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

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

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

19

Plaintiffs,

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v.

21 WILLIAMS ENERGY MARKETING & TRADING
22 COMPANY; THE WILLIAMS COMPANIES, INC.;;
and DOES 1-100,

23

Defendants.

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

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Case No.: CGC 02-4054-32

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

(California Business & Professions
Code § 17200)

1 **INTRODUCTION**

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

16 **PARTIES**

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

26 3. Defendant Williams Energy Marketing & Trading Company (together with its
27 predecessor and successor entities, “WILLIAMS ENERGY MARKETING & TRADING”),
28 formerly Williams Energy Services Company, is a corporation formed under the laws of the State

1 of Delaware. WILLIAMS ENERGY MARKETING & TRADING is a wholesale seller of
2 electricity in California. WILLIAMS ENERGY MARKETING & TRADING entered into a
3 Scheduling Coordinator Agreement with the ISO on or about March 13, 1998. This Scheduling
4 Coordinator Agreement, as amended, governs WILLIAMS ENERGY MARKETING &
5 TRADING's rights and responsibilities with respect to the conduct alleged in this Complaint.
6 WILLIAMS ENERGY MARKETING & TRADING is a subsidiary of defendant The Williams
7 Companies, Inc.

8 4. Defendant The Williams Companies, Inc. (together with its predecessor and
9 successor entities, "WILLIAMS COMPANIES") is a corporation formed under the laws of the
10 State of Delaware. WILLIAMS COMPANIES is a global energy company which provides
11 energy services in California through its subsidiary WILLIAMS ENERGY MARKETING &
12 TRADING.

13 5. On or about May 1, 1998, WILLIAMS ENERGY MARKETING & TRADING,
14 through Williams Energy Services Company, entered into a twenty-year Capacity Sale and
15 Tolling Agreement ("Tolling Agreement") with three California generating facilities owned by
16 The AES Corporation, Inc.: AES Alamitos, L.L.C., AES Huntington Beach, L.L.C., and AES
17 Redondo Beach, L.L.C. (collectively, the "AES Plants"). The Tolling Agreement provides for
18 the sale of all of the energy and capacity from the AES Plants to WILLIAMS ENERGY
19 MARKETING & TRADING. The Tolling Agreement further provides that WILLIAMS
20 ENERGY MARKETING & TRADING has the exclusive right to schedule and market the
21 capacity, energy, and Ancillary Services from the AES Plants.

22 6. At all relevant times alleged in this Complaint, defendant WILLIAMS ENERGY
23 MARKETING & TRADING acted in the capacity of ISO-certified scheduling coordinator for
24 itself and for the following companies: AES Alamitos, L.L.C., AES Huntington Beach, L.L.C.,
25 and AES Redondo Beach, L.L.C.

26 7. AES Alamitos, L.L.C. (together with its predecessor and successor entities, "AES
27 Alamitos") is a limited liability company formed under the laws of the State of Delaware. On or
28 about May 1998, AES Alamitos acquired from Southern California Edison Company an

1 electricity generation facility located in Long Beach, California. The Alamitos facility consists of
2 seven separate electricity generating units with a combined operating capacity limit of
3 approximately 2090 megawatts (“MW”). AES Alamitos entered into a Participating Generator
4 Agreement with the ISO on or about May 8, 1998.

5 8. AES Huntington Beach, L.L.C. (together with its predecessor and successor
6 entities, “AES Huntington Beach”) is a limited liability company formed under the laws of the
7 State of Delaware. On or about May 1998, AES Huntington Beach acquired from Southern
8 California Edison Company an electricity generation facility located in Huntington Beach,
9 California. The Huntington Beach facility consists of three separate electricity generating units
10 with a combined operating capacity limit of approximately 563 MW. AES Huntington Beach
11 entered into a Participating Generator Agreement with the ISO on or about May 8, 1998.

