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**Joan Claybrook, President**

July 16, 2004

Fred Homan, Director  
Baltimore County Office of Budget & Finance  
400 Washington Avenue, Suite 200, Mailstop 2109  
Towson, MD 21204

Edward J. Gallagher, Acting City Purchasing Agent  
Bureau of Purchases  
City of Baltimore  
231 E. Baltimore St, Suite 300  
Baltimore, MD 21202

Dear Mr. Homan and Mr. Gallagher,

This responds to your June 30, 2004 letter defending Baltimore's decision to award a \$67.3 million contract to a subsidiary of Reliant Energy, Inc. even though one of its affiliates has been indicted. Your rationale appears to stem from the fact that because Reliant Energy Solutions East, LLC (Reliant Solutions East) has been certified by the State of Maryland to sell power, Baltimore has "no basis to deviate from our responsibility concerning the award of the contract to the lowest responsible bidder"; that by awarding the contract to the lowest bidder (Reliant Solutions East), "taxpayers in the Baltimore region will save an estimated \$2,988,720 during the 23-month period of the contract"; and that Reliant Energy Services, Inc. (Reliant Services) is only *alleged* to have violated the law.

This rationale is troubling. First, it suggests that Baltimore can exercise no discretion over the types of individuals and businesses to which they give taxpayers' money if that individual or company is a low bidder. But under Maryland law<sup>1</sup> "a procurement officer shall reject a bid or proposal if the procurement officer determines that the bidder or offeror is *not responsible*...[A] procurement officer may determine that a person is not a responsible bidder or offeror for...any other reason indicating that the person does not have the integrity and reliability that will ensure good faith performance." Moreover, "the procurement officer shall award the procurement contract to the *responsible bidder* who submits the responsive bid that is the lowest bid price [emphasis added]."<sup>2</sup> Maryland law defines *responsible bidder* as "a person who possesses the integrity and reliability that will ensure good faith performance." A *person* is "an individual, receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind and any partnership, firm, association, corporation, or other entity."<sup>3</sup>

Maryland law, therefore, appears to grant discretion to procurement officers to only accept low bids from those entities that possess "integrity." Public Citizen believes that an indictment and voluntary agreements by the company to pay \$83 million to settle allegations of electricity and natural gas manipulation raise legitimate questions about the integrity of a bidder—especially when Public Citizen has documentation

<sup>1</sup> State Finance and Procurement, § 13-206, [http://mlis.state.md.us/cgi-win/web\\_statutes.exe?gsf&13-206](http://mlis.state.md.us/cgi-win/web_statutes.exe?gsf&13-206)

<sup>2</sup> State Finance and Procurement, § 13-103, [http://mlis.state.md.us/cgi-win/web\\_statutes.exe?gsf&13-103](http://mlis.state.md.us/cgi-win/web_statutes.exe?gsf&13-103)

<sup>3</sup> State Finance and Procurement, § 11-101, [http://mlis.state.md.us/cgi-win/web\\_statutes.exe?gsf&11-101](http://mlis.state.md.us/cgi-win/web_statutes.exe?gsf&11-101)

(described later in this letter) that Reliant Solutions East depends heavily on its indicted affiliate to fulfill its contract obligations.

Second, you imply that because “Reliant Energy Solutions East is licensed by the Public Service Commission to sell electricity in the State of Maryland” that you “have no basis to deviate from our responsibility concerning the award of the contract to the lowest possible bidder.” This statement suggests that certification by the PSC automatically equates with “responsible bidders.” But under Maryland law, certification by the PSC does not appear to be the sole criterion in determining whether someone is a “responsible bidder.” As noted above, procurement officers appear to possess leeway in assessing whether a bidder meets the “integrity” criteria. **Moreover, if one were to place some reliance on the PSC’s licensure, that licensure occurred in May 2003, nearly a year before the company was indicted.**

