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January 16, 2007

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OFFICE OF CHIEF COUNSEL
CORPORATION FINANCE

VIA HAND DELIVERY

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street
Washington, DC 20549

Re: Reliant Energy, Inc. – Omission of Stockholder Proposal of Seneca Capital, L.P.

Dear Sir or Madam:

Pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), Reliant Energy, Inc., a Delaware corporation (the "Company"), is hereby submitting this letter to respectfully request that the Staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission") concur with the Company's view that, for the reasons stated below, the stockholder proposal and supporting statement thereof (the "Proposal") submitted by Seneca Capital, L.P. (the "Proponent") may properly be omitted from the proxy materials (the "Proxy Materials") to be distributed by the Company in connection with its 2007 annual meeting of stockholders (the "2007 Annual Meeting"). The Proposal and all related correspondence are attached hereto as Exhibit A.

The Company expects to file its definitive Proxy Materials with the Commission on or about April 6, 2007. Pursuant to Rule 14a-8(j), enclosed herewith are six (6) copies of this letter and Exhibit A. Pursuant to Rule 14a-8(j), this letter is being filed with the Commission no later than eighty (80) calendar days before the Company files its definitive 2007 Proxy Materials with the Commission. On behalf of the Company, we hereby agree to promptly forward to the Proponent any Staff response to this no-action request that the Staff transmits by facsimile to the Company only.

I. The Proposal

On December 18, 2006, the Company received the Proposal for inclusion in its Proxy Materials. The text of the Proposal is reprinted below as it was submitted to the Company:

> RESOLVED, that pursuant to Section 109 of the Delaware General Corporation Law, 8 Del. C. § 109, the stockholders of Reliant Energy, Inc. ("Reliant Energy" or the "Company") hereby amend Article III of the Company's Bylaws by adding a new Section 5 and renumbering the existing Sections 5 through 11 as Sections 6 through 12:
>
>> Section 5. Proxy Access For Certain Candidates Nominated by Stockholders. Notwithstanding any other provision of these Bylaws to the contrary, the Company shall include in its proxy materials for a meeting of stockholders the name, together with the Disclosure and Statement (both defined below), of any person nominated for election to the Board of Directors by a stockholder or group thereof that satisfies the requirements of this Section 5 (the "Qualified Nominator"), and allow stockholders to vote with respect to such nominee on the Company's proxy card for that meeting. Each Qualified Nominator may nominate one candidate for election at a meeting.
>>
>> To be eligible, a Qualified Nominator must:
>>
>> (a) have beneficially owned 3% or more of the Company's outstanding common stock (the "Required Shares") continuously for at least one year;
>>
>> (b) provide written notice received by the Company's Secretary within the time period specified in Section 4 of Article III of the Bylaws containing (i) with respect to the nominee, (A) the information required by Items 7(a), (b) and (c) of SEC Schedule 14A (such information is referred to herein as the "Disclosure") and (B) such nominee's consent to being named in the proxy statement and to serving as a director if elected; and (ii) with respect to the Qualified Nominator, proof of ownership of the Required Shares; and
>>
>> (c) execute an undertaking that it agrees to (i) assume all liability of any violation of law or regulation arising out of the Qualified Nominator's communications with stockholders, including the Disclosure (ii) to the extent it uses soliciting material other than the Company's proxy materials, comply with all laws and

regulations relating thereto.

The Qualified Nominator shall have the option to furnish a statement, not to exceed 500 words, in support of the nominee's candidacy (the "Statement"), at the time the Disclosure is submitted to the Company's Secretary. The Board of Directors shall adopt a procedure for timely resolving disputes over whether notice of a nomination was timely given and whether the Disclosure and Statement comply with this Section 5 and SEC rules.

II. GROUNDS FOR OMISSION

1. Rule 14a-8(i)(8) – Relates to Election of Directors

Rule 14a-8(i)(8) permits the exclusion of a stockholder proposal from a company's proxy materials when the proposal "relates to an election for membership on the company's board of directors or analogous governing body." As discussed below, Commission statements and Staff precedent in this regard support our view that the Proposal is excludable under Rule 14a-8(i)(8) since the Proposal would establish a procedure that may result in contested elections of directors.

