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PETITION TO INQUIRE INTO THE
REASONABLENESS OF THE RATES
AND SERVICES OF CAP ROCK
ENERGY CORPORATION

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PUBLIC UTILITY COMMISSION
BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

MOTION FOR WAIVER OF P.U.C. PROC. R. 22.144

Now Comes Cap Rock Energy Corporation ("Cap Rock") and moves that the procedural timelines in P.U.C. PROC R. 22.144 be waived and proposes the adoption of the following alternative procedures.

**I. GOOD CAUSE EXISTS FOR WAIVER AND ADOPTION
OF ALTERNATIVE PROCEDURES**

As of April 20, 2004, Cap Rock has received over 1,000 requests for information, and has responded to 433 requests.¹ Cap Rock is unable to timely respond to all of the overwhelming number of requests despite its best efforts to do so. Neither is Cap Rock able to adequately determine if objections or privilege claims are appropriate in the short time allowed under the procedural rules. While parties have been gracious when asked to extend the time for filing objections on a case-by-case basis, it is often not possible for counsel to know that a request to extend is necessary until late in the twenty-day period for response.

Parties have claimed that Cap Rock has waived its right to assert lawyer-client privilege because such claims were not made within ten days of receipt of the request. Cap Rock contends that lawyer-client privilege cannot be waived except by an affirmative expression of waiver.² However, the fact that parties make such a claim creates the necessity for Cap Rock to file

¹ These figures reflect the number of requests including each subpart or multiple question. The vast majority of these requests have been from the City of Greenville and Pioneer. Each has propounded over 400 requests.

² See TEX. R. EVID. 511.

protective claims of privilege based upon very limited knowledge of the documents that may be responsive to a request. The filing of the protective privilege claims then requires that the requesting party file a motion to compel before document production is complete. While the intent of the rule is to expedite the production of relevant, non-privileged information, the result in this case due to the timelines has been the filing of ultimately unnecessary discovery pleadings in many instances.

Several of the parties' expectations regarding discovery seem to assume that Cap Rock is similar to other IOUs such as AEP that are regulated by the Commission. It is not. Cap Rock does not have an organization or division that is dedicated to regulatory matters. As indicated in response to numerous requests for information, Cap Rock has at this time only 114 employees. The employees with the knowledge needed to respond to the vast majority of the information requests cannot provide the responses in the time required. In particular, the requests concerning financial documents and data are being handled by a small group. As described in her affidavit³ as a Vice President, Controller, and Assistant Secretary/Treasurer of Cap Rock, Celia Zinn has responsibility for a wide range of matters. She is responsible for the preparation of SEC filings including forms 10-K and 10-Q; the proxy, the annual report to the shareholders and annual meeting; tax matters; human resources, and all day-to-day accounting operations required to run Cap Rock. Ms. Zinn is also responsible for two phases of Cap Rock's on-going computer conversion that are to be completed in June and August of 2004. Ms. Zinn has a small group of nine people who support her in performing all of these responsibilities.⁴ The ongoing responsibilities of this group have required that the individuals work extremely long hours even

³ Ms. Zinn's affidavit is attached hereto as Exhibit B.

⁴ Cap Rock is also responding to an IRS audit of its predecessor, Cap Rock Electric Cooperative, Inc., and to a claim by the Texas Controller's Office that the shares held in the trust established to hold shares issued to former cooperative members who have not been located have escheated to the State of Texas.

without the addition of the requirement to respond to requests for information in this proceeding. Cap Rock has investigated the possibility of hiring additional temporary help in this area, but has determined that the nature of the information requested requires the knowledge and expertise of the current employees.⁵ Therefore, additional resources would not enable Cap Rock to respond more quickly to the requests.

Cap Rock's proposal will not harm the parties requesting the information. In this case, the parties already have an extended discovery period.⁶ Cap Rock is not seeking to avoid production of responsive, relevant non-privileged information. Cap Rock seeks this waiver solely due to its limited resources for the preparation of the responses.

II. NEW TIMELINE PROPOSAL

Cap Rock has sought agreement to the following proposal from the parties who have filed the vast majority of the information requests. The parties have not been able to agree to the requested relief and Cap Rock, therefore, now seeks a waiver of the timelines in P.U.C. PROC. R. 22.144 that would be applicable to all requests for information.

Cap Rock requests that the following changes be ordered for discovery.

- a) Responses will be due thirty-four days after receipt. Cap Rock will provide a response to requests as information is available and will not hold responses until the final due date.
- b) Privilege claims and logs shall be filed on the same day that the response to the request is due.
- c) All other objections shall be filed 20 days after the requests are received.

Cap Rock opposes the extension of deadlines for intervenor testimony, staff testimony, rebuttal testimony, and the hearing on the merits (and all other deadlines unrelated to discovery).

⁵ Cap Rock has hired temporary clerical assistance for copying of requested materials.

⁶ Order No. 4, p. 2 (Schedule) and p. 3 (Waiver of Jurisdictional Deadline).

