



Control Number: 26311



Item Number: 27

Addendum StartPage: 0

DOCKET NO. 26311

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APPEAL BY FRONTERA GENERATION §
LIMITED PARTNERSHIP OF ELECTRIC §
RELIABILITY COUNCIL OF TEXAS §
APPROVAL OF PROTOCOL REVISION §
NOS. 338 AND 347 §

PUBLIC UTILITY COMMISSION
OF TEXAS
PUBLIC SERVICE CLERK

**JOINT MOTION OF STAFF AND FRONTERA TO ABATE DISCOVERY,
AND REQUEST FOR EXPEDITED RELIEF**

TO THE HONORABLE TAMMY COOPER, DIRECTOR, DOCKET MANAGEMENT:

The parties have engaged in extensive, productive settlement discussions. These discussions began in earnest with an effort, primarily by Frontera and ERCOT, to stipulate to facts. This effort led to a focusing and clarification of the issues in this docket. Parties have identified three basic issues concerning OOMC compensation: (1) clarification of OOMC compensation under the current Protocols, including the necessary documentation and process for compensation, under the option of compensation of verifiable costs directly attributable to providing the service plus a premium;¹ (2) compensation for energy produced during the period in which the resource under an OOMC instruction increases its output to the level required by the OOMC instruction (ramp energy) and compensation for the minimum energy that is necessary during the provision of OOMC service (minimum energy, which Frontera represents that, in its case, is driven by environmental permit requirements); and (3) compensation for resource capacity reserved to provide the OOMC service (capacity reservation).²

Parties most recently met on December 3, 2002, at which time they discussed the three issues identified above. As to issue three, it is clear that there is no conceptual agreement

¹ Protocols §6.8.2.2(4).

² Parties reserved the right to argue that these issues are outside of the scope of this docket.

amongst the parties (including amongst Staff and Frontera) as to whether a capacity reservation payment for providing OOMC is appropriate. However, this issue is being clarified through settlement discussions. As to issue two, in addition to raising this issue in settlement discussions in this docket, the issue is also being discussed in the context of PRR 371, which is under consideration by the ERCOT Protocol Revision Subcommittee. As to issue one, parties agreed at the December 3, 2002 settlement meeting that it would be worthwhile for Frontera to draft a proposal to clarify OOMC compensation under the current Protocols, including the necessary documentation and process for compensation, under the option of compensation of verifiable costs directly attributable to providing the service plus a premium. As an agreed follow-up to the meeting, Frontera informed the parties that it estimated that it could provide a draft proposal by December 20, 2002 and, at Staff's request, is trying to provide the proposal to the parties by December 18, 2002.

Pursuant to the parties' agreement described above for Frontera to draft a proposal to clarify OOMC compensation, Frontera hereby represents that it has assigned resources including fourteen business, regulatory, and legal personnel to work on the issues associated with the organization, drafting, and development of the proposal. However, on December 11 and 12, 2002, TIEC and ERCOT, respectively, served Frontera with very extensive RFIs, which are attached. Due to these RFIs, Frontera has stopped work on drafting a proposal to clarify OOMC compensation. Prior to stopping work on drafting the proposal, Frontera conservatively estimates that it had spent 204 hours on drafting the proposal. However, Frontera cannot resume work on the proposal given the extensive RFIs that it is currently subject to.

Under Commission Procedural Rules 22.144(c)(1) and 22.4(a), Frontera's responses to these RFIs are currently due December 31, 2002 and January 2, 2003, respectively. Furthermore,

the RFIs seek highly sensitive information specific to Frontera, even though the relief that Frontera seeks in this docket would apply to any entity providing OOMC service to ERCOT. As a result, Frontera will very likely be compelled to file objections to the RFIs, which under Rules 22.144(d) and 22.4(a) are due December 23, 2002 for both sets of RFIs.

Staff and Frontera are surprised and disappointed by these RFIs. The timing of the RFIs could not be worse, not only because they come on the eve of a two-week holiday period, but because they have brought settlement efforts to a screeching halt. Staff and Frontera have diligently and in good faith engaged in settlement efforts, and those settlement efforts have been productive in focusing and clarifying the issues in this docket. Staff and Frontera believe that continued settlement efforts have a substantial chance of further narrowing the issues, assuming that there is a reasonable opportunity for such efforts and that the other parties continue to negotiate in good faith.

ERCOT and TIEC should not be able to unilaterally scuttle settlement efforts by inundating Frontera with RFIs. It is particularly frustrating that ERCOT chose to serve Frontera with RFIs. Just last week, on December 6, 2002, Frontera amended its petitions to delete the request that the Commission direct ERCOT to continue to settle OOMC service under the Protocols in effect prior to ERCOT Board approval of PRRs 338 and 347 until the Commission determines appropriate OOMC service compensation. In Frontera's view, the prior Protocols provided for pay-as-bid, and ERCOT was concerned about any delay due to settlement discussions given its potential exposure to pay-as-bid. Frontera amended its Protocols to delete the request for reversion to the prior Protocols in order to assuage ERCOT's concerns, so that ERCOT could continue settlement discussions. Frontera's amended petitions requests the Commission to determine, and order, adequate compensation.

Staff and Frontera previously did not seek to abate discovery, so that if settlement discussions ended, the parties could immediately commence discovery. However, settlement discussions had not ended prior to TIEC and ERCOT serving Frontera with RFIs. As discussed above, Frontera had been devoting large amounts of resources to furthering settlement discussions when it received the RFIs, which it cannot continue given the extensive RFIs that it is currently subject to.

Staff and Frontera request that your Honor immediately toll the deadlines pertaining to the RFIs for two weeks. It is routine in Commission dockets, and the humane thing to do, to toll the deadlines pertaining to RFIs the week before, and the week of, new year's day.

