

Control Number: 34738



Item Number: 332

Addendum StartPage: 0

**SOAH DOCKET NO. 473-08-1153
PUC DOCKET NO. 34738**

**NOTICE OF VIOLATION OF
INTERNATIONAL POWER
AMERICA, INC., HAYS ENERGY
LIMITED PARTNERSHIP,
MIDLOTHIAN ENERGY LIMITED
PARTNERSHIP, AND ANP FUNDING
I, LLC OF PURA §39.151(j) AND PUC
SUBST. R. 25.503 (f) AND (g),
RELATING TO FAILURE TO
ADHERE TO ERCOT PROTOCOLS
§5.8.1.1 AND 6.5.1.1(1)(e)
CONCERNING GOVERNOR IN
SERVICE REQUIREMENTS AND
FREQUENCY BIAS REQUIREMENTS
AND OF PUC SUBST. R. 25.503(f)(10),
RELATING TO FAILURE TO
COMPLY WITH REQUESTS FOR
INFORMATION BY ERCOT WITHIN
THE TIME SPECIFIED BY ERCOT
INSTRUCTIONS**

**BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS**

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**OBJECTIONS OF COMMISSION STAFF TO INTERNATIONAL
POWER AMERICA, INC., HAYS ENERGY LIMITED PARTNERSHIP,
MIDLOTHIAN ENERGY LIMITED PARTNERSHIP, AND
ANP FUNDING I, LLC'S NINTH REQUEST FOR INFORMATION**

NOW COMES Staff of the Public Utility Commission of Texas ("Commission Staff" or "Staff"), representing the public interest, and submits these Objections of Commission Staff to International Power America, Inc., Hays Energy Limited Partnership, Midlothian Energy Limited Partnership, and ANP Funding I, LLC's Ninth Request for Information.

GENERAL OBJECTIONS

1. Staff objects to each and every request that calls for the production of documents that are core work product as defined by Tex.R.Civ.P. 192.5(b)(1), or attorney-client privileged communications as defined by TRE 503(b), and are not provided to a designated testifying expert.

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2. Staff objects to each and every request to the extent that any such request calls for documents that are in the possession of the IPA Parties, documents to which the IPA Parties have a superior right of possession or access to Staff, or information available to the IPA Parties as accessibly or readily as to Staff.
3. Staff objects to each and every request to the extent that any such request calls for documents or information that relate to persons or entities other than IPA Parties that are proprietary and/or confidential.
4. Staff objects to each and every request that does not define a time period or refer to the Relevant Period as defined in the Definitions, subject to the objection to that definition.
5. Staff objects to each and every request to the extent that any such request attempts to require Staff to marshal all of its evidence and/or provide its litigation strategy.
6. Staff objects to each and every request to the extent that any such request is unduly burdensome, unnecessarily expensive, or unreasonably cumulative and duplicative of other requests.
7. Staff's response that it will produce a document is not an acknowledgement that any document exists, or ever existed in Staff's control or otherwise. Staff only agrees to search for, and if found, produce relevant responsive documents subject to the other objections asserted herein.
8. By responding to a request or producing documents pursuant thereto, Staff does not concede the relevancy or materiality of the request or of the subject to which such request refers. Staff's response to any request is made expressly subject to, and without waiving, any questions or objections as to the relevancy, materiality, privilege, or admissibility as evidence or for any other purposes, of any of the documents referred to or produced or of the responses given herein, or of the subject matter thereof, in any proceeding including the administrative hearing of this matter or any subsequent proceeding.
9. Pursuant to the requirement of P.U.C. PROC. R. 22.144(d) the parties have negotiated diligently and in good faith concerning discovery disputes prior to the filing of these objections. These negotiations resulted, in part, in the Agreed Modifications to Discovery Procedures filed by the parties on October 25, 2007.

