiture of utility-owned generating facilities,
22 AB 1890 established two new entities to administer the deregulated energy market: the
23 California Power Exchange ("PX") and the ISO. Each is a non-profit, public benefit corporation
24 established under California state law.

25 28. The PX was established to operate a market for the purchase and sale of
26 electricity for delivery during the same or the next day.

27 **The ISO Market**

28 29. The ISO is responsible for ensuring the safe, reliable, and efficient operation of

1 the high voltage transmission grid. As stated in the ISO's by-laws, its "principal objective is to
2 ensure the reliability of the California Grid, while fostering a competitive marketplace for
3 electrical generation and related Services in California." The ISO attempts to achieve this
4 objective by (1) managing the flow of electricity across the grid and (2) balancing demand and
5 supply in real time.

6 30. The ISO's operations are governed by a Tariff and Protocols (the "ISO Tariff") on
7 file with and approved by the Federal Energy Regulatory Commission ("FERC").

8 31. In order to maintain system reliability, the ISO procures both "imbalance energy"
9 (energy needed to balance the grid) and Ancillary Services (also known as "operating reserves"
10 or "reserve capacity") through various market auction processes. The ISO uses the imbalance
11 energy and Ancillary Services bought and sold in these markets to keep generation (*i.e.*, supply)
12 and load (*i.e.*, demand) in balance on the system at all times. Generally, the costs of these
13 services are allocated among all load-serving entities (*i.e.*, entities that use the transmission
14 network to serve retail customers) based on their usage. California's major investor-owned
15 utilities (Pacific Gas & Electric Company, Southern California Edison Company, and San Diego
16 Gas & Electric Company) and municipal utilities, which together provide service to millions of
17 retail customers, have historically absorbed the vast majority of these costs.

18 32. In order to provide Ancillary Services or imbalance energy to the ISO, an entity
19 that owns or controls electricity generating facilities must enter into a standard agreement with the
20 ISO known as a Participating Generator Agreement ("PGA"). The PGA is a contract which,
21 among other things, expressly requires the generator to comply with the terms of the ISO Tariff.
22 At all relevant times alleged in this Complaint, defendants RELIANT COOLWATER, RELIANT
23 ELLWOOD, RELIANT ETIWANDA, RELIANT MANDALAY, and RELIANT ORMOND were
24 parties to separate PGAs, as amended from time to time, with the ISO.

25 33. A Scheduling Coordinator ("SC") is an entity authorized by the ISO to submit
26 energy "schedules" to the ISO on behalf of electricity suppliers and purchasers. These schedules
27 specify the amount of energy the SC expects its customers to use over the course of the next day,
28 together with the amount of electricity generation the SC anticipates having available to meet the

1 projected demand. SCs submit revised schedules one hour before each operating hour in order to
2 account for changes in weather, plant outages, and a number of other factors. The ISO analyzes
3 the energy schedules submitted by SCs to forecast the total amount of generation and load on the
4 system at any given time, and to determine how much energy and Ancillary Services it will need
5 to procure to keep the system in balance.

6 34. In addition to being responsible for submitting balanced schedules to the ISO, SCs
7 are the only entities authorized to submit bids to sell imbalance energy and Ancillary Services into
8 markets administered by the ISO. A generator or power marketer wishing to participate in these
9 auctions must bid through its SC. A generator or power marketer may serve as its own SC or use
10 a third party to act as its SC.

11 35. All SCs are required to enter into a standard agreement with the ISO called a
12 Scheduling Coordinator Agreement (“SCA”). The SCA is a contract which, among other things,
13 expressly requires the SC to comply with the terms of the ISO Tariff. All SCs also must certify
14 that the generators they represent have entered into PGAs with the ISO.

