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APPEAL BY FRONTERA
GENERATION LIMITED PARTNERSHIP
OF ELECTRIC RELIABILITY COUNSEL
OF TEXAS APPROVAL OF PROTOCOL
REVISION 338

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

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PROJECT NO. 26311

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

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

Pursuant to § 22.144(e) of the Commission's Procedural Rules, Texas Industrial Energy Consumers ("TIEC") files this Motion to Compel Frontera Generation, L.P. ("Frontera") to respond and provide answers to its questions TIEC 1-1 through TIEC 1-28 contained in TIEC's First Request for Information ("RFI"). Frontera's objections are without merit and Frontera should be compelled to respond.

I. Introduction

This case concerns a claim by Frontera that the new protocols, adopted by the Electric Reliability Council of Texas ("ERCOT") Board in protocol revision requests 338 and 347, do not provide "adequate compensation" for generators who provide out-of-order merit capacity ("OOMC") reliability service. Frontera has appealed ERCOT's adoption of PRRs 338 and 347 to the Commission, claiming that the new cost-based compensation method fails to adequately compensate it and other generators providing OOMC service. In its initial complaint, Frontera alleged that because of the specific operating characteristics of its 477 MW plant in McAllen, Texas (the "McAllen Plant"), the new ERCOT protocols did not provide it with adequate compensation for costs resulting from the sale of ramp-up and environmental minimum energy into the bilateral Day Ahead energy market at a loss, as well as other miscellaneous costs allegedly

incurred as a result of providing OOMC service to the grid. *See* Frontera General Limited Partnership's Appeal of the Decision of the ERCOT Board to Adopt PRRs 338 and 347 Regarding Prospective Pricing of Out of Order Merit Capacity at 3-5 (July 22, 2002). Frontera has subsequently amended its petition to the Commission to eliminate any specific references to the McAllen Plant in an apparent attempt to defeat TIEC's discovery on relevance objections. However, Frontera continues to argue that the new OOMC compensation protocols do not adequately compensate those categories of costs relevant to the McAllen Plant. *See* Frontera General Limited Partnership's Consolidated Second Amended Appeal of the Decision of the ERCOT Board to Adopt PRRS 338 and 347 Regarding Prospective Pricing of Out of Order Merit Capacity at 3-5 (January 2, 2003).¹

Although Frontera now attempts to style this case as a general matter affecting all generators and claims that its own specific costs are irrelevant to the proceedings, because Frontera remains the only party to this litigation challenging the ERCOT protocol revisions, its data is essential to allow the Commission to make an informed decision about compensation. Rather than rendering Frontera's specific costs and revenues irrelevant, Frontera's procedural effort to turn this litigation into a case on behalf of all generators further underscores the importance of discovering the facts relevant to Frontera's costs and revenues because Frontera is now a proxy for all other generators. While before, the underlying facts were relevant only to Frontera's own claim, Frontera's data is now relevant to all similarly-situated generators, as well.

¹ To the extent that Frontera amended its complaint in order to avoid the discovery of facts that are reasonably calculated to lead to the discovery of admissible evidence, such amendments should be ignored.

Frontera now carries a burden to show that all similarly-situated generators are under-compensated, not just itself.

Furthermore, this is not a rulemaking, but a litigated case brought by Frontera before the Commission.² As such, any determination of whether the protocols provide adequate compensation must be based on the specific circumstances of the parties to this litigation, which necessarily includes Frontera's specific operational costs at its McAllen Plant.

Rather than disclose its own costs and revenues, Frontera argues that the parties should simply agree to the categories of costs that are compensable and the specific information necessary to verify those costs. Yet, without any information as to what costs are actually being incurred, it is impossible to determine what constitutes "adequate compensation" for OOMC service-providers. Also, without any information as to what revenues are being received in the course of providing OOMC service, it is impossible to determine if the total compensation received under the new protocols is adequate or not. Based on the fundamental principals of discovery, TIEC is entitled to understand the basis of Frontera's claim that it has a right to receive these payments and its theory about what constitutes adequate compensation.³ The RFIs all attempt to shed light on

² Frontera brought this case pursuant to Public Utility Regulatory Act ("PURA") § 39.151. PURA § 30.003 provides that "each commission proceeding brought under [chapter 39] other than a rulemaking proceeding, report, notification, or registration, shall be conducted as a *contested case*. . . ." PURA § 39.003 (emphasis added). This case is clearly not a rulemaking, report, notification, or registration proceeding and therefore is a contested case. It would be inappropriate for Frontera to be allowed to utilize Commission processes for contested cases (for settlement discussions and potentially for the litigated resolution of this matter), but at the same time claim that other parties to the litigation cannot avail themselves of the Commission's methods for gathering information provided in P.U.C. PROC. R. 22.141. Instead, TIEC believes that once Frontera decided to bring a contested case before the Commission, it committed itself to the full corpus of the Commission's procedural rules, including the discovery of information relevant to the litigation.

³ Frontera contends that allowing discovery will have a "chilling affect" on parties challenging ERCOT protocols before the Commission. In essence, Frontera argues that by allowing discovery of

Frontera's true costs and revenues in order for TIEC to reach a position as to what categories of costs should be compensable under the ERCOT protocols and thus are reasonably calculated to lead to the discovery of evidence relevant to this proceeding. Therefore, the Commission should compel Frontera to respond to TIEC's requests.

II. General Responses

Frontera makes the same two objections to the majority of TIEC's RFIs. First, Frontera argues that all of TIEC's requests are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Second, Frontera objects to sixteen of TIEC's RFIs on the basis of the trade secret privilege and that the information requested by those RFIs is confidential.⁴ Both of these objections are unavailing.

A. The Information Sought is Reasonably Calculated to Lead to the Discovery of Relevant and Admissible Evidence

On the issue of relevance, the evidence sought is both relevant and is reasonably calculated to lead to the discovery of admissible evidence. As stated above, according to Frontera this appeal concerns whether Frontera and other generators will receive adequate compensation for the provision of OOMC reliability services to ERCOT under the new protocols. In order to determine what constitutes adequate compensation, whether such compensation is specifically applicable to Frontera or otherwise, requires the factual development of the actual costs of facilities providing OOMC services.

relevant information, the Commission will make pursuing contentious proceedings before it more burdensome. Although it is undoubtedly true that precluding all factual development of cases and deciding issues solely on the bald assertions of the parties would make litigation of matters much less costly, the Texas courts have clearly and consistently rejected such an approach as inimical to the judicial process. *See, e.g., In re Colonial Pipeline*, 968 S.W. 2d 938, 941 (Tex. 1996) (stating that "the ultimate purpose of discovery is to seek the truth, so that disputes may be decided by what the facts reveal, not by what facts are concealed.") (citing *Jampole v. Touchy*, 673 S.W. 2d 569, 573 (Tex. 1984), *overruled on other grounds by Walker v. Packer*, 827 S.W.2d 833 (Tex. 1992)).

⁴ Specifically, Frontera claims trade privilege and confidentiality protections in response to RFIs TIEC 1-3, 1-4 through 1-7, 1-9, 1-11, 1-12, 1-15, 1-19, 1-20, and 1-23 through 1-27.

Without such information, there is simply no method to reach an informed conclusion as to what “adequate compensation” for OOMC service means. Whether compensation is “adequate” to cover costs can only be determined if those costs are known. Otherwise, any determination from this litigation as to what should be compensated under the ERCOT protocols will be the result of guesswork.

Further, to determine whether an entity is compensated under the protocols, parties are entitled to understand the ways in which a generator comes to provide OOMC service and what costs and payments flow from the provision of that service. As an example, if a generator has decided not to run during a certain period, that generator has voluntarily foregone certain opportunities in the market, such as the opportunity to recover fixed costs. As such, the payment of fixed costs for OOMC service would be inappropriate because the entity being OOM’d has by definition already determined that it will not recover those costs. In addition, if a generator, by virtue of its decision to not run or be scheduled in a certain manner, obtains a benefit (congestion payment, etc.) then those benefits must also be determined and accounted for before the generator can show that it is not being compensated. This is especially the case because generators like Frontera are permitted to sell the energy they produce for OOMC services. In short, as a part of determining whether an entity is compensated under the protocols, parties are entitled to understand the costs and the manner of operation (as it relates to OOM service) of the complaining entity, as well as the ancillary service revenues derived therefrom. Without this information the complaint cannot be sustained.

TIEC’s RFIs are designed to provide the precise information necessary to understand the costs and revenues from OOMC service-providers and respond to

Frontera's claims. For example, Frontera alleges that it and other generators are required to sell environmental minimum energy into the Day Ahead markets at a significant loss as a result of providing OOMC service and that these losses are not compensated by the ERCOT protocols. *See* Frontera's Second Amended Appeal at 5. In response to this claim, TIEC 1-13 requests that Frontera "provide all supporting documentation for the minimum operational level of the Frontera facility necessary to comply with environmental permits." The information gleaned from Frontera's responses to this RFI will be directly relevant to TIEC's position on whether the ERCOT protocols should be amended to recognize this particular category of costs. Thus, it is clearly reasonably calculated to result in the disclosure of relevant evidence.

Frontera now contends that that such information regarding Frontera's own environmental minimum energy usage, as well as other costs, is not necessary to determine whether such costs should be included as part of the OOMC compensation package. As such, Frontera would essentially ask TIEC to agree to compensate all of its claimed costs without any information regarding the extent of those costs, how they were calculated, and whether they might be compensated already through some other means. Such a request is preposterous.

Again, it is important to point out that this is not a rulemaking and Frontera is the only party to this appeal seeking additional compensation. If this were a joint application filed by multiple generators, TIEC would request similar information from all participants in order to ascertain the factual basis of each parties' OOMC compensation claims. As it stands, however, Frontera is the sole source for information that is directly relevant to the issue on appeal: whether the ERCOT protocols adequately compensate

OOMC service-providers such as Frontera. As such, Frontera should be compelled to respond to TIEC's RFIs, which are aimed at ascertaining information about the basis of Frontera's OOMC service compensation claims.

Moreover, although Frontera claims that this case concerns only general OOMC compensation matters and that its own cost information is irrelevant to this appeal, Frontera presumably sought to pursue this litigation because it felt that the ERCOT protocols did not adequately compensate Frontera for its own costs. In fact, Frontera initially plead this case in exactly this manner, focusing on the specific costs incurred at its McAllen Plant. Frontera's Appeal at 3-5. Thus, the manner in which Frontera ultimately presents this case will necessarily be colored by its own cost structures and operational experiences. TIEC is entitled to understand Frontera's theories of compensation that form the basis of its case, as well as the reasons that Frontera chooses to pursue particular categories of costs for OOMC services.

B. Frontera Cannot Use Claims of Privilege and Confidentiality to Shield Information Upon Which it Bases its Claim for Affirmative Relief and Which Could be Safeguarded Through the Entry of a Protective Order.

Frontera further claims that it is withholding certain material because, although it is responsive to TIEC's requests, it is protected by the trade secret privilege and the confidentiality provision of the Utilities Code. TEX. R. EVID. 507; TEX. UTIL. CODE 39.001(b)(4). Frontera brought this appeal claiming that it and other generators would not receive adequate compensation for the costs incurred in providing OOMC service under the new ERCOT protocols. The information that Frontera relies upon to form its own theory of adequate compensation is the same information it claims can now be shielded by its trade secret and confidentiality claims. It is well-settled, however, that the

offensive use of such discovery privileges to shield or deny access to information with one hand while affirmatively seeking relief with the other is inappropriate. *Ginsberg v. Fifth Court of Appeals*, 686 S.W. 2d 105, 107 (Tex. 1985); *Texas Dept. of Publ. Safety Officers Ass'n v. Denton*, 897 S.W. 2d 757, 761 (Tex. 1995). As stated above, the material requested by TIEC is necessary to determine the issue of whether the ERCOT protocols provide adequate compensation for OOMC service-providers like Frontera. Thus, Frontera, as the principal source of information as to generator costs in this proceeding, should be required to promptly produce the withheld information.