Third, your letter seeks to deflect the concerns raised by Public Citizen by emphasizing that “taxpayers in the Baltimore region will save an estimated \$2,988,720 during the 23-month period of the [Reliant Solutions East] contract.” While Public Citizen has raised concerns about the ability of Reliant Energy and its subsidiaries to meet the state’s integrity and reliability test, we are aware of no ethical allegations or criminal proceedings initiated against the other two companies that submitted competitive bids, PEPCO Holdings, Inc. and WGL Holdings, Inc. Is it safe to assume that Baltimore could have awarded the contract to either of these two entities, resulting in taxpayers saving money over the incumbent supplier? If so, how much money would taxpayers have saved over the incumbent supplier had either PEPCO or WGL won the contract with their submitted bid?

Please remember that Public Citizen is not making allegations of criminal conduct against Reliant Services—it was a federal grand jury that returned a six-count criminal indictment against the company, believing that there was enough evidence to bring the government’s case to trial. That criminal indictment is enclosed and available online.<sup>4</sup>

Also remember that prior to the criminal indictment, the parent company, Reliant Energy, volunteered to pay \$83 million in fines, penalties and refunds to settle allegations the company manipulated markets. In January 2003, Reliant Energy agreed to pay \$13.8 million to the Federal Energy Regulatory Commission (FERC) to settle allegations the company’s trading subsidiary, Reliant Services, intentionally withheld power from California, causing blackouts.<sup>5</sup> In October 2003, Reliant Energy again agreed to pay as much as \$50 million to FERC to settle allegations the company’s subsidiary manipulated the California energy market.<sup>6</sup> One month later, Reliant Energy agreed to pay \$18 million to the U.S. Commodity Futures Trading Commission to settle charges the company’s subsidiary engaged in manipulation of energy markets.<sup>7</sup> In March 2004, Reliant Energy agreed to pay \$836,000 to FERC to settle additional allegations the company manipulated energy markets.<sup>8</sup>

In addition to these voluntary payments to settle manipulation allegations, Reliant Energy was ordered to pay \$41.8 million to the California Independent System Operator to settle allegations the company failed to deliver electricity during a declared emergency.<sup>9</sup> In total, the company will pay \$125 million to settle allegations of electricity and natural gas manipulation. In Public Citizen’s view, a company rarely agrees to pay so much money unless there is some validity to the allegations.

<sup>4</sup> [www.usdoj.gov/usao/can/press/assets/applets/2004\\_04\\_08\\_Reliant\\_.pdf](http://www.usdoj.gov/usao/can/press/assets/applets/2004_04_08_Reliant_.pdf)

<sup>5</sup> [www.ferc.gov/press-room/pr-archives/2003/2003-1/01-31-03-reliant.pdf](http://www.ferc.gov/press-room/pr-archives/2003/2003-1/01-31-03-reliant.pdf)

<sup>6</sup> [www.ferc.gov/press-room/pr-archives/2003/2003-4/10-02-03.asp](http://www.ferc.gov/press-room/pr-archives/2003/2003-4/10-02-03.asp)

<sup>7</sup> [www.cftc.gov/files/enf/03orders/enfreliantenergy\\_order.pdf](http://www.cftc.gov/files/enf/03orders/enfreliantenergy_order.pdf)

<sup>8</sup> [www.ferc.gov/whats-new/comm-meet/030304/E-38.pdf](http://www.ferc.gov/whats-new/comm-meet/030304/E-38.pdf)

<sup>9</sup> Christian Berthelsen, “State energy agency docks power firms,” *San Francisco Chronicle*, July 4, 2002

And the U.S. Congress agrees. On July 14, 2004, the House-Senate appropriations conference committee added language to H.R. 4613 ordering the Department of Defense to review the contract that federal agency awarded to Reliant Solutions East.

