

ORIGINAL

MCWHIRTER REEVES
ATTORNEYS AT LAW

TAMPA OFFICE:
400 NORTH TAMPA STREET, SUITE 2450
TAMPA, FLORIDA 33602-5126
P.O. BOX 3350 TAMPA, FL 33601-3350
(813) 224-0866 (813) 221-1854 Fax

PLEASE REPLY TO:
TALLAHASSEE

TALLAHASSEE OFFICE:
117 SOUTH GADSDEN
TALLAHASSEE, FLORIDA 32301
(850) 222-2525
(850) 221-5606 Fax

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February 15, 2002

VIA HAND DELIVERY

Blanca S. Bayo, Director
Division of Records and Reporting
Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, Florida 32399-0870

Re: Docket Nos.: 011605-EI

Dear Ms. Bayo:

On behalf of Reliant Energy Power Generation, Inc., I am enclosing for filing and distribution the original and 15 copies of the following:

- Reliant Energy Power Generation, Inc.'s Petition to Intervene

Please acknowledge receipt of the above on the extra copy and return the stamped copy to me. Thank you for your assistance.

Sincerely,

Joe McGlothlin

Joseph A. McGlothlin

JAM/mls
Enclosure

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MCWHIRTER, REEVES, MCGLOTHLIN, DAVIDSON, DECKER, KAUFMAN, ARNOLD & STEEN, P.A. 1802 FEB 15 2002

FPSC-COMMISSION CLEF

Done 2/19/02

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of investor-owned
electric utilities' risk management
policies and procedures.

Docket No.: 011605-EI
Filed: February 15, 2002

RELIANT ENERGY POWER GENERATION, INC.'S
PETITION TO INTERVENE

Pursuant to Rules 25-22.039 and 28-106.205, Florida Administrative Code, Reliant Energy Power Generation, Inc., through its undersigned counsel, submits its Petition to Intervene, and in support thereof states:

1. The name and address of the Petitioner is:

Reliant Energy Power Generation, Inc.
P.O. Box 61867 (77208-1867)
1111 Louisiana Street-43rd Fl.
Houston, Texas 77002
Telephone: 713-207-7469
Telecopier: 713-207-0141

2. Copies of all pleadings, notices, and orders in this Docket should be provided to:

Joseph A. McGlothlin
McWhirter, Reeves, McGlothlin,
Davidson, Decker, Kaufman,
Arnold & Steen, P.A.
117 South Gadsden Street
Tallahassee, Florida 32301
Telephone: 850-222-2525
Telecopier: 850-222-5606

Michael G. Briggs
Reliant Energy, Inc.
801 Pennsylvania Avenue, Suite 620
Washington, D.C. 20004
Telephone: 202-783-7220
Telecopier: 202-783-8127

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

3. Statement of Affected Interests. Reliant Energy Power Generation, Inc. (“Reliant”) is a developer of independent power projects throughout the United States, including Florida. In the course of its business, Reliant sells wholesale bulk power to retail-serving utilities through power agreements. In Florida, Reliant owns approximately 600 MW of oil-fired generation (the “Indian River” units) that it acquired from the Orlando Utilities Commission. Reliant is developing a 460 MW peaking project in Osceola County. Reliant has entered agreements to purchase the output of 700 MW of combustion turbines owned by Mirant for resale in Florida’s wholesale market. Reliant is evaluating other potential capacity projects. Having already made a very significant capital investment to establish its business presence in Florida’s wholesale market, Reliant has a substantial interest in decisions and policies that affect the depth and viability of that market. Inasmuch as such a decision would have implications for the amount of purchased power deemed desirable for the investor-owned utilities whose risk management practices are being reviewed in this docket, Reliant’s substantial interests would be affected by a decision that assesses or purports to characterize the advantages and risks associated with purchases of wholesale power.

4. Reliant is also a retail customer of Florida Power Corporation. Reliant receives retail service from Florida Power Corporation pursuant to Florida Power’s standby service rate schedule. Reliant pays approximately \$100,000 per month to Florida Power for service that Reliant receives under this Commission-approved rate schedule. As a retail consumer of electricity provided by an investor-owned utility regulated by this Commission, Reliant’s substantial interests will be affected by a decision that governs the manner in which Florida Power manages risks borne by Reliant and other retail ratepayers.