12 9. AES Redondo Beach, L.L.C. (together with its predecessor and successor entities,
13 “AES Redondo Beach”) is a limited liability company formed under the laws of the State of
14 Delaware. On or about May 1998, AES Redondo Beach acquired from Southern California
15 Edison Company an electricity generation facility located in Redondo Beach, California. The
16 Redondo Beach facility consists of four separate electricity generating units with a combined
17 operating capacity limit of approximately 1310 MW. AES Redondo Beach entered into a
18 Participating Generator Agreement with the ISO on or about May 8, 1998.

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

23 11. Unless otherwise alleged, whenever reference is made in this Complaint to any act
24 of the defendants, such allegation shall mean that each defendant acted individually and jointly
25 with the other defendants named in the Complaint.

26 12. Unless otherwise alleged, whenever reference is made in this Complaint to any act
27 of any corporate or other business defendant, such allegation shall mean that such corporation or
28 other business defendant did the acts alleged in this Complaint through its officers, directors,

1 employees, agents and/or representatives while they were acting within the actual or ostensible
2 scope of their authority.

3 13. At all relevant times alleged in this Complaint, each of the defendants has acted as
4 an agent, representative, or employee of each of the other defendants and has acted within the
5 course and scope of said agency or representation.

6 14. At all relevant times alleged in this Complaint, each of the defendants has
7 conspired, aided and abetted, or acted in concert with each other, in causing defendant
8 WILLIAMS ENERGY MARKETING & TRADING to commit acts of unfair competition,
9 including engaging in a common plan, scheme, or design to violate the rules of the ISO market
10 and the terms of applicable laws and agreements, and to tortiously convert property to which the
11 ISO had an exclusive right of possession. Through their acts alleged herein, each of the
12 defendants acted with knowledge of said conspiracy, common plan, scheme, or design, and with
13 the intent of carrying out such conspiracy, common plan, scheme, or design, all to the detriment
14 of the reliability of the California electricity market, the ISO, the major investor-owned utilities,
15 the municipal utility districts, and California's residents and ratepayers.

16 **JURISDICTION**

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

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

23 **VENUE**

24 17. Venue is proper in this Court because the cause of action alleged in this
25 Complaint, and the liability arising therefrom, arose in part in the City and County of San
26 Francisco, and because many of the violations of law alleged herein occurred in the City and
27 County of San Francisco.

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1 **FACTUAL ALLEGATIONS**

2 **Deregulation of California’s Electricity Generation Market**

3 18. Prior to 1996, California’s major investor-owned utilities owned and controlled
4 facilities used for the generation, transmission, and distribution of electricity to retail customers.
5 The utilities’ operations were regulated by the California Public Utilities Commission (“CPUC”),
6 which set retail rates for each of these services pursuant to its authority under the California
7 Constitution and the California Public Utilities Code.

8 19. In September 1996, the California Legislature enacted Assembly Bill 1890 (“AB
9 1890”) in order to restructure the electric industry and bring competition to California’s
10 electricity generation market by, among other things, requiring utilities to separate their
11 electricity generation operations from their electric power transmission and distribution
12 operations. After the adoption of AB 1890, the utilities sought and received approval from the
13 CPUC to divest themselves of a number of their electricity generating plants. AES Alamosa,
14 L.L.C. , Alamosa Huntington Beach, L.L.C., and AES Redondo Beach, L.L.C. purchased the
15 generating facilities they now own and operate from Southern California Edison Company.

16 20. In addition to facilitating the divestiture of utility-owned generating facilities,
17 AB 1890 established two new entities to administer the deregulated energy market: the
18 California Power Exchange (“PX”) and the ISO. Each is a non-profit, public benefit corporation
19 established under California state law.

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

22 **The ISO Market**

23 22. The ISO is responsible for ensuring the safe, reliable, and efficient operation of
24 the high voltage transmission grid. As stated in the ISO’s by-laws, its “principal objective is to
25 ensure the reliability of the California Grid, while fostering a competitive marketplace for
26 electrical generation and related Services in California.” The ISO attempts to achieve this
27 objective by (1) managing the flow of electricity across the grid and (2) balancing demand and
28 supply in real time.

1 23. The ISO’s operations are governed by a Tariff and Protocols (the “ISO Tariff”) on
2 file with and approved by the Federal Energy Regulatory Commission (“FERC”).

