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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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RELIANT ENERGY AND REPORTING

In re: Tampa Electric Company's :
Petition for Approval of its Plan to :
bring its Generating Units into :
Compliance with the Clean Air Act. :


DOCKET NO. 992014-EI
Filed on February 21, 2000

RELIANT ENERGY POWER GENERATION, INC.'S
RESPONSE TO TAMPA ELECTRIC COMPANY'S
CONTINGENT MOTION FOR PROTECTIVE ORDER RELATED TO
RELIANT ENERGY POWER GENERATION, INC.'S
SECOND REQUEST TO PRODUCE DOCUMENTS

Reliant Energy Power Generation, Inc. (Reliant Energy), through its undersigned counsel, files this Response to the "contingent" Motion for Protective Order that Tampa Electric Company (TECO) served on Reliant Energy by hand-delivery on February 14, 2000.

1. In its Response, Objections, and Motion for Protective Order, TECO states "...[T]o the extent that a Motion for Protective Order is required, Tampa Electric's objections are to be construed as a request for a Protective Order." Reliant Energy assumes the request is related to the statement that TECO's pleading is filed on the "authority of Slatnick v. Leadership Housing, 368 So.2d 78 (4th DCA, 1979)." Reliant Energy submits that TECO's reliance on Slatnick is misplaced. Slatnick holds that an objection (to an interrogatory) avoids the necessity of an immediate answer, as would a motion for protective order (if granted). The case does not say that an objection is to be construed as a motion for protective order. Under the applicable Rules of Civil Procedure, these are separate and distinct pleadings. Indeed, TECO seems to acknowledge this when it reserves the right to file a further motion. Reliant Energy submits there is no occasion for a ruling unless Reliant Energy files a motion to compel (which it will not be in a position to do until it reviews the documents). Nevertheless, in an abundance of caution, Reliant Energy is filing this response. Reliant Energy submits that TECO has the burden of demonstrating specific good cause in order to justify the entry of a protective order, and its generalized objections do not satisfy that burden. Carson v. Fort Myers, 173 So.2d 743 (2d DCA 1965); Beekie v. Morgan, 2000 Fla. App. LEXIS 980; Christie v.

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Hixson, 358 So.2d 859 (4th DCA 1978).

2. In its Second Request to Produce Documents, Reliant Energy requested documents relating to the several scenarios that TECO quantified in a “market analysis” that TECO cites in justification of the repowering alternative.

3. In its response, TECO makes certain general objections to the request “to the extent” that they are applicable. For instance, TECO objects to “each request...” “...to the extent” that it seeks materials protected by a privilege; “insofar as” the request is vague or overbroad; “to the extent” that the request seeks trade secrets; “insofar as” the materials are irrelevant. When addressing specific requests, TECO does not claim that any of these general objections provides the basis for withholding documents.


4. TECO also objects “to the extent” a request calls for proprietary confidential business information, including computer inputs and outputs. Based on conversations with TECO’s counsel, Reliant Energy understands that TECO intends to provide the specific computer inputs and outputs requested by Reliant Energy. In light of the general objection, Reliant Energy reserves the right to file an appropriate motion, if necessary.

5. TECO objects to the terms “supporting” and “underlying” on the grounds that they are vague and undefined. All of the items in Reliant Energy’s Second Request to Produce relate to the “market analysis” that TECO purports to have conducted before concluding that the repowering of Gannon is the best option. Reliant Energy submits that, in the context of a request relating to TECO’s quantification of transmission impacts and financial risk, the concepts of “supporting” and “underlying” documents are clear and well understood. Further, the request for documents “referring to” assumptions and analyses is clear and in bounds, as such documents may amplify the analyses and the request is reasonably calculated to lead to the discovery of admissible evidence.

6. In individual responses TECO objects to supplying Reliant Energy with proprietary computer models that must be licensed. Depending on the models involved, it is possible that Reliant Energy may not require the models. In the event a model is necessary, however, Reliant Energy has already indicated its willingness to enter appropriate arrangements, including a

confidentiality agreement.

7. In this case TECO has asserted that its proposed repowering should be preferred over the alternative of purchased power. TECO claims that this assertion is supported by analyses and comparisons of costs, risks, and impacts. In its Second Request to Produce Reliant Energy asked for copies of certain of the documents that form the basis for TECO's contention. The documents are relevant and germane; indeed, they are central to the case. Reliant Energy is entitled to a full and complete production. Reliant Energy reserves the right to file a motion to compel discovery in the event it appears that TECO has withheld needed materials on the basis of these objections.


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing, filed on behalf of Reliant Energy Power Generation, Inc., has been furnished by U.S. mail and by hand-delivery* on this 21st day of February, 2000 to the following:

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