5. That this proceeding will affect Reliant’s substantial interests—and that those interests

are of the type this proceeding was designed to protect—is evident from the Order On Procedure and from a Staff memorandum to parties dated December 10, 2001. In Order No. PSC-02-0192-PCO-EI, entered February 12, 2002 the Commission identified several tentative issues, including the following:

- ISSUE 1: Is each investor-owned electric utility taking reasonable steps to manage the risks associated with its fuel and purchased power transactions through the use of physical, operational, and financial hedging practices?
- ISSUE 2: What is the appropriate regulatory treatment for gains and losses an investor-owned electric utility incurs from hedging fuel and purchased power transactions through futures contracts?
- ISSUE 3: What is the appropriate regulatory treatment for the premiums an investor-owned electric utility receives and pays for hedging fuel and purchased power transactions through options contracts?
- ISSUE 4: What is the appropriate regulatory treatment for the transaction costs an investor-owned electric utility incurs from hedging its fuel and purchased power transactions through futures and options contracts?
- ISSUE 5: For the period March 1999, to March 2001, did Florida Power take reasonable steps to manage the risk associated with changes in natural gas prices?
- ISSUE 6: for the Period March 1999, to March 2001, did Florida Power take reasonable steps to manage the risk associated with changes in natural gas prices?

6. Before addressing the first issue, it will be necessary for the Commission to form a conclusion as to what “risks associated . . . with . . . purchased power transactions,” if any, need to be managed. Further, an assessment of the risks associated with purchased power cannot be undertaken in a vacuum. The first tentative issue appears to presume that the investor-owned utility’s ownership and operation of generating plants is “risk free” -- or, at any rate, that the risks of ownership play no part in the evaluation of purchased power. In fact, when utilities construct,

own and operate generating plants, they impose risks on ratepayers-- such as the risk of cost overruns and the risk of high costs resulting from inefficient performance. Retail-serving utilities can shift such risks away from the ratepayers and onto the wholesale providers through contracts for the purchase and sale of wholesale power containing such features as fixed-formula prices and “pay-for-performance” measures. Therefore, in any meaningful risk analysis the risks associated with purchased power must be compared to the significant risks associated with the alternative, which is the IOUs’ decision to construct, own, and operate power plants. Any erroneous finding, resulting from a failure to recognize how purchases of wholesale power can reduce or offset the risks borne by ratepayers, that the utility’s “ownership” option should be assigned undue weight in a portfolio of resources will adversely and immediately affect Reliant’s substantial interests.

7. The purpose of ascertaining whether the IOUs’ risk management practices are reasonable and appropriate is to protect the retail ratepayers. As a retail customer, Reliant’s costs of service will be greater than they should be if Florida Power Corporation fails to take advantage of opportunities to shift risks away from ratepayers . As a wholesale provider, Reliant’s interests would be adversely affected by a policy that understates, for purposes of the retail-serving utilities’ purchasing practices, the obligation of the retail-serving utilities to avail themselves of the ability of wholesale providers to lower risks to ratepayers.

8. From the Commission’s point of view, unless the perspective of the wholesale providers is represented in this proceeding, the Commission will not receive a full picture of the important considerations that bear on the issues. A failure by the Commission to take all aspects of relative risks into account -- including the risks properly associated with an IOU’s decision to construct and operate its own generating units -- will lead to flawed policy decisions and less-than-

optimal portfolios of resources. Such portfolios will lead in turn to unnecessarily high costs to ratepayers that reflect the failure of the investor-owned utilities to shed risk through an appropriate level of purchased power arrangements.

9. In the memorandum dated December 10, 2001, Staff identified the following components of a utility's "risk management plan":

- II. Fuel and Purchased Power Mix
 - E. Purchased Power
 - 1. How much wholesale power does the utility plan to purchase during the next three (3) years? List by year.
- IV. Risk Management
 - A. Risk Identification
 - 5. Purchased Power
 - 1. Identify each type of risk that the utility encounters for wholesale purchases
 - 2. Identify the utility's goal(s) in managing the risk associated with its wholesale power purchases.
 - D. Acceptance of Risk
 - Describe how the utility decides an acceptable level of risk associated with its . . . purchased power transactions.

A copy of the Staff memorandum is attached as Exhibit A.

10. It is Reliant's understanding that the "Risk Management Plan" is not currently being pursued in the same *format* mentioned in the December 10, 2001 memorandum. However, a consideration of the "risks" to be "managed" necessarily involves the same type of information -- whether that information is pursued in discovery, in testimony, in "audits," or in proposed risk management plans. Regardless of the format chosen, this docket involves a consideration of the risks

associated with purchased power and, by implication, the nature of the role that purchased power should play in a retail-serving utility's portfolio of resources. When evaluating such questions -- and the IOUs' responses to them -- it is essential to bear in mind that the retail-serving utilities are not indifferent or impartial with respect to the decision to build capacity or purchase power from wholesale providers. Because an IOU receives a return on its investment in plant, the IOU has a powerful incentive to favor its construction alternative over purchased power--and to "manage" its portfolio accordingly. In this docket, the Commission will exercise an aspect of its oversight responsibilities regarding the IOUs' purchasing practices. As a wholesale provider and as a retail customer, Reliant is entitled to protect its interests by participating in the development of a record that reflects all facets of an appropriate risk analysis.