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

13 25. A Scheduling Coordinator (“SC”) is an entity authorized by the ISO to submit
14 energy “schedules” to the ISO on behalf of electricity suppliers and purchasers. These schedules
15 specify the amount of energy the SC expects its customers to use over the course of the next day,
16 together with the amount of electricity generation the SC anticipates having available to meet the
17 projected demand. SCs submit revised schedules one hour before each operating hour in order to
18 account for changes in weather, plant outages, and a number of other factors. The ISO analyzes
19 the energy schedules submitted by SCs to forecast the total amount of generation and load on the
20 system at any given time, and to determine how much energy and Ancillary Services it will need
21 to procure to keep the system in balance.

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

27 27. All SCs are required to enter into a standard agreement with the ISO called a
28 Scheduling Coordinator Agreement (“SCA”). The SCA is a contract which, among other things,

1 expressly requires the SC to comply with the terms of the ISO Tariff. All SCs also must certify
2 that the generators they represent have entered into PGAs with the ISO.

3 28. At all relevant times alleged in this Complaint, WILLIAMS ENERGY
4 MARKETING & TRADING was a party to an SCA, as amended from time to time, with the
5 ISO. In its role as SC, defendant WILLIAMS ENERGY & TRADING has exercised, and
6 continues to exercise, operational control over the AES Plants. In addition, WILLIAMS
7 ENERGY MARKETING & TRADING has served, and continues to serve, as the ISO's primary
8 point of contact for resolving any operational issues that arise in connection with the AES Plants.

9 29. In order to provide Ancillary Services or imbalance energy to the ISO, an entity
10 that owns electricity generating facilities must enter into a standard agreement with the ISO
11 known as a Participating Generator Agreement ("PGA"). At all relevant times alleged in this
12 Complaint, the AES Plants were parties to separate PGAs, as amended from time to time, with
13 the ISO.

14 **The Imbalance Energy Market**

15 30. Although SCs are required to submit preliminary and revised "balanced
16 schedules" to the ISO, actual load often deviates from the amount of scheduled generation for a
17 number of reasons, including increased demand due to weather. In order to keep supply and
18 demand constantly in balance, the ISO procures "imbalance energy" from several different
19 sources.

20 31. The ISO's primary source of imbalance energy is the imbalance energy market,
21 also known as the "real-time" market. No later than forty five minutes prior to the operating
22 hour, generators and power marketers that wish to sell power into the imbalance energy market
23 submit supply bids through their SCs specifying, among other things, the amount of energy they
24 are willing to provide, and the price at which they are willing to provide it. The ISO then ranks
25 all of the supply bids in order of price from lowest to highest, forming what is commonly referred
26 to as the Balancing Energy and Ex-Post Pricing ("BEEP") stack. The ISO then selects from the
27 BEEP stack all the bids it needs to balance the system. Generally, the last bid needed to balance
28 the system sets the price paid to all successful bidders. The price established in this manner is

1 the “market clearing price” for imbalance energy (also known as the “Ex Post Price”). After
2 selecting the generating units needed to balance the system, the ISO issues dispatch instructions
3 to each of these units directing them to produce the energy.

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

12 33. Uninstructed deviations out of Ancillary Services capacity are prohibited by the
13 ISO Tariff.

14 **The Ancillary Services Markets**

15 34. In order to maintain system reliability, the ISO is authorized to procure Ancillary
16 Services on behalf of all load-serving entities. Ancillary Services represent generating capacity
17 that can be converted to energy and delivered to the grid in response to uncertain events, such as
18 major plant outages, in order to maintain the safe and reliable operation of the transmission
19 system.

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

28 36. The amount of each type of Ancillary Service that the ISO must procure in order

1 to maintain an adequate reserve margin is dictated by standards set by the Western Systems
2 Coordinating Council (“WSCC”), a branch of the North American Electric Reliability Council.
3 Generally, the ISO must maintain a reserve margin equal to approximately seven percent of
4 forecasted demand. When the reserve margin falls below a specified threshold, the ISO has
5 authority under the ISO Tariff to declare a system emergency, and to issue any operating orders
6 needed to preserve system reliability, including ordering the utilities to institute rolling blackouts.