The Commission has stated that "the principal purpose of [Rule 14a-8(i)(8)] is to make clear, with respect to corporate elections, that Rule 14a-8 is not the proper means for conducting campaigns or *effecting reforms in elections* of that nature, since other proxy rules . . . are applicable thereto." SEC Release No. 34-12598 (July 7, 1976) (emphasis added). Specifically, the Staff has consistently and on multiple occasions permitted exclusion of proposals and supporting materials with respect to similar proposals in reliance on Rule 14a-8(i)(8) (or its predecessor Rule 14a-8(c)(8)) because such proposals "rather than establishing procedures for nomination or qualification generally, would establish a procedure that may result in contested elections of directors." *See AOL Time Warner Inc.* (avail. Feb. 28, 2003); *Eastman Kodak Co.* (avail. Feb. 28, 2003); *Exxon Mobil Corp. (avail. Feb. 28, 2003)*; *Sears, Roebuck & Co.* (avail. Feb. 28, 2003); *The Bank of New York Co., Inc.* (avail. Feb. 28, 2003); *Citigroup Inc.* (avail. April 14, 2003) (Recon.) (all permitting exclusion of a proposal to amend the bylaws to require that the company include the name, along with certain disclosures and statements, of any person nominated for election to the board by a stockholder who beneficially owns three percent or more of the company's outstanding common stock).

Further, the Staff has permitted numerous companies to exclude, in reliance on Rule 14a-8(i)(8), stockholder proposals that sought to require that, if beneficial owners of at least three percent of the company's common stock nominated candidates for the board of directors, the company would include the names of those nominees in its proxy materials and afford stockholder the same opportunity to vote for those nominees as provided for the company's nominees. *See Wilshire Oil Co. of Texas* (avail. Mar. 28, 2003); *Oxford Health Plans, Inc.* (avail. Feb. 23, 2000) (in which the Staff noted: "It appears that the proposal, rather than establishing procedures for nomination or qualification generally, would establish a procedure that may result in contested

elections of directors, which is a matter more appropriately addressed under rule 14a-12."); *AT&T Corp.* (avail. Jan. 24, 2000); *BellSouth Corp.* (avail. Jan. 24, 2000); *The Coca-Cola Co.* (avail. Jan. 24, 2000); *Ford Motor Co.* (avail. Jan. 24, 2000); *Citigroup Inc.* (avail. Jan. 21, 2000); *Newmont Mining Corp.* (avail. Jan. 18, 2000); *Black & Decker Corp.* (avail. Jan. 18, 2000).[1] This extensive Staff precedent reflects the Commission's intention that Rule 14a-8(i)(8) is not the proper means to achieve election contests – regardless of whether a contest would result immediately or subsequently.[2]

Consistent with the Commission precedent noted above in which similar proposals have been omitted from proxy materials, the Proposal would establish a procedure that would result in contested elections of directors. As such, the Proposal provides that any "Qualified Nominator"

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[1] *See also Merck & Co., Inc.* (avail. Jan. 25, 2004) (proposal requiring that the registrant include in its proxy materials an alternative slate of directors proposed by the ten largest stockholders of record); Goldfield Corp. (avail. April 9, 2002) (proposal requesting that company develop bylaws to "qualify nominees who have demonstrated a meaningful level of stockholder support and to provide them with free and equal ballot access."); *Storage Technology Corp.* (avail. Mar. 22, 2002) (permitting the exclusion of a stockholder proposal recommending that the company amend its bylaws to require the inclusion in its proxy materials of the name of each candidate for the board nominated by stockholders); *General Motors Corp.* (avail. Mar. 22, 2001) (concurring that the company could exclude a proposal asking it to publish the names of all director nominees and a "goals" statement); *United Road Services* (avail. May 5, 2000) (permitting exclusion of a proposal that would amend the bylaws to require that each duly-nominated director candidate be listed in the company's proxy materials and that the company's proxy materials contain the same type and amount of information about each such candidate); *Kmart Corp.* (avail. Mar. 23, 2000) (permitting the company to exclude a proposal requiring it to grant any two percent stockholder access to the proxy statement for the purpose of presenting a non-management candidate for election to the board); *Storage Technology Corp.* (avail. Mar. 11, 1998) (permitting exclusion of a proposal that the company amend its bylaws and charter to require that the proxy statement include a list of stockholder nominees for the board holding a certain number of the company's shares); *BellSouth Corp.* (avail. Feb. 4, 1998) (permitting exclusion of a proposal recommending a bylaw providing that stockholder nominees to the board would be included in the company's proxy materials); *Unocal Corp.* (avail. Feb. 8, 1991) (permitting exclusion of a proposal recommending a bylaw to require the company to include in its proxy materials the names of any stockholder's director nominees and information about the nominees "in the same manner as any, and all other nominees presented for election"); *Amoco Corp.* (avail. Feb. 14, 1990) (permitting exclusion of a proposal allowing stockholders representing over $100,000 in market value of company shares to nominate an individual for election through a "common ballot").

