

DOCKET NO. 26311

03/11/02 PM 3:32
PUBLIC UTILITY COMMISSION
FILED CLERK

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

FRONTERA GENERATION LIMITED PARTNERSHIP'S
MOTION FOR ENTRY OF THE STANDARD PROTECTIVE ORDER OF THE PUBLIC
UTILITY COMMISSION OF TEXAS

COMES NOW FRONTERA GENERATION LIMITED PARTNERSHIP ("Frontera") and files this Motion for Entry of the Standard Protective Order of the Public Utility Commission of Texas ("Commission") in connection with the above-captioned docket and, in support thereof, respectfully shows the Commission the following:

1. Frontera filed its Petition in this proceeding appealing PRR 338 on July 22, 2002 and its Petition in Docket 26504 on August 19, 2002 appealing PRR 347, both of which have been consolidated in this Docket 26311. These petitions were most recently amended and consolidated in *Frontera Generation Limited Partnership's Consolidated Second Amended Appeal of the Decision of the ERCOT Board to Adopt Protocol Revisions 338 and 347 Regarding Prospective Pricing of Out of Merit Capacity*. Frontera is appealing the decision of the Electric Reliability Council of Texas, Inc. ("ERCOT") Board of Directors in adopting Protocol Revision Requests ("PRRs") 338 and 347 setting prospective rates for the provision of Out of Merit Capacity reliability services to ERCOT.

2. On or about August 30, 2002, the Texas Industrial Energy Consumers ("TIEC") intervened in this proceeding.

3. On December 11, 2002, TIEC served its First Request for Information on Frontera. TIEC's request includes 26 separate requests for information, and seeks a large

volume of information and documents regarding the market position, costs, operation and management of Frontera's McAllen facility.

4. On December 12, 2002, ERCOT served its First Request for Admission of Facts and Information on Frontera. ERCOT's request includes 75 separate requests, and again seeks a large volume of information and documents regarding the operation and management of Frontera's McAllen facility.

5. TIEC's and ERCOT's requests call for disclosure of documents and other information containing confidential (Protected Materials) as well as highly confidential (Highly Sensitive Protected Materials). The materials requested consist of proprietary, competitively sensitive information including: 1) pricing and payment information concerning Frontera's sales; 2) contractual information and contracts between Frontera and third parties; 3) wholesale transaction information and market-sensitive marketing plans and analysis; 4) and business operations and financial information that is commercially sensitive. These requests clearly meet the definition of Protected Material and Highly Sensitive Protected Material under the Standard Protective Order. Release of the requested information would compromise Frontera's ability to participate competitively in the ERCOT market. Accordingly, Frontera requests that the Commission enter the Standard Protective Order restricting access to and dissemination of all information Frontera or other parties designate as confidential.

6. Attached hereto as Exhibit "A" is the Commission's Standard Protective Order originally adopted in Project 21662, *Development of a Standard Protective Order for Use in Senate Bill 7 Transition Cases*, Final Order, (January 6, 2000).

7. Under the Commission's Procedural rules, specifically Procedural Rule §22.142(c), the Standard Protective Order is required to be used in a docket when it is

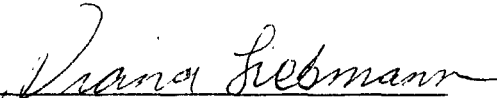
appropriate to issue a protective order in a docket. As stated herein above, this provision clearly contemplates the use of the Standard Protective Order where proprietary and confidential information of the nature requested by TIEC and ERCOT is sought.

8. TIEC and ERCOT have each sought discovery relating to Protected Materials and Highly Sensitive Protected Material including discovery of proprietary, confidential cost and market information, which requests are attached as Exhibits "B" and "C" hereto respectively.

Without commenting on or waiving or limiting its objection to the individual discovery requests in any manner or waiving in whole or in part its ability to seek further limitations on discovery, Frontera respectfully requests that the Commission enter the Standard Protective Order in the form attached and grant Frontera such other and further relief to which it is entitled and any other relief to which Frontera may be entitled and the Commission finds necessary.


Respectfully submitted,

HAYNES AND BOONE, L.L.P.
112 East Pecan Street, Suite 1600
San Antonio, Texas 78205
Telephone: (210) 978-7000
Telecopier: (210) 978-7450

By 


Diana Liebmann
State Bar No. 00797058
Stephen P. Allison
State Bar No. 01091500

ATTORNEYS FOR FRONTERA GENERATION
LIMITED PARTNERSHIP

w/permission: 

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing has been delivered to all parties of record in this proceeding on this 2 day of January, 2003.