11. The objective of the Commission in this docket is to ensure that investor-owned utilities subject to its jurisdiction manage risks by, among other things, constructing their portfolios of resources in a manner that will best serve the interests of ratepayers. The wholesale market is one such resource. Reliant's entire business effort in Florida is devoted to providing wholesale power to retail-serving utilities under terms and arrangements that serve ratepayers' interests. Reliant contends that ratepayers benefit when the IOUs' portfolios contain significant amounts of wholesale power, secured via power purchase agreements. A decision (whether explicit or implicit) regarding the relative risks of IOU-owned facilities and wholesale power--and how such perceived risks should be managed-- will impact the wholesale market in which Reliant participates, thereby implicating its substantial interests. Agrico Chemical Company v. Department of Environmental Regulation, 406 So.2d 478 (Fla. 2d DCA 1981); Royal Palm Square Associates v. Servco, 623 So.2d 533 (2d DCA, 1993). See Florida Optometric Association v. Department of Professional Regulation, 567 So 2d. 928

(Fla. App., 1st DCA, 1990) (optometrists' association had standing to intervene in a case in which the ruling sought by opticians would have infringed on optometrists' protected area of activity); Florida Medical Association v. Department of Professional Regulation, 426 So. 2d 1112 (Fla. App., 1st DCA, 1983) (association of physicians allowed to intervene in a proceeding held to consider whether optometrists could prescribe certain "legend drugs").¹

12. Affected Agency. The affected agency is the Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850.

13. Disputed Issues of Material Fact. Reliant anticipates that the issues of disputed fact in this case will include, but are not limited to:

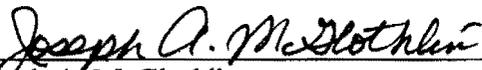
- a. What are the risks of purchased power relative to the risks associated with the alternative, i.e., an IOU's decision to construct, own, and operate generating units of its owns?
- b. How can the overall risks imposed on ratepayers be managed most cost-effectively, such that the risks are allocated to the parties best suited to bear them?
- c. Is FPL's present and planned portfolio of owned and purchased resources designed to appropriately allocate risks, to the benefit of ratepayers?
- d. Is FPC's present and planned portfolio of owned and purchased resources designed to appropriately allocate risks, to the benefit of ratepayers?
- e. Is TECO's present and planned portfolio of owned and purchased resources designed to appropriately allocate risks, to the benefit of ratepayers?
- f. Is Gulf Power Company's present and planned portfolio of owned and purchased resources designed to appropriately allocate risks, to the benefit of ratepayers?

¹In Florida Medical, the court rejected the contention that the zone of interest was limited to the particular statute under which the statute was brought. It acknowledged that "economic interests" can confer standing if the proceeding itself contemplates the consideration of such economic interests.

14. Statement of Ultimate Facts Alleged. Ultimate facts alleged by Reliant include, but are not limited to, the following:

- a. A well constructed power purchase contract has the effect of transferring investment risk, construction risk, and operating risk from the retail-serving utility's ratepayers to the wholesale provider of electricity, thereby benefitting the ratepayers.
- b. By including a significant amount of purchased power in its portfolio, a retail-serving utility can reduce materially the retail utility's overall risk profile, thereby reducing the risks borne by ratepayers.
- c. Purchasing power from a wholesale provider through a well-formed power purchase agreement is an important risk management technique that should be employed by a retail-serving utility to the fullest extent that is beneficial to ratepayers, with oversight by this Commission.

WHEREFORE, Reliant Energy Power Generation, Inc. requests the Commission to enter an Order authorizing it to intervene with full-party status.



Joseph A. McGlothlin
McWhirter, Reeves, McGlothlin,
Davidson, Decker, Kaufman,
Arnold & Steen, P.A.
117 South Gadsden Street
Tallahassee, Florida 32301
Telephone: (850) 222-2525
Telecopy: (850) 222-5606

Michael G. Briggs
Reliant Energy, Inc.
801 Pennsylvania Avenue, Suite 620
Washington DC 20004
Telephone: 202-783-7220
Telecopier: 202-783-8127

Attorneys for Reliant Energy Power Generation, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Reliant Energy Power Generation, Inc.'s Petition to Intervene has been furnished by (*) hand delivery or U.S. Mail to the following this 15th day of February, 2002:

(*) Wm. Cochran Keating
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

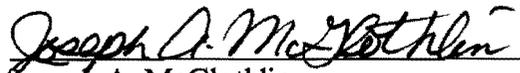
Robert Vandiver
Office of Public Counsel
111 West Madison Street
Room 812
Tallahassee, Florida 32399

Jeffrey A. Stone
Russell A. Badders
Beggs and Lane
Post Office Box 12950
Pensacola, Florida 32576

Lee L. Willis
James D. Beasley
Ausley & McMullen
Post Office Box 391
Tallahassee, Florida 32302

James A. McGee
Florida Power Corporation
Post Office Box 14042
St. Petersburg, Florida 33733

John T. Butler
Steel Hector & Davis
200 S. Biscayne Boulevard
Miami, Florida 33131-2398



Joseph A. McGlothlin