In addition, Frontera could be adequately protected from any potential harm resulting from the disclosure of the requested information by the entry of a standard protective order covering this proceeding by the Administrative Law Judge (“ALJ”). Discovery should not be denied when the proprietary interests of a party can be safeguarded by a protective order. *Jampole*, 673 S.W. 2d at 574. Highly sensitive information is regularly disclosed in Commission proceedings under the protection of standard protective orders like the one covering this proceeding. TIEC will comply with the protective order’s terms and will take steps to ensure that Frontera’s proprietary information is not compromised. Thus, there is no basis for denying TIEC access to information that is critical to understanding Frontera’s theory of adequate compensation for OOMC service.

Based on the foregoing, TIEC respectfully moves to compel Frontera to respond to the following requests:

III. Questions and Specific Responses to Objections

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.

OBJECTIONS:

Frontera objects on the basis that this request is not reasonably calculated to lead to the discovery of relevant or admissible evidence. Tex. R. Civ. P. 192.3(a); PUC Procedural Rule 22.141(a). The subject of this proceeding is the decision of the Electric Reliability Council of Texas ("ERCOT") board to adopt protocol revisions 338 and 347 regarding prospective pricing of Out of Merit Capacity. TIEC has failed to show how the economic performance of the Frontera Facility, or any presentations related thereto, is relevant to the subject-matter of this proceeding. This proceeding is limited in nature, and the discovery allowed herein is not for the purpose of providing parties with the unlimited ability to question Frontera about any aspect of its management or operation.

RESPONSE:

The economic performance of the McAllen Plant is relevant to the subject-matter of this proceeding because it is necessary to determine whether the ERCOT protocols will adequately compensate generators for the provision of OOMC services. Frontera claims that it has had to make sales at a loss into the bilateral Day Ahead market because it has been required to provide OOMC service. TIEC's request is designed to determine if Frontera's statements to other parties about its costs and levels of compensation are consistent with its claims in this litigation. Moreover, the economic performance of the McAllen Plant and Frontera's representations to Wall Street about the McAllen Plant are directly relevant to determining whether generators are likely to be forced to make loss sales if called upon to provide OOMC service. Thus, the information gleaned from Frontera's response to this request will be directly relevant to TIEC's position on whether the ERCOT protocols should be amended to recognize additional categories of costs as Frontera requests. TIEC 1-1, therefore, clearly is reasonably calculated to result in the disclosure of relevant evidence.

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.

OBJECTIONS:

Frontera objects to this request as vague and ambiguous, in that it is unclear what is meant by the "economics of receiving Out of Order Merit instructions." Frontera also objects on the basis that this request is not reasonably calculated to lead to the discovery of relevant or admissible evidence. Tex. R. Civ. P. 192.3(a); PUC Procedural Rule 22.141(a). The subject of this proceeding is the decision of the Electric Reliability Council of Texas ("ERCOT") board to adopt protocol revisions 338 and 347 regarding prospective pricing of Out of Merit Capacity. TIEC has failed to show how the "economics of receiving Out of Order Merit instructions," or any documents related thereto, is relevant to the subject-matter of this proceeding. This proceeding is limited in nature, and the discovery allowed herein is not for the purpose of providing parties with the unlimited ability to question Frontera about any aspect of its management or operation.

RESPONSE:

Frontera first objects to TIEC 1-2 on the grounds that the phrase "the economics of receiving Out of Order Merit instructions" is vague and ambiguous. TIEC believes that its request for documents discussing the economics of receiving Out of Order Merit instructions is clear. Any ambiguities, however, can be resolved through negotiations between the parties. TIEC is willing to work with Frontera to ensure that it understands the types of information TIEC is seeking with this request.

TIEC further contends that its request for documents discussing the economics of receiving Out of Order Merit instructions is reasonably calculated to result in the disclosure of relevant evidence. The principal issue in this appeal is whether the new ERCOT protocols will provide adequate compensation for OOMC service. In order to determine whether an entity is compensated adequately under the protocols, there must be factual development of the actual costs and revenues of facilities providing OOMC services. Specifically, it is necessary to determine whether Frontera and other similarly situated generators are profiting from providing OOMC services to the grid. Documents discussing operating profits or losses addressed to outside financial analysts, bond agencies, or investment groups would shed light on what costs and payments flow from the provision to OOMC services. Frontera has presumably made representations to these parties as to the costs and revenues resulting from responding to ERCOT's OOM instructions, as well as the adequacy of such compensation. Thus, TIEC 1-2 clearly is reasonably calculated to result in the disclosure of evidence relevant to this litigation.

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.

OBJECTIONS:

Frontera objects to this question on the basis of the trade secret privilege. TEX. R. CIV. P. 192.3(a); TEX. R. EVID. 507. Furthermore, the information requested is confidential pursuant to section 39.001(b)(4) of the Texas Utilities Code. Frontera further objects to this request because it is unduly burdensome, and as being propounded merely for harassment purposes. TEX. R. CIV. P. 192.4(b); PUC Procedural Rule 22.142(a)(1)(D). Frontera further objects on the basis that this request is not reasonably calculated to lead to the discovery of relevant or admissible evidence. Tex. R. Civ. P. 192.3(a); PUC Procedural Rule 22.141(a). The subject of this proceeding is the decision of the Electric Reliability Council of Texas ("ERCOT") board to adopt protocol revisions 338 and 347 regarding prospective pricing of Out of Merit Capacity. TIEC has failed to show how 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," or any documents, studies, or analysis related thereto, are relevant to the subject-matter of this proceeding. This proceeding is limited in nature, and the discovery allowed herein is not for the purpose of providing parties with the unlimited ability to question Frontera about any aspect of its management or operation.

RESPONSE:

TIEC's request for any documents, studies, or analyses created by or on behalf of Frontera discussing the revenues to be gained from operating the McAllen Plant to sell ancillary services as opposed to operating the McAllen Plant to sell energy or capacity into either the ERCOT or Mexican markets is reasonably calculated to lead to the discovery of evidence relevant to this litigation. The principal issue in this appeal is whether the new ERCOT protocols will provide adequate compensation for OOMC service. Clearly, the economic difference for Frontera and other similarly situated generators between providing OOMC services and making regular electricity or capacity sales into either the ERCOT or Mexican energy markets is directly relevant to the ultimate issue of what constitutes adequate compensation under the protocols. Further, if Frontera chose to operate its McAllen Plant in such a manner as to force ERCOT to issue OOM instructions rather than to sell energy to the market, then Frontera effectively chose to provide OOM services, undermining any of its claims that it is being inadequately compensated for providing a forced service. Thus, TIEC 1-3 is reasonably calculated to result in the disclosure of evidence relevant to this litigation.

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.

OBJECTIONS:

Frontera objects to this request to the extent that it improperly characterizes the confidential "settlement" with ERCOT as relating to payments for Out of Order Merit instructions. Frontera also objects to this question on the basis of the trade secret privilege. TEX. R. CIV. P. 192.3(a); TEX. R. EVID. 507. Furthermore, the information requested is confidential pursuant to section 39.001(b)(4) of the Texas Utilities Code. Frontera further objects to this request as seeking information that is protected by the attorney-client and work product privileges. TEX. R. EVID. 503; TEX. R. CIV. P. 192.5. Frontera further objects to this request because it is unduly burdensome, and as being propounded merely for harassment purposes. TEX. R. CIV. P. 192.4(b); PUC Procedural Rule 22.142(a)(1)(D). Frontera further objects on the basis that this request is not reasonably calculated to lead to the discovery of relevant or admissible evidence. Tex. R. Civ. P. 192.3(a); PUC Procedural Rule 22.141(a). The subject of this proceeding is the decision of the Electric Reliability Council of Texas ("ERCOT") board to adopt protocol revisions 338 and 347 regarding prospective pricing of Out of Merit Capacity. TIEC has failed to show how the "economic value of the settlement it entered into with ERCOT relating to payments for Out of Order Merit instructions" or the "profits or net cash flows such a settlement yielded to Frontera," or any documents, studies, analysis, or reports related thereto, are relevant to the subject-matter of this proceeding. This proceeding is limited in nature, and the discovery allowed herein is not for the purpose of providing parties with the unlimited ability to question Frontera about any aspect of its management or operation.

RESPONSE:

Frontera objects to TIEC 1-4 because the request is unduly burdensome and propounded solely for purposes of harassment. TIEC does not believe the disclosures sought by this request are unreasonably cumulative or duplicative with any other requests. Additionally, there is no other more convenient or less burdensome source other than Frontera that can provide the important information requested in TIEC 1-4.

Frontera also objects to this request as violating the attorney-client privilege. TIEC is not seeking disclosure of any documents protected by the attorney-client privilege.

Further, TIEC's request for any documents, studies, or analyses created by or on behalf of Frontera discussing the economic value of the settlement it entered into with ERCOT relating to payments for Out of Order Merit instructions is reasonably calculated to lead to the discovery of evidence relevant to this litigation. The principal issue in this appeal is whether the new ERCOT protocols will provide adequate compensation for OOMC service. Documents and studies by Frontera relating to the settlement with ERCOT will reveal Frontera's own theories and calculations of the appropriate value of these services. Thus, this information is critical to understanding Frontera's own theories as to what constitutes adequate compensation for OOMC services. Thus, TIEC 1-4 clearly is reasonably calculated to result in the disclosure of evidence relevant to this litigation.

Frontera's reliance on the trade secret privilege and PURA's confidentiality provisions is also unavailing. Frontera is seeking affirmative relief in this litigation. Any documents, economic analyses, or studies of the economic value of the settlement it entered into with ERCOT relating to payments for Out of Order Merit services potentially are determinative of the ultimate issue in the case: what constitutes adequate compensation for the provision of OOMC services. Frontera cannot seek affirmative relief from the Commission and then shield information behind the trade secret privilege and claims of confidentiality. Moreover, Frontera's information will be safeguarded by a standard protective order adopted by the ALJ. Highly sensitive information is regularly disclosed in Commission proceedings under the protection of standard protective orders like the one covering this proceeding. TIEC would comply with the protective order's terms and would take steps to ensure that Frontera's proprietary information is not compromised.

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.

OBJECTIONS:

Frontera objects to this request as vague and ambiguous because the term "long-term service agreements" is not defined. Frontera also objects to this question on the basis of the trade secret privilege. TEX. R. CIV. P. 192.3(a); TEX. R. EVID. 507. Furthermore, the information requested is confidential pursuant to section 39.001(b)(4) of the Texas Utilities Code. Frontera further objects on the basis that this request is not reasonably calculated to lead to the discovery of relevant or admissible evidence. Tex. R. Civ. P. 192.3(a); PUC Procedural Rule 22.141(a). The subject of this proceeding is the decision of the Electric Reliability Council of Texas ("ERCOT") board to adopt protocol revisions 338 and 347 regarding prospective pricing of Out of Merit Capacity. TIEC has failed to show how "any long-term service agreements for its gas turbines or steam turbines at the Frontera

Facility" are relevant to the subject-matter of this proceeding. This proceeding is limited in nature, and the discovery allowed herein is not for the purpose of providing parties with the unlimited ability to question Frontera about any aspect of its management or operation.

RESPONSE:

Frontera first objects to TIEC 1-5 on the grounds that the term "long term service agreement" is vague and ambiguous. TIEC believes that its request for any long term service agreements for the gas or steam turbines at the McAllen Plant is clear. TIEC would clarify its request by defining "long term" as meaning one-year or longer. Any further ambiguities can be resolved through negotiations between the parties. TIEC is willing to work with Frontera to ensure that it understands the types of information TIEC is seeking with this request.