Although TIEC and ERCOT have expressed a willingness to negotiate extensions of deadlines pertaining to the RFIs, it is unclear whether agreements can be reached. Furthermore, currently, nothing precludes parties from serving additional RFIs. Most importantly, settlement discussions should be given a reasonable opportunity to continue. Therefore, after consideration of any responses in opposition to this motion, Staff and Frontera request that your Honor abate discovery until either the parties agree that abatement should be lifted or a party demonstrates that abatement of discovery is no longer necessary to permit settlement discussions.

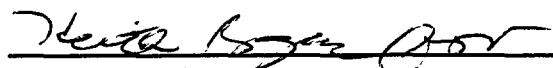
Dated: December 13, 2002

Respectfully Submitted,

Thomas S. Hunter
Division Director - Legal and
Enforcement Division



Keith Rogas
Director – Legal and
Enforcement Division, Electric Section
State Bar No. 00784867
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keith.rogas@puc.state.tx.us

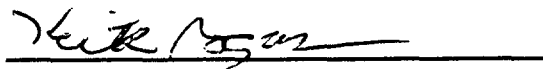


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Public Utility Commission of Texas
1701 North Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

CERTIFICATE OF SERVICE

I, Keith Rogas, certify that copies of this document will be served on all parties on December 13, 2002, by fax, in accordance with Public Utility Commission of Texas Procedural Rule 22.74.



Keith Rogas

KR

DOCKET NO. 26311

APPEAL BY FRONTERA GENERATION §
LIMITED PARTNERSHIP OF §
ELECTRIC RELIABILITY COUNSEL OF §
TEXAS APPROVAL OF PROTOCOL §
REVISION NOS. 338 AND 347 §

PUBLIC UTILITY COMMISSION
OF TEXAS

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**TEXAS INDUSTRIAL ENERGY CONSUMERS'
FIRST REQUEST FOR INFORMATION TO
FRONTERA GENERATION LIMITED PARTNERSHIP**

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DEC 11 2002
Legal Division

Pursuant to § 22.144 of the Commission's Procedural Rules, Texas Industrial Energy Consumers ("TIEC") requests that Frontera Generation Limited Partnership ("Frontera"), by and through its attorneys of record, provide all of the information requested within twenty (20) days of receipt thereof. TIEC further requests that answers to the requests for information be made under oath, and that each item of information be made available as it is completed, rather than upon compilation of all information requested. Each answer should identify the person responsible for preparing that answer (other than the purely clerical aspects of its preparation) and the name of the witness in this proceeding who will sponsor the answer and who can vouch for its accuracy. These requests are continuing in nature, and should there be a change in circumstances which would modify or change an answer supplied by you, such changed answer should be submitted immediately as a supplement to your original answer. In producing documents pursuant to this Request, please indicate the specific request(s) to which the document is being produced.

All information requested on the attached Exhibit "A" should be sent via overnight mail to Mr. Oldham at the address below on a piecemeal basis as individual

items become available. For answering these questions, the following definitions shall apply:

A. "Person" and "persons" include human beings, corporations, partnerships, associations, joint ventures, government agencies (federal, state, and local), and any other organization cognizable at law.

B. The terms "document" or "documents" are used in their broadest sense to include, by way of illustration and not limitation, all written or graphic matter of every kind and description whether printed, produced or reproduced by any process whether visually, magnetically, mechanically, electronically or by hand, whether final or draft, original or reproduction, whether or not claimed to be privileged or otherwise excludable from discovery, and whether or not in your actual or constructive possession, custody, or control. The terms include writings, correspondence, telegrams, memoranda, studies, reports, surveys, statistical compilations, notes, calendars, tapes, computer disks, data on computer drives, e-mail, cards, recordings, contracts, agreements, invoices, licenses, diaries, journals, accounts, pamphlets, books, ledgers, publications, microfilm, microfiche and any other data compilations from which information can be obtained and translated, by you if necessary, into reasonably usable form. "Document" or "documents" shall also include every copy of a document where the copy contains any commentary or notation of any kind that does not appear on the original or any other copy.

C. The terms "and" and "or" shall be construed both disjunctively and conjunctively as necessary to make the request inclusive rather than exclusive.

D. "Each" shall be construed to include the word "every" and "every" shall be construed to include the word "each."

E. "Any" shall be construed to include "all" and "all" shall be construed to include "any."

F. The term "regarding," or one of its inflections, includes the following meanings: relating to; referring to; pertaining to; concerning; discussing; mentioning; containing; reflecting; evidencing; describing; showing; identifying; providing; disproving; consisting of; supporting; contradicting; in any way legally, logically or factually connected with the matter to which the term refers; or having a tendency to prove or disprove the matter to which the term refers.

G. The term "including," or one of its inflections, means and refers to "including but not limited to."

H. Words used in the plural shall also be taken to mean and include the singular. Words used in the singular shall also be taken to mean and include the plural.

I. The present tense shall be construed to include the past tense, and the past tense shall be construed to include the present tense.

J. This discovery is continuing in nature and must be supplemented pursuant to the Texas Rules of Civil Procedure.

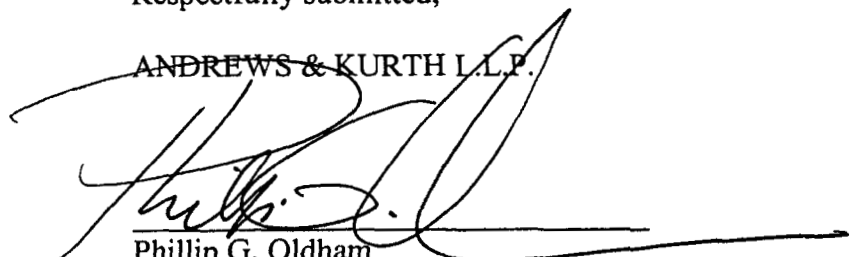
K. The term "Frontera Facility" refers to the nominal 477 MW facility just outside of McAllen, Texas in the Rio Grande Valley.

L. The term "Frontera" includes any and all affiliates or parent companies of Frontera, including but not limited to TECO and TECO EnergySource.

L. To the extent that terms are not defined in this document, the terms shall have the meaning ascribed to them in the Commission's rules and enabling statutes.