15 36. At all relevant times alleged in this Complaint, RELIANT ENERGY SERVICES
16 was a party to an SCA, as amended from time to time, with ISO. In its role as SC, defendant
17 RELIANT ENERGY SERVICES has exercised, and continues to exercise, operational control
18 over the electricity generating units owned by defendants RELIANT COOLWATER, RELIANT
19 ELLWOOD, RELIANT ETIWANDA, RELIANT MANDALAY, and RELIANT ORMOND. In
20 addition, RELIANT ENERGY SERVICES has served, and continues to serve, as the ISO’s
21 primary point of contact for resolving any operational issues that arise in connection with the
22 generating units owned by defendants RELIANT COOLWATER, RELIANT ELLWOOD,
23 RELIANT ETIWANDA, RELIANT MANDALAY, and RELIANT ORMOND.

24 **The Imbalance Energy Market**

25 37. Although SCs are required to submit preliminary and revised “balanced schedules”
26 to the ISO, actual load often deviates from the amount of scheduled generation for a number of
27 reasons, including increased demand due to weather. In order to keep supply and demand
28

constantly in balance, the ISO procures “imbalance energy” from several different sources.

1
2 38. The ISO’s primary source of imbalance energy is the imbalance energy market,
3 also known as the “real-time” market. No later than forty five minutes prior to the operating hour,
4 generators and power marketers that wish to sell power into the imbalance energy market submit
5 supply bids through their SCs specifying, among other things, the amount of energy they are
6 willing to provide, and the price at which they are willing to provide it. The ISO then ranks all of
7 the supply bids in order of price from lowest to highest, forming what is commonly referred to as
8 the Balancing Energy and Ex-Post Pricing (“BEEP”) stack. The ISO then selects from the BEEP
9 stack all the bids it needs to balance the system. Generally, the last bid needed to balance the
10 system sets the price paid to all successful bidders. The price established in this manner is the
11 “market clearing price” for imbalance energy (also known as the “Ex Post Price”). After selecting
12 the generating units needed to balance the system, the ISO issues dispatch instructions to each of
13 these units directing them to produce the energy.

14 39. An “uninstructed deviation” occurs when a generating unit produces less (a
15 “negative uninstructed deviation”) or more (a “positive uninstructed deviation”) energy in real
16 time than it was scheduled to produce. The ISO has no way of knowing in advance the extent to
17 which a given unit will deviate from schedule, but must take uninstructed deviations into account
18 when balancing the system. Uninstructed deviations are determined after the fact by comparing
19 the unit’s metered output to the unit’s scheduled operating level. Prior to September 2000,
20 generators were paid the Ex Post Price for energy supplied as a result of a positive uninstructed
21 deviation.

22 40. Uninstructed deviations out of Ancillary Services capacity are prohibited by the
23 ISO Tariff.

The Ancillary Services Markets

24
25 41. In order to maintain system reliability, the ISO is authorized to procure Ancillary
26 Services on behalf of all load-serving entities. Ancillary Services represent generating capacity
27 that can be converted to energy and delivered to the grid in response to uncertain events, such as
28

1 major plant outages, in order to maintain the safe and reliable operation of the transmission
2 system.

3 42. The ISO procures four different types of Ancillary Services through market
4 auctions run one day and one hour, respectively, ahead of each operating hour: (1) “regulation,”
5 or “automatic generation control,” (2) “spinning reserves,” (3) “non-spinning reserves,” and (4)
6 “replacement reserves.” The first, regulation, is used primarily to maintain proper electrical
7 frequency on the grid. The four services are distinguished by the amount of time needed to
8 convert the reserve capacity to actual energy and deliver it to the grid when it is called on by the
9 ISO. The fastest-responding service is regulation. Spinning reserves are the next-fastest
10 responding service, followed by non-spinning reserves and then replacement reserves.