10. For any RFI question which Staff does not currently have responsive documents or information, Staff reserves the right to file additional objections at such a time as it supplements its RFI answers.
11. Without waiving the foregoing General Objections and incorporating all of them into Staff's objections hereafter, Staff objects to the IPA Parties' Ninth Request for Information to Commission Staff as follows:

DEFINITIONS OBJECTIONS

. . . The term "identify," when used in reference to a natural person means to provide his or her (1) full name, (2) present or last known residence and mailing address and telephone numbers (designating which), and (3) present or last known position or business affiliation, job title, employment address, and telephone number (designating which).

The terms "identify" and "describe," when used in reference to facts, an event, or an allegation, means to include: (a) a detailed description of the facts, events, or allegation at issue; (b) the date or dates on which the facts or event occurred, or the time period involved in the events giving rise or relating to the allegation; (c) the name, address, telephone number, and affiliation of all persons involved in the facts, event, or allegation; and (d) the date, author, addressee or recipient, and type of document of any document relating to or concerning the event or allegation.

The term "identify, when used with respect to a document, means to state: (1) the type of document (e.g., letter, form, memorandum, book, telegraph, chart, videotape, computer disk, tape recording, photograph, electronic media, etc.), (2) the subject matter of the document, (3) the date of the document, and (4) each author, sender, addressee, and recipient of the document, and (5) the present or last known location and custodian of the document and every document and every copy of it.

The term "identify," when used in connection with a communication, means to state (1) the persons involved in the communication; (2) the date and time of the communication; (3) the manner or medium of the communication; (4) a general summary of the matters communicated; and (5) a description of all documents in your possession, custody or control containing related to the communication.

Objection

Staff objects to the use of multiple definitions for the words “identify” and/or “describe” as they are confusing. Staff rejects such complicated definitions and will answer specific RFI questions by their plain meaning, consistent with P.U.C. Procedural Rules and the Agreed Modifications to Discovery Procedures filed in this docket on October 25, 2007.

Staff further objects to using these definitions because using them would be unduly burdensome, requiring Staff to provide multiple subpart information requested for each of the communications and numerous documents reviewed. The request is unduly burdensome as the time and effort required to identify or describe, in compliance with the RFI Instructions, every such e-mail would be great compared to the minimal or non-existent value of doing so. For example, email documents in this case are clearly identifiable and prominently indicate who the emails are sent to and from, a subject line, and the date and time sent. Therefore no additional information will be provided with individual emails.

Staff further objects to “identify” as it applies to identifying documents or workpapers that are clearly described in Staff’s testimony, are provided as attachments to the testimony, or were previously disclosed in response to IPA RFIs in this docket. Responsive documents are clearly identifiable based on direct references in the testimony or are included as attachments (which include relevant calculation worksheets), as well as documents previously produced in response to RFI questions, including IPA Parties First RFIs to Staff, Question No. 1-3, which required Staff to produce documents provided to, reviewed by, or created by an expert. Staff objects that it is unduly burdensome for Staff to further compile a list of such materials, and notes that the parties agreed in the Agreed Modifications to Discovery Procedures filed in this docket not to provide indexes of voluminous materials.

INSTRUCTIONS OBJECTIONS

Electronic or magnetic data shall be produced in its native computer readable format with an identification of its associated software application and computer system on CD-ROM’S [sic] readable by PC computers. The data produced must contain an exact and complete image copy of the source hard drives, or other electronic or magnetic media

or storage device containing the original data and include not only active files, but all deleted, erased or discarded copies, and prior versions or drafts of data.

Objection

Staff objects to instructions on how to provide electronic or magnetic data because they require procedures that are unduly burdensome, and Staff states it shall not be bound by instructions other than those in P.U.C. Procedural Rules and the Agreed Modifications to Discovery Procedures filed in this docket on October 25, 2007. Staff will make available either printouts of emails, their attachments, and other documents, or shall provide disks containing electronic files of such documents and lengthy electronic calculation spreadsheets.