Diana Liebmann

w/ permission: 

PUC DOCKET NO. _____

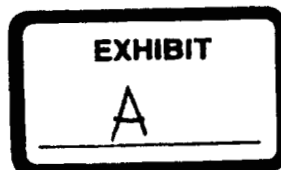
§ BEFORE THE PUBLIC UTILITY
§
§ COMMISSION OF TEXAS
§

PROTECTIVE ORDER

This Protective Order shall govern the use of all information deemed confidential (Protected Materials) or highly confidential (Highly Sensitive Protected Materials) by a party providing information to the Public Utility Commission of Texas (Commission), including information whose confidentiality is currently under dispute.

It is ORDERED that:

1. Designation of Protected Materials. Upon producing or filing a document, including, but not limited to, records stored or encoded on a computer disk or other similar electronic storage medium in this proceeding, the producing party may designate that document, or any portion of it, as confidential pursuant to this Protective Order by typing or stamping on its face "PROTECTED PURSUANT TO PROTECTIVE ORDER ISSUED IN DOCKET NO. _____" or words to this effect and consecutively Bates Stamping each page. Protected Materials and Highly Sensitive Protected Materials include not only the documents so designated, but also the substance of the information contained in the documents and any description, report, summary, or statement about the substance of the information contained in the documents.
2. Materials Excluded from Protected Materials Designation. Protected Materials shall not include any information or document contained in the public files of the Commission or any other federal or state agency, court, or local governmental authority subject to the Texas Public Information Act. Protected Materials also shall not include documents or information which at the time of, or prior to disclosure in a proceeding, is or was public knowledge, or which becomes public knowledge other than through disclosure in violation of this Protective Order.



3. Reviewing Party. For the purposes of this Protective Order, a Reviewing Party is a party to this docket.
4. Procedures for Designation of Protected Materials. On or before the date the Protected Materials or Highly Sensitive Protected Materials are provided to the Commission, the producing party shall file with the Commission and deliver to each party to the proceeding a written statement, which may be in the form of an objection, indicating: (1) any and all exemptions to the Public Information Act, TEX. GOV'T CODE ANN., Chapter 552, claimed to be applicable to the alleged Protected Materials; (2) the reasons supporting the providing party's claim that the responsive information is exempt from public disclosure under the Public Information Act and subject to treatment as protected materials; and (3) that counsel for the providing party has reviewed the information sufficiently to state in good faith that the information is exempt from public disclosure under the Public Information Act and merits the Protected Materials designation.
5. Persons Permitted Access to Protected Materials. Except as otherwise provided in this Protective Order, a Reviewing Party shall be permitted access to Protected Materials only through its Reviewing Representatives who have signed the Protective Order Certification Form. Reviewing Representatives of a Reviewing Party include its counsel of record in this proceeding and associated attorneys, paralegals, economists, statisticians, accountants, consultants, or other persons employed or retained by the Reviewing Party and directly engaged in these proceedings. At the request of the Commissioners or their staff, copies of Protected Materials may be produced by the Commission Office of Regulatory Affairs (ORA) or the Office of Policy Development (OPD) to the Commissioners. The Commissioners and their staff shall be informed of the existence and coverage of this Protective Order and shall observe the restrictions of the Protective Order.
6. Highly Sensitive Protected Material Described. The term Highly Sensitive Protected Materials is a subset of Protected Materials and refers to documents or information which a producing party claims is of such a highly sensitive nature that making copies of such documents or information or providing access to such documents to employees of the Reviewing Party (except as set forth herein) would expose a producing party to unreasonable risk of harm, including but not limited to: (1) customer-specific information

protected by § 32.101(c) of the Public Utility Regulatory Act; (2) contractual information pertaining to contracts that specify that their terms are confidential or which are confidential pursuant to an order entered in litigation to which the producing party is a party; (3) market-sensitive fuel price forecasts, wholesale transactions information and/or market-sensitive marketing plans; and (4) business operations or financial information that is commercially sensitive. Documents or information so classified by a producing party shall bear the designation "HIGHLY SENSITIVE PROTECTED MATERIALS PROVIDED PURSUANT TO PROTECTIVE ORDER ISSUED IN DOCKET NO. _____" or words to this effect and shall be consecutively Bates Stamped in accordance with the provisions of this Protective Order. The provisions of this Protective Order pertaining to Protected Materials also apply to Highly Sensitive Protected Materials, except where this Protective Order provides for additional protections for Highly Sensitive Protected Materials. In particular, the procedures herein for challenging the producing party's designation of information as Protected Materials also apply to information that a producing party designates as Highly Sensitive Protected Materials.