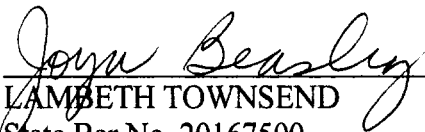
Cap Rock believes that intervenors and Staff will have had adequate time for discovery, even with the proposed new timeline. Cap Rock has already agreed to one extension of the statutory timeline. While this extension was to address a scheduling conflict for Cap Rock's counsel, the extension benefited all parties.

III. CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Cap Rock moves that its request for waiver be granted, that its proposed new timelines be ordered, and requests such other and further relief to which it may show itself to be entitled.

Respectfully submitted,

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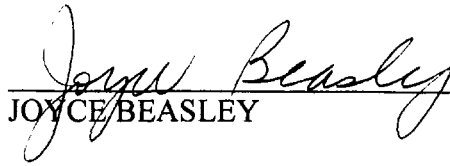
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ATTORNEYS FOR CAP ROCK ENERGY
CORPORATION

CERTIFICATE OF SERVICE

I, Joyce Beasley, attorney, hereby certify that a copy of this document was served on all parties of record in this proceeding on the 23rd day of April, 2004, in the following manner: hand delivered, sent via facsimile, or mailed by First Class Mail.


JOYCE BEASLEY

**SOAH DOCKET NO. 473-04-3554
PUC DOCKET NO. 28813**

**CAP ROCK ENERGY CORPORATION'S RESPONSES TO
PIONEER NATURAL RESOURCES, USA, INC.'S
FIRST REQUESTS FOR INFORMATION**

Pioneer 1-11: (Atkins, page 11, lines 9-10) Provide an organizational chart showing the assignment of Cap Rock's 116 employees to Cap Rock's organizational subdivisions, including divisions, sections, teams, groups, showing numbers of employees in each division, group, section, team, or group and describing the broad areas of responsibilities of each division, section, team, and group.

RESPONSE:

See Organizational Chart attached.

Prepared by: Lester Baker
Sponsored by: Lee D. Atkins

Exhibit A – Page 2 of 2

OVERSIZE DOCUMENT

The Organizational Chart attached to Cap Rock Energy Corporation's Response to Pioneer Natural Resources USA, Inc.'s First Request for Information Question No. 1-11 (Exhibit A to this Motion) is an oversize document, previously provided to all parties on April 19, 2004, and is not being reproduced herein.

SOAH DOCKET NO. 473-04-3554

PUC DOCKET NO. 28813

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**BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS**

STATE OF TEXAS

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COUNTY OF MIDLAND

AFFIDAVIT

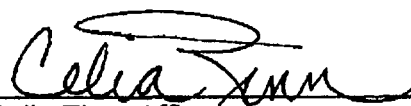
BEFORE ME, the undersigned authority, on this day appeared CELIA ZINN, who being by me first duly sworn, on oath deposed and said the following:

"My name is Celia Zinn, and I am the Vice President, Controller, Assistant Secretary/Treasurer of Cap Rock Energy Corporation ("Cap Rock"). In such capacity, I am responsible for the day to day financial operations for Cap Rock. My office is located at 500 West Wall, STE 280, Midland, TX 79701. I am over 18 years of age, have personal knowledge of the facts recited herein, and am not otherwise disqualified from making this my sworn affidavit. The information provided herein is true and correct

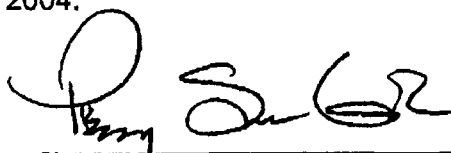
My responsibilities include the compilation and filing of documents required by the SEC including the company's 10-K and 10-Q reports, the proxy and annual report for the annual meeting, the company's tax matters, human resources, and all day-to-day accounting operations required to operate the company. Additionally, during this current time frame I am responsible for an IRS audit, 2 phases of the computer conversion with deadlines in June and August and preparation for the annual meeting. I

have a total of nine other employees in my department. My duties require me to work approximately 65 to 70 hours per week even without answering Requests for Information ("RFIs") in the pending Public Utility Commission proceeding. Cap Rock has made every effort to timely provide the information requested. I have spent approximately 20 to 25 hours per week responding to RFI's since March 1, 2004. This has caused some of my other work to be neglected. This has also caused my group to work 70 to 80 hour weeks for the past few months. Our combined workload and obligation to meet public filing deadlines, as well as responses to these RFIs has required some of us to work 80 to 90 hour weeks on occasion. I have investigated hiring temporary assistance for the preparation of the responses. However, the nature of the information requested requires someone knowledgeable regarding Cap Rock's operations to prepare responses. Therefore, temporary assistance would not permit the company to prepare responses any faster than it presently is doing. We have hired temporary assistance to copy the boxes of data required to answer some of the RFI's.

This ends my affidavit."


Celia Zinn, Affiant

SWORN AND SUBSCRIBED to under oath by Celia Zinn before the undersigned notary public on the 22nd day of April 2004.


Notary Public in and for the State of Texas

SEAL