11 43. The amount of each type of Ancillary Service that the ISO must procure in order to
12 maintain an adequate reserve margin is dictated by standards set by the Western Systems
13 Coordinating Council (“WSCC”), a branch of the North American Electric Reliability Council.
14 Generally, the ISO must maintain a reserve margin equal to approximately seven percent of
15 forecasted demand. When the reserve margin falls below a specified threshold, the ISO has
16 authority under the ISO Tariff to declare a system emergency, and to issue any operating orders
17 needed to preserve system reliability, including ordering the utilities to institute rolling blackouts.

18 44. Generators wishing to provide Ancillary Services to the ISO submit bids through
19 their SCs specifying, among other things, the type and amount of capacity they are willing to
20 provide, and the price at which they are willing to provide it. The ISO then selects all the bids it
21 needs to meet its reserve requirements in a given operating hour. As in the imbalance energy
22 market, the last bid needed to meet the reserve requirement determines the price paid to all
23 successful bidders for any given Ancillary Service in any given operating hour. Under the ISO
24 Tariff, Ancillary Service bids are unit-specific: once a generator or SC has been awarded an
25 Ancillary Services bid, it may not provide the service from any unit other than the one that
26 submitted the bid. Under the ISO Tariff, the ISO must procure Ancillary Services at the lowest
27 possible cost consistent with maintaining system reliability.

28 45. A generator providing Ancillary Services capacity to ISO must, as a matter of law,

1 keep its capacity “unloaded” (*i.e.*, held in reserve), unless and until the ISO issues a dispatch
2 instruction directing it to produce energy from that reserve capacity. Moreover, a generator
3 providing Ancillary Service capacity must, as a matter of law, follow ISO dispatch instructions
4 when directed to produce energy out of that reserve capacity. When a generator submits a bid to
5 provide Ancillary Services, it expressly warrants to the ISO that it is capable of providing the
6 service and that it will comply with ISO dispatch instructions if the bid is accepted.

7 46. A generator providing Ancillary Services is entitled to payment for holding its
8 capacity in reserve, regardless of whether or not the ISO calls on the generator to produce energy
9 out of that capacity. In the event that the ISO issues a dispatch instruction to the generator to
10 supply the energy and the generator complies, the generator is entitled to payment for both the
11 reserve capacity and the resulting energy it provides.

12 47. The ISO has an exclusive possessory interest in all generating capacity it
13 procures through the Ancillary Services markets. The ISO’s interest includes the right to
14 determine how much energy, if any, should be produced out of the capacity it has procured.

15 **The Settlement Process**

16 48. Settlement is the process administered by the ISO whereby suppliers (*i.e.*,
17 generators and marketers) are paid for providing imbalance energy and Ancillary Services, and
18 purchasers (*i.e.*, utilities) are billed for their usage of imbalance energy and Ancillary Services.

19 49. The ISO generates and sends to each SC preliminary and final settlement
20 statements reflecting all transactions that occurred in each market the ISO administers. Under the
21 ISO Tariff, SCs have an affirmative duty to disclose to the ISO any settlement errors in their favor
22 that they discover. All payments from energy users are wired to a bank account in California
23 controlled by the ISO. Similarly, all payments to SCs are wired from a California bank account
24 controlled by the ISO.

25 **Misconduct in the Ancillary Services Market**

26 50. On or about June 1, 1998, defendants began to engage in a scheme to violate their
27 Ancillary Services obligations. Instead of holding obligated Ancillary Services capacity in
28 reserve, defendants frequently produced energy out of obligated capacity and “dumped” it into the

1 real-time (BEEP) market in the absence of a dispatch instruction from the ISO. By engaging in
2 this misconduct, defendants unlawfully received payments for both (1) Ancillary Service capacity
3 (or reserves) that they did not keep unloaded; and (2) the energy produced out of those Ancillary
4 Services commitments. The costs associated with the Ancillary Services commitments that
5 defendants did not and could not fulfill have been passed on to the load-serving entities, *i.e.*,
6 California's investor-owned and municipal utilities.