7. Restrictions on Copying and Inspection of Highly Sensitive Protected Material. Except as expressly provided herein, only one copy may be made of any Highly Sensitive Protected Materials except that additional copies may be made in order to have sufficient copies for introduction of the material into the evidentiary record if the material is to be offered for admission into the record. A record of any copies that are made of Highly Sensitive Protected Material shall be kept and a copy of the record shall be sent to the producing party at the time the copy or copies are made. The record shall include information on the location and the person in possession of the copy. Highly Sensitive Protected Material shall be made available for inspection only at the location or locations provided by the producing party, except as provided by Paragraph 9. Limited notes may be made of Highly Sensitive Protected Materials, and such notes shall themselves be treated as Highly Sensitive Protected Materials unless such notes are limited to a description of the document and a general characterization of its subject matter in a manner that does not state any substantive information contained in the document.
8. Restricting Persons Who May Have Access to Highly Sensitive Protected Material. With the exception of ORA and the Office of Public Utility Counsel (OPC), and except as

provided herein, the Reviewing Representatives for the purpose of access to Highly Sensitive Protected Materials may be persons who are: (1) outside counsel for the Reviewing Party; (2) outside consultants for the Reviewing Party working under the direction of Reviewing Party's counsel; or (3) employees of the Reviewing Party working with and under the direction of Reviewing Party's counsel who have been authorized by the presiding officer to review Highly Sensitive Protected Materials. The Reviewing Party shall limit the number of Reviewing Representatives that review each Highly Sensitive Protected document to the minimum number of persons necessary. The Reviewing Party is under a good faith obligation to limit access to each portion of any Highly Sensitive Protected Materials to two Reviewing Representatives whenever possible. Reviewing Representatives for ORA and OPC, for the purpose of access to Highly Sensitive Protected Materials, shall consist of their respective counsel of record in this proceeding and associated attorneys, paralegals, economists, statisticians, accountants, consultants, or other persons employed or retained by them and directly engaged in these proceedings.

9. Copies Provided of Highly Sensitive Protected Material. A producing party shall provide one copy of Highly Sensitive Protected Materials specifically requested by the Reviewing Party to the person designated by the Reviewing Party who must be a person authorized to review Highly Sensitive Protected Material under Paragraph 8, and be either outside counsel or an outside consultant. Other representatives of the reviewing party who are authorized to view Highly Sensitive Material may review the copy of Highly Sensitive Protected Materials at the office of the Reviewing Party's representative designated to receive the information. Any Highly Sensitive Protected documents provided to a Reviewing Party may not be copied except as provided in Paragraph 7 and shall be returned along with any copies made pursuant to Paragraph 7 to the producing party within two weeks after the close of the evidence in this proceeding. The restrictions contained herein do not apply to ORA, OPC, and the Office of the Attorney General (OAG) when the OAG is a representing a party to the proceeding.
10. Procedures in Paragraphs 10-14 Apply to ORA, OPC, and the OAG and Control in the Event of Conflict. The procedures set forth in Paragraphs 10 through 14 apply to responses to requests for documents or information that the producing party designates as

Highly Sensitive Protected Materials and provides to ORA, OPC, and the OAG in recognition of their purely public functions. To the extent the requirements of Paragraphs 10 through 14 conflict with any requirements contained in other paragraphs of this Protective Order, the requirements of these Paragraphs shall control.