7 37. SCs submit bids for Ancillary Services to the ISO which specify, among other
8 things, the type and amount of capacity they are willing to provide, and the price at which they
9 are willing to provide it. The ISO then selects all the bids it needs to meet its reserve
10 requirements in a given operating hour. As in the imbalance energy market, the last bid needed
11 to meet the reserve requirement determines the price paid to all successful bidders for any given
12 Ancillary Service in any given operating hour. Under the ISO Tariff, Ancillary Service bids are
13 unit-specific: once a generator or SC has been awarded an Ancillary Services bid, it may not
14 provide the service from any unit other than the one that submitted the bid. Under the ISO Tariff,
15 the ISO must procure Ancillary Services at the lowest possible cost consistent with maintaining
16 system reliability.

17 38. A SC providing Ancillary Services capacity to ISO must, as a matter of law, keep
18 its capacity “unloaded” (*i.e.*, held in reserve) unless and until the ISO issues a dispatch
19 instruction directing it to produce energy from that reserve capacity. Moreover, a SC providing
20 Ancillary Service capacity must, as a matter of law, follow ISO dispatch instructions when
21 directed to produce energy out of that reserve capacity. When a SC submits a bid to provide
22 Ancillary Services, it expressly warrants to the ISO that it is capable of providing the service and
23 that it will comply with ISO dispatch instructions if the bid is accepted.

24 39. A SC providing Ancillary Services is entitled to payment for holding its
25 capacity in reserve, regardless of whether or not the ISO calls on the generator to produce energy
26 out of that capacity. In the event that the ISO issues a dispatch instruction to the SC to supply the
27 energy and the generator complies, the SC is entitled to payment for both the reserve capacity
28 and the resulting energy it provides.

1 not provide, the costs of which were passed on, again, to the load serving entities, *i.e.*,
2 California's investor-owned and municipal utilities.

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

10 46. As a further result of this scheme, in order to make up for operating reserves that
11 were no longer available for their intended purpose, the ISO was often forced to purchase
12 imbalance energy on an "out-of-market" basis. Such "out-of-market" supplies were generally
13 much more costly than imbalance energy dispatched through the BEEP stack. In addition, as it
14 grew to recognize that it could no longer count on defendants and other market participants to
15 honor their Ancillary Services obligations, the ISO began procuring larger quantities of Ancillary
16 Services than it would otherwise have had to procure under normal conditions. This, in turn, put
17 upward pressure on the market clearing prices for Ancillary Services and increased the amount
18 paid to all suppliers of Ancillary Services, including generators who did not hold their capacity in
19 reserve as required. Again, these increased costs were passed on to load-serving entities, *i.e.*,
20 California's investor-owned and municipal utilities.

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

27 48. Notwithstanding these and other directives from the ISO, defendants and other
28 market participants continued to violate their Ancillary Services obligations.

1 49. On or about December 1998, the ISO proposed an amendment to the ISO Tariff
2 (“Amendment 13”) designed to remove the economic incentive for generators to violate their
3 Ancillary Services obligations. Specifically, the ISO proposed that when a generator or SC fails
4 to provide Ancillary Services as required, it should not be paid for the capacity it failed to hold in
5 reserve, or for any energy produced out of that capacity in the absence of a dispatch instruction.

6 50. On or about February 1999, FERC approved Amendment 13, and immediately
7 thereafter the ISO began to develop a software system that would automatically implement the
8 provisions of Amendment 13. The new system, which came to be called “No Pay,” was
9 intended to audit the performance of generating units in all hours in which they were obligated to
10 provide Ancillary Services. No Pay would then eliminate inappropriate payments for any
11 Ancillary Services capacity that was not held in reserve, and for any energy produced out of
12 committed Ancillary Service capacity in the absence of a dispatch instruction. No Pay was not
13 fully implemented until September 2000.