7 51. In addition to producing energy out of Ancillary Services capacity in the absence of
8 a dispatch instruction, defendants failed to comply with the ISO dispatch instructions they did
9 receive. Instead of producing energy out of obligated Ancillary Services capacity as directed by
10 the ISO, defendants frequently delivered less energy than was required, or even none at all. By
11 engaging in this misconduct, defendants unlawfully received payments for capacity that they did
12 not provide, the costs of which were passed on, again, to the load-serving entities, *i.e.*,
13 California's investor-owned and municipal utilities.

14 52. As a result of this scheme, critically important reserves that the ISO relied on to
15 preserve the safety and reliability of the transmission system were not available to serve their
16 intended purpose. The consequences to the safety and reliability of the transmission system were
17 serious and far-reaching. Due in part to defendants' failure to honor their Ancillary Services
18 obligations, the ISO fell out of compliance with WSCC reliability standards on numerous
19 occasions. These violations carried financial penalties, the costs of which have been passed on,
20 again, to the load-serving entities, *i.e.*, California's investor-owned and municipal utilities.

21 53. As a further result of this scheme, in order to make up for operating reserves that
22 were no longer available for their intended purpose, the ISO was often forced to purchase
23 imbalance energy on an "out-of-market" basis. Such "out-of-market" supplies were generally
24 much more costly than imbalance energy dispatched through the BEEP stack. In addition, as it
25 grew to recognize that it could no longer count on defendants and other market participants to
26 honor their Ancillary Services obligations, the ISO began procuring larger quantities of Ancillary
27 Services than it would otherwise have had to procure under normal conditions. This, in turn, put
28 upward pressure on the market clearing prices for Ancillary Services and increased the amount

1 paid to all suppliers of Ancillary Services, including generators who did not hold their capacity in
2 reserve as required. Again, these increased costs were passed on to load-serving entities, *i.e.*,
3 California's investor-owned and municipal utilities.

4 54. During the summer of 1998, the ISO sent several notices addressed to all market
5 participants, including defendants, urging them to comply with their Ancillary Services
6 obligations and stating that failure to do so was a breach of their contracts with the ISO and a
7 violation of the ISO Tariff. The ISO stated in these notices, among other things, that misconduct
8 by generators and SCs was severely compromising its ability to safely operate the transmission
9 grid, and was imposing significant, unnecessary costs on the system.

10 55. Notwithstanding these and other directives from the ISO, defendants and other
11 market participants continued to violate their Ancillary Services obligations.

12 56. On or about December 1998, the ISO proposed an amendment to the ISO Tariff
13 ("Amendment 13") designed to remove the economic incentive for generators to violate their
14 Ancillary Services obligations. Specifically, the ISO proposed that when a generator fails to
15 provide Ancillary Services as required, it should not be paid for the capacity it failed to hold in
16 reserve, or for any energy produced out of that capacity in the absence of a dispatch instruction.

17 57. On or about February 1999, FERC approved Amendment 13, and immediately
18 thereafter the ISO began to develop a software system that would automatically implement the
19 provisions of Amendment 13. The new system, which came to be called "No Pay," was intended
20 to audit the performance of generating units in all hours in which they were obligated to provide
21 Ancillary Services. No Pay would then eliminate inappropriate payments for any Ancillary
22 Services capacity that was not held in reserve, and for any energy produced out of committed
23 Ancillary Service capacity in the absence of a dispatch instruction. No Pay was not fully
24 implemented until September 2000.

25 58. From on or about June 1998 until the implementation of No Pay in September
26 2000, defendants and other market participants continued to violate their Ancillary Services
27 obligations with impunity. They continued to collect payments for Ancillary Services they did not
28 and could not provide, and continued to parlay the operating reserves they were required to hold

1 off the market into highly lucrative energy deals, thus sacrificing the safety and reliability of the
2 transmission system serving millions of Californians, all in an effort to boost their own
3 profitability.