The reason Reliant Services has been indicted and its parent agreed to pay \$83 million in other fines is because of the overwhelming evidence against the company. Among this evidence are recorded transcripts obtained by FERC that detail conversations among various Reliant Services employees describing how they shut down power plants, creating power blackouts that allowed the company to enjoy bigger profits from the scarce power supplies. Just one of the conversations in the 36 pages of transcripts released by FERC is reprinted below:<sup>10</sup>

*June 21, 2000, 14:34*

*Reliant Trader 2: Hey.*

*Unidentified Reliant Employee: Hey. Your ass is in trouble I guess, huh? I've never seen [Reliant Manager 2] on the floor.*

*Reliant Trader 2: I didn't know he was here. I mean [Reliant Trader 1] just told me he came down.*

*Unidentified Reliant Employee: What did he have to say? Where the hell is my 3 million bucks?*

*Reliant Trader 2: No, we've made back.*

*Unidentified Reliant Employee: Oh, did you?*

*Reliant Trader 2: Yeah.*

*Unidentified Reliant Employee: So what's he doing down here?*

*Reliant Trader 2: We shut down all of our plants yesterday, for today and for tomorrow.*

*Unidentified Reliant Employee: Yeah, and he wanted to know why?*

*Reliant Trader 2: No, no, no, he was – we made all the money back and he thought that, I mean he just thought that was the coolest strategy ever.*

*Unidentified Reliant Employee: Did you take all the credit for that?*

*Reliant Trader 2: I wasn't here.*

*Unidentified Reliant Employee: Well, who made the decision to shut the plants then?*

*Reliant Trader 2: Well, [Reliant Manager 1], I mean, we all kind of came up with it. [Reliant Manager 1]–*

*Unidentified Reliant Employee: Look over here, you know I've got you on the speaker phone.*

*Reliant Trader 2: Oh, do you? I didn't even, I wasn't even around. No, [Reliant Manager 1]. I'm not even talking to you, bye.*

These allegations of shutting down power plants to make bigger profits are particularly important given the fact that Reliant Energy owns 21 power plants in the Maryland area, whose power is marketed by Reliant Services and often sold to Reliant Solutions East.

**Public Citizen's review of documents Reliant Energy filed with federal regulators show that the subsidiary securing the local government contract, Reliant Solutions East, has an interdependent relationship with the indicted subsidiary, Reliant Services. The indicted subsidiary, Reliant Services, conducts most of its operations in the Maryland region, and sells significant quantities of electricity to Reliant Solutions East. In addition, not only are both Reliant Services and Reliant Solutions East 100% owned and controlled by the same parent company, but at least three top officers hold positions with *both* Reliant Services *and* Reliant Solutions East. Public Citizen believes that this close business relationship between the two Reliant Energy, Inc. subsidiaries is grounds for you to review the appropriateness of Reliant Solutions East continuing the terms of the contract.**

According to *Electric Quarterly Reports* Reliant Services filed with FERC,<sup>11</sup> the indicted subsidiary sold 65,271,418 megawatt hours (MWH) of electricity in the U.S. from October 2003 through March 2004.

<sup>10</sup> Available online at [www.ferc.gov/industries/electric/indus-act/wem/pa02-2/Transcripts-Reliant.pdf](http://www.ferc.gov/industries/electric/indus-act/wem/pa02-2/Transcripts-Reliant.pdf)

<sup>11</sup> These reports are available online at [www.ferc.gov/docs-filing/eqr/data/spreadsheet.asp](http://www.ferc.gov/docs-filing/eqr/data/spreadsheet.asp)

Sixty-two percent of that amount, or 40,251,522 MWH, was delivered to customers in the PJM Control Area, which encompasses Delaware, Illinois, Maryland, New Jersey, Ohio, Pennsylvania, Virginia, West Virginia and the District of Columbia.<sup>12</sup> **More importantly, Reliant Services sold 2,144,438 MWH of electricity to Reliant Solutions East over that time period.**

Reliant Solutions East wrote in its *Application for Supplier License* filed with Maryland's PSC in March 2003 that it "intends to enter into a full requirements bilateral agreement with Reliant Energy Services, Inc., an affiliate and current member of PJM."<sup>13</sup>

Reliant Services markets most of its power in the PJM Control Area because subsidiaries of its parent company, Reliant Energy, Inc. own 21 power plants in the Mid-Atlantic region totaling 4,158 megawatts (MW) of net generating capacity. Sixteen of those plants are in Pennsylvania (with four of those on the Pennsylvania-Maryland border), four in New Jersey and one in Maryland.

