

Astoria Generating Co., L.P. v Riley Power, Inc.

2019 NY Slip Op 33918(U)

February 15, 2019

Supreme Court, Queens County

Docket Number: Index No. 702521/2014

Judge: Marguerite A. Grays

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This opinion is uncorrected and not selected for official publication.

Memorandum

NEW YORK STATE SUPREME COURT - QUEENS COUNTY

Present: HONORABLE MARGUERITE A. GRAYS IAS PART 4
Justice

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ASTORIA GENERATING COMPANY, L.P., INDEX NO. 702521/2014

Plaintiff(s),

DATED: February 15, 2019

-against-

RILEY POWER, INC. and JACK HECKMAN
TUBE COMPANY,

Defendant(s).

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Hon. Marguerite A. Grays

FILED
FEB 27 2019
COUNTY CLERK
QUEENS COUNTY

By Order of this Court dated November 20, 2018, the parties were directed to submit the names of three (3) attorneys, along with each attorney's curriculum vitae, for the Court to select an attorney from the list provided.

Plaintiff and defendant Riley Power, Inc. submitted the curriculum vitae of Michael Cardello, III, and hereby request his appointment as Special Master to this matter.

Defendant Jack Heckman Tube Company submitted the curriculum vitae of David Rosen and requests his appointment as Special Master.

Upon review of the documents submitted by the parties, it is hereby

ORDERED that pursuant to CPLR §3104, the Court hereby enters this Order of Reference to a Special Referee for the purpose of assisting the Court and the parties in this action in conducting and completing discovery in an orderly and efficient manner.

1. Michael Cardello, III, Esq., is HEREBY APPOINTED Special Referee to assist, oversee and supervise the discovery process (as defined below) and other matters as may be agreed to by the parties and as designated by the Court that may arise in this action.

2. The Special Referee shall have the duty and the power to regulate all discovery of the parties as follows:

- a) The Special Referee shall have the duty and the power: (i) to resolve discovery disputes; (ii) to resolve disputes during depositions; (iii) to resolve discovery motions filed by the parties or non-parties as referred to him by the Court; and (iv) to rule on all issues relating to any privilege logs of all parties which cannot be resolved by the parties.
- b) The Special Referee shall have the authority to hear and decide such matters as may be assigned by the Court in accordance with the Court's rules and applicable statutes.

3. The Special Referee shall, after consulting with the parties, establish procedures for the handling of discovery disputes set forth in Section 2 above. The Special Referee shall have the duty and authority to require the submission of briefs, reports, call conferences, hold hearings, including evidentiary hearings, to issue orders requiring the parties to adhere to discovery, and to issue orders relating to other matters designated for his decision by the Court. He shall hear, resolve and make rulings on all disputes regarding discovery.

4. If the Special Referee or a party is of the view that a specific issue presented by the parties is of such fundamental importance to the progress or outcome of the case that effective case management would not be furthered by having the Special Referee render a decision in the first instance, the Special Referee may as a matter of discretion certify that issue to the Court for initial decision, or a party may request that the Court decide the issue. As the final arbiter of case management, the Court may, but need not, accept the certification. If the Court denies the certification, the Special Referee shall proceed to render a decision in accordance with the terms of this Order.

5. The Special Referee shall be reasonably available to hear disputes, including, without limitation, disputes during depositions, promptly and at such times as may be convenient to the Special Referee. Argument shall be heard by the Special Referee either in person or by telephone conference or, if all parties and the Special Referee agree to the use of video conference, by video conference. Unless determined otherwise by the Special Referee, all arguments, including telephone conference arguments or video conference arguments, shall be recorded by a court reporter to be retained by the parties. In the event a telephone conference or video conference hearing is necessary, reasonable advance notice and an opportunity to participate in the conference shall be provided to the interested parties.

6. All hearings and conferences with the Special Referee shall be held at such appropriate location as may be designated by the Special Referee, or by the parties with the Special Referee's approval. The moving party shall arrange for a court reporter at all hearings and shall provide to the Special Referee a copy of the transcript of the hearing promptly thereafter.

7. All decisions of the Special Referee shall be in writing and shall be accompanied by supporting reasons, except that the Special Referee may state at a hearing that an oral ruling, as reflected in the transcript, shall constitute the decision. All written decisions shall be filed with the Court and simultaneously transmitted to counsel for the parties by electronic mail.

8. Exceptions to any decision made by the Special Referee may be taken to the Court. A Notice of Exception and an opening brief in support thereof, not to exceed a total of four (4) pages, together with an appendix containing the records on which the Special Referee's decision was made (e.g. discovery requests, related motions and briefs, transcript of argument and the Special Referee's decision) must be filed and served within fifteen (15) business days after the written decision, which decision shall be delivered by electronic mail to counsel. If a decision is reflected only in a transcript of a hearing, the time for filing of exceptions shall run from the date of the receipt of the transcript by the excepting party's counsel. Any answering brief, which must not exceed four (4) pages, must be filed and served within ten (10) business days after receipt of the Notice of Exception. The time for filing exceptions and briefs may be enlarged only by the Special Referee or the Court. Any party may request oral argument, which shall be held in the discretion of the Court.

9. The Special Referee shall be compensated as follows:

- a) The parties shall pay the Special Referee's fees (at the hourly rate of \$475.00), and reasonable expenses and costs. The Special Referee's fees shall be billed monthly for services rendered.
 - (i) For discovery matters involving all parties, the Special Referee's compensation shall be shared equally among each of the parties, such that each party shall pay an equal share ("Pro-Rata Share") of the Special Referee's compensation. In the event of a final dismissal or discontinuance of the action as against one or more of the parties, the Pro-Rata Shares of the remaining parties shall be adjusted accordingly.
 - (ii) For discovery disputes that involve less than all of the parties, the Special Referee's compensation shall be shared in equal shares among only those parties who are involved in the dispute. For purposes of this subparagraph (ii) only, plaintiff shall be considered as one party and each of the defendants shall be considered as an individual party.
 - (iii) The aforementioned parties who are responsible for payment of the Special Referee's compensation shall hereinafter be collectively referred to as the "Obligated Parties".
 - (iv) The allocation of fees may be adjusted by the direction of the Court or by agreement of the parties.
- (b) Any Obligated Party who does not pay the required amount within sixty (60) days of billing by the Special Referee may be subject to an appropriate Order of Enforcement by this Court upon application of the Special Referee.
- (c) The Special Referee shall submit itemized statements to the parties, and

copies to the Court, for payment for fees, expenses and costs, stating the total amount of time spent and the type of services and work performed during such time. Expenses and costs shall be itemized. Each itemized statement of the Special Referee for services and expenses shall be approved by Order of the Court prior to payment of same. Prior to the Court's approval of the Special Referee invoices, each Obligated Party shall have fifteen (15) days from billing by the Special Referee to file with the Court an objection in writing to an invoice. If no objections are filed within fifteen (15) days, the Court in its discretion may issue an order approving the invoice for payment.

10. Upon the final disposition of this action, the full amount paid for the services and expenses of the Special Referee may be re-allocated amongst the Obligated Parties as the Court in its discretion may determine.

11. On occasion, the Court may, with the consent of the parties, refer non-dispositive motions to the Special Referee pursuant to this Order. In such an event, the Special Referee's compensation shall be shared as set forth in paragraph 9.

12. This Order may be amended by the Court, or for good cause upon application by a party, may be amended to conform to any changes in the subject matter of this action.

This constitutes the decision and Order of the Court.



MARGUERITE A. GRAYS
J.S.C.

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COUNTY CLERK
QUEENS COUNTY