14 51. From on or about June 1998 until the implementation of No Pay in September
15 2000, defendants and other market participants continued to violate their Ancillary Services
16 obligations with impunity. They continued to collect payments for Ancillary Services they did
17 not and could not provide, and continued to parlay the operating reserves they were required to
18 hold off the market into highly lucrative energy deals, thus sacrificing the safety and reliability of
19 the transmission system serving millions of Californians, all in an effort to boost their own
20 profitability.

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

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

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

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

3 54. Plaintiff incorporates by reference paragraphs 1 through 53 inclusive, as if fully
4 set forth herein.

5 55. Section 17200 of the California Business & Professions Code prohibits unfair
6 competition, which includes any unlawful, unfair, or fraudulent business act or practice.

7 56. California law prohibits the wrongful taking or substantial interference with the
8 personal property of another.

9 57. WILLIAMS ENERGY MARKETING & TRADING and its agents violated their
10 respective SCA and PGAs, as amended from time to time.

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

14 a. Defendants converted, and conspired to engage in and did engage in a
15 scheme to convert, Ancillary Services capacity and/or monies to which the ISO had an exclusive
16 right of possession by (1) using the same energy capacity that they had sold to the ISO in the
17 form of Ancillary Services to generate electricity to sell a second time into the real-time market,
18 in the absence of dispatch instructions, and/or (2) failing to comply with ISO dispatch
19 instructions to produce energy out of committed Ancillary Services capacity;

20 b. In addition, defendants submitted, and conspired to engage in and did
21 engage in a scheme to submit bids to provide Ancillary Services on behalf of the AES Plants by
22 falsely and misleadingly warranting to the ISO that the underlying Ancillary Services capacity
23 bid into the market would remain available and unloaded as required by law and that they would
24 comply with the ISO's dispatch instructions to provide that capacity upon request;

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

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

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

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

14 59. From on or about September 10, 2000 to the present, defendants, and each of
15 them, have engaged and continue to engage in unlawful, unfair, or fraudulent business acts or
16 practices, which include, but are not limited to, the following:

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

24 b. In addition, defendants submitted, and conspired to engage in and did
25 engage in a scheme to submit bids to provide Ancillary Services on behalf of the AES Plants by
26 falsely and misleadingly warranting to the ISO that the underlying Ancillary Services capacity
27 committed would remain available and unloaded as required by law and that they would comply
28 with ISO's dispatch instructions;

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

6 60. As a result of the conduct alleged above, defendants unlawfully and unfairly
7 collected millions of dollars in payments for Ancillary Services they did not provide, and for
8 energy sold into the real-time market that was legally required to be held in reserve, in specific
9 amounts to be subject to proof at trial.

10 61. As a further result of the conduct alleged above, the ISO has faced and continues
11 to face serious threats to system reliability because operating reserves it was relying on to
12 maintain the reliability of the transmission grid were not available. In many instances, after
13 discovering that defendants had failed to honor their Ancillary Services bids, the ISO was
14 required to purchase emergency supplies of electricity at prices much higher than normal to keep
15 the system in balance. Further, because it could not rely on defendants to honor their obligations,
16 the ISO was required to procure greater amounts of Ancillary Services than it normally would
17 have needed to meet its reserve requirements, which put upward pressure on the market clearing
18 prices for Ancillary Services.

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

24 63. As a further result of the conduct alleged above, the ISO and its market
25 participants have incurred substantial penalties from various market-monitoring entities,
26 including the WSCC.

27 64. Defendants' continuing wrongful conduct, as alleged above, unless and until
28 restrained by an Order of this Court, will further cause great and irreparable harm to the safety

1 and reliability of the California electricity market and to California's ratepayers and taxpayers.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, plaintiff prays for judgment against defendants, and each of them, as
4 follows:

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

10 2. For an order directing defendants to pay restitution in an amount according to
11 proof;

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

15 4. For an order assessing civil penalties of two thousand five hundred dollars
16 (\$2,500) against each defendant for each violation of Cal. Bus. & Prof. Code § 17200, as
17 authorized by Cal. Bus. & Prof. Code § 17206, in an amount according to proof;

18 5. For costs of suit incurred herein; and

19 6. For such other and further relief as the nature of the case may require and the
20 Court deems just and proper.

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Dated: March 11, 2002

Respectfully submitted,
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