OBJECTIONS TO SPECIFIC REQUESTS

- 9-1. For each expert witness submitting rebuttal testimony and each consulting expert whose mental impressions and opinions have been reviewed by an expert witness submitting rebuttal testimony, please produce the following materials, organized by the specific subsection to which the materials are responsive:**
- (a) All facts known by the expert that relate to or form the basis of the expert's mental impressions and opinions formed or made in connection with their rebuttal testimony, regardless of when and how the factual information was acquired;**
 - (b) All documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's rebuttal testimony;**
 - (c) All workpapers of the expert;**
 - (d) All drafts of rebuttal testimony prepared or reviewed by the expert. For each document, list the date that the document was created and its author(s). For each draft, provide an electronic copy of the document or a printout which clearly identifies all marked-up (redline) changes and the name of the author(s) of the document and commenter who authored each change;**
 - (e) All calculations made by the expert, including all supporting intermediate and preliminary calculations, and all data, numbers, or other input used in each step of such calculations;**
 - (f) If the expert has been specially retained by, employed by, or otherwise is**

subject to your control, (i) all agreements by which such expert was retained, employed or made subject to your control, (ii) all responses to requests for proposals, or similar proposed work descriptions, (iii) all invoices submitted by such expert concerning work related to the rebuttal testimony, and (iv) the amount of hours he or she has worked on this case and amounts and dates for all related payments;

- (g) the expert's current resume and bibliography;
- (h) All written communications between the expert and any other person concerning the subjects raised in the rebuttal testimony, as well as all documents reflecting, discussing, summarizing, or memorializing such communications;
- (i) Identify the names and job titles of any person such expert interviewed or communicated with in connection with forming the opinions expressed in rebuttal testimony, and provide the dates of each interview. Provide all notes, e-mail and other messages, and other documents related to such interviews;
- (j) All texts, studies, articles, treatises, codes, standards, or authorities relied upon, considered, or reviewed in connection with the analysis of issues discussed in rebuttal testimony.

Objection

Staff objects to this question as overly broad and unnecessarily cumulative and duplicative of IPA Parties' RFIs previously propounded on Staff, Question Nos. 1-3, 1-7, 1-8, 2-1 and 2-2. Staff would refer IPA Parties to Staff's original and supplemental responses to these questions:

- Question No. 1-3 asked Staff to "identify and produce all documents, tangible things, reports, models and data compilations provided to, reviewed by, or prepared for testifying experts concerning the issues set forth in the NOV or Jaussaud memorandum in anticipation of the expert's testimony."
- Question No. 1-7 asked Staff to identify all communications between Staff and ERCOT, including ERCOT committees, regarding frequency response issues during the relevant period.
- Question No. 1-8 asked Staff to "identify all communications between Staff and any person regarding IPA's provision of frequency response and bias signal to ERCOT."
- Question No. 2-1 asked Staff to produced all documents constituting, summarizing, or momoralizing all communications between Staff or its agents and ERCOT concerning the violations described in the Notice of Violation.

- Question No. 2-2 asked Staff to produce all documents constituting, summarizing, or memorializing all communications between Staff or its agents and the Texas Regional Entity.

Because Staff has already provided IPA Parties with responsive information in previous RFI responses and supplemental responses, Staff objects to this request to the extent that documents are in the possession of the IPA Parties and the information is available to the IPA Parties as accessibly or readily as to Staff. Staff further objects that it is unduly burdensome to require Staff to “organize by specific subsection” such materials or otherwise compile lists of such materials (including “workpapers” as requested in subpart (c) of this question) previously produced by Staff; and Staff notes that Staff and IPA Parties in the Agreed Modifications to Discovery Procedures filed in this docket on October 25, 2007, agreed not to provide indexes of voluminous materials. Responsive documents such as emails clearly identify who they are to and from, the dates sent, and their subject matter; likewise, rebuttal testimony and attachments (which include relevant data and calculations) clearly identify the facts known by the experts and the reports, models or data they reviewed and relied on for their testimony. Additionally, in Staff’s Fifteenth Supplemental Response to IPA’s First RFIs to Staff on February 23, 2009, Staff produced documents of Howard Illian on four disks containing documents organized within folders.