[2] The Commission previously suggested that this precedent did not apply to "direct access proposals," as described in the Commission's proposed revisions to Rule 14a-11. See Exchange Act Release No. 34-48626, n.74 (Oct. 14, 2003). However, recent precedent indicates that such an exception no longer exists. As the Staff stated in several no-action letters in 2005, "Given the passage of time since the proposal of rule 14a-11 ... without Commission action on that proposal, we have concluded that the position that the [S]taff intended to take... regarding the application of rule 14a-8 to proposals providing that the company become subject to the security holder nomination procedure in proposed rule 14a- 11 is no longer necessary or appropriate." *Qwest Communications International* (avail. Feb. 7, 2005); *Verizon Communications* (avail. Feb. 7, 2005); *Halliburton Co.* (avail. Feb. 7, 2005); *General Motors Corp.* (avail. Feb. 28, 2005). To the extent that the Staff nevertheless assesses the Proposal under proposed Rule 14a-11, we believe that the Proposal does not meet the requirements for a "direct access proposal" as it does not comport with proposed substantive requirements (e.g., the Proposal would allow each Qualified Nominator to include one candidate in the Company's proxy materials, as opposed to the range of nominees in the proposing release, the Proposal defines a "Qualified Nominator" as someone beneficially owning three percent or more of the Company's outstanding common stock instead of the proposed threshold of "more than 5%" and the Proposal does not require that the Qualified Nominator "intend to continue to hold those securities through the date of the subject election of directors"). The Proponent is also ineligible to submit a Proposed Rule 14a-11 proposal as it owned less than one percent of the Company's outstanding shares on the date that it submitted the Proposal (based on the Proponent's ownership information set forth in Exhibit A hereto).

can nominate a candidate for the Board of Directors and that the names of such candidates must be included on the proxy card and other information, including a statement in support of each nominee's candidacy, must be included in the Proxy Materials. Consistent with its fiduciary duties, the Board of Directors of the Company nominates a full slate of candidates for all available seats on the Board of Directors, and so the Proposal would necessarily result in a procedure that results in contested elections because it would require the Company to include in the Proxy Materials one or more additional candidates who would run in opposition to the Board's candidates for a fixed number of seats. As such, the Proposal may properly be omitted because it seeks to establish a procedure that would result in contested elections of directors in direct violation of Rule 14a-8(i)(8).

We recognize that the Commission has deferred from its December 13, 2006 meeting its consideration of the issues raised by the decision of the United States Court of Appeals for the Second Circuit in *American Federation of State, County & Municipal Employees, Employees Pension Plan v. American International Group, Inc.*, 462 F.3d 121 (2d Cir. 2006) ("*AFSCME v. AIG*"). It is important to note, however, that the Staff's authority with respect to the Company's request that it concur with the Company's decision to exclude the Proposal is not limited by the decision of the Second Circuit Court of Appeals. The *AFSCME v. AIG* decision is only binding on the Staff within the Second Circuit, and the Company's omission of the Proposal from its Proxy Materials for the 2007 Annual Stockholders Meeting will occur outside of the Second Circuit. The United States Court of Appeals for the Fifth Circuit is the applicable jurisdiction because the Company is headquartered in Texas and will hold its annual meeting there. That court has noted that generally recognized principle that it is not bound by the decisions of other circuits. *See, e.g., U.S. v. Phillips*, 210 F.3d 345, 351 n.4 (5th Cir. 2000) (even where courts of other circuits have adopted precedent of Fifth Circuit, the court "of course, [is] not bound" by the case law and decisions of such other circuit). Accordingly, the Staff's ability to concur that the Company may exclude the Proposal pursuant to Rule 14a-8(i)(8) is not constrained by the Second Circuit decision and it should do so for the reasons set forth above.

2. <u>Rule 14a-8(i)(3) – Violation of Proxy Rules</u>

Rule 14a-8(i)(3) permits the exclusion of a stockholder proposal from a company's proxy materials when "the proposal or supporting statement is contrary to any of the Commission's proxy rules." The Proposal would implement procedures that are inconsistent with the Commission's proxy rules including Rule 14a-12 and other rules governing proxy contests promulgated by the Commission. For example, the Commission's rules require that persons seeking to solicit proxies in support of an opposition slate of directors file and deliver a separate proxy statement. The Proposal would result in the nominees of any three percent shareholder being included in the Company's proxy materials, which would require the Company to file and deliver to shareholders proxy information regarding contested elections that it has not prepared and over the contest of which it has no control. The inclusion of such information in the Company's proxy materials would create confusion and would be contrary to the Commission's current policies and procedures that require that disclosure regarding nominations of directors in opposition of those selected by the Company stand apart from the general proxy disclosure of the Company.