Respectfully submitted,

ANDREWS & KURTH L.L.P.

A large, stylized handwritten signature in black ink, likely belonging to Phillip G. Oldham, is written over the text of the firm name and extends across the contact information.

Phillip G. Oldham
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ATTORNEYS FOR TEXAS
INDUSTRIAL ENERGY
CONSUMERS

CERTIFICATE OF SERVICE

I, Phillip G. Oldham, Attorney for Texas Industrial Energy Consumers, hereby certify that a true and correct copy of Texas Industrial Energy Consumers' First Request For Information to Frontera General Limited Partnership was served on all parties of record in this proceeding on this 11th day of December, 2002 by facsimile, first class, U.S. Mail, postage prepaid, or by hand delivery.

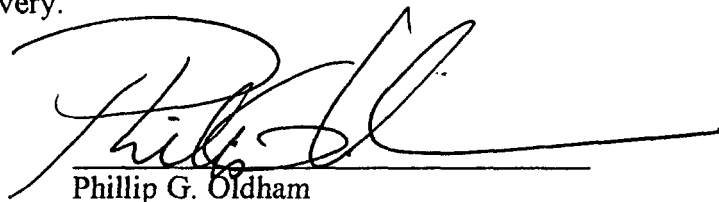

Phillip G. Oldham

EXHIBIT "A"

DOCKET NO. 26311

APPEAL BY FRONTERA GENERATION	§	PUBLIC UTILITY COMMISSION
LIMITED PARTNERSHIP OF	§	
ELECTRIC RELIABILITY COUNSEL OF	§	
TEXAS APPROVAL OF PROTOCOL	§	OF TEXAS
REVISION NOS. 338 AND 347	§	

TIEC 1-1

Has Frontera made any presentations or given information to any financial analysts, investment groups, or any bond rating agencies which in whole or in part discuss the past, current or future projected economic performance of the Frontera Facility? If so, please provide these documents and fully explain the substance of them.

TIEC 1-2

Has Frontera provided any documents to any financial analysts, investment groups, or any bond rating agencies discussing the economics of receiving Out of Order Merit instructions from ERCOT. If so, please provide these documents.

TIEC 1-3

Has Frontera created any documents or conducted any studies or analyses (or had any documents, studies or analyses created on their behalf) of the revenues to be gained from operating the Frontera Facility to sell Ancillary Services to ERCOT as opposed to operating the Frontera Facility to sell energy and/or capacity in the ERCOT and/or Mexican market? If so, please provide any such documents.

TIEC 1-4

Has Frontera created any documents or conducted any economic analyses or studies (or had any documents, studies or analyses created on their behalf) of the economic value of the settlement it entered into with ERCOT relating to payments for Out of Order Merit instructions? Has Frontera created any documents, conducted any economic analyses or studies (or had any documents, studies or analyses created on their behalf) of the profits or net cash flows such a settlement yielded to Frontera? If so, please provide any such documents, analyses, studies, or reports addressing the economic value of the settlement with ERCOT or any profits or net cash flows derived from the ERCOT settlement.

TIEC 1-5

Has Frontera entered into any long-term service agreements for its gas turbines or steam turbines at the Frontera Facility? If so, please provide these service agreements.

TIEC 1-6

Please provide all documents, analysis, and correspondence to ERCOT relating to the Reliability Must Run (RMR) agreement that currently exists between Frontera and ERCOT. Please provide all correspondence, analysis, and documents relating to any future RMR contract with ERCOT.

TIEC 1-7

Did Frontera's contract with Enron for marketing/QSE/optimization services include a share the "profit" "revenue sharing" mechanism? Has Frontera received any documents or spreadsheets from Enron regarding the "optimization" of the performance of the assets that Frontera controls in ERCOT and the "profit" therefrom? If so, please provide those documents. Please provide a copy of Frontera's aforementioned contract(s) with Enron. Please provide all correspondence with Enron involving scheduling of electricity from the Frontera Facility.

TIEC 1-8

Has Frontera (or any affiliate or parent of Frontera) produced any documents, offering sheets or management discussions relating to the failed efforts to non-recourse finance the Frontera Facility? If so, please provide any such documents.

TIEC 1-9

Please provide the current debt-equity ratio and ownership structure of the Frontera Facility. Does Frontera have any unaffiliated third-party indebtedness associated with the Frontera Facility?

TIEC 1-10

Please provide the purchase price for the Frontera Facility and how much of that price is attributable to "good will" under standard accounting rules. Please explain how the "good will" is not currently impaired under FAS 142. Provide all documents discussing this matter including documents provided to auditors or prepared by the auditors including any papers relating to the impairment testing of any Frontera Plant goodwill.

TIEC 1-11

Please provide all documents discussing how Frontera's operation of the Frontera Facility (including the methods used to obtain OOM payments and its RMR contract) complies with the affidavits submitted on Frontera's behalf in PUC Project No.25937, *PUC Investigation into Possible Manipulation of the ERCOT Market*.

TIEC 1-12

Does Frontera believe that it will be able to sell the output of its Frontera Facility to ERCOT at above-market prices? Please explain.

TIEC 1-13

Please provide all supporting documentation for the minimum operational level of the Frontera Facility necessary to comply with its environmental permits.

TIEC 1-14

Please provide any documents discussing the activities of Frontera's QSE of record for the past 18 months as it relates to any affidavits filed on Frontera's behalf in PUC Project No.25937, *PUC Investigation into Possible Manipulation of the ERCOT Market*.

TIEC 1-15

Please explain Frontera's position that when it receives an Out of Order Merit Instruction from ERCOT for the Frontera Facility, it is entitled to be paid for fixed costs and/or sunk costs when it has necessarily decided not to operate its facility in order to be OOMed. If Frontera had decided to operate the Frontera Facility, but told ERCOT it did not plan to operate the Frontera Facility in order to be OOMed, please explain how this activity is consistent with the affidavits filed on its behalf in PUC Project No.25937, *PUC Investigation into Possible Manipulation of the ERCOT Market*. Please provide all supporting documentation for these positions.