11. Copy of Highly Sensitive Protected Material to be Provided to ORA, OPC, and the OAG.
When, in response to a request for information by a Reviewing Party, the producing party makes available for review documents or information claimed to be Highly Sensitive Protected Materials, the producing party shall also deliver one copy of the Highly Sensitive Protected Materials to the ORA, OPC (if OPC is a party), and the OAG (if the OAG is representing a party) in Austin, Texas. Provided however, that in the event such Highly Sensitive Protected Materials are voluminous, the materials will be made available for review by ORA, OPC (if OPC is a party), and the OAG (if the OAG is representing a party) at the designated office in Austin, Texas. The ORA, OPC (if OPC is a party), and the OAG (if the OAG is representing a party) may request such copies as are necessary of such voluminous material under the copying procedures set forth herein.
12. Delivery of the Copy of Highly Sensitive Protected Material to Staff and Outside Consultants. The ORA, OPC (if OPC is a party), and the OAG (if the OAG is representing a party) may deliver the copy of Highly Sensitive Protected Materials received by them to the appropriate members of their staff for review, provided such staff members first sign the certification provided in Paragraph 15. After obtaining the agreement of the producing party, ORA, OPC, and the OAG (if the OAG is representing a party) may deliver the copy of Highly Sensitive Protected Materials received by it to the agreed, appropriate members of their outside consultants for review, provided such outside consultants first sign the certification attached hereto.
13. Restriction on Copying by ORA, OPC, and the OAG. Except as allowed by Paragraphs 7, ORA, OPC, and the OAG may not make additional copies of the Highly Sensitive Protected Materials furnished to them unless the producing party agrees in writing otherwise, or, upon a showing of good cause, the Presiding Officer directs otherwise. Limited notes may be made by ORA, OPC (if OPC is a party), and the OAG (if the OAG is representing a party) of Highly Sensitive Protected Materials furnished to them and all

such handwritten notes will be treated as Highly Sensitive Protected Materials as are the materials from which the notes are taken.

14. Public Information Requests. In the event of a request for any of the Highly Sensitive Protected Materials under the Public Information Act, an authorized representative of the Commission OPC, or the OAG may furnish a copy of the requested Highly Sensitive Protected Materials to the Open Records Division at the OAG together with a copy of this Protective Order after notifying the producing party that such documents are being furnished to the OAG. Such notification may be provided simultaneously with the delivery of the Highly Sensitive Protected Materials to the OAG.
15. Required Certification. Each person who inspects the Protected Materials shall, before such inspection, agree in writing to the following certification set forth in the attachment to this Protective Order:

I certify my understanding that the Protected Materials are provided to me pursuant to the terms and restrictions of the Protective Order in this docket, and that I have been given a copy of it and have read the Protective Order and agree to be bound by it. I understand that the contents of the Protected Materials, any notes, memoranda, or any other form of information regarding or derived from the Protected Materials shall not be disclosed to anyone other than in accordance with the Protective Order and unless I am an employee of ORA or OPC shall be used only for the purpose of the proceeding in Docket No. _____. I acknowledge that the obligations imposed by this certification are pursuant to such Protective Order. Provided, however, if the information contained in the Protected Materials is obtained from independent public sources, the understanding stated herein shall not apply.

In addition, Reviewing Representatives who are permitted access to Highly Sensitive Protected Material under the terms of this Protective Order shall, before inspection of such material, agree in writing to the following certification set forth in the Attachment to this Protective Order:

I certify that I am eligible to have access to Highly Sensitive Protected Material under the terms of the Protective Order in this docket.

A copy of each signed certification shall be provided by the reviewing party to counsel for the producing party and served upon all parties of record.

16. Disclosures Between Reviewing Representatives and Continuation of Disclosure Restrictions After a Person is no Longer Engaged in the Proceeding. Any Reviewing Representative may disclose Protected Materials, other than Highly Sensitive Protected Materials, to any other person who is a Reviewing Representative provided that, if the person to whom disclosure is to be made has not executed and provided for delivery of a signed certification to the party asserting confidentiality, that certification shall be executed prior to any disclosure. A Reviewing Representative may disclose Highly Sensitive Protected Material to other Reviewing Representatives who are permitted access to such material and have executed the additional certification required for persons who receive access to Highly Sensitive Protected Material. In the event that any Reviewing Representative to whom Protected Materials are disclosed ceases to be engaged in these proceedings, access to Protected Materials by that person shall be terminated and all notes, memoranda, or other information derived from the protected material shall either be destroyed or given to another Reviewing Representative of that party who is authorized pursuant to this Protective Order to receive the protected materials. Any person who has agreed to the foregoing certification shall continue to be bound by the provisions of this Protective Order so long as it is in effect, even if no longer engaged in these proceedings.
17. Producing Party to Provide One Copy of Certain Protected Material and Procedures for Making Additional Copies of Such Materials. Except for Highly Sensitive Protected Materials which shall be provided to the Reviewing Parties pursuant to Paragraph 9, and voluminous Protected Materials, the producing party shall provide a Reviewing Party one copy of the Protected Materials upon receipt of the signed certification described in Paragraph 15. Except for Highly Sensitive Protected Materials, a Reviewing Party may make further copies of Protected Materials for use in this proceeding pursuant to this Protective Order, but a record shall be maintained as to the documents reproduced and the number of copies made, and upon request the Reviewing Party shall provide the party asserting confidentiality with a copy of that record.
18. Procedures Regarding Voluminous Protected Materials. Production of voluminous Protected Materials will be governed by P.U.C. PROC. R. 22.144(h). Voluminous Protected Materials will be made available in the producing party's voluminous room, in

Austin, Texas, or at a mutually agreed upon location, Monday through Friday, 9:00 a.m. to 5:00 p.m. (except on state or Federal holidays), and at other mutually convenient times upon reasonable request.