Frontera further objects to TIEC 1-5 because the request is not reasonably calculated to lead to the discovery of relevant or admissible evidence. The principal issue in this appeal is whether the new ERCOT protocols will provide adequate compensation for OOMC service. In its pleadings, Frontera has specifically alleged that maintenance is one of the categories of costs that is not compensated under the new ERCOT protocols. As part of determining whether generators are adequately compensated for their maintenance costs, TIEC is entitled to understand the specific maintenance costs of the complaining entity, as well as the manner it incurs those costs. Thus, TIEC 1-5 clearly is reasonably calculated to result in the disclosure of evidence relevant to this litigation.

Frontera's objections to TIEC 1-5 based on the trade secret privilege and PURA's confidentiality provisions are also unavailing. Frontera is seeking affirmative relief in this litigation. Any long term service agreements for its gas or steam turbines potentially are determinative of the ultimate issue in the case: what constitutes adequate compensation for the provision of OOMC services. Frontera cannot seek affirmative relief from the Commission and then shield information behind the trade secret privilege and claims of confidentiality. Moreover, Frontera's information will be safeguarded by a standard protective order adopted by the ALJ. Highly sensitive information is regularly disclosed in Commission proceedings under the protection of standard protective orders like the one covering this proceeding. TIEC would comply with the protective order's terms and would take steps to ensure that Frontera's proprietary information is not compromised.

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.

OBJECTIONS:

Frontera objects to this question on the basis of the trade secret privilege. TEX. R. CIV. P. 192.3(a); TEX. R. EVID. 507. Furthermore, the information requested is confidential pursuant to section 39.001(b)(4) of the Texas Utilities Code. Frontera further objects to this request as vague, overbroad, and unduly burdensome. TEX. R. CIV. P. 192.4(b); PUC Procedural Rule 22.142(a)(1)(D). Frontera further objects on the basis that this request is not reasonably calculated to lead to the discovery of relevant or admissible evidence. Tex. R. Civ. P. 192.3(a); PUC Procedural Rule 22.141(a). The subject of this proceeding is the decision of the Electric Reliability Council of Texas ("ERCOT") board to adopt protocol revisions 338 and 347 regarding prospective pricing of Out of Merit Capacity. TIEC has failed to show how the RMR agreement that currently exists or any future (and currently non-existent) RMR agreements are relevant to the subject-matter of this proceeding. This proceeding is limited in nature, and the discovery allowed herein is not for the purpose of providing parties with the unlimited ability to question Frontera about any aspect of its management or operation.

RESPONSE:

Frontera objects to TIEC 1-6 because the request is vague, overbroad, and unduly burdensome. First, TIEC believes that its request for any documents, analyses, or correspondence with ERCOT relating to the RMR agreement (this agreement has since expired) between Frontera and ERCOT is clear. Any ambiguities, however, can be resolved through negotiations between the parties. TIEC is willing to work with Frontera to ensure that it understands the types of information TIEC is seeking with this request. Second, TIEC does not believe the disclosures sought by this request are unreasonably cumulative or duplicative with any other requests. Additionally, there is no other more convenient or less burdensome source other than Frontera that can provide the important information requested in TIEC 1-6. Finally, as discussed below in response to Frontera's objection that TIEC's request is not reasonably calculated to lead to the discovery of relevant evidence, TIEC 1-6 seeks information that is germane to the issue of what constitutes adequate compensation. Thus, it is not overbroad, but rather focused on ascertaining Frontera's own internal evaluations of adequate compensation for OOMC service.

Frontera also objects to TIEC 1-6 on the grounds that the request is not reasonably calculated to lead to the discovery of any relevant or admissible evidence. The principal issue in this appeal is whether the new ERCOT protocols will provide adequate compensation for OOMC service. RMR and OOM are related ancillary services. In entering into the RMR agreement with ERCOT, Frontera presumably had to agree to some sort of compensation. As such, documents, analyses, and correspondence relating to the RMR agreement with ERCOT may reveal Frontera's calculations of the appropriate value of OOMC services. This information, therefore, is critical to understanding Frontera's own theories as to

what constitutes adequate compensation. Thus, TIEC 1-6 clearly is reasonably calculated to result in the disclosure of evidence relevant to this litigation.

Frontera's objections to TIEC 1-6 on the basis of the trade secret privilege and PURA's confidentiality provisions are also unavailing. Frontera is seeking affirmative relief in this litigation. Any documents, analyses, and correspondence to ERCOT relating to the RMR agreement between Frontera and ERCOT potentially are determinative of the ultimate issue in the litigation of whether the new ERCOT protocols provide generators with adequate compensation for the provision of OOMC services. Frontera cannot seek affirmative relief from the Commission and then shield information behind the trade secret privilege and claims of confidentiality. Moreover, Frontera's information will be safeguarded by a standard protective order adopted by the ALJ. Highly sensitive information is regularly disclosed in Commission proceedings under the protection of standard protective orders like the one covering this proceeding. TIEC would comply with the protective order's terms and would take steps to ensure that Frontera's proprietary information is not compromised.

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.

OBJECTIONS:

Frontera objects to this question on the basis of the trade secret privilege. TEX. R. CIV. P. 192.3(a); TEX. R. EVID. 507. Furthermore, the information requested is confidential pursuant to section 39.001(b)(4) of the Texas Utilities Code. Frontera objects to this request as vague, overbroad, and unduly burdensome. TEX. R. CIV. P. 192.4(b); PUC Procedural Rule 22.142(a)(1)(D). Frontera further objects on the basis that this request is not reasonably - calculated to lead to the discovery of relevant or admissible evidence. Tex. R. Civ. P. 192.3(a); PUC Procedural Rule 22.141(a). The subject of this proceeding is the decision of the Electric Reliability Council of Texas ("ERCOT") board to adopt protocol revisions 338 and 347 regarding prospective pricing of Out of Merit Capacity. TIEC has failed to show how Frontera's relationship with Enron or documents relating to Enron's services or "optimization" of the facility are relevant to the subject-matter of this proceeding. This proceeding is limited in nature, and the discovery allowed herein is not for the purpose of providing parties with the unlimited ability to question Frontera about any aspect of its management or operations.

RESPONSE:

Frontera objects to TIEC 1-7 because the request is vague, overbroad, and unduly burdensome. First, TIEC believes that its request for Enron's contract with Frontera for marketing, QSE, and optimization, as well as for any documents relating to the optimization of assets controlled by Frontera in the ERCOT market is clear. Any ambiguities, however, can be resolved through negotiations between the parties. TIEC is willing to work with Frontera to ensure that it understands the types of information TIEC is seeking with this request. Second, TIEC does not believe the disclosures sought by this request are unreasonably cumulative or duplicative with any other requests. Additionally, there is no other more convenient or less burdensome source other than Frontera that can provide the important information requested in TIEC 1-7. Finally, as discussed below in response to Frontera's objection that TIEC's request is not reasonably calculated to lead to the discovery of relevant evidence, TIEC 1-7 seeks information that is germane to the issue of what constitutes adequate compensation. Thus, it is not overbroad, but rather focused on ascertaining whether and to what extent Frontera receives additional compensation out of electricity sales into the ERCOT market, which must be considered in determining what constitutes adequate compensation for the provision of OOMC services.

Frontera also objects to TIEC 1-7 on the grounds that the request is not reasonably calculated to lead to the discovery of any relevant or admissible evidence. The principal issue in this appeal is whether the new ERCOT protocols will provide adequate compensation for OOMC service. Generators like Frontera are permitted to sell the energy they produce for OOMC services into market. Thus, these sales form part of the overall amount of compensation for providing OOMC services to the grid. How Frontera operated with Enron, its former QSE, is relevant to the total amount of compensation Frontera received from such market sales and therefore is necessary to reach an informed decision as to what constitutes adequate compensation for the complaining entity. Thus, TIEC 1-7 clearly is reasonably calculated to result in the disclosure of evidence relevant to this litigation.

Frontera's objections to TIEC 1-7 on the basis of the trade secret privilege and PURA's confidentiality provisions are also unavailing. Frontera is seeking affirmative relief in this litigation. Frontera's market, QSE, and optimization contract with Enron, as well as any documents or spreadsheets from Enron regarding the "optimization" of the performance of the assets Frontera controls in ERCOT are potentially determinative of the ultimate issue in this litigation of whether the new ERCOT protocols provide generators with adequate compensation for OOMC services. Frontera cannot seek affirmative relief from the Commission and then shield information behind the trade secret privilege and claims of confidentiality. Moreover, Frontera's information will be safeguarded by a standard protective order adopted by the ALJ. Highly sensitive information is regularly disclosed in Commission proceedings under the protection of standard protective orders like the one covering this proceeding. TIEC would comply with

the protective order's terms and would take steps to ensure that Frontera's proprietary information is not compromised.

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.

OBJECTIONS:

Frontera objects to this request as vague and ambiguous because the term "offering sheets" is not defined. Furthermore, the information requested is confidential pursuant to section 39.001(b)(4) of the Texas Utilities Code. Furthermore, Frontera objects to this request as overbroad and unduly burdensome. TEX. R. CIV. P. 192.4(b); PUC Procedural Rule 22.142(a)(1)(D). Frontera further objects to this request as vague, ambiguous, and unclear, in that the phrase "produced any documents" is undefined. Frontera further objects on the basis that this request is not reasonably calculated to lead to the discovery of relevant or admissible evidence. Tex. R. Civ. P. 192.3(a); PUC Procedural Rule 22.141(a). The subject of this proceeding is the decision of the Electric Reliability Council of Texas ("ERCOT") board to adopt protocol revisions 338 and 347 regarding prospective pricing of Out of Merit Capacity. TIEC has failed to show how the alleged "failed efforts to non-recourse finance the Frontera Facility" is relevant to the subject-matter of this proceeding. This proceeding is limited in nature, and the discovery allowed herein is not for the purpose of providing parties with the unlimited ability to question Frontera about any aspect of its management or operations.

RESPONSE:

Frontera first objects to TIEC 1-8 on the grounds that the phrase "offering sheets" is vague and ambiguous. TIEC believes that its request for any offering sheets relating to the failed efforts of non-recourse financing for the McAllen Plant is clear. Any ambiguities, however, can be resolved through negotiations between the parties. TIEC is willing to work with Frontera to ensure that it understands the types of information TIEC is seeking with this request.

Frontera further objects to TIEC 1-8 because the request is not reasonably calculated to lead to the discovery of relevant or admissible evidence. The principal issue in this appeal is whether the new ERCOT protocols will provide adequate compensation for OOMC service. In its pleadings, Frontera has specifically alleged that it is entitled to recover its fixed costs under the new ERCOT protocols. In order to understand what Frontera's fixed costs are, TIEC is entitled to review any documents discussing attempts to obtain financing for the McAllen Plant. Moreover, any offering sheets would likely contain assertions as to the true costs and revenues of the McAllen Plant, which is directly relevant to

determining the appropriate amount of compensation for Frontera's provision of OOMC service. Thus, TIEC 1-8 clearly is reasonably calculated to result in the disclosure of evidence relevant to this litigation.

Frontera's objections to TIEC 1-8 on the basis of the trade secret privilege and PURA's confidentiality provisions are also unavailing. Frontera is seeking affirmative relief in this litigation. Any documents, offering sheets, or management discussions relating to the failed efforts to obtain non-recourse financing of the McAllen Plain are potentially determinative of the ultimate issue in this litigation of whether the new ERCOT protocols provide generators with adequate compensation for OOMC services. Frontera cannot seek affirmative relief from the Commission and then shield information behind the trade secret privilege and claims of confidentiality. Moreover, Frontera's information will be safeguarded by a standard protective order adopted by the ALJ. Highly sensitive information is regularly disclosed in Commission proceedings under the protection of standard protective orders like the one covering this proceeding. TIEC would comply with the protective order's terms and would take steps to ensure that Frontera's proprietary information is not compromised.