TIEC 1-18

For the period after Frontera entered into the RMR contract with ERCOT, please provide a summary of all sales of electricity produced by the Frontera Facility to entities other than ERCOT, including the time, date, quantity, and duration of such sales.

TIEC 1-19

Please provide a listing of all energy sales made by Frontera from the Frontera Facility during the periods it operated in response to OOM instructions including the time, date, quantity, and duration of such sales.

TIEC 1-20

Did Frontera provide expected gas commodity and transportation costs, unit heat curves, unit ramp rates, unit start costs and/or other operating parameters to Enron while Enron was Frontera's QSE of record? Please provide copies of such information/documents provided to Enron.

TIEC 1-21

Did Frontera participate in any Enron BENA activities in ERCOT? Did Frontera receive a share of the "profit" from Enron's BENA activities in ERCOT?

TIEC 1-22

Who were Enron's contacts at Frontera? Who were Frontera's contacts at Enron?

TIEC 1-23

Please provide copies of all documents provided to Frontera by the seller (or the seller's agents) of the Frontera Facility during the course of Frontera's negotiations to purchase the Frontera Facility that relate to the physical location of the Frontera Facility on the transmission grid, transmission congestion, transmission upgrade schedules, the likelihood of being needed for reliability purposes and the likelihood of being OOMed or receiving an RMR contract.

TIEC 1-24

Please provide a listing of all energy sales made by Frontera from the Frontera Facility into Mexico including the time, date, quantity, and duration of such sales.

TIEC 1-25

Please provide copies of all analyses or studies of the transmission grid in the area surrounding the Frontera Plant.

TIEC 1-26

Please provide a copy of all contracts between Frontera and TECO EnergySource for gas supply/management and power sales/optimization.

TIEC 1-27

Please provide a copy of Frontera's 2003 earnings projections (including the backup calculations and assumptions) referred to in TECO's SEC Form 8-K filed on or around September 23, 2002.

TIEC 1-28

The following excerpt is taken from TECO's 2002 10-K filing, under the heading "Liquidity, Capital Resources", "Merchant Power Plants"

A merchant plant sells power based on market conditions at the time of sale, so there can be no certainty at present about the amount or timing of revenue that may be received from power sales from operating plants or about the differential between the cost of operations (in particular, natural gas prices) and merchant power sales revenue. With no guaranteed rate of return, TPS will also have no guarantee that it will recover its initial investment in these plants.

- (a) Does Frontera agree with this statement from TECO's 10-K?
- (b) If this statement is true, please explain how the "goodwill" associated with the Frontera Facility is not impaired.

KR

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PUC DOCKET NO. 26311

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PUBLIC UTILITY COMMISSION
FILING CLERK

APPEAL BY FRONTERA
GENERATION LIMITED
PARTNERSHIP OF ELECTRIC
RELIABILITY COUNCIL OF TEXAS
APPROVED PROTOCOL REVISION
Nos. 338 AND 347

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PUBLIC UTILITY COMMISSION

OF TEXAS

ERCOT's FIRST REQUEST FOR ADMISSION OF
FACTS AND INFORMATION TO FRONTERA
GENERATION LIMITED PARTNERSHIP

RECEIVED
DEC 11 2002
Legal Division

TO: Frontera Generation Limited Partnership, by and through its attorney of record, Ms. Diana Liebmann, Haynes & Boone, 112 E. Pecan St., San Antonio, Texas 78205.

Pursuant to § 22.144 of the Commission's Procedural Rules, Electric Reliability Council of Texas, Inc. ("ERCOT") requests that Frontera Generation Limited Partnership ("Frontera"), by and through its attorneys of record, provide all of the information requested within twenty (20) days of receipt hereof. ERCOT further requests that answers to the requests for information be made under oath, and that each item of information be made available as it is completed, rather than upon compilation of all information requested. Each answer should identify the person responsible for preparing that answer (other than the purely clerical aspects of its preparation) and the name of the witness in this proceeding who will sponsor the answer and who can vouch for its accuracy. These requests are continuing in nature, and should there be a change in circumstances which would modify or change an answer supplied by you, such changed answer should be submitted immediately as a supplement to your original answer. In producing documents pursuant to this *Request*, please indicate the specific request(s) to which you produced the document(s).

You should send all information requested via overnight mail to Mr. Gallo at the address below on a piecemeal basis as individual items become available.

Electric Reliability Council of Texas, Inc.

By: Mark A. Walker

Mark A. Walker

Texas Bar No.: 20717318

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CERTIFICATE OF SERVICE

I, A. Andrew Gallo, attorney for ERCOT, certify that a copy of this document filed in this docket by ERCOT was served on all parties of record in this proceeding on December 12, 2002, in the following manner: by facsimile, first class U.S. mail or hand delivery.

A. Andrew Gallo

A. Andrew Gallo

I. DEFINITIONS AND INSTRUCTIONS

The following definitions and instructions apply to each *Request for Admission and Information* set forth hereafter, are deemed incorporated herein and supplement any particular definitions contained therein, unless expressly stated to the contrary within any such request:

DEFINITIONS

A. The term "Applicant" or "Frontera" includes any and all affiliates or parent companies of Frontera, including but not limited to TECO and TECO EnergySource.

B. The terms "you", "your" and "Frontera" shall mean and include Frontera Generation Limited Partnership and all its parents, subsidiaries, affiliated entities, officers, directors, employees, agents, representatives, attorneys and all other persons acting or purporting to act on its behalf.

C. "Person" shall include any entity including individuals, associations, companies, firms, partnerships, joint ventures, corporations, municipalities, trusts, estates, agencies, departments, bureaus, boards or other forms of public, private or legal entities.