Staff further objects to subpart (b) of the request because it is overly broad and unduly burdensome. The request for “all documents” reviewed by or prepared by the expert is overly broad and could encompass every email communication, however transitory, sent or received by the expert on subjects only tangentially relevant to the revised NOV. This request is unduly burdensome as the time and effort required to identify, in compliance with the RFI instructions, every such email would be great compared to the minimal or nonexistent value of such documents.

Staff further objects to subpart (d) of this request to the extent that it requests information that constitutes attorney work product and/or core work product as defined by Texas Rules of Civil Procedure 192.5 and/or are protected as attorney-client privilege as defined by Texas Rules of Evidence 503.

Pursuant to an agreement with counsel for IPA Parties, Staff is not providing answers to subpart (f) of this request concerning Staff expert witness Danielle Jaussaud.

Staff further objects to subpart (i) of this request which calls for Staff to identify the job titles of any person its experts “interviewed or communicated with” in forming opinions expressed in rebuttal testimony, and to provide the dates and any documents related to each to each interview. The request is vague and overly broad as its request to identify anyone “communicated with” could encompass nearly every communication, however transitory, the expert made while working on the case, on subjects only tangentially relevant to their testimony (such as requiring the expert to identify the name of a librarian a document was requested from). This request is unduly burdensome as the time and effort required to identify, in compliance with the RFI instructions, any person communicated and determine the dates of such communication is great compared to the minimal or nonexistent value of such communications. As previously stated,

Staff has already produced written communications created by or reviewed by its experts in responses to IPA RFI question numbers 1-3, 1-7, 1-8, 2-1 and 2-2.

Staff further objects to subpart (j) of this request which calls it to produce copies of all texts, studies, treatises, codes standards, or authorities relied upon, considered or reviewed in connection with the analysis of issues discussed in rebuttal testimony. Staff would refer IPA Parties to the rebuttal testimony and attachments, in which authorities relied upon are cited or attached. To the extent they are publicly available, Staff objects to producing authorities such as ERCOT Protocols and Operating Guides or publicly available texts, studies and treatises. Furthermore, Staff objects that the request is overly broad in that it would require Staff to produce entire documents such as texts and treatises when only a portion of them was reviewed.

Staff reasserts its objections to Definitions and Instructions, as stated on pages 3 through 5 of this pleading. Subject to these objections, and without waiving them, Staff provides a response.

9-2. Please produce electronic versions of all charts and tables in the rebuttal testimony in their original (native) format along with the numerical or other data underlying any graphical depictions and all spreadsheets, computer models, or calculations used in creating such charts and tables. "Calculations" as used herein includes not only final calculations, but also all supporting intermediate and preliminary calculations.

Staff objects to this question as overly broad and unnecessarily cumulative and duplicative of IPA Parties' RFI Question Nos. 1-3 and 9-1 subparts (a), (b), and (e). IPA RFI question number No. 1-3 asked Staff to "identify and produce all documents, tangible things, reports, models and data compilations provided to, reviewed by, or prepared for testifying experts concerning the issues set forth in the NOV or Jaussaud memorandum in anticipation of the expert's testimony." Staff would refer IPA Parties to electronic versions of charts filed with its rebuttal testimonies and filed in its supplemental responses to RFI No. 1-3.

Staff further objects to producing underlying spreadsheets, computer models or calculations for charts reproduced from other sources, such as in printed reports or studies, to the extent that Staff and its experts do not have the underlying spreadsheets, computer models or calculations in its possession or control.