19. Reviewing Period Defined. The Protected Materials may be reviewed only during the Reviewing Period, which shall commence upon entry of this Protective Order and continue until the expiration of the Commission's plenary jurisdiction. The Reviewing Period shall reopen if the Commission regains jurisdiction due to a remand as provided by law. Protected materials that are admitted into the evidentiary record or accompanying the evidentiary record as offers of proof may be reviewed throughout the pendency of this proceeding and any appeals.
20. Procedures for Making Copies of Voluminous Protected Materials. Other than Highly Sensitive Protected Materials, Reviewing Parties may take notes regarding the information contained in voluminous Protected Materials made available for inspection or they may make photographic, mechanical, or electronic copies of the Protected Materials, subject to the conditions hereof; provided, however, that before photographic, mechanical, or electronic copies can be made, the Reviewing Party seeking photographic, mechanical, or electronic copies must complete a written receipt for copies on the attached form identifying each piece of Protected Materials or portions thereof the Reviewing Party will need.
21. Protected Materials to be Used Solely for the Purposes of These Proceedings. All Protected Materials shall be made available to the Reviewing Parties and their Reviewing Representatives solely for the purposes of these proceedings. Access to the Protected Materials may not be used in the furtherance of any other purpose, including, without limitation: (1) any other pending or potential proceeding involving any claim, complaint, or other grievance of whatever nature, except appellate review proceedings that may arise from or be subject to these proceedings; or (2) any business or competitive endeavor of whatever nature. Because of their statutory regulatory obligations, these restrictions do not apply to ORA or OPC.
22. Procedures for Confidential Treatment of Protected Materials and Information Derived from those Materials. Protected Materials, as well as a Reviewing Party's notes, memoranda, or other information regarding or derived from the Protected Materials are to

be treated confidentially by the Reviewing Party and shall not be disclosed or used by the Reviewing Party except as permitted and provided in this Protective Order. Information derived from or describing the Protected Materials shall be maintained in a secure place and shall not be placed in the public or general files of the Reviewing Party except in accordance with the provisions of this Protective Order. A Reviewing Party must take all reasonable precautions to insure that the Protected Materials including notes and analyses made from Protected Materials that disclose Protected Materials are not viewed or taken by any person other than a Reviewing Representative of a Reviewing Party.

23. Procedures for Submission of Protected Materials. If a Reviewing Party tenders for filing any Protected Materials, including Highly Sensitive Protected Materials, or any written testimony, exhibit, brief, motion, or other type of pleading or other submission at the Commission or before any other judicial body that quotes from Protected Materials or discloses the content of Protected Materials, the confidential portion of such submission shall be filed and served in sealed envelopes or other appropriate containers endorsed to the effect that they contain Protected Material or Highly Sensitive Protected Material and are sealed pursuant to this Protective Order. If filed at the Commission, such documents shall be marked "PROTECTED MATERIAL" and shall be filed under seal with the Presiding Officer and served under seal to the counsel of record for the Reviewing Parties. The Presiding Officer may subsequently, on his/her own motion or on motion of a party, issue a ruling respecting whether or not the inclusion, incorporation or reference to Protected Materials is such that such submission should remain under seal. If filing before a judicial body, the filing party: (1) shall notify the party which provided the information within sufficient time so that the providing party may seek a temporary sealing order; and (2) shall otherwise follow the procedures set forth in Rule 76a, Texas Rules of Civil Procedure.
24. Maintenance of Protected Status of Materials During Pendency of Appeal of Order Holding Materials are not Protected Materials. In the event that the Presiding Officer at any time in the course of this proceeding finds that all or part of the Protected Materials are not confidential or proprietary, by finding, for example, that such materials have entered the public domain or materials claimed to be Highly Sensitive Protected Materials are only Protected Materials, those materials shall nevertheless be subject to the

protection afforded by this Protective Order for three (3) full working days, unless otherwise ordered, from the date the party asserting confidentiality receives notice of the Presiding Officer's order. Such notification will be by written communication. This provision establishes a deadline for appeal of a Presiding Officer's order to the Commission. In the event an appeal to the Commissioners is filed within those three (3) working days from notice, the Protected Materials shall be afforded the confidential treatment and status provided in this Protective Order during the pendency of such appeal. Neither the party asserting confidentiality nor any Reviewing Party waives its right to seek additional administrative or judicial remedies after the Commission's denial of any appeal.