3. Rule 14a-8(i)(6) – Absence of Power/Authority

Rule 14a-8(i)(6) provides that a proposal may be excluded if "the company would lack the power or authority to implement the proposal." In 1998, the Commission noted that while exclusion would not normally be justified if the proposal merely requires a company to ask for cooperation from a third party, see, e.g., Northeast Utilities System (Nov. 7, 1996) (proposal that the company ask a third party to coordinate annual meetings held by public companies), exclusion may be justified where implementing the proposal would require intervening action by independent third parties. See Release No 34-40018 (May 21, 1998) at note 20.

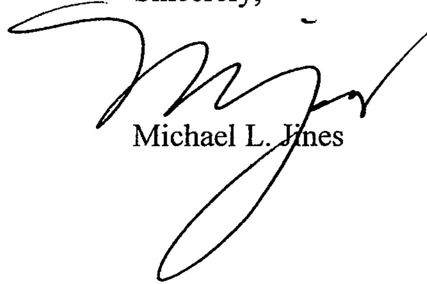
The Proposal would, if implemented, require the Company to permit certain shareholders to require the Company to include their candidate for the Board of Directors in the Company's proxy statement along with certain disclosure information as well as a 500-word supporting statement. Because the Company has liability for its proxy statement, requiring the inclusion of information that is provided by someone over whom the Company has no control opens the Company to potential risk and litigation. The last sentence of the Proposal acknowledges this problem and seeks to solve it by requiring that: "The Board of Directors shall adopt a procedure for timely resolving disputes over whether the Disclosure and Statement comply with this Section 5 and SEC Rules." This requirement is inherently beyond the power of the Company to implement. Any such dispute resolution procedure would, by its nature, require the intervening action by third parties over whom the Company has no control (an independent third party). The Board of Directors cannot create a procedure that will ensure that an insurgent shareholder, as an independent third party, will be reasonable and will cooperate with the Company in resolving disputes over whether that shareholders' disclosure information and 500-word statement of support are accurate and comply with securities laws, especially Rule 14a-9. Because any resolution of disputes over whether the disclosure and 500-word statement comply with Commission rules necessarily depends on the intervention of independent third parties (an insurgent shareholder), the Board of Directors of the Company simply lacks the power to implement the Proposal and the Company may exclude the Proposal pursuant to Rule 14a-8(i)(6).

III. CONCLUSION

The Company respectfully requests that the Staff confirm that it will not recommend any enforcement action to the Commission if the Proposal is omitted from the Company's Proxy Materials for the 2007 Annual Meeting. Should the Staff disagree with our conclusions regarding the omission of the Proposal, or should any additional information be desired in support of our position, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of the Staff's response.

If you have any questions or would like any additional information regarding this matter, please do not hesitate to contact the undersigned at 713 497-7465.

Sincerely,



Michael L. Jines

Attachments

cc: Seneca Capital, L.P.

Exhibit A

SENECA CAPITAL
INVESTMENT PARTNERSHIP

December 18, 2006

BY FEDERAL EXPRESS AND FACSIMILE

Reliant Energy, Inc.
P.O. Box 1384
Houston, Texas 77251-1384
Attention: Corporate Secretary

Facsimile: 713-497-0140

Re: Shareholder Proposal of Seneca Capital, L.P.

Ladies and Gentlemen:

Seneca Capital, L.P. currently owns, and has continuously owned, at least $2,000 in market value of the shares of the common stock, $1 par value (the "Common Stock"), of Reliant Energy, Inc. (the "Company") for more than 1 year as of today's date. Seneca Capital, L.P. intends to continue to hold at least $2,000 in market value of the Company's Common Stock through the date of the Company's 2007 annual meeting of shareholders.

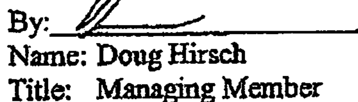
Pursuant to Rule 14a-8, Seneca Capital, L.P. is hereby submitting the enclosed shareholder proposal and supporting statement (the "Proposal") for inclusion in the Company's proxy materials and for presentation to a vote of shareholders at the Company's 2007 annual meeting of shareholders.

Please contact us if you would like to discuss the Proposal or if you have any questions.

Very truly yours,

SENECA CAPITAL, L.P.

By: SENECA CAPITAL ADVISORS, LLC, its general partner

By: 
Name: Doug Hirsch
Title: Managing Member

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