D. "Document" or "documents" refers to all "writings", "recordings" and "photographs", including written, printed, typed, recorded or graphic matter of every type and description, however and by whomever prepared, produced, reproduced, disseminated or made, in any form, including all originals and duplicates, as defined in the Texas Rules of Civil Procedure and Texas Rules of Evidence, within your possession, control or custody or in the hands of any of your experts, agents, representatives, attorneys or consultants, including, but not limited to, memoranda, correspondence, reports (including drafts, preliminary, intermediate and final reports), studies, minutes, notes, diaries, transcripts, microfilm, microfiche, minutes, bulletins, instructions, charts, literature, work assignments, notations of telephone or personal conversations or conferences, contracts, agreements, interoffice communications, notebooks, appointment books, pamphlets, summaries, data sheets, data compilations, computer data sheets and compilations, statistics, tapes (computer or recording), input, output and printouts, mechanical and electrical recordings, telephone and telegraphic communications, speeches and all other recorded information, whether recorded in writing, electrically or mechanically and all things similar to any of the foregoing, however

denominated by you, and any other documents within the scope of the Texas Rules of Evidence. “Documents” shall also mean non-identical copies of documents and copies of documents notwithstanding that you do not have the originals thereof in your possession, custody or control, and every copy of a document which contains handwritten or other notations or which otherwise does not duplicate the original or any other copy, and all attachments to any document.

E. “McAllen Facility” means the Generation Resource (as defined in the ERCOT Protocols) owned and operated by Frontera and located near McAllen, Texas and made the subject of this appeal.

F. “Protocols” means the ERCOT Protocols (as amended from time to time) approved by the Texas Public Utilities Commission, in PUC Docket No. 23220, *Petition of the Electric Reliability Council of Texas for Approval of the ERCOT Protocols*, Order on Rehearing, June 4, 2001.

G. “Fixed costs” means those costs which are invariant with the level of production, thereby not changing in the short run. Such costs must be paid regardless of how much electricity the facility produces, or whether it produces at all.

H. “Variable Costs” means those costs which change directly (but not necessarily proportionately) with the level of production.

I. “Sunk Costs” means those costs that have already been incurred, are considered irretrievable and which cannot be avoided regardless of the course of action selected.

J. “OOMC Service” means Replacement Reserve Service provided by a Generation Resource when no Market Solution exists to solve Local Congestion.

K. “Person” and “persons” include human beings, corporations, partnerships, associations, joint ventures, government agencies (federal, state, and local) and any other organization cognizable at law.

L. The term “regarding” or one of its inflections, includes the following meanings: relating to; referring to; pertaining to; concerning; discussing; mentioning; containing; reflecting; evidencing; describing; showing; identifying; providing; disproving; consisting of; supporting;

contradicting; in any way legally, logically or factually connected with the matter to which the term refers; or having a tendency to prove or disprove the matter to which the term refers.

M. The term “including” or one of its inflections, means and refers to “including but not limited to.”

N. This discovery is continuing in nature and must be supplemented pursuant to the Texas Rules of Civil Procedure.

INSTRUCTIONS

A. Unless otherwise indicated, capitalized terms in these *Requests* have the meaning ascribed to them in the Protocols or in the “Definitions” section, above.

B. Unless otherwise indicated, the time covered by these *Requests for Admission and Information* is all time periods during which Frontera received unit-specific instructions for any Unit at the McAllen Facility to date.

C. You shall construe the terms “and”, “or” and “and/or” either disjunctively or conjunctively whenever appropriate in order to bring within the scope of these *Requests* any information or documents reasonably considered within their scope. You shall construe the term “all” to mean “any and all”. You shall construe the term “any” to mean “any and all”. You shall construe the term “each” to mean “each and every”. You shall construe the term “every” to mean “each and every.”

D. You shall interpret the singular form of a word as plural, and the plural form as singular whenever appropriate in order to bring within the scope of these *Requests* any information or documents reasonably considered within their scope.

E. If you withhold any information, document or any part thereof called for by any *Request* herein, you must furnish ERCOT a list identifying each such document or communication together with the following:

1. the reason for withholding;
2. the date of the document or communication;

3. the name of each author or person who prepared the document and identify each such person;
4. the name of each person who was sent or furnished with the document or received, viewed or has had custody of the document and identify each such person.
5. a brief description of the document;
6. a statement of facts constituting the basis for any claim of privilege, work product or other ground of non-disclosure; and
7. the paragraph of this request to which the document relates.

In the case of any document relating in any way to a meeting or any other conversation, you must identify each participant in the meeting or conversation.

F. If you possessed or controlled any responsive document which you disposed of, lost, discarded or destroyed, identify each such document, specify its author, addressee, date, subject matter and all persons who received copies; describe the contents of the documents; state when any of your representatives controlled or possessed the document; and state the location of the disposed documents and the location of any alternative copies of the lost, discarded or destroyed documents, the dates or approximate time of the disposition, loss, destruction or discarding and the persons responsible for the disposition, loss, destruction or discarding.

G. If you do not know the answer to all or any part of a *Request* or you do not have such answer available to you, include a statement to that effect, furnish the information that you know or have available to you, and, to the extent that any unanswered portion of the *Request* includes the identity of any witness or other person with knowledge of discoverable matter, provide such information within ten (10) days from the time the information becomes known or available.

H. If at any time after service of your responses to these *Requests* you discover that a portion of your response was incorrect when made, or although correct when made no longer remains true. serve a corrected response in writing within ten (10) days from the time of such discovery.

I. Pursuant to the PUC Rules and the Texas Rules of Civil Procedure, when good faith requires that you qualify your answer or deny only a part of the matter of which an admission is requested, you must specify so much of it as is true and qualify or deny the remainder. You may not give lack of knowledge or information as a reason for failure to admit or deny unless you make reasonable inquiry and the information known or easily obtainable by you is insufficient to enable you to admit or deny the *Request*. You may not object to a request simply because you believe it presents a genuine issue for hearing.

J. Unless otherwise indicated, capitalized terms in this document have the same meaning as ascribed to them in the ERCOT Protocols.