Concerning the two charts in Attachment HFI-R2 to the Rebuttal testimony of Howard Illian, Staff further objects to providing most of the underlying spreadsheets, computer models or calculations because it would be unnecessarily burdensome to do so. Chart HFI-R2 shows the 1-minute average Frequency Error Density in ERCOT for the years 2000 and 2001. Staff is providing electronic copies of the final spreadsheets used to produce the charts shown in Attachment HFI-R2. However, because the charts were compiled for ERCOT based on 2-second data over the two year period, there are more than 20 gigabytes of underlying data and calculations that the charts are based on. The charts in Attachment HFI-R2 show the 1-minute averages for 2000 and 2001, so providing the remaining underlying data used to calculate those averages would be of minimal value. This request is unduly burdensome as the time and effort required to identify and produce, in compliance with the RFI question, all the numerical and

other data underlying the graphical depiction would be great compared to the minimal value of the data. Staff estimates it would take at least 30 hours to copy the information onto at least 30 disks. Therefore, Staff is producing only the final spreadsheets used to produce the charts shown in Attachment HFI-R2.

Staff reasserts its objections to Definitions and Instructions, as stated on pages 3 through 5 of this pleading. Subject to these objections, and without waiving them, Staff provides a response.

9-3. All written communications between you and any third person, including but not limited to employees or members of ERCOT or the TRE, concerning the facts and opinions discussed in your rebuttal testimony, as well as all documents reflecting, discussing, summarizing, or memorializing, such communications.

Staff objects to this question as overly broad and unnecessarily cumulative and duplicative of IPA Parties' RFIs previously propounded on Staff, Question Nos. 1-3, 1-7, 1-8, 2-1 and 2-2. It also duplicates IPA RFI Question No. 9-1 subpart (h). Staff would refer IPA Parties to Staff's original and supplemental responses to the following questions:

- Question No. 1-3 asked Staff to "identify and produce all documents, tangible things, reports, models and data compilations provided to, reviewed by, or prepared for testifying experts concerning the issues set forth in the NOV or Jaussaud memorandum in anticipation of the expert's testimony."
- Question No. 1-7 asked Staff to identify all communications between Staff and ERCOT, including ERCOT committees, regarding frequency response issues during the relevant period.
- Question No. 1-8 asked Staff to "identify all communications between Staff and any person regarding IPA's provision of frequency response and bias signal to ERCOT."
- Question No. 2-1 asked Staff to produced all documents constituting, summarizing, or momoralizing all communications between Staff or its agents and ERCOT concerning the violations described in the Notice of Violation.
- Question No. 2-2 asked Staff to produce all documents constituting, summarizing, or memorializing all communications between Staff or its agents and the Texas Regional Entity.

Because Staff has already provided IPA Parties with responsive information in previous RFI responses and numerous supplemental responses, Staff objects to this request to the extent that documents are in the possession of the IPA Parties and the information is available to the IPA Parties as accessibly or readily as to Staff.

Staff further objects to this request as overly broad and unduly burdensome. Specifically, the request is overly broad as the request for "all written communications" could encompass every email communication, however transitory, sent or received by Staff or its experts on subjects only tangentially relevant to the revised NOV. This request is unduly burdensome as the time and effort required to identify, in compliance with the RFI instructions, every such email would be great compared to the minimal or nonexistent value of such documents.

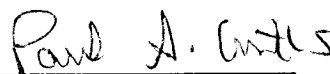
Staff further objects to this request to the extent that it requests information that constitutes attorney work product and/or core work product as defined by Texas Rules of Civil Procedure 192.5 and/or are protected as attorney-client privilege as defined by Texas Rules of Evidence 503.

Staff reasserts its objections to Definitions and Instructions, as stated on pages 3 through 5 of this pleading. Subject to these objections, and without waiving them, Staff provides a response.

Respectfully Submitted,

Thomas S. Hunter
Division Director
Legal Division

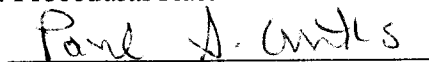
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SOAH DOCKET NO. 473-08-1153
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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on this the 10th day of March, 2009, in accordance with P.U.C. Procedural Rule 22.74.


Paul A. Curtis