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?

OBJECTIONS:

Frontera objects to this question on the basis of the trade secret privilege. TEX. R. CIV. P. 192.3(a); TEX. R. EVID. 507. Furthermore, the information requested is confidential pursuant to section 39.001(b)(4) of the Texas Utilities Code. Frontera objects to this request as vague, overbroad, and unduly burdensome. TEX. R. CIV. P. 192.4(b); PUC Procedural Rule 22.142(a)(1)(D). Frontera objects to this request as vague and ambiguous because the term "third-party indebtedness" is not defined. Frontera further objects on the basis that this request is not reasonably calculated to lead to the discovery of relevant or admissible evidence. Tex. R. Civ. P. 192.3(a); PUC Procedural Rule 22.141(a). The subject of this proceeding is the decision of the Electric Reliability Council of Texas ("ERCOT") board to adopt protocol revisions 338 and 347 regarding prospective pricing of Out of Merit Capacity. TIEC has failed to show how Frontera's debt-equity ratio and ownership structure is relevant to the subject-matter of this proceeding. This proceeding is limited in nature, and the discovery allowed herein is not for the purpose of providing parties with the unlimited ability to question Frontera about any aspect of its management or operations.

RESPONSE:

Frontera objects to TIEC 1-9 because the request is vague, overbroad, and unduly burdensome. First, TIEC believes that its request for the current debt-equity ratios, ownership structure, and any unaffiliated third-party indebtedness for the McAllen Plant is clear. Any ambiguities, however, can be resolved through negotiations between the parties. TIEC is willing to work with Frontera to ensure that it understands the types of information TIEC is seeking with this request. Second, TIEC does not believe the disclosures sought by this request are unreasonably cumulative or duplicative with any other requests. Additionally, there is no other more convenient or less burdensome source other than Frontera that can provide the important information requested in TIEC 1-9. Finally, as discussed below in response to Frontera's objection that TIEC's request is not reasonably calculated to lead to the discovery of relevant evidence, TIEC 1-9 seeks information that is germane to the issue of what constitutes adequate compensation. Thus, it is not overbroad, but rather focused on ascertaining the extent of Frontera's fixed costs for which it is seeking compensation under the new ERCOT protocols.

Frontera further objects to TIEC 1-9 because the request is not reasonably calculated to lead to the discovery of relevant or admissible evidence. The principal issue in this appeal is whether the new ERCOT protocols will provide adequate compensation for OOMC service. In its pleadings, Frontera has specifically alleged that it is entitled to recover its fixed costs under the new ERCOT protocols. A major component of the fixed costs of any generating facility is debt service. In order to understand what Frontera's fixed costs are, TIEC is entitled to review any documents discussing the current debt-equity ratio and ownership structure of the McAllen Plant, as well as whether there is any unaffiliated third-party indebtedness associated with the McAllen Plant. This information will permit to TIEC to ascertain the amount and nature of the fixed costs for which Frontera is seeking compensation. Thus, TIEC 1-9 clearly is reasonably calculated to result in the disclosure of evidence relevant to this litigation.

Frontera's objections to TIEC 1-9 on the basis of the trade secret privilege and PURA's confidentiality provisions are also unavailing. Frontera is seeking affirmative relief in this litigation. The current debt-equity ratio, the ownership structure, and the existence of any unaffiliated third-party indebtedness with regards to the McAllen Plant are all potentially determinative of the ultimate issue in this litigation of whether the new ERCOT protocols provide generators with adequate compensation for OOMC services. Frontera cannot seek affirmative relief from the Commission and then shield information behind the trade secret privilege and claims of confidentiality. Moreover, Frontera's information will be safeguarded by a standard protective order adopted by the ALJ. Highly sensitive information is regularly disclosed in Commission proceedings under the protection of standard protective orders like the one covering this proceeding. TIEC would comply with the protective order's terms and would take steps to ensure that Frontera's proprietary information is not compromised.

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.

OBJECTIONS:

Frontera objects because the information requested is confidential pursuant to section 39.001(b)(4) of the Texas Utilities Code. Frontera objects to this request as vague, overbroad, I and unduly burdensome. TEX. R. CIV. P. 192.4(b); PUC Procedural Rule 22.142(a)(1)(D). Frontera further objects on the basis that this request is not reasonably calculated to lead to the discovery of relevant or admissible evidence. Tex. R. Civ. P. 192.3(a); PUC Procedural Rule 22.141(a). The subject of this proceeding is the decision of the Electric Reliability Council of Texas ("ERCOT") board to adopt protocol revisions 338 and 347 regarding prospective pricing of Out of Merit Capacity. TIEC has failed to show how the purchase price or the good will attributed to the purchase price of the Frontera Facility is relevant to the subject-matter of this proceeding. This proceeding is limited in nature, and the discovery allowed herein is not for the purpose of providing parties with the unlimited ability to question Frontera about any aspect of its management or operations. Frontera further objects to this request to the extent it seeks documents protected from disclosure by the attorney-client and work product privileges. TEX. R. EVID. 503; TEX. R. CIV. P. 192.5.

RESPONSE:

Frontera objects to TIEC 1-10 because the request is vague, overbroad, and unduly burdensome. First, TIEC believes that its request for the purchase price for the McAllen Plant, as well as how much of that price is attributable to “good will” under standard accounting rules is clear. Any ambiguities, however, can be resolved through negotiations between the parties. TIEC is willing to work with Frontera to ensure that it understands the types of information TIEC is seeking with this request. Second, TIEC does not believe the disclosures sought by this request are unreasonably cumulative or duplicative with any other requests. Additionally, there is no other more convenient or less burdensome source other than Frontera that can provide the important information requested in TIEC 1-10. Finally, as discussed below in response to Frontera’s objection that TIEC’s request is not reasonably calculated to lead to the discovery of relevant evidence, TIEC 1-10 seeks information that is germane to the issue of what constitutes adequate compensation. Thus, it is not overbroad, but rather focused on ascertaining the extent of Frontera’s fixed costs for which it is seeking compensation.

Frontera further objects to TIEC 1-10 because the request is not reasonably calculated to lead to the discovery of relevant or admissible evidence. The principal issue in this appeal is whether the new ERCOT protocols will provide adequate compensation for OOMC service. In its pleadings, Frontera has specifically alleged that it is entitled to recover its fixed costs under the new ERCOT protocols. The purchase price for the McAllen Plant and the McAllen Plant's book value (which essentially is the purchase price less any good will) is a major component of Frontera's fixed costs. In order to understand what Frontera's fixed costs are, TIEC is entitled to review any documents discussing the purchase price for the McAllen Plant, as well as the amount of good will included in that price and whether such good will has been impaired. Moreover, the requested documents may reveal that Frontera has in fact received adequate compensation for providing OOMC service because it otherwise would have been required to write down the good will associated with its purchase of the McAllen Plant. Thus, TIEC 1-10 clearly is reasonably calculated to result in the disclosure of evidence relevant to this litigation.

Frontera's objections to TIEC 1-10 on the basis of the trade secret privilege and PURA's confidentiality provisions are also unavailing. Frontera is seeking affirmative relief in this litigation. The purchase price of the McAllen Plant, as well as the book value of the McAllen Plant and the existence of any good will are all potentially determinative of the ultimate issue in this litigation of whether the new ERCOT protocols provide generators with adequate compensation for OOMC services. Frontera cannot seek affirmative relief from the Commission and then shield information behind the trade secret privilege and claims of confidentiality. Moreover, Frontera's information will be safeguarded by a standard protective order adopted by the ALJ. Highly sensitive information is regularly disclosed in Commission proceedings under the protection of standard protective orders like the one covering this proceeding. TIEC would comply with the protective order's terms and would take steps to ensure that Frontera's proprietary information is not compromised.

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*.

OBJECTIONS:

Frontera objects to this question on the basis of the trade secret privilege. TEX. R. CIV. P. 192.3(a); TEX. R. EVID. 507. Furthermore, the information requested is confidential pursuant to section 39.001(b)(4) of the Texas Utilities Code. Frontera objects to this request as vague, overbroad, and unduly burdensome. TEX. R. CIV. P. 192.4(b); PUC Procedural Rule 22.142(a)(1)(D). In addition,

Texas courts have repeatedly emphasized that discovery may not be used as a fishing expedition. See *K Mart Corp. v. Sanderson*, 937 S.W.2d 429, 431 (Tex.1996); *Dillard Dep't Stores. Inc. v. Hall*, 909 S.W.2d 491, 492 (Tex. 1995). Frontera objects to this request as vague, overbroad, and unduly burdensome. TEX. R. CIV. P. 192.4(b); PUC Procedural Rule 22.142(a)(1)(D). Frontera further objects on the basis that this request is not reasonably calculated to lead to the discovery of relevant or admissible evidence. Tex. R. Civ. P. 192.3(a); PUC Procedural Rule 22.141(a). The subject of this proceeding is the decision of the Electric Reliability Council of Texas ("ERCOT") board to adopt protocol revisions 338 and 347 regarding prospective pricing of Out of Merit Capacity. TIEC has failed to show how Frontera's compliance with the affidavits submitted in PUC Project No. 25937 is relevant to the subject-matter of this proceeding. This proceeding is limited in nature, and the discovery allowed herein is not for the purpose of providing parties with the unlimited ability to question Frontera about any aspect of its management or operations.

RESPONSE:

Frontera objects to TIEC 1-11 because the request is vague, overbroad, and unduly burdensome. First, TIEC believes that its request for all documents discussing how Frontera's operation of the McAllen Plant (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* is clear. Any ambiguities, however, can be resolved through negotiations between the parties. TIEC is willing to work with Frontera to ensure that it understands the types of information TIEC is seeking with this request. Second, TIEC does not believe the disclosures sought by this request are unreasonably cumulative or duplicative with any other requests. Additionally, there is no other more convenient or less burdensome source other than Frontera that can provide the important information requested in TIEC 1-11. Finally, as discussed below in response to Frontera's objection that TIEC's request is not reasonably calculated to lead to the discovery of relevant evidence, TIEC 1-11 seeks information that is germane to the issue of what constitutes adequate compensation. Thus, it is not overbroad, but rather focused on ascertaining how Frontera is coming to access the OOM market, as well as whether Frontera is engaging in any forms of market abuses to trigger OOMC compensation.

Frontera further objects to TIEC 1-11 because the request is not reasonably calculated to lead to the discovery of relevant or admissible evidence. The principal issue in this appeal is whether the new ERCOT protocols will provide adequate compensation for OOMC service. In order to determine whether an entity is adequately compensated under the protocols, TIEC is entitled to understand the ways in which a generator comes to provide OOMC service and what costs and payments flow from the provision of that service. In this instance, if Frontera is not operating the McAllen Plant solely to create local congestion, they should not be compensated for providing OOMC service. Moreover, if a

generator such as Frontera obtains a benefit from not operating its facility, then the amount of those benefits must be determined before the generator can show it is not being compensated. TIEC 1-11 attempts to ascertain how generators come to be paid under the ERCOT protocols and therefore what is appropriate compensation for providing OOMC service. Thus, TIEC 1-11 clearly is reasonably calculated to result in the disclosure of evidence relevant to this litigation.

Frontera's objections to TIEC 1-11 on the basis of the trade secret privilege and PURA's confidentiality provisions are also unavailing. Frontera is seeking affirmative relief in this litigation. Issues of how Frontera ultimately comes to access the OOM market, whether payments under the protocols are the result of some sort of market manipulation or abuse, or whether Frontera is not running its plant solely in order to be OOM'd by ERCOT are all potentially determinative of the ultimate issue in this litigation of whether the new ERCOT protocols provide generators with adequate compensation for OOMC services. Frontera cannot seek affirmative relief from the Commission and then shield information behind the trade secret privilege and claims of confidentiality. Moreover, Frontera's information will be safeguarded by a standard protective order adopted by the ALJ. Highly sensitive information is regularly disclosed in Commission proceedings under the protection of standard protective orders like the one covering this proceeding. TIEC would comply with the protective order's terms and would take steps to ensure that Frontera's proprietary information is not compromised.