25. Notice of Intent to Use Protected Materials or Change Materials Designation. Parties intending to use Protected Materials shall notify the other parties prior to offering them into evidence or otherwise disclosing such information into the record of the proceeding. During the pendency of Docket No. _____ at the Commission, in the event that a Reviewing Party wishes to disclose Protected Materials to any person to whom disclosure is not authorized by this Protective Order, or wishes to have changed the designation of certain information or material as Protected Materials by alleging, for example, that such information or material has entered the public domain, such Reviewing Party shall first file and serve on all parties written notice of such proposed disclosure or request for change in designation, identifying with particularity each of such Protected Materials. A Reviewing Party shall at any time be able to file a written motion to challenge the designation of information as Protected Materials.
26. Procedures to Contest Disclosure or Change in Designation. In the event that the party asserting confidentiality wishes to contest a proposed disclosure or request for change in designation, the party asserting confidentiality shall file with the appropriate Presiding Officer its objection to a proposal, with supporting affidavits, if any, within five (5) working days after receiving such notice of proposed disclosure or change in designation. Failure of the party asserting confidentiality to file such an objection within this period shall be deemed a waiver of objection to the proposed disclosure or request for change in designation. Within five (5) working days after the party asserting confidentiality files its objection and supporting materials, the party challenging confidentiality may respond.

Any such response shall include a statement by counsel for the party challenging such confidentiality that he or she has reviewed all portions of the materials in dispute and without disclosing the Protected Materials, a statement as to why the Protected Materials should not be held to be confidential under current legal standards, or alternatively that the party asserting confidentiality for some reason did not allow such counsel to review such materials. If either party wishes to submit the material in question for in camera inspection, it shall do so no later than five (5) working days after the party challenging confidentiality has made its written filing.

27. Procedures for Presiding Officer Determination Regarding Proposed Disclosure or Change in Designation. If the party asserting confidentiality files an objection, the appropriate Presiding Officer will determine whether the proposed disclosure or change in designation is appropriate. Upon the request of either the producing or reviewing party or upon the presiding officer's own initiative, the presiding officer may conduct a prehearing conference. The burden is on the party asserting confidentiality to show that such proposed disclosure or change in designation should not be made. If the Presiding Officer determines that such proposed disclosure or change in designation should be made, disclosure shall not take place earlier than three (3) full working days after such determination unless otherwise ordered. No party waives any right to seek additional administrative or judicial remedies concerning such Presiding Officer's ruling.
28. Maintenance of Protected Status During Periods Specified for Challenging Various Orders. Any party electing to challenge, in the courts of this state, a Commission or Presiding Officer determination allowing disclosure or a change in designation shall have a period of ten (10) days from: (1) the date of an unfavorable Commission order; or (2) if the Commission does not rule on an appeal of an interim order, the date an appeal of an interim order to the Commission is overruled by operation of law, to obtain a favorable ruling in state district court. Any party challenging a state district court determination allowing disclosure or a change in designation shall have an additional period of ten (10) days from the date of the order to obtain a favorable ruling from a state appeals court. Finally, any party challenging a determination of a state appeals court allowing disclosure or a change in designation shall have an additional period of ten (10) days from the date of the order to obtain a favorable ruling from the state supreme court, or other appellate

court. All Protected Materials shall be afforded the confidential treatment and status provided for in this Protective Order during the periods for challenging the various orders referenced in this Paragraph. For purposes of this Paragraph, a favorable ruling of a state district court, state appeals court, supreme court or other appellate court includes any order extending the deadlines set forth in this Paragraph.