Documents filed with federal regulators show that much of the output from these power plants is marketed by Reliant Services to retail customers, including Reliant Solutions East.

For example, according to the first quarter 2004 *Electric Quarterly Reports* Reliant Energy Mid-Atlantic Power Holdings, LLC ("Reliant Mid-Atlantic" is a subsidiary of Reliant Energy) filed with FERC, 100% of its electricity sales were to Reliant Services, which then marketed the power to retail clients. Reliant Mid-Atlantic owns about 10 power plants in the greater Maryland area.

First quarter 2004 *Electric Quarterly Reports* filed by Reliant Energy Maryland Holdings, LLC (a subsidiary of Reliant Mid-Atlantic) show that 100% of its electricity sales were also to Reliant Services.

Reliant Energy Hunterstown, LLC, another subsidiary of Reliant Energy, owns a 866 MW gas-fired power plant located on the Pennsylvania-Maryland border. It also recorded electricity transactions only with Reliant Services in its first quarter 2004 *Electric Quarterly Report*.

Another Reliant Energy, Inc. subsidiary, Reliant Energy Seward, LLC, owns a 585 MW coal-fired power plant east of Pittsburgh. Again, Seward's first quarter 2004 *Electric Quarterly Report* only recorded electricity sales to Reliant Services.

This close business relationship between Reliant Energy, Inc. subsidiaries is also reflected in the fact that at least three executives hold senior positions at *both* Reliant Services *and* Reliant Solutions East. As noted above, the *Application for Authority to Hold Interlocking Positions* Reliant Energy, Inc. filed with FERC on May 27, 2004, lists Daniel Hannon as Senior Vice-President of both Reliant Services and Reliant Solutions East; Tanya Rohauer as Assistant Treasurer for Reliant Solutions East, Reliant Services, Reliant Maryland, Reliant Mid-Atlantic, Reliant Seward and Reliant Hunterstown; and Wendi Zerwas as Assistant Corporate Secretary for Reliant Services, Reliant Solutions East, Reliant Maryland, Reliant Mid-Atlantic, Reliant Seward and Reliant Hunterstown.

In addition, two additional executives hold top positions with the indicted subsidiary and the Maryland-area power plants that sell electricity exclusively to Reliant Services, which then markets the power to retail clients, including Reliant Solutions East. Robert W. Harvey is President of Reliant Services and listed as both President and Manager of Reliant Maryland, Reliant Mid-Atlantic, Reliant Seward and Reliant Hunterstown. David Brast is Senior Vice-President of Reliant Services, Reliant Mid-Atlantic, Reliant Seward and Reliant Hunterstown.

<sup>12</sup> [www.pjm.com/about/control-area.html](http://www.pjm.com/about/control-area.html)

<sup>13</sup> Mail Log # 87124, [www.psc.state.md.us/psc](http://www.psc.state.md.us/psc)

This documentation makes clear that Reliant Solutions East depends largely on its affiliate, Reliant Services, to honor the commitments of the contract with Baltimore. Indeed, when Reliant Solutions East filed its *Application for Supplier License* with the Maryland PSC, it provided “as evidence of Applicant’s financial integrity...a draft copy of Applicant’s parental guaranty, in an envelope marked ‘confidential.’”

As a result, Public Citizen believes that local government officials must review the appropriateness of spending taxpayer dollars on a company that depends on an indicted affiliate. We request a prompt response to our inquiry.

Sincerely,

Tyson Slocum, Research Director  
Public Citizen’s Energy Program

Cc:

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