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.

OBJECTIONS:

Frontera objects to this question on the basis of the trade secret privilege. TEX. R. CIV. P. 192.3(a); TEX. R. EVID. 507. Furthermore, the information requested is confidential pursuant to section 39.001(b)(4) of the Texas Utilities Code. Frontera further objects to this request as vague because the phrase "above-market prices" is not defined. Moreover, Frontera objects on the basis that this request is not reasonably calculated to lead to the discovery of relevant or admissible evidence. Tex. R. Civ. P. 192.3(a); PUC Procedural Rule 22.141(a). The subject of this proceeding is the decision of the Electric Reliability Council of Texas ("ERCOT") board to adopt protocol revisions 338 and 347 regarding prospective pricing of Out of Merit Capacity. TIEC has failed to show how Frontera's ability, individually, to sell the output of its Frontera Facility to ERCOT at above-market prices is relevant to the subject-matter of this proceeding. This proceeding is limited in nature, and the discovery allowed herein is not for the purpose of providing parties with the unlimited ability to question Frontera about any aspect of its management or operations.

RESPONSE:

Frontera first objects to TIEC 1-12 on the grounds that the term “above-market prices” is vague. TIEC believes that the term “above-market prices” is clear. Any ambiguities, however, can be resolved through negotiations between the parties. TIEC is willing to work with Frontera to ensure that it understands the types of information TIEC is seeking with this request.

Frontera further objects to TIEC 1-12 because the request is not reasonably calculated to lead to the discovery of relevant or admissible evidence. The principal issue in this appeal is whether the new ERCOT protocols will provide adequate compensation for OOMC service. Generators like Frontera are permitted to sell the energy they produce for OOMC services into market. Thus, these sales form part of the overall amount of compensation for providing OOMC service to the grid. If Frontera believes it will be able to sell the output of the McAllen Plant to ERCOT at above-market prices, such a benefit should offset any ERCOT payments for providing OOMC service. Additionally, whether or not Frontera truly believes that it can sell the output of its facility at above-market prices and why it believes this are directly relevant to Frontera’s definition of and claim for “adequate” compensation. Moreover, such information sheds additional light on how Frontera came to access the OOM market and is directly relevant to the issue of why Frontera is not running its McAllen Plant. Thus, TIEC 1-12 clearly is reasonably calculated to result in the disclosure of evidence relevant to this litigation.

Frontera’s objections to TIEC 1-12 on the basis of the trade secret privilege and PURA’s confidentiality provisions are also unavailing. Frontera is seeking affirmative relief in this litigation. Whether Frontera believes it will be able to sell the output of its McAllen Plant to ERCOT at above-market prices is potentially determinative of the ultimate issue in this litigation of whether the new ERCOT protocols provide generators with adequate compensation for OOMC services. Frontera cannot seek affirmative relief from the Commission and then shield information behind the trade secret privilege and claims of confidentiality. Moreover, Frontera’s information will be safeguarded by a standard protective order adopted by the ALJ. Highly sensitive information is regularly disclosed in Commission proceedings under the protection of standard protective orders like the one covering this proceeding. TIEC would comply with the protective order’s terms and would take steps to ensure that Frontera’s proprietary information is not compromised.

TIEC 1-13

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

OBJECTIONS:

Frontera objects on the basis that this request is not reasonably calculated to lead to the discovery of relevant or admissible evidence. Tex. R. Civ. P. 192.3(a); PUC Procedural Rule 22.141(a). The subject of this proceeding is the decision of the Electric Reliability Council of Texas ("ERCOT") board to adopt protocol revisions 338 and 347 regarding prospective pricing of Out of Merit Capacity. TIEC has failed to show how the "minimum operational level of the Frontera Facility necessary to comply with its environmental permits" is relevant to the subject-matter of this proceeding. This proceeding is limited in nature, and the discovery allowed herein is not for the purpose of providing parties with the unlimited ability to question Frontera about any aspect of its management or operations.

RESPONSE:

Frontera objects to TIEC 1-13 because the request is not reasonably calculated to lead to the discovery of relevant or admissible evidence. The principal issue in this appeal is whether the new ERCOT protocols will provide adequate compensation for OOMC service. In its pleadings, one of the specific costs Frontera identified as not compensated by the new ERCOT protocols was costs of maintaining the minimum operational level of the McAllen Plant. Thus, the amount of such costs is relevant to the subject-matter of this proceeding because it is necessary to determine whether minimum energy is essential to compensate generators for the provision of OOMC services. The information gleaned from Frontera's response to this request will be directly relevant to TIEC's position on whether it is necessary to amend the ERCOT protocols to recognize environmental minimum costs as Frontera requests. Thus, TIEC 1-13 clearly is reasonably calculated to result in the disclosure of relevant evidence.

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*.

OBJECTIONS:

Texas courts have repeatedly emphasized that discovery may not be used as a fishing expedition. See *K Mart Corp. v. Sanderson*, 937 S.W.2d 429, 431 (Tex.1996); *Dillard Dep't Stores. Inc. v. Hall*, 909 S. W .2d 491, 492 (Tex. 1995). Frontera objects to this request as vague, overbroad, and unduly burdensome, and propounded solely for the purpose of harassment. TEX. R. CIV. P. 192.4(b); PUC Procedural Rule 22.142(a)(1)(D). Frontera further objects on the basis that this request is not reasonably calculated to lead to the discovery of relevant or admissible evidence. Tex. R. Civ. P. 192.3(a); PUC Procedural Rule 22.141(a). The subject of this proceeding is the decision of the Electric Reliability Council of Texas ("ERCOT") board to adopt protocol revisions 338 and 347 regarding

prospective pricing of Out of Merit Capacity. TIEC has failed to show how the activities of Frontera's QSE as it related to the affidavits submitted in PUC Project No. 25937 is relevant to the subject-matter of this proceeding. This proceeding is limited in nature, and the discovery allowed herein is not for the purpose of providing parties with the unlimited ability to question Frontera about any aspect of its management or operations.

RESPONSE:

Frontera objects to TIEC 1-14 because the request is vague, overbroad, unduly burdensome, and propounded solely for purposes of harassment. First, TIEC believes that its request for any documents discussing the activities of Frontera's QSE over the last 18 months is clear. Any ambiguities, however, can be resolved through negotiations between the parties. TIEC is willing to work with Frontera to ensure that it understands the types of information TIEC is seeking with this request. Second, TIEC does not believe the disclosures sought by this request are unreasonably cumulative or duplicative with any other requests. Additionally, there is no other more convenient or less burdensome source other than Frontera that can provide the important information requested in TIEC 1-14. Finally, as discussed below in response to Frontera's objection that TIEC's request is not reasonably calculated to lead to the discovery of relevant evidence, TIEC 1-14 seeks information that is germane to the issue of what constitutes adequate compensation. Thus, it is not overbroad, but rather focused on ascertaining any compensation derived by Frontera from the sales of OOMC service electricity into the market from its McAllen Plant.

Frontera further objects to TIEC 1-14 because the request is not reasonably calculated to lead to the discovery of relevant or admissible evidence. The principal issue in this appeal is whether the new ERCOT protocols will provide adequate compensation for OOMC service. In order to determine whether an entity is compensated under the protocols, TIEC is entitled to understand the ways in which a generator comes to access the OOM market and what costs and payments flow from the provision of OOMC service. Frontera's relationship with its QSE will likely provide information that is directly relevant to Frontera's market activities. Moreover, because generators are permitted to sell the energy they produce to provide OOMC service, how Frontera's QSE marketed this energy is relevant to Frontera's compensation. Thus, TIEC 1-14 clearly is reasonably calculated to result in the disclosure of relevant evidence.

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.

[The phrase “in order to be OOMed” has been struck by mutual agreement of the parties]

OBJECTIONS:

Texas courts have repeatedly emphasized that discovery may not be used as a fishing expedition. *See K Mart Corp. v. Sanderson*, 937 S.W.2d 429, 431 (Tex.1996); *Dillard Dep't Stores, Inc. v. Hall*, 909 S. W.2d 491, 492 (Tex. 1995). Frontera objects to this request as vague, overbroad, and unduly burdensome, and propounded solely for the purpose of harassment. TEX. R. CIV. P. 192.4(b); PUC Procedural Rule 22.142(a)(1)(D). Frontera further objects on the basis that this request is not reasonably calculated to lead to the discovery of relevant or admissible evidence. Tex. R. Civ. P. 192.3(a); PUC Procedural Rule 22.141(a). The subject of this proceeding is the decision of the Electric Reliability Council of Texas ("ERCOT") board to adopt protocol revisions 338 and 347 regarding prospective pricing of Out of Merit Capacity. TIEC has failed to show how Frontera's operation of its facility or its compliance with the affidavits submitted in PUC Project No. 25937 is relevant to the subject-matter of this proceeding. This proceeding is limited in nature, and the discovery allowed herein is not for the purpose of providing parties with the unlimited ability to question Frontera about any aspect of its management or operations.

RESPONSE:

Frontera objects to TIEC 1-15 because the request is vague, overbroad, unduly burdensome, and propounded solely for purposes of harassment. First, TIEC believes that its request for an explanation of how, if Frontera had decided to operate its facility, its representations to ERCOT that it did not plan to operate its facility is consistent with affidavits it filed in Project No. 25937 is clear. Any ambiguities, however, can be resolved through negotiations between the parties. TIEC is willing to work with Frontera to ensure that it understands the types of information TIEC is seeking with this request. Second, TIEC does not believe the disclosures sought by this request are unreasonably cumulative or duplicative with any other requests. Additionally, there is no other more convenient or less burdensome source other than Frontera that can provide the important information requested in TIEC 1-15. Finally, as discussed below in response to Frontera's objection that TIEC's request is not reasonably calculated to lead to the discovery of relevant evidence, TIEC 1-15 seeks information that is germane to the issue of what constitutes adequate compensation. Thus, it is not overbroad, but rather focused on ascertaining Frontera's basis for seeking recovery of fixed and sunk costs when it apparently had chosen to forego recovering such costs voluntarily by not operating the McAllen Plant.

Frontera further objects to TIEC 1-15 because the request is not reasonably calculated to lead to the discovery of relevant or admissible evidence. The principal issue in this appeal is whether the new ERCOT protocols will provide adequate compensation for OOMC service. TIEC's request for information on the basis of Frontera's claim for fixed and sunk costs for its McAllen Plant when, by definition, it has not planned on operating that facility and therefore had to be OOM'd by ERCOT is relevant to the subject-matter of this proceeding because such information is necessary to determine whether such costs are essential to compensate generators for the provision of OOMC services. The information gleaned from Frontera's response to this request will be directly relevant to TIEC's position on whether the ERCOT protocols should be amended to recognize fixed and sunk costs as Frontera requests even when a generator does not plan on operating that facility. Thus, TIEC 1-15 clearly is reasonably calculated to result in the disclosure of relevant evidence.

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.

OBJECTIONS:

Frontera objects to this question on the basis of the trade secret privilege. TEX. R. CIV. P. 192.3(a); TEX. R. EVID. 507. Furthermore, the information requested is confidential pursuant to section 39.001(b)(4) of the Texas Utilities Code. Frontera objects to this request as vague, overbroad, and unduly burdensome, and propounded solely for the purpose of harassment. TEX. R. CIV. P. 192.4(b); PUC Procedural Rule 22.142(a)(1)(D). Frontera further objects on the basis that this request is not reasonably calculated to lead to the discovery of relevant or admissible evidence. Tex. R. Civ. P. 192.3(a); PUC Procedural Rule 22.141(a). The subject of this proceeding is the decision of the Electric Reliability Council of Texas ("ERCOT") board to adopt protocol revisions 338 and 347 regarding prospective pricing of Out of Merit Capacity. TIEC has failed to show how Frontera's sale of electricity to entities other than ERCOT is relevant to the subject-matter of this proceeding. This proceeding is limited in nature, and the discovery allowed herein is not for the purpose of providing parties with the unlimited ability to question Frontera about any aspect of its management or operations.