29. Other Grounds for Objection to Use of Protected Materials Remain Applicable. Nothing in this Protective Order shall be construed as precluding any party from objecting to the use of Protected Materials on grounds other than confidentiality, including the lack of required relevance. Nothing in this Protective Order constitutes a waiver of the right to argue for more disclosure, provided, however, that unless and until such additional disclosure is ordered by the Commission or a court, all parties will abide by the restrictions imposed by the Protective Order.
30. Protection of Materials from Unauthorized Disclosure. All notices, applications, responses, or other correspondence shall be made in a manner which protects Protected Materials from unauthorized disclosure.
31. Return of Copies of Protected Materials and Destruction of Information Derived from Protected Materials. Following the conclusion of these proceedings, each Reviewing Party must, no later than thirty (30) days following receipt of the notice described below, return to the party asserting confidentiality all copies of the Protected Materials provided by that party pursuant to this Protective Order and all copies reproduced by a Reviewing Party, and counsel for each Reviewing Party must provide to the party asserting confidentiality a letter by counsel that, to the best of his or her knowledge, information, and belief, all copies of notes, memoranda, and other documents regarding or derived from the Protected Materials (including copies of Protected Materials) that have not been so returned, if any, have been destroyed, other than notes, memoranda, or other documents which contain information in a form which, if made public, would not cause disclosure of the substance of Protected Materials. As used in this Protective Order, "conclusion of these proceedings" refers to the exhaustion of available appeals, or the running of the time for the making of such appeals, as provided by applicable law. If, following any appeal, the Commission conducts a remand proceeding, then the "conclusion of these proceedings" is extended by the remand to the exhaustion of

available appeals of the remand, or the running of the time for making such appeals of the remand, as provided by applicable law. Promptly following the conclusion of these proceedings, counsel for the party asserting confidentiality will send a written notice to all other parties, reminding them of their obligations under this Paragraph. Nothing in this Paragraph shall prohibit counsel for each Reviewing Party from retaining two (2) copies of any filed testimony, brief, application for rehearing, hearing exhibit, or other pleading which refers to Protected Materials provided that any such Protected Materials retained by counsel shall remain subject to the provisions of this Protective Order.

32. Applicability of Other Law. This Protective Order is subject to the requirements of the Public Information Act, the Open Meetings Act, and any other applicable law, provided that parties subject to those acts will give the party asserting confidentiality notice, if possible under those acts, prior to disclosure pursuant to those acts.
33. Procedures for Release of Information Under Order. If required by order of a governmental or judicial body, the Reviewing Party may release to such body the confidential information required by such order; provided, however, that: (1) the Reviewing Party shall notify the party asserting confidentiality of such order at least five (5) calendar days in advance of the release of the information in order for the party asserting confidentiality to contest any release of the confidential information; (2) the Reviewing Party shall notify the producing party that there is a request for such information within five (5) calendar days of the date the Reviewing Party is notified of the request for information; and (3) the Reviewing Party shall use its best efforts to prevent such materials from being disclosed to the public. The terms of this Protective Order do not preclude the Reviewing Party from complying with any valid and enforceable order of a state or federal court with competent jurisdiction specifically requiring disclosure of Protected Materials earlier than contemplated herein.
34. Best Efforts Defined. The term "best efforts" as used in the preceding paragraph requires that the Reviewing Party attempt to ensure that disclosure is not made unless such disclosure is pursuant to a final order of a Texas governmental or Texas judicial body or written opinion of the Texas Attorney General which was sought in compliance with the Public Information Act. The Reviewing Party is not required to delay compliance with a lawful order to disclose such information but is simply required to timely notify the party

asserting confidentiality, or its counsel, that it has received a challenge to the confidentiality of the information and that the Reviewing Party will either proceed under the provisions of §552.301 of the Public Information Act, or intends to comply with the final governmental or court order.

35. Notify Defined. Notify, for purposes of Paragraphs 33 and 34, shall mean written notice to the party asserting confidentiality at least five (5) calendar days prior to release; including when a Reviewing Party receives a request under the Public Information Act. However, the Commission or OPC may provide a copy of Protected Materials to the Open Records Division of the OAG as provided herein.
36. Requests for Non-Disclosure. If the producing party asserts that the requested information should not be disclosed at all, or should not be disclosed to certain parties under the protection afforded by this Order, the producing party shall tender the information for in camera review to the presiding officers within 10 calendar days of the request. At the same time, the producing party shall file and serve on all parties its argument, including any supporting affidavits, in support of its position of non-disclosure. The burden is on the producing party to establish that the material should not be disclosed. The producing party shall serve a copy of the information under the classification of Highly Sensitive Protected Material to all parties requesting the information that the producing party has not alleged should be prohibited from reviewing the information. Parties wishing to respond to the producing party's argument for non-disclosure shall do so within five working days. Responding parties should explain why the information should be disclosed to them, including why disclosure is necessary for a fair adjudication of the case if the material is determined to constitute a trade secret. If the presiding officer finds that the information should be disclosed as Protected Material under the terms of this Protective Order, the presiding officer shall stay the order of disclosure for such period of time as the presiding officer deems necessary to allow the producing party to appeal the ruling to the commission.
37. Sanctions Available for Abuse of Designation. If the presiding officer finds that a producing party unreasonably designated material as Protected Material or as Highly Sensitive Protected Material, or unreasonably attempted to prevent disclosure pursuant to