K. "Identify" when used with reference to a person who was or still is employed by or associated with you, means to state his or her full name, present or last known business affiliation and position, present or last known mailing address, and all positions or business associations with you during the time period covered by the Requests and Interrogatories.

L. "Identify" when used with reference to an individual or natural person, other than those who were or are presently employed by or associated with you, means to state the individual's name and present business and home addresses, his or her present or last known position and business affiliation, and his or her position and business affiliation at the time or times in question.

M. "Identify" when used with reference to a document, means to state the date and author, preparer, all addressees, and other recipients, the general subject matters, the type of documents (e.g., letter, memorandum, chart), and its present or last known location and custodian. If any such document no longer exists or you no longer have it within your possession, custody or control, state the disposition you made of it, the reason for such disposition, and the date thereof and identify all persons who have knowledge of the contents thereof.

N. "Identify", when referring to any entity, shall mean to state its full name, the address of its principal place of business or principal location, and its form of organization (e.g., corporation or partnership). Once you have identified an entity in answer to a Request, you thereafter need only identify such entity by name.

II. REQUEST FOR ADMISSION OF FACTS AND REQUEST FOR INFORMATION

ERCOT 1-1: Admit that Frontera purchased the McAllen Facility in the year 2000 from AEP.

ERCOT 1-2: If you deny the preceding *Request* or claim you cannot admit or deny it, set forth the exact date on which Frontera purchased the McAllen Facility.

ERCOT 1-3: Produce all documents relating to Frontera's purchase of the McAllen Facility.

ERCOT 1-4: Admit that Frontera paid \$265,000,000 for the McAllen Facility.

ERCOT 1-5: If you deny the preceding *Request* or claim you cannot admit or deny it, pursuant to the Texas Rules of Civil Procedure, set forth the exact purchase price Frontera paid for the McAllen Facility.

ERCOT 1-6: Admit that, at the time it purchased the McAllen Facility, Frontera attributed \$70,000,000 of the purchase price to "good will."

ERCOT 1-7: (a) If you deny the preceding *Request* or claim you cannot admit or deny it, set forth the exact amount of the purchase price for the McAllen Facility Frontera assigned to "good will;" (b) Produce all documents relating to the manner in which Frontera accounts for all expenses associated with the purchase price and operation of the McAllen Facility.

ERCOT 1-8: Admit that, pursuant to generally accepted accounting practices, Frontera cannot depreciate "good will" associated with the McAllen Facility.

ERCOT 1-9: (a) If you deny the preceding *Request* or claim you cannot admit or deny it, set forth SPECIFICALLY and IN DETAIL your reasons for the denial or your inability to admit or deny the Request; (b) produce all documents relating to the manner in which Frontera treats the "good will" associated with the McAllen Facility on its financial books.

ERCOT 1-10: Admit that, regardless of whether ERCOT ever instructs Frontera to run its McAllen Facility to provide RPRS service, Frontera must incur the Fixed Costs associated with the McAllen Facility.

ERCOT 1-11: (a) If you deny the preceding *Request* or claim you cannot admit or deny it, set forth SPECIFICALLY and IN DETAIL your reasons for the denial or your inability to admit or deny the *Request* and explain why Frontera will not incur the Fixed Costs associated with the McAllen Facility; (b) produce all documents relating to Frontera's Fixed Costs associated with the McAllen Facility.

ERCOT 1-12: Admit that, regardless of whether ERCOT ever instructs Frontera to run its McAllen facility to provide RPRS service, Frontera must incur the Sunk Costs associated with the McAllen Facility.

ERCOT 1-13: (a) If you deny the preceding *Request* or claim you cannot admit or deny it, set forth SPECIFICALLY and IN DETAIL your reasons for the denial or your inability to admit or deny the *Request* and explain why Frontera will not incur the Sunk Costs associated with the McAllen Facility; (b) please produce all documents relating to Frontera's Sunk Costs associated with the McAllen Facility.

ERCOT 1-14: Admit that, pursuant to economic theory, the operator of an electricity generation facility will be willing to generate electricity so long as the revenue received for the electricity exceeds the facility's Variable Costs.

ERCOT 1-15: (a) If you deny the preceding *Request* or claim you cannot admit or deny it, set forth SPECIFICALLY and IN DETAIL your reasons for the denial or your inability to admit or deny the *Request* and explain why you take the position that, pursuant to economic theory, the operator of an electricity generation facility will not be willing to generate electricity so long as the revenue received for the electricity exceeds the facility's variable costs; (b) produce all documents relating to Frontera's Variable Costs to operate the McAllen Facility.

ERCOT 1-16: Admit that the revised version of Protocol §6.8.2. (as revised by PRR 338 and PRR 347) provides that a Generation Resource must be compensated for its Variable Costs when ERCOT requires that it provide RPRS.

ERCOT 1-17: If you deny the preceding *Request* or claim you cannot admit or deny it, set forth SPECIFICALLY and IN DETAIL your reasons for the denial or your inability to admit or deny the Request.

ERCOT 1-18: Admit that, by statute, Texas deregulated the amounts Generation Resources could charge for electricity in the State in 1996.

ERCOT 1-19: If you deny the preceding *Request* or claim you cannot admit or deny it, set forth SPECIFICALLY and IN DETAIL your reasons for the denial or your inability to admit or deny the Request.

ERCOT 1-20: Admit that, Under current Texas law, a Generation Resource is not entitled to receive payment for electricity it generates on a “cost of service” basis.

ERCOT 1-21: (a) If you deny the preceding *Request* or claim you cannot admit or deny it, set forth SPECIFICALLY and IN DETAIL your reasons for the denial or your inability to admit or deny the Request and explain why you believe that Texas law provides for a Generation Resource to be entitled to receive payment for electricity it generates on a “cost of service” basis; (b) produce all documents relating to Frontera’s “cost of service” for operating the McAllen Facility.

ERCOT 1-22: Admit that, the ERCOT Protocols covering compensation for OOMC service both before and after revision by PRR 338 and PRR 347 provided that Resources would be paid only for their “verifiable costs in excess of the OOMC payment that are directly attributable to the OOMC Service” if the Resource believed the original payment for OOMC Service did not sufficiently compensate the Resource.