RESPONSE:

Frontera objects to TIEC 1-18 because the request is vague, overbroad, unduly burdensome, and propounded solely for purposes of harassment. First, TIEC believes that its request for a summary of any electricity sales by Frontera from its McAllen Plant to any entities other than ERCOT for the period of its RMR

contract with ERCOT is clear. Any ambiguities, however, can be resolved through negotiations between the parties. TIEC is willing to work with Frontera to ensure that it understands the types of information TIEC is seeking with this request. Second, TIEC does not believe the disclosures sought by this request are unreasonably cumulative or duplicative with any other requests. Additionally, there is no other more convenient or less burdensome source other than Frontera that can provide the important information requested in TIEC 1-18. Finally, as discussed below in response to Frontera's objection that TIEC's request is not reasonably calculated to lead to the discovery of relevant evidence, TIEC 1-18 seeks information that is germane to the issue of what constitutes adequate compensation. Thus, it is not overbroad, but rather focused on ascertaining whether Frontera was receiving any benefits in the form of above-market rates solely from choosing not to operate the McAllen Plant.

Frontera further objects to TIEC 1-18 because the request is not reasonably calculated to lead to the discovery of relevant or admissible evidence. The principal issue in this appeal is whether the new ERCOT protocols will provide adequate compensation for OOMC service. In order to determine whether an entity is adequately compensated under the new ERCOT protocols, TIEC is must understand the ways in which generators like Frontera come to access the OOM market. Specifically, if Frontera operated its McAllen Plant under the RMR agreement and made sales into the electricity market, this may indicate that such sales were economically viable when Frontera subsequently chose not to operate and was OOM'd by ERCOT. Moreover, if Frontera was receiving benefits from its decision not to run in the form of above-market prices, then those benefits must be included in any calculation of adequate compensation. Thus, TIEC 1-18 clearly is reasonably calculated to result in the disclosure of relevant evidence.

Frontera's objections to TIEC 1-18 on the basis of the trade secret privilege and PURA's confidentiality provisions are also unavailing. Frontera is seeking affirmative relief in this litigation. Whether Frontera operated the McAllen Plant and made any electricity sales to entities other than ERCOT during the term of its RMR agreement with ERCOT is potentially determinative of the ultimate issue in this litigation of whether the new ERCOT protocols provide generators with adequate compensation for OOMC services. Frontera cannot seek affirmative relief from the Commission and then shield information behind the trade secret privilege and claims of confidentiality. Moreover, Frontera's information will be safeguarded by a standard protective order adopted by the ALJ. Highly sensitive information is regularly disclosed in Commission proceedings under the protection of standard protective orders like the one covering this proceeding. TIEC would comply with the protective order's terms and would take steps to ensure that Frontera's proprietary information is not compromised.

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.

OBJECTIONS:

Frontera objects to this request as vague and ambiguous, in that what constitutes an "energy sale" is not defined. Frontera further objects to this question on the basis of the trade secret privilege. TEX. R. CIV. P. I 92.3(a); TEX. R. EVID. 507. Furthermore, the information requested is confidential pursuant to section 39.001(b)(4) of the Texas Utilities Code and any confidentiality provisions included within the sales agreements dictating the terms of any such energy sales. Frontera objects to this request as overbroad, unduly burdensome, and propounded solely for the purpose of harassment. TEX. R. CIV. P. I 92.4(b); PUC Procedural Rule 22.142(a)(1)(D). Frontera further objects on the basis that this request is not reasonably calculated to lead to the discovery of relevant or admissible evidence. Tex. R. Civ. P. 192.3(a); PUC Procedural Rule 22.141(a). The subject of this proceeding is the decision of the Electric Reliability Council of Texas ("ERCOT") board to adopt protocol revisions 338 and 347 regarding prospective pricing of Out of Merit Capacity. TIEC has failed to show how the "energy sales made by Frontera from the Frontera Facility during the periods it operated in response to OOM instructions" is relevant to the subject-matter of this proceeding. This proceeding is limited in nature, and the discovery allowed herein is not for the purpose of providing parties with the unlimited ability to question Frontera about any aspect of its management or operations.

RESPONSE:

Frontera first objects to TIEC 1-19 on the grounds that the term "energy sale" is vague and ambiguous. TIEC believes that its request for a list of all energy sales made by Frontera from the McAllen Plant is clear. Any ambiguities, however, can be resolved through negotiations between the parties. TIEC is willing to work with Frontera to ensure that it understands the types of information TIEC is seeking with this request.

Frontera further objects to TIEC 1-19 because the request is not reasonably calculated to lead to the discovery of relevant or admissible evidence. The principal issue in this appeal is whether the new ERCOT protocols will provide adequate compensation for OOMC service. Generators like Frontera are permitted to sell the energy they produce for OOMC services. Thus, in order to understand whether Frontera or other generators are compensated adequately under the protocols, TIEC must ascertain the amount of revenues derived from these sales in order to determine whether they were adequately compensated. Thus, TIEC 1-19 clearly is reasonably calculated to result in the disclosure of relevant evidence.

Frontera's objections to TIEC 1-19 on the basis of the trade secret privilege and PURA's confidentiality provisions are also unavailing. Frontera is seeking affirmative relief in this litigation. Any energy sales made by Frontera from the McAllen Plant during the periods it operated in response to OOM instructions are potentially determinative of the ultimate issue in this litigation of whether the new ERCOT protocols provide generators with adequate compensation for OOMC services. Frontera cannot seek affirmative relief from the Commission and then shield information behind the trade secret privilege and claims of confidentiality. Moreover, Frontera's information will be safeguarded by a standard protective order adopted by the ALJ. Highly sensitive information is regularly disclosed in Commission proceedings under the protection of standard protective orders like the one covering this proceeding. TIEC would comply with the protective order's terms and would take steps to ensure that Frontera's proprietary information is not compromised.

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.

OBJECTIONS:

Frontera objects to this question on the basis of the trade secret privilege. TEX. R. CIV. P. 192.3(a); TEX. R. EVID. 507. Furthermore, the information requested is confidential pursuant to section 39.001(b)(4) of the Texas Utilities Code. Frontera objects to this request as vague, overbroad, and unduly burdensome, and propounded solely for the purpose of harassment. TEX. R. CIV. P. 192.4(b); PUC procedural Rule 22.142(a)(1)(D). Frontera further objects on the basis that this request is not reasonably calculated to lead to the discovery of relevant or admissible evidence. Tex. R. Civ. P. I 92.3(a); PUC Procedural Rule 22.141(a). The subject of this proceeding is the decision of the Electric Reliability Council of Texas ("ERCOT") board to adopt protocol revisions 338 and 347 regarding prospective pricing of Out of Merit Capacity. TIEC has failed to show how Frontera's relationship with Enron or the operating parameters of a QSE contract are relevant to the subject-matter of this proceeding. This proceeding is limited in nature, and the discovery allowed herein is not for the purpose of providing parties with the unlimited ability to question Frontera about any aspect of its management or operations.

RESPONSE:

Frontera objects to TIEC 1-20 because the request is vague, overbroad, unduly burdensome, and propounded solely for purposes of harassment. First, TIEC believes that its request for any documents Frontera provided to Enron pertaining to cost information, heat curves, ramp rates, and other operating parameters for

the McAllen Plant is clear. Any ambiguities, however, can be resolved through negotiations between the parties. TIEC is willing to work with Frontera to ensure that it understands the types of information TIEC is seeking with this request. Second, TIEC does not believe the disclosures sought by this request are unreasonably cumulative or duplicative with any other requests. Additionally, there is no other more convenient or less burdensome source other than Frontera that can provide the important information requested in TIEC 1-20. Finally, as discussed below in response to Frontera's objection that TIEC's request is not reasonably calculated to lead to the discovery of relevant evidence, TIEC 1-20 seeks information that is germane to the issue of what constitutes adequate compensation. Thus, it is not overbroad, but rather focused on ascertaining the how Enron was scheduling the McAllen Plant.

Frontera also objects to TIEC 1-20 on the grounds that the request is not reasonably calculated to lead to the discovery of any relevant or admissible evidence. The principal issue in this appeal is whether the new ERCOT protocols will provide adequate compensation for OOMC service. Generators like Frontera are permitted to sell the energy they produce for OOMC services into market. Thus, these sales form part of the overall amount of compensation for providing OOMC services. How Frontera operated with Enron, its former QSE, is relevant to the total amount of compensation Frontera received from such market sales and therefore is necessary to reach an informed decision as to what constitutes adequate compensation. Thus, TIEC 1-20 clearly is reasonably calculated to result in the disclosure of evidence relevant to this litigation.

Frontera's objections to TIEC 1-20 on the basis of the trade secret privilege and PURA's confidentiality provisions are also unavailing. Frontera is seeking affirmative relief in this litigation. How Enron was scheduling the McAllen Plant is potentially determinative of the ultimate issue in this litigation of whether the new ERCOT protocols provide generators with adequate compensation for OOMC services. Frontera cannot seek affirmative relief from the Commission and then shield information behind the trade secret privilege and claims of confidentiality. Moreover, Frontera's information will be safeguarded by a standard protective order adopted by the ALJ. Highly sensitive information is regularly disclosed in Commission proceedings under the protection of standard protective orders like the one covering this proceeding. TIEC would comply with the protective order's terms and would take steps to ensure that Frontera's proprietary information is not compromised.

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?

OBJECTIONS:

Frontera objects to this request as vague, overbroad, and unduly burdensome, and propounded solely for the purpose of harassment. TEX. R. CIV. P. 192.4(b); PUC Procedural Rule 22.142(a)(1)(D). Frontera further objects on the basis that this request is not reasonably calculated to lead to the discovery of relevant or admissible evidence. Tex. R. Civ. P. 192.3(a); PUC Procedural Rule 22.141(a). The subject of this proceeding is the decision of the Electric Reliability Council of Texas ("ERCOT") board to adopt protocol revisions 338 and 347 regarding prospective pricing of Out of Merit Capacity. TIEC has failed to show how Frontera's relationship with Enron is relevant to the subject-matter of this proceeding. This proceeding is limited in nature, and the discovery allowed herein is not for the purpose of providing parties with the unlimited ability to question Frontera about any aspect of its management or operations.

RESPONSE:

Frontera objects to TIEC 1-21 because the request is vague, overbroad, unduly burdensome, and propounded solely for purposes of harassment. This request calls for a simple yes/no answer, so it is difficult to believe that TIEC 1-21 is overly burdensome or harassing. Further, TIEC believes its request to know merely whether Frontera participated in any BENA activities at ERCOT or whether it received a share of the "profit" from Enron's BENA activities at ERCOT is clear. Any ambiguities, however, can be resolved through negotiations between the parties. TIEC is willing to work with Frontera to ensure that it understands the types of information TIEC is seeking with this request.

Frontera also objects to TIEC 1-21 on the grounds that the request is not reasonably calculated to lead to the discovery of any relevant or admissible evidence. The principal issue in this appeal is whether the new ERCOT protocols will provide adequate compensation for OOMC service. If Frontera received a portion of the BENA payments from Enron, these could offset its costs for the McAllen Plant that it is now claiming are not compensated. Whether Frontera's costs have been offset by other sources of revenues is directly relevant to whether the payments under the new protocols provide adequate compensation to OOMC service-providers. Thus, TIEC 1-21 clearly is reasonably calculated to result in the disclosure of relevant evidence.

