

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-EL  
Filed on February 21, 2000

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**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  
FIRST 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 U.S. Mail on February 8, 2000.\*

1. At paragraph 7 of 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 (4<sup>th</sup> 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 submits 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

\* As counsel for Reliant Energy informed counsel for TECO, TECO's Certificate of Service contains an error; Reliant Energy received its copy by U.S. mail, and not by hand-delivery.

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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. Hixson, 358 So.2d 859 (4<sup>th</sup> DCA 1978).


2. In its pleading, TECO sets forth several general objections, and asks that they be applied if and where applicable. For instance, TECO objects to the items in Reliant Energy's First Request to Produce "to the extent that" they seek privileged materials, and "insofar as" the information is irrelevant or constitutes confidential trade secrets. When TECO addresses the specific items, it does not identify any specific documents to which it contends the "general" objections would apply. Reliant Energy therefore assumes that no documents are being withheld on the basis of the "general" objections (except for Reliant Energy's Production Request No. 4, which TECO treated in a different pleading and which is the subject of a separate Motion to Compel).

3. TECO also generally objected to Reliant Energy's use of such terms as "supporting," "underlying," and "referring to" when identifying the categories of documents. TECO asserts that such terms are "undefined" and are therefore "vague." The objection has no valid basis. All of the items in Reliant Energy's First Request to Produce relate to the "market analysis" that TECO purports to have conducted before concluding that the repowering of Gannon is the option to be preferred. 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 thus reasonably calculated to lead to the discovery of admissible evidence.

4. 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 First Request to Produce Reliant Energy asked for copies 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.

**WHEREFORE**, Reliant Energy submits that TECO's objections are not tantamount to a motion for protective order; and no grounds sufficient for entry of a protective order have been demonstrated in any event.

  
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  
e-mail: [jmclglothlin@mac-law.com](mailto:jmclglothlin@mac-law.com)

Michael G. Briggs, Senior Counsel  
Reliant Energy Power Generation, Inc.  
801 Pennsylvania Avenue, Suite 620  
Washington, D.C. 20004  
Telephone: (202) 783-7220  
Telecopy: (202) 783-8127  
e-mail: [michael-briggs@reliantenergy.com](mailto:michael-briggs@reliantenergy.com)

Attorneys for Reliant Energy Power Generation, Inc.

**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:

\*Robert Elias  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Gail Kamaras/Debra Swim  
Legal Environmental Assistance Foundation  
1114 Thomasville Road, Suite E  
Tallahassee, FL 32303

\*Lee L. Willis  
James D. Beasley  
Ausley & McMullen  
227 South Calhoun Street  
Tallahassee, FL 32301

Office of Public Counsel  
Jack Shreve and Roger Howe  
c/o The Florida Legislature  
111 W. Madison St., #812  
Tallahassee, FL 32399-1400

Office of the Attorney General  
Robert A. Butterworth  
Department of Legal Affairs  
PL-01 The Capitol  
Tallahassee, FL 32399-1050

  
\_\_\_\_\_  
Joseph A. McGlothlin