ERCOT 1-23: If you deny the preceding *Request* or claim you cannot admit or deny it, set forth SPECIFICALLY and IN DETAIL your reasons for the denial or your inability to admit or deny the Request; (b) please set forth your understanding of how the ERCOT Protocols address payments for OOMC Service.

ERCOT 1-24: Admit that, if, after ERCOT Settles with Frontera for OOMC Service pursuant to the Protocols, Frontera believes it has not received sufficient compensation to cover its costs to provide the OOMC Service, Frontera can appeal to the PUC.

ERCOT 1-25: If you deny the preceding *Request* or claim you cannot admit or deny it, set forth SPECIFICALLY and IN DETAIL your reasons for the denial or your inability to admit or deny the Request; (b) please provide all documents relating to Frontera's cost of providing OOMC Service on each date on which it has done so during the year 2002.

ERCOT 1-26: Admit that, if Frontera believes the existing ERCOT Protocols do not fairly compensate Generation Resources for RPRS, Frontera can use the Protocol revision procedure set forth in Section 21 of the ERCOT Protocols to seek to amend the Protocols.

ERCOT 1-27: If you deny the preceding *Request* or claim you cannot admit or deny it, set forth SPECIFICALLY and IN DETAIL your reasons for the denial or your inability to admit or deny the Request.

ERCOT 1-28: Admit that, as revised by PRR 338 and PRR 347, the ERCOT Protocols do not determine the particulars of amounts a specific Market Participant will receive for providing RPRS to ERCOT, they provide a methodology of how to perform Settlement for RPRS.

ERCOT 1-29: If you deny the preceding *Request* or claim you cannot admit or deny it, set forth SPECIFICALLY and IN DETAIL your reasons for the denial or your inability to admit or deny the Request.

ERCOT 1-30: Admit that, as revised by PRR 338 and PRR 347, the ERCOT Protocols do not give ERCOT the power to undertake any "rate making" with respect to Market Participants in the ERCOT Region.

ERCOT 1-31: If you deny the preceding *Request* or claim you cannot admit or deny it, set forth SPECIFICALLY and IN DETAIL your reasons for the denial or your inability to admit or deny the Request.

ERCOT 1-32: Admit that, APX has served as Frontera's QSE during the year 2002.

ERCOT 1-33: If you deny the preceding *Request* or claim you cannot admit or deny it, set forth SPECIFICALLY and IN DETAIL your reasons for the denial or your inability to admit or

deny the Request; (b) provide all documents (including contracts) between Frontera and another entity which has served as Frontera's QSE during the year 2002.

ERCOT 1-34: Admit that, to the best of Frontera's knowledge, APX, Frontera's QSE, has not taken steps to balance its portfolio when ERCOT has issued unit-specific instructions to Resources who have contracted with APX for QSE services.

ERCOT 1-35: If you deny the preceding *Request* or claim you cannot admit or deny it, (a) set forth SPECIFICALLY and IN DETAIL your reasons for the denial or your inability to admit or deny the Request and (b) describe the effort Frontera put into determining whether APX has taken any steps to balance its portfolio when ERCOT has issued unit-specific instructions to Resources who have contracted with APX for QSE services.

ERCOT 1-36: Admit that, as of October 1, 2002, Frontera and ERCOT have entered into a Reliability-Must-Run ("RMR") contract covering the McAllen Facility.

ERCOT 1-37: If you deny the preceding *Request* or claim you cannot admit or deny it, set forth SPECIFICALLY and IN DETAIL your reasons for the denial or your inability to admit or deny the Request; (b) please provide all documents relating to Frontera's analysis of whether it should enter into an RMR contract with ERCOT; (c) please produce all documents relating to the financial impact on Frontera of entering into an RMR contract with ERCOT; (d) please provide all documents relating to financial analyses performed by Frontera to reach a conclusion on whether to enter into an RMR contract with ERCOT; (e) please produce all documents relating to Frontera's costs to comply with the terms of any RMR contract Frontera entered into with ERCOT.

ERCOT 1-38: Admit that, between April 1, 2002 and September 30, 2002, Frontera sold energy produced by the McAllen Facility to third-parties.

ERCOT 1-39: Produce all Documents relating to any sales by Frontera to third-parties of energy produced by the McAllen Facility between April 1, 2002 and September 30, 2002.

ERCOT 1-40: Admit that Mr. Paul Messerschmidt is a representative of Frontera.

ERCOT 1-41: If you deny the preceding *Request* or claim you cannot admit or deny it, set forth SPECIFICALLY and IN DETAIL your reasons for the denial or your inability to admit or deny the Request.

ERCOT 1-42: Admit that Mr. Messerschmidt attended the following meetings:

- (i) May 22, 2002 meeting of the ERCOT Protocol Revision Subcommittee ("PRS");
- (ii) June 3, 2002 meeting of the ERCOT PRS;
- (iii) June 17, 2002 meeting of the ERCOT Board of Directors;
- (iv) July 2, 2002 meeting of the ERCOT Technical Advisory Committee ("TAC").

ERCOT 1-43: If you deny the preceding *Request* or claim you cannot admit or deny it, set forth SPECIFICALLY and IN DETAIL your reasons for the denial or your inability to admit or deny the Request; (b) produce all documents (including, but not limited to, notes, Memoranda and e-mails) generated by Mr. Messerschmidt relating to the meetings set forth in the immediately preceding Request for Admission; (c) produce all documents (including, but not limited to, notes, Memoranda and e-mails) generated by or between any employees or representatives of Frontera relating to the meetings set forth in the immediately preceding *Request*.

ERCOT 1-44: Admit that, during the meetings referred to ERCOT 1-42, Mr. Messerschmidt never voiced to the meeting participants any problems or concerns Frontera had with PRR 338 or PRR 347.

