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Attorney General of the State of California

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

In the Matter of the Investigation of:

POSSIBLY UNLAWFUL, UNFAIR, OR ANTI-  
COMPETITIVE BEHAVIOR AFFECTING  
ELECTRICITY PRICES IN CALIFORNIA.

BILL LOCKYER, Attorney General of the State of  
California,

Petitioner,

v.

RELIANT ENERGY, INC., RELIANT ENERGY  
POWER GENERATION, INC., RELIANT ENERGY  
SERVICES, INC., RELIANT ENERGY RETAIL,  
INC., RELIANT ENERGY SOLUTIONS, INC.,  
RELIANT ENERGY CALIFORNIA HOLDINGS,  
LLC, RELIANT ENERGY ELWOOD, LLC,  
RELIANT ORMOND BEACH, LLC, RELIANT  
ENERGY MANDALAY, LLC, RELIANT ENERGY  
COOLWATER, LLC, RELIANT ENERGY  
ETIWANDA, LLC, RELIANT ENERGY PIPELINE  
SERVICES, INC., AND ALTA NORTE POWER  
GENERATION, LLC.

Respondents.

Case No.: 320615

**RENEWED PETITION FOR  
ORDER COMPELLING  
COMPLIANCE WITH  
INVESTIGATORY SUBPOENAS  
AND INTERROGATORIES**

[Govt. Code §§11187, 11188]

1           Petitioner, Bill Lockyer, the Attorney General of California, on behalf of the People of  
2 the State of California, by and through the undersigned, alleges as follows:

3           1.       Petitioner is the Attorney General of California and was so at all times relevant  
4 herein. He brings this proceeding in his official capacity.

5           2.       Acting pursuant to Government Code section 11180, the Attorney General has  
6 initiated an investigation into possibly unlawful, unfair, or anti-competitive behavior affecting  
7 electricity prices in California.

8           3.       The Attorney General is the head of the Department of Justice and has the  
9 authority to issue investigatory subpoenas and interrogatories pursuant to Government Code  
10 section 11181, subdivisions (e) and (f), and to delegate those powers to officers of the  
11 Department of Justice pursuant to Government Code section 11182.

12          4.       The Attorney General has delegated his authority to investigate behavior affecting  
13 electricity prices in California and to issue subpoenas and interrogatories in connection with that  
14 investigation. Among others, Deputy Attorneys General Richard Rochman, Paul Stein, and  
15 Paula Quintiliani.

16          5.       On or about February 15, 2001, Deputy Attorney General Richard Rochman,  
17 acting on behalf of the Attorney General, issued an investigatory subpoena to respondents Reliant  
18 Energy, Inc., Reliant Energy Power Generation, Inc., Reliant Energy Services, Inc., Reliant  
19 Energy Retail, Inc., Reliant Energy Solutions, Inc., Reliant Energy California Holdings, LLC,  
20 Reliant Ormond Beach, LLC, Reliant Energy Mandalay, LLC, Reliant Energy Coolwater, LLC,  
21 Reliant Energy Etiwanda, LLC, Reliant Energy Pipeline Services, Inc., and Alta Norte Power  
22 Generation, LLC (collectively, "Reliant") directing them to produce 91 categories of documents  
23 regarding their activities in the California electricity markets. The February 15, 2001  
24 investigatory subpoena is attached hereto as Exhibit A and incorporated herein by reference.

25          6.       On or about November 30, 2001, Deputy Attorney General Paul Stein, acting on  
26 behalf of the Attorney General, issued an investigatory subpoena to Reliant directing it to  
27 produce certain additional documents relating to its activities in the California electricity  
28 markets. The November 30, 2001 investigatory subpoena is attached hereto as Exhibit B and

1 incorporated herein by reference.

2 7. On February 6, 2002, Deputy Attorney General Paula Quintiliani, acting on behalf  
3 of the Attorney General, issued a further investigatory subpoena to Reliant directing it to produce  
4 certain additional documents relating to its activities in the California electricity markets. The  
5 February 6, 2002 investigatory subpoena is attached hereto as Exhibit C and incorporated herein  
6 by reference.

7 8. The Attorney General's investigatory subpoenas were each issued and served in  
8 the manner prescribed by Government Code section 11180 *et seq.* and each provided due notice  
9 of the time and place for production of the documents.

10 9. Deputy Attorney General Paula Quintiliani, acting on behalf of the Attorney  
11 General, also issued two separate sets of investigatory interrogatories dated February 13, 2002  
12 and March 4, 2002 to Reliant directing it to provide answers to question regarding its activities in  
13 the California electricity markets pertinent and material to the investigation. The February 13,  
14 2002 and March 4, 2002, interrogatories are attached hereto as Exhibits D and E, respectively,  
15 and incorporated herein by reference.

16 10. The Attorney General's investigatory interrogatories were each issued and served  
17 in the manner prescribed by Government Code section 11180 *et seq.* and each provided due  
18 notice of the time and place for answering the interrogatories.

19 11. Through the investigation, the Attorney General determined that Reliant had  
20 engaged in unlawful conduct in several respects in the energy markets and filed four lawsuits  
21 against Reliant relating to these specific violations of law. After filing the civil actions, the  
22 Attorney General's office withdrew portions of the November 30, 2001 subpoena that related to  
23 the allegations of a complaint filed by the Attorney General in the San Francisco Superior Court  
24 on March 11, 2001. The February 6, 2002 subpoena and February 13, 2002 interrogatories which  
25 sought information related to Reliant's acquisition of generation facilities in California were  
26 withdrawn after the Attorney General filed an action in the U.S. District Court on April 15, 2002.