TIEC 1-22

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

OBJECTIONS:

Frontera objects to this request as vague, overbroad, and unduly burdensome, and propounded solely for the purpose of harassment. TEX. R. CIV. P. 192.4(b); PUC Procedural Rule 22.142(a)(1)(D). Frontera further objects on the basis that this request is not reasonably calculated to lead to the discovery of relevant or admissible evidence. Tex. R. Civ. P. 192.3(a); PUC Procedural Rule 22.141 (a).

The subject of this proceeding is the decision of the Electric Reliability Council of Texas ("ERCOT") board to adopt protocol revisions 338 and 347 regarding prospective pricing of Out of Merit Capacity. TIEC has failed to show how Frontera's prior relationship with Enron is relevant to the subject-matter of this proceeding. This proceeding is limited in nature, and the discovery allowed herein is not for the purpose of providing parties with the unlimited ability to question Frontera about any aspect of its management or operations.

RESPONSE:

Frontera objects to TIEC 1-22 because the request is vague, overbroad, unduly burdensome, and propounded solely for purposes of harassment. Pursuant to Texas Rule of Civil Procedure 194.2(e), TIEC is entitled to discover "the name, address, and telephone number of persons having knowledge of relevant facts, with a brief statement of each identified person's connection with the case." TEX. R. CIV. P. 194.2(e). TIEC believes that Frontera's contacts with Enron are relevant to the subject matter of this dispute. Generators like Frontera are permitted to sell the energy they produce for OOMC services into market. Thus, these sales form part of the overall amount of compensation for providing OOMC. How Frontera operated with Enron, its former QSE, is relevant to the total amount of compensation Frontera received from such market sales and therefore is necessary to reach an informed decision as to what constitutes adequate compensation for the complaining entity. Thus, Frontera should be compelled to reveal its contacts at Enron under the Texas discovery rules.

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.

OBJECTIONS:

Frontera objects to this question on the basis of the trade secret privilege. TEX. R. CIV. P. 192.3(a); TEX. R. EVID. 507. Furthermore, the information requested is confidential pursuant to section 39.001(b)(4) of the Texas Utilities Code. Frontera objects to this request as vague, overbroad, and unduly burdensome, and propounded solely for the purpose of harassment. TEX. R. CIV. P. 192.4(b); PUC Procedural Rule 22.142(a)(1)(D). Moreover, Frontera objects on the basis that this request is not reasonably calculated to lead to the discovery of relevant or admissible evidence. Tex. R. Civ. P. 192.3(a); PUC Procedural Rule 22.141(a). The subject of this proceeding is the decision of the Electric Reliability Council of Texas ("ERCOT") board to adopt protocol revisions 338 and 347 regarding prospective pricing of Out of Merit Capacity. TIEC has failed to show how

Frontera's purchase of the Frontera Facility is relevant to the subject-matter of this proceeding. This proceeding is limited in nature, and the discovery allowed herein is not for the purpose of providing parties with the unlimited ability to question Frontera about any aspect of its management or operations.

RESPONSE:

Frontera objects to TIEC 1-23 because the request is vague, overbroad, unduly burdensome, and propounded solely for purposes of harassment. First, TIEC believes that its request for copies of all documents provided to Frontera by the seller of the McAllen Plant relating to the facility's physical location on the transmission grid, transmission congestion, transmission upgrade schedules, as well as the likelihood of being needed for reliability purposes and being OOM'd is clear. Any ambiguities, however, can be resolved through negotiations between the parties. TIEC is willing to work with Frontera to ensure that it understands the types of information TIEC is seeking with this request. Second, TIEC does not believe the disclosures sought by this request are unreasonably cumulative or duplicative with any other requests. Additionally, there is no other more convenient or less burdensome source other than Frontera that can provide the important information requested in TIEC 1-23. Finally, as discussed below in response to Frontera's objection that TIEC's request is not reasonably calculated to lead to the discovery of relevant evidence, TIEC 1-23 seeks information that is germane to the issue of what constitutes adequate compensation. Thus, it is not overbroad, because it concerns Frontera's own calculations as to the potential economic benefits associated with providing OOMC services from its McAllen Plant at the time of purchase.

Frontera also objects to TIEC 1-23 on the grounds that the request is not reasonably calculated to lead to the discovery of any relevant or admissible evidence. The principal issue in this appeal is whether the new ERCOT protocols will provide adequate compensation for OOMC service. Any benefits obtained by Frontera by virtue of its decision not to run the McAllen Plant and be OOM'd must be determined before Frontera can show that it is not being compensated. Any information relating to the potential value of the provision of OOMC service that was reflected in the purchase price for the McAllen Plant would shed light on Frontera's expectations of the value of this OOMC service. Thus, TIEC 1-23 clearly is reasonably calculated to result in the disclosure of evidence relevant to this litigation.

Frontera's objections to TIEC 1-23 on the basis of the trade secret privilege and PURA's confidentiality provisions are also unavailing. Frontera is seeking affirmative relief in this litigation. Any information regarding representations of the potential value of providing OOMC services to ERCOT, as well as any value paid to obtain those benefits by Frontera in purchasing the facility is potentially determinative of the ultimate issue in this litigation of whether the new ERCOT protocols provide generators with adequate compensation for OOMC services. Frontera cannot seek affirmative relief from the Commission and then shield

information behind the trade secret privilege and claims of confidentiality. Moreover, Frontera's information will be safeguarded by a standard protective order adopted by the ALJ. Highly sensitive information is regularly disclosed in Commission proceedings under the protection of standard protective orders like the one covering this proceeding. TIEC would comply with the protective order's terms and would take steps to ensure that Frontera's proprietary information is not compromised.

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.

OBJECTIONS:

Frontera objects to this question on the basis of the trade secret privilege. TEX. R. CIV. P. 192.3(a); TEX. R. EVID. 507. Furthermore, the information requested is confidential pursuant to section 39.001(b)(4) of the Texas Utilities Code. Frontera objects to this request as vague, overbroad, and unduly burdensome, and propounded solely for the purpose of harassment. TEX. R. CIV. P. 192.4(b); PUC Procedural Rule 22.142(a)(1)(D). Frontera further objects on the basis that this request is not reasonably calculated to lead to the discovery of relevant or admissible evidence. Tex. R. Civ. P. 192.3(a); PUC Procedural Rule 22.141(a). The subject of this proceeding is the decision of the Electric Reliability Council of Texas ("ERCOT") board to adopt protocol revisions 338 and 347 regarding prospective pricing of Out of Merit Capacity. TIEC has failed to show how Frontera's energy sales into Mexico are relevant to the subject-matter of this proceeding. This proceeding is limited in nature, and the discovery allowed herein is not for the purpose of providing parties with the unlimited ability to question Frontera about any aspect of its management or operations.

RESPONSE:

Frontera objects to TIEC 1-24 because the request is vague, overbroad, unduly burdensome, and propounded solely for purposes of harassment. First, TIEC believes that its request for a listing of all energy sales made by Frontera from its McAllen plant into Mexico is clear. Any ambiguities, however, can be resolved through negotiations between the parties. TIEC is willing to work with Frontera to ensure that it understands the types of information TIEC is seeking with this request. Second, TIEC does not believe the disclosures sought by this request are unreasonably cumulative or duplicative with any other requests. Additionally, there is no other more convenient or less burdensome source other than Frontera that can provide the important information requested in TIEC 1-24. Finally, as discussed below in response to Frontera's objection that TIEC's request is not reasonably calculated to lead to the discovery of relevant evidence, TIEC 1-24 seeks information that is germane to the issue of what constitutes adequate compensation. Thus, it is not overbroad, but rather is focused on any benefits or

revenues obtained by Frontera through the sales energy produced at the McAllen Plant, as well as the market price at which those sales were economically viable.

Frontera also objects to TIEC 1-24 on the grounds that the request is not reasonably calculated to lead to the discovery of any relevant or admissible evidence. The principal issue in this appeal is whether the new ERCOT protocols will provide adequate compensation for OOMC service. In its pleadings, Frontera has specifically alleged that it is entitled to recover its fixed costs under the new ERCOT protocols. Sales of electricity into the Mexican market may offset these fixed costs and therefore affect whether the current protocols adequately compensate Frontera for its fixed costs. Additionally, the economic difference for Frontera and other similarly situated generators between providing OOMC services and making regular electricity or capacity sales into the Mexican energy market is directly relevant to the ultimate issue of what constitutes adequate compensation under the protocols. Thus, TIEC 1-24 clearly is reasonably calculated to result in the disclosure of evidence relevant to this litigation.

Frontera's objections to TIEC 1-24 on the basis of the trade secret privilege and PURA's confidentiality provisions are also unavailing. Frontera is seeking affirmative relief in this litigation. Any sales of electricity that can offset the fixed costs for the McAllen Plant are potentially determinative of the ultimate issue in this litigation of whether the new ERCOT protocols provide generators with adequate compensation for OOMC services. Frontera cannot seek affirmative relief from the Commission and then shield information behind the trade secret privilege and claims of confidentiality. Moreover, Frontera's information will be safeguarded by a standard protective order adopted by the ALJ. Highly sensitive information is regularly disclosed in Commission proceedings under the protection of standard protective orders like the one covering this proceeding. TIEC would comply with the protective order's terms and would take steps to ensure that Frontera's proprietary information is not compromised.

TIEC 1-25

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

OBJECTIONS:

Frontera objects to this question on the basis of the trade secret privilege. TEX. R. CIV. P. 192.3(a); TEX. R. EVID. 507. Furthermore, the information requested is confidential pursuant to section 39.001(b)(4) of the Texas Utilities Code. Frontera objects to this request as vague, overbroad, and unduly burdensome, and propounded solely for the purpose of harassment. TEX. R. CIV. P. 192.4(b); PUC Procedural Rule 22.142(a)(1)(D). Frontera further objects on the basis that this request is not reasonably calculated to lead to the discovery of relevant or admissible evidence. Tex. R. Civ. P. 192.3(a); PUC Procedural Rule 22.141(a).

The subject of this proceeding is the decision of the Electric Reliability Council of Texas ("ERCOT") board to adopt protocol revisions 338 and 347 regarding prospective pricing of Out of Merit Capacity. TIEC has failed to show how any "analyses or studies of the transmission grid in the area surrounding the Frontera Plant" is relevant to the subject-matter of this proceeding. This proceeding is limited in nature, and the discovery allowed herein is not for the purpose of providing parties with the unlimited ability to question Frontera about any aspect of its management or operations.

RESPONSE:

Frontera objects to TIEC 1-25 because the request is vague, overbroad, unduly burdensome, and propounded solely for purposes of harassment. First, TIEC believes that its request for all analyses or studies of the transmission grid in the area surrounding the McAllen Plant is clear. Any ambiguities, however, can be resolved through negotiations between the parties. TIEC is willing to work with Frontera to ensure that it understands the types of information TIEC is seeking with this request. Second, TIEC does not believe the disclosures sought by this request are unreasonably cumulative or duplicative with any other requests. Additionally, there is no other more convenient or less burdensome source other than Frontera that can provide the important information requested in TIEC 1-25. Finally, as discussed below in response to Frontera's objection that TIEC's request is not reasonably calculated to lead to the discovery of relevant evidence, TIEC 1-25 seeks information that is germane to the issue of what constitutes adequate compensation. Thus, it is not overbroad, because it concerns Frontera's own calculations as to the potential economic benefits associated with providing OOMC services from its McAllen Plant.

Frontera also objects to TIEC 1-25 on the grounds that the request is not reasonably calculated to lead to the discovery of any relevant or admissible evidence. The principal issue in this appeal is whether the new ERCOT protocols will provide adequate compensation for OOMC service. Any studies or analyses by Frontera of the transmission grid directly relates to the likelihood of being required to provide OOMC services, as well as their potential economic value. As such, such information could shed light on Frontera's expectations of the value of providing OOMC services to the grid. Thus, TIEC 1-25 clearly is reasonably calculated to result in the disclosure of evidence relevant to this litigation.