ERCOT 1-45: (a) If you deny the preceding *Request* or claim you cannot admit or deny it, set forth SPECIFICALLY and IN DETAIL your reasons for the denial or your inability to admit or deny the Request; (b) please produce all documents reflecting any comments made by Mr. Messerschmidt during those meetings relating to PRR 338 or PRR 347.

ERCOT 1-46: Admit that Messrs. Ray King and Larry Frost are representatives of Frontera.

ERCOT 1-47: If you deny the preceding *Request* or claim you cannot admit or deny it, set forth SPECIFICALLY and IN DETAIL your reasons for the denial or your inability to admit or deny the Request.

ERCOT 1-48: Admit that Messrs. Ray King, Larry Frost and Paul Messerschmidt attended the June 17, 2002 ERCOT Board of Directors meeting.

ERCOT 1-49: If you deny the preceding *Request* or claim you cannot admit or deny it, set forth SPECIFICALLY and IN DETAIL your reasons for the denial or your inability to admit or deny the Request.

ERCOT 1-50: Admit that, during the open session of the June 17, 2002 ERCOT Board of Directors meeting, the ERCOT Board discussed and approved PRR 338.

ERCOT 1-51: If you deny the preceding *Request* or claim you cannot admit or deny it, set forth SPECIFICALLY and IN DETAIL your reasons for the denial or your inability to admit or deny the Request.

ERCOT 1-52: Admit that, during the open session of the June 17, 2002 ERCOT Board of Directors meeting when the ERCOT Board discussed PRR 338, none of the Frontera representatives present at the meeting voiced any concerns about or problems with PRR 338.

ERCOT 1-53: If you deny the preceding *Request* or claim you cannot admit or deny it:

- (a) set forth SPECIFICALLY and IN DETAIL your reasons for the denial or your inability to admit or deny the *Request*;
- (b) produce all documents reflecting any comments made by any Frontera representative at the June 17, 2002 meeting of the ERCOT Board of Directors;
- (c) describe the comments made by a Frontera representative in the open meeting at the June 17, 2002 ERCOT Board of Directors meeting.

ERCOT 1-54: Admit that, at the November 19, 2002 meeting of the ERCOT Board of Directors, Mr. Paul Messerschmidt raised his hand to make a comment to the Board members, was acknowledged by the Board Chairman and commented on proposed PRR370, even though he is not a member of the Board and was not on the Board's agenda for the meeting.

ERCOT 1-55: If you deny the preceding *Request* or claim you cannot admit or deny it, set forth SPECIFICALLY and IN DETAIL your reasons for the denial or your inability to admit or deny the Request.

ERCOT 1-56: Admit that, Frontera can operate the McAllen Facility at a minimum generation level of 60 MW and remain in compliance with Permit No. O-01888 issued to Frontera by the Texas Commission on Environmental Quality.

ERCOT 1-57: If you deny the preceding *Request* or claim you cannot admit or deny it, set forth SPECIFICALLY and IN DETAIL your reasons for the denial or your inability to admit or deny the Request.

ERCOT 1-58: Admit that, at the PRS meeting on Monday, November 4, 2002, Mr. Paul Messerschmidt stated that Frontera had no intention of mothballing the McAllen Facility when Frontera sent its RMR letter to ERCOT in September, 2002.

ERCOT 1-59: Admit that, at a meeting of the QSE Project Managers held on November 6, 2002 at ERCOT's offices regarding a PRR to change the way OOMC payments are made, Frontera representatives stated that they registered the units at the McAllen Facility with ERCOT as "gas cyclic" because that was the category which yielded them the most money for payments for OOMC Service.

ERCOT 1-60: How many generation facilities does your QSE have in its portfolio?

ERCOT 1-61: What is the minimum "ramp" time for one of the Combustion Turbines at the McAllen Facility to reach its so-called "environmental minimum" when it has been off-line for twenty-four hours?

ERCOT 1-62: Could Frontera modify either of the Combustion Turbines at the McAllen Facility to allow it to run at less than 60 MW and comply with Permit No. O-01888 issued to Frontera by the Texas Commission on Environmental Quality?

ERCOT 1-63: (a) If you answered the preceding Request "yes," please set forth, specifically and in detail, the modifications which would be necessary?

ERCOT 1-64: Set forth, specifically and in detail, the cost for the modifications referred to in your response to the preceding Request.

ERCOT 1-65: Describe – specifically and in detail - each and every action you have taken to require your QSE to rebalance its portfolio in response to a unit-specific instruction received from ERCOT.

ERCOT 1-66: Please set forth – specifically and in detail: (a) each date and time interval for which you claim ERCOT sent an OOMC instruction for a Unit at the McAllen Facility which was at a MW quantity less than the MW quantity set forth in the Resource Plan for that Unit; (b) for each date and time interval set forth in your response to sub-section (a) of this Request, please set forth the quantity of MW in the OOMC instruction sent by ERCOT for that particular Unit; (c) for each date and time interval set forth in your response to sub-section (a) of this Request, please set forth the quantity of MW in the Resource Plan sent to ERCOT for that particular Unit.

ERCOT 1-67: What is Frontera's required internal return on investment for acquisitions?

ERCOT 1-68: What is Frontera's required internal return on capital employed?

ERCOT 1-69: What is Frontera's required internal ROCC?

ERCOT 1-70: Provide a copy of your contract with your QSE.

ERCOT 1-71: Produce any and all documents relating to each action you have taken to require your QSE to rebalance its portfolio in response to a unit-specific instruction received from ERCOT.

ERCOT 1-72: Produce any and all studies regarding the McAllen Facility being a "baseload" facility.

ERCOT 1-73: Produce any and all documents relating to setting the so-called "Environmental Limit" of the McAllen Facility.

ERCOT 1-74: Produce any and all studies, analyses or other documents supporting Frontera's claim that the McAllen Facility's minimum generation level is 60 MW.

ERCOT 1-75: Produce any and all Resource Plan minimum run levels submitted to ERCOT for each unit at the McAllen Facility.