27  
28 12. Consequently, the investigatory subpoenas and interrogatories related to any suit

1 filed against Reliant have been withdrawn by the Attorney General's office. The remaining  
2 outstanding investigatory demands issued to Reliant by the Attorney General's office relate only  
3 to the Attorney General's ongoing investigation of other possible unlawful, unfair and anti-  
4 competitive activities in the electricity markets. The Attorney General's office has demanded  
5 that Reliant respond in full to the outstanding subpoenas and interrogatories not specifically  
6 withdrawn.

7 13. Nevertheless, Reliant refuses to fully produce the documents responsive to the  
8 outstanding subpoenas not specifically withdrawn by the Attorney General and has failed and  
9 refuses to answer the interrogatories not specifically withdrawn by the Attorney General.

10 14. Reliant asserts that because the Attorney General has filed suit against it, his  
11 investigation has ended and that it need not respond to the outstanding investigatory demands.  
12 Reliant has informed the Attorney General that it will not produce any more information in  
13 response to any of the Attorney General's investigatory subpoenas or interrogatories.

14 15. The Attorney General's investigation has not terminated. The investigation is  
15 ongoing and includes an examination of activities by Reliant and others in the energy markets  
16 unrelated to any filed lawsuit. The Attorney General's office is informed that there are various  
17 participants in California's energy markets that may have engaged in unlawful, unfair, or anti-  
18 competitive behavior that is not the subject of any lawsuit currently filed by the Attorney  
19 General. Indeed, the Attorney General is informed that Reliant has admitted to sham electricity  
20 and natural gas trades and submitting false information to the California ISO.

21 16. Reliant has also refused to comply with the specific requirements of the  
22 outstanding subpoenas. The subpoenas each require that responsive electronic documents,  
23 including, but not limited to, e-mails, spreadsheets, and word processing files, be produced in  
24 their original electronic format. (See Feb. 15, 2001 Subpoena at ¶ 7, p. 9:19-21; Nov. 30, 2001  
25 Subpoena at ¶ 7, pp. 5:27 to 6:5 ; Feb. 6, 2002 Subpoena at ¶ 5, p. 7:20-26.) Electronic  
26 documents in their original electric format often contain information not found in a paper print  
27 out of the electronic file. In addition to the subpoenas' specific requirements, the Attorney  
28 General's office indicated to Reliant on various occasions that electronic documents must be

1 produced in their original electronic format. Despite the express requirements of the subpoenas  
2 and the Attorney General's specific demands, Reliant refuses to produce the responsive  
3 electronic documents in their original electronic form, depriving the Attorney General of the full  
4 range of information contained in such documents.

5 17. The Attorney General's investigatory subpoenas require the production of certain  
6 documents that Reliant claims contain trade secret information. The Attorney General has  
7 demanded that Reliant produce of all responsive documents that might contain trade secret  
8 information. The Attorney General has given Reliant various assurances that he will maintain  
9 the confidentiality of sensitive or trade secret documents produced pursuant to the subpoenas.  
10 The Attorney General has stated that he will maintain the confidentiality of any document  
11 produced, and will not disclose confidential or trade secret data with governmental agencies  
12 which have acted as Reliant's competitors in the energy markets or with whom Reliant has  
13 negotiated electricity contracts. The Attorney General has further stated that any governmental  
14 agency with whom he might share subpoenaed documents during the course of the investigation  
15 will be required to maintain the confidentiality of the information.

16 18. In addition, Government Code section 11183 requires that sensitive business  
17 documents obtained through investigatory subpoenas be kept confidential. Government Code  
18 section 6254, subdivision (f) prevents public disclosure of trade secret documents subpoenaed  
19 by the Attorney General through Public Record Act requests. Government Code section 6254.5,  
20 subdivision (e), requires that any governmental agency receiving subpoenaed documents agree to  
21 treat the material as confidential. Additionally, there is a stipulated protective order currently in  
22 place between Reliant and the Attorney General that anticipates Reliant's production of trade  
23 secret documents and limits their dissemination to only those working on the Attorney General's  
24 investigation.

25 19. Despite the Attorney General's specific assurances that Reliant's trade secret  
26 documents will be kept confidential, the protections of the stipulated protective order, and the  
27 statutory safeguards found in the Government Code, Reliant continues to refuse to produce  
28 responsive trade secret documents.

1           20.     Reliant's refusal to produce responsive trade secret documents is unwarranted and  
2 contrary to its legal obligation to fully comply with the Attorney General's investigatory  
3 subpoenas. Reliant's refusal to produce the responsive trade secret documents threatens to  
4 substantially interfere with the Attorney General's effective investigation of California's energy  
5 markets and threatens to conceal possible evidence of unlawful, unfair or anti-competitive  
6 activity, and otherwise works injustice to the Attorney General's investigation.

7           21.     Reliant has also refused to produce a privilege log, as required by the subpoenas,  
8 for responsive documents being withheld on the basis of privilege.

9           WHEREFORE, pursuant to Government Code sections 11186 through 11188, Petitioner  
10 prays that this Court issue an Order directing respondents to appear before this Court, and show  
11 cause why they refuse to fully comply with the Attorney General's validly issued subpoenas, and,  
12 upon their failure to show cause, enter an Order directing them to: (1) produce all documents  
13 responsive to the Attorney General's outstanding investigatory subpoenas; (2) answer the  
14 Attorney General's outstanding investigatory interrogatories; (3) produce all responsive trade  
15 secret documents; (4) produce all responsive electronic documents in their original electronic  
16 format; and (5) produce a privilege log for withheld documents, all at a time and place fixed by  
17 said Order.

18 Dated: May 17, 2002

Respectfully submitted,  
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of the State of California  
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