Frontera's objections to TIEC 1-25 on the basis of the trade secret privilege and PURA's confidentiality provisions are also unavailing. Frontera is seeking affirmative relief in this litigation. Any analyses or studies of the transmission grid in the area surrounding the Frontera plant are potentially determinative of the ultimate issue in this litigation of whether the new ERCOT protocols provide generators with adequate compensation for OOMC services. Frontera cannot seek affirmative relief from the Commission and then shield information behind the trade secret privilege and claims of confidentiality. Moreover, Frontera's information will be safeguarded by a standard protective order adopted by the

ALJ. Highly sensitive information is regularly disclosed in Commission proceedings under the protection of standard protective orders like the one covering this proceeding. TIEC would comply with the protective order's terms and would take steps to ensure that Frontera's proprietary information is not compromised.

TIEC 1-26

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

OBJECTIONS:

Frontera objects to this question on the basis of the trade secret privilege. TEX. R. CIV. P. 192.3(a); TEX. R. EVID. 507. Furthermore, the information requested is confidential pursuant to section 39.001(b)(4) of the Texas Utilities Code. Frontera objects to this request as vague, overbroad, and unduly burdensome, and propounded solely for the purpose of harassment. TEX. R. CIV. P. 192.4(b); PUC Procedural Rule 22.142(a)(1)(D). Frontera further objects on the basis that this request is not reasonably calculated to lead to the discovery of relevant or admissible evidence. Tex. R. Civ. P. 192.3(a); PUC Procedural Rule 22.141(a). The subject of this proceeding is the decision of the Electric Reliability Council of Texas ("ERCOT") board to adopt protocol revisions 338 and 347 regarding prospective pricing of Out of Merit Capacity. TIEC has failed to show how the requested contracts are relevant to the subject-matter of this proceeding. This proceeding is limited in nature, and the discovery allowed herein is not for the purpose of providing parties with the unlimited ability to question Frontera about any aspect of its management or operations.

RESPONSE:

Frontera objects to TIEC 1-26 because the request is vague, overbroad, unduly burdensome, and propounded solely for purposes of harassment. First, TIEC believes that its request for all contracts between Frontera and TECO EnergySource for gas supply/management and power sales/optimization is clear. Any ambiguities, however, can be resolved through negotiations between the parties. TIEC is willing to work with Frontera to ensure that it understands the types of information TIEC is seeking with this request. Second, TIEC does not believe the disclosures sought by this request are unreasonably cumulative or duplicative with any other requests. Additionally, there is no other more convenient or less burdensome source other than Frontera that can provide the important information requested in TIEC 1-26. Finally, as discussed below in response to Frontera's objection that TIEC's request is not reasonably calculated to lead to the discovery of relevant evidence, TIEC 1-26 seeks information that is germane to the issue of what constitutes adequate compensation. Thus, it is not overbroad, but rather focused on ascertaining how TECO schedules the McAllen Plant on the ERCOT grid.

Frontera further objects to TIEC 1-26 because the request is not reasonably calculated to lead to the discovery of relevant or admissible evidence. The principal issue in this appeal is whether the new ERCOT protocols will provide adequate compensation for OOMC service. TECO is the entity that schedules the McAllen Plant on the ERCOT grid. The manner in which TECO schedules the McAllen Plant will likely provide information that is directly relevant to Frontera's market activities. This in turn will permit TIEC to understand the ways in which Frontera comes to access the OOM market and what costs and payments flow from the provision of OOMC service. Moreover, because generators are permitted to sell the energy they produce to provide OOMC service, how TECO schedules the McAllen facility may reveal information that is relevant to Frontera's compensation. Thus, TIEC 1-26 clearly is reasonably calculated to result in the disclosure of relevant evidence.

Frontera's objections to TIEC 1-26 on the basis of the trade secret privilege and PURA's confidentiality provisions are also unavailing. Frontera is seeking affirmative relief in this litigation. The manner in which TECO schedules the McAllen Plant is potentially determinative of the ultimate issue in this litigation of whether the new ERCOT protocols provide generators with adequate compensation for OOMC services. Frontera cannot seek affirmative relief from the Commission and then shield information behind the trade secret privilege and claims of confidentiality. Moreover, Frontera's information will be safeguarded by a standard protective order adopted by the ALJ. Highly sensitive information is regularly disclosed in Commission proceedings under the protection of standard protective orders like the one covering this proceeding. TIEC would comply with the protective order's terms and would take steps to ensure that Frontera's proprietary information is not compromised.

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.

OBJECTION AND RESPONSE:

Frontera objects to this question on the basis of the trade secret privilege. TEX. R. CIV. P. 192.3(a); TEX. R. EVID. 507. Furthermore, the information requested is confidential pursuant to section 39.001(b)(4) of the Texas Utilities Code. Frontera objects to this request as vague, overbroad, and unduly burdensome, and propounded solely for the purpose of harassment. TEX. R. CIV. P. 192.4(b); PUC Procedural Rule 22.142(a)(1)(0). Frontera further objects on the basis that this request is not reasonably calculated to lead to the discovery of relevant or admissible evidence. Tex. R. Civ. P. 192.3(a); PUC Procedural Rule 22.141(a). The subject of this proceeding is the decision of the Electric Reliability Council of Texas ("ERCOT") board to adopt protocol revisions 338 and 347 regarding

prospective pricing of Out of Merit Capacity. TIEC has failed to show how Frontera's 2003 earning projections are relevant to the subject-matter of this proceeding. This proceeding is limited in nature, and the discovery allowed herein is not for the purpose of providing parties with the unlimited ability to question Frontera about any aspect of its management or operations.

RESPONSE:

Frontera objects to TIEC 1-27 because the request is vague, overbroad, unduly burdensome, and propounded solely for purposes of harassment. First, TIEC believes its request for a copy of Frontera's 2003 earnings projections specifically identified in TECO's SEC form 8-K filed on or about September 23, 2002 is clear. Any ambiguities, however, can be resolved through negotiations between the parties. TIEC is willing to work with Frontera to ensure that it understands the types of information TIEC is seeking with this request. Second, TIEC does not believe the disclosures sought by this request are unreasonably cumulative or duplicative with any other requests. Additionally, there is no other more convenient or less burdensome source other than Frontera that can provide the important information requested in TIEC 1-27. Finally, as discussed below in response to Frontera's objection that TIEC's request is not reasonably calculated to lead to the discovery of relevant evidence, TIEC 1-27 seeks information that is germane to the issue of what constitutes adequate compensation. Thus, it is not overbroad, but rather focused on ascertaining Frontera's anticipated earnings from the McAllen Plant and from providing OOMC services.

Further, TIEC's request for Frontera's 2003 earnings projections (including backup calculations and assumptions) is reasonably calculated to lead to the discovery of evidence relevant to this litigation. The principal issue in this appeal is whether the new ERCOT protocols will provide adequate compensation for OOMC service. Frontera's own earnings projections potentially will reveal whether they are operating the McAllen Plant at a profit. This information therefore is critical to understanding whether Frontera is profiting from providing OOMC services. If Frontera's earnings projections anticipate gains under the new protocols, then it is being adequately compensated. Thus, TIEC 1-27 clearly is reasonably calculated to result in the disclosure of evidence relevant to this litigation.

Frontera's objections to TIEC 1-27 on the basis of the trade secret privilege and PURA's confidentiality provisions are also unavailing. Frontera is seeking affirmative relief in this litigation. Frontera's anticipated earnings from the operation of its McAllen Plant is potentially determinative of the ultimate issue in this litigation of whether the new ERCOT protocols provide generators with adequate compensation for OOMC services. Frontera cannot seek affirmative relief from the Commission and then shield information behind the trade secret privilege and claims of confidentiality. Moreover, Frontera's information will be safeguarded by a standard protective order adopted by the ALJ. Highly sensitive information is regularly disclosed in Commission proceedings under the

protection of standard protective orders like the one covering this proceeding. TIEC would comply with the protective order's terms and would take steps to ensure that Frontera's proprietary information is not compromised.

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.

OBJECTIONS:

(a) Frontera objects on the basis that this Request is not reasonably calculated to lead to the discovery of relevant or admissible evidence. Tex. R. Civ. P. 192.3(a); PUC Procedural Rule 22.141(a). The subject of this proceeding is the decision of the Electric Reliability Council of Texas ("ERCOT") board to adopt protocol revisions 338 and 347 regarding prospective pricing of Out of Merit Capacity. TIEC has failed to show how statements from TECO's 10-K is relevant to the subject-matter of this proceeding, especially in light of the fact that TECO is not a party to this proceeding. This proceeding is limited in nature, and the discovery allowed herein is not for the purpose of providing parties with the unlimited ability to question Frontera about any aspect of its management or operations.

(b) Frontera objects on the basis that this Request is not reasonably calculated to lead to the discovery of relevant or admissible evidence. Tex. R. Civ. P. 192.3(a); PUC Procedural Rule 22.141(a). The subject of this proceeding is the decision of the Electric Reliability Council of Texas ("ERCOT") board to adopt protocol revisions 338 and 347 regarding prospective pricing of Out of Merit Capacity. TIEC has failed to show how statements from TECO's 10-K or the goodwill associated with the Frontera Facility is relevant to the subject-matter of this proceeding, especially in light of the fact that TECO is not a party to this proceeding. This proceeding is limited in nature, and the discovery allowed

herein is not for the purpose of providing parties with the unlimited ability to question Frontera about any aspect of its management or operations.

RESPONSE:

(a) Frontera objects to TIEC 1-28(a) because the request is not reasonably calculated to lead to the discovery of relevant or admissible evidence. The principal issue in this appeal is whether the new ERCOT protocols will provide adequate compensation for OOMC service. In its pleadings, Frontera has specifically alleged that it is entitled to recover its fixed costs under the new ERCOT protocols. Frontera's response to the statement in TECO's 10K that there are no guarantees that a generator will recover its initial investment in the particular asset is relevant to whether and to what extent fixed costs should be compensated for through the new ERCOT protocols. Thus, TIEC 1-28(a) clearly is reasonably calculated to result in the disclosure of evidence relevant to this litigation.

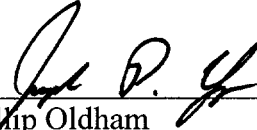
(b) Frontera objects to TIEC 1-28(b) because the request is not reasonably calculated to lead to the discovery of relevant or admissible evidence. The principal issue in this appeal is whether the new ERCOT protocols will provide adequate compensation for OOMC service. The information sought by TIEC 1-28(b) is relevant because if Frontera had not in fact received adequate compensation for providing OOMC service, it would likely have been required to write down the good will associated with its purchase of the McAllen Plant. Thus, TIEC 1-28(b) clearly is reasonably calculated to result in the disclosure of evidence relevant to this litigation.

IV. Conclusion and Prayer

For the reasons set forth above, TIEC requests that Frontera be compelled to respond to TIEC 1-1 through TIEC 1-28.

Respectfully Submitted,

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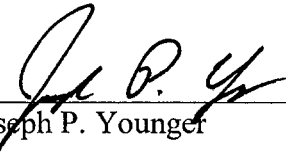
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ATTORNEYS FOR TEXAS INDUSTRIAL
ENERGY CONSUMERS

CERTIFICATE OF SERVICE

I, Joseph P. Younger, Attorney for Texas Industrial Energy Consumers, hereby certify that a true and correct copy of Texas Industrial Energy Consumers' Motion to Compel Frontera Generation Limited Partnership to Respond to First Request for Information was served on all parties of record in this proceeding on this 13th day of January, 2003 by facsimile, first class, U.S. Mail, postage prepaid, or by hand delivery.



Joseph P. Younger