4 59. On or about September 10, 2000, in an attempt to ensure system reliability and
5 eliminate the financial incentive for generators to fail to honor their Ancillary Services bids, the
6 ISO fully implemented No Pay. The No Pay system has not proven to be a successful deterrent,
7 however, and the reliability of the ISO reserves system continues to be threatened by the
8 misconduct of the defendants and other generators and SCs.

9 60. From September 10, 2000 to the present, defendants and other market participants
10 have continued to violate their obligations to keep Ancillary Service capacity unloaded and
11 available when bid successfully into the ISO market.

12 **FIRST CAUSE OF ACTION ALLEGED AGAINST ALL DEFENDANTS**

13 **(Violation of Cal. Business & Professions Code § 17200)**

14 61. Plaintiff incorporates by reference paragraphs 1 through 60 inclusive, as if fully set
15 forth herein.

16 62. Section 17200 of the California Business & Professions Code prohibits unfair
17 competition, which includes any unlawful, unfair, or fraudulent business act or practice.

18 63. California law prohibits the wrongful taking or substantial interference with the
19 personal property of another.

20 64. RELIANT ENERGY SERVICES, RELIANT COOLWATER, RELIANT
21 ELLWOOD, RELIANT ETIWANDA, RELIANT MANDALAY, RELIANT ORMOND, and
22 their agents violated their respective SCA and PGAs, as amended from time to time.

23 65. From on or about June 1998 through September 9, 2000, defendants, and each of
24 them, engaged in unlawful, unfair, or fraudulent business acts or practices, which include, but are
25 not limited to, the following:

26 a. Defendants converted, and conspired to engage in and did engage in a
27 scheme to convert, Ancillary Services capacity and/or monies to which the ISO had an exclusive
28 right of possession by (1) using the same energy capacity that they had sold to the ISO in the form

1 of Ancillary Services to generate electricity to sell a second time into the real-time market, in the
2 absence of a dispatch instruction, and/or (2) failing to comply with ISO dispatch instructions to
3 produce energy out of committed Ancillary Services capacity;

4 b. In addition, defendants submitted, and conspired to engage in and did
5 engage in a scheme to submit bids to provide Ancillary Services on behalf of the participating
6 generators, RELIANT COOLWATER, RELIANT ELLWOOD, RELIANT ETIWANDA,
7 RELIANT MANDALAY, and RELIANT ORMOND, by falsely and misleadingly warranting to
8 the ISO that the underlying Ancillary Services capacity bid into the market would remain
9 available and unloaded as required by law and that they would comply with the ISO's dispatch
10 instructions to provide that capacity upon request;

11 c. In addition, defendants unlawfully failed to comply, and conspired to
12 engage in and did engage in a scheme to unlawfully fail to comply, with ISO dispatch instructions
13 to produce energy out of Ancillary Services capacity sold to the ISO as operating reserves;

14 d. In addition, defendants violated their agreements, and conspired to engage
15 in and did engage in a scheme to violate their agreements, to keep said Ancillary Services capacity
16 unloaded and available. On thousands of occasions defendants failed to comply with their
17 obligations by (1) causing the same capacity to be sold again as energy into the real-time market,
18 and/or (2) failing to provide the committed Ancillary Services capacity altogether;

19 e. In addition, defendants accepted payments, and conspired to engage in and
20 did engage in a scheme to accept payments, for Ancillary Services that they did not and could not
21 provide, and unlawfully failed to notify the ISO that settlements errors had been made in their
22 favor; and

23 f. In addition, defendants accepted payments, and conspired to engage in and
24 did engage in a scheme to accept payments, for energy capacity that they unlawfully sold into the
25 real-time market even though they had no ownership interest in that energy, having sold the
26 underlying capacity to the ISO as Ancillary Services.