Paragraph 36, the presiding officer may sanction the producing party pursuant to P.U.C. PROC. R. 22.161.

38. Modification of Protective Order. Each party shall have the right to seek changes in this Protective Order as appropriate from the presiding officer.
39. Breach of Protective Order. In the event of a breach of the provisions of this Protective Order, the producing party, if it sustains its burden of proof required to establish the right to injunctive relief, shall be entitled to an injunction against such breach without any requirements to post bond as a condition of such relief. The producing party shall not be relieved of proof of any element required to establish the right to injunctive relief. In addition to injunctive relief, the producing party shall be entitled to pursue any other form of relief to which it is entitled.

SIGNED AT AUSTIN, TEXAS as of the ____ day of _____, _____.

Public Utility Commission of Texas

Pat Wood, III, Chairman

Judy Walsh, Commissioner

Brett A. Perlman, Commissioner

Protective Order Certification

I certify my understanding that the Protected Materials are provided to me pursuant to the terms and restrictions of the Protective Order in this docket, and that I have been given a copy of it and have read the Protective Order and agree to be bound by it. I understand that the contents of the Protected Materials, any notes, memoranda, or any other form of information regarding or derived from the Protected Materials shall not be disclosed to anyone other than in accordance with the Protective Order and unless I am an employee of ORA or OPC shall be used only for the purpose of the proceeding in Docket No. _____. I acknowledge that the obligations imposed by this certification are pursuant to such Protective Order. Provided, however, if the information contained in the Protected Materials is obtained from independent public sources, the understanding stated herein shall not apply.

Signature

Party Represented

Printed Name

Date

I certify that I am eligible to have access to Highly Sensitive Protected Material under the terms of the Protective Order in this docket.

Signature

Party Represented

Printed Name

Date

DOCKET NO. _____

I request to view/copy the following documents:

Document requested	# of Copies	Non-Confidential	Confidential &/or H.S.

Signature

Party Represented

Printed Name

Date

DOCKET NO. 26311

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

RECEIVED
02 DEC 11 PM 50
PUBLIC UTILITY COMMISSION
FILING CLERK
OF TEXAS

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

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

EXHIBIT

B

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.~~

Phillip G. Oldham
State Bar Number 00794392
111 Congress Avenue, Suite 1700
Austin, Texas 78701
(512) 320-9200
(512) 320-9292 (FAX)

Joseph P. Younger
State Bar Number 24037761
111 Congress Avenue, Suite 1700
Austin, Texas 78701
(512) 320-9200
(512) 320-9292 (FAX)

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.

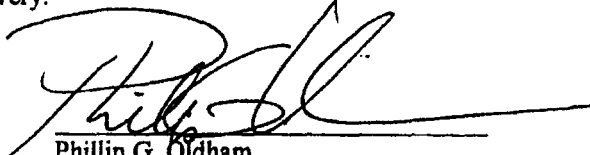

Phillip G. Oldham

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.

PUC DOCKET NO. 26311

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

§
§
§
§
§
§

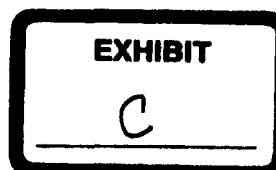
RECEIVED
2002 DEC 12 PM 2:39
PUBLIC UTILITY COMMISSION
FILING CLERK
OF TEXAS

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

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.



26

Electric Reliability Council of Texas, Inc.

By: Andrew Gallo

Mark A. Walker
Texas Bar No.: 20717318
ERCOT
7260 Metro Center Drive
Austin, Texas 78744
Tel. (512) 225-7076
Fax (512) 225-7079
mwalker@ercot.com

A. Andrew Gallo
Texas Bar No. 07592500
ERCOT
7260 Metro Center Drive
Austin, Texas 78744
Tel. (512) 225-7065
Fax (512) 225-7079
agallo@ercot.com

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.

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.