27 66. From on or about September 10, 2000 to the present, defendants, and each of them,
28 have engaged and continue to engage in unlawful, unfair, or fraudulent business acts or practices,

1 which include, but are not limited to, the following:

2 a. Defendants have failed to honor their Ancillary Services agreements and
3 have conspired to engage in, and have engaged in, a scheme to fail to honor their Ancillary
4 Services capacity bids, despite the implementation of No Pay, by (1) using the same energy
5 capacity that they had sold to the ISO in the form of Ancillary Services to generate electricity to
6 sell a second time into the real-time market in the absence of a dispatch instruction and/or (2)
7 failing to comply with ISO dispatch instructions directing them to produce energy out of
8 committed Ancillary Services capacity;

9 b. In addition, defendants submitted, and conspired to engage in and did
10 engage in a scheme to submit, thousands of bids to provide Ancillary Services on behalf of the
11 participating generators, RELIANT COOLWATER, RELIANT ELLWOOD, RELIANT
12 ETIWANDA, RELIANT MANDALAY, and RELIANT ORMOND, by falsely and misleadingly
13 warranting to the ISO that the underlying Ancillary Services capacity committed would remain
14 available and unloaded as required by law and that they would comply with ISO's dispatch
15 instructions;

16 c. In addition, defendants violated their agreements, and conspired to engage
17 in and did engage in a scheme to violate their agreements, to keep said Ancillary Services capacity
18 unloaded and available. Defendants failed to comply with their obligations by (1) causing the
19 same capacity to be sold again into the real-time market, and/or (2) failing to provide the
20 committed Ancillary Services capacity altogether.

21 67. As a result of the conduct alleged above, defendants, through their SC, RELIANT
22 ENERGY SERVICES, unlawfully and unfairly collected millions of dollars in payments for
23 Ancillary Services they did not provide, and for energy sold into the real-time market that was
24 legally required to be held in reserve, in specific amounts to be subject to proof at trial.

25 68. As a further result of the conduct alleged above, the ISO has faced and continues to
26 face serious threats to system reliability because operating reserves it was relying on to maintain
27 the reliability of the transmission grid were not available. In many instances, after discovering
28 that defendants had failed to honor their Ancillary Services bids, the ISO was required to purchase

1 emergency supplies of electricity at prices much higher than normal to keep the system in balance.
2 Further, because it could not rely on defendants to honor their obligations, the ISO was required to
3 procure greater amounts of Ancillary Services than it normally would have needed to meet its
4 reserve requirements, which put upward pressure on the market clearing prices for Ancillary
5 Services.

6 69. As a further result of the conduct alleged above, the ISO has incurred substantial
7 costs for services never received. Those costs have been borne by the utilities, who act as
8 intermediaries to provide consumers and businesses with electricity, and by California's
9 ratepayers and taxpayers. The magnitude of the incremental costs incurred by the ISO to safely
10 and reliably operate the system in the face of said conduct will be subject to proof at trial.

11 70. As a further result of the conduct alleged above, the ISO and its market participants
12 have incurred substantial penalties from various market-monitoring entities, including the WSCC.

13 71. Defendants' continuing wrongful conduct, as alleged above, unless and until
14 restrained by an Order of this Court, will further cause great and irreparable harm to the safety and
15 reliability of the California electricity market and to California's ratepayers and taxpayers.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, plaintiff prays for judgment against defendants, and each of them, as
18 follows:

19 1. For a preliminary and permanent injunction, as authorized by Cal. Bus. & Prof.
20 Code § 17203, enjoining defendants, and each of them, their successors, agents, representatives,
21 employees and all persons acting in concert with them, from engaging in unfair competition as
22 defined in Cal. Bus. & Prof. Code § 17200, including, but not limited to the types of acts or
23 practices alleged herein;

24 2. For an order directing defendants to pay restitution in an amount according to
25 proof;

26 3. For an order directing defendants to disgorge all monies, including any profits, they
27 gained as a result of their violations of Cal. Bus. & Prof. Code § 17200 in an amount according to
28 proof;

