

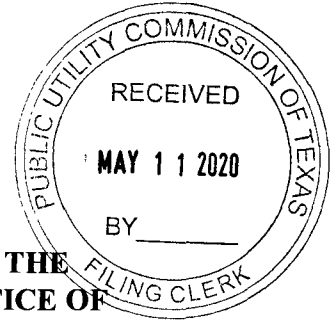
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PUC DOCKET NO. 49795
SOAH DOCKET NO. 473-20-1118



COMPLAINT OF PETTY GROUP, LLP §
AGAINST RIO GRANDE ELECTRIC §
COOPERATIVE, INC. §

BEFORE THE
STATE OFFICE OF
ADMINISTRATIVE HEARINGS

**PETTY GROUP, LLP’S MOTION TO COMPEL RESPONSES TO ITS SIXTH
REQUESTS FOR INFORMATION**

Petty Group, LLP (“Petty”) hereby submits this Motion to Compel Responses to Petty’s Sixth Requests for Information (“RFI”) Nos. 6-2, 6-3, 6-4, 6-5, 6-6, 6-7, and 6-8 to Rio Grande Electric Cooperative, Inc. (“RGEC”). RGEC filed its Objections to Petty’s Sixth RFIs and Request for Extension of Time or Waiver of Privilege Log Requirements (“Objections”) on May 6, 2020. Petty’s motion is timely filed pursuant to SOAH Order No. 3.¹

**I RGEC FAILED TO COMPLY WITH COMMISSION RULES
WHEN FILING ITS OBJECTIONS**

As an initial matter, RGEC’s Objections should be denied due to failure of RGEC’s counsel to comply with the Commission’s procedural rules. PUC Proc. R. § 22.144(d) requires parties to “negotiate diligently and in good faith concerning any discovery dispute prior to filing an objection.” PUC rules also require that objections “include a statement that negotiations were conducted diligently and in good faith.”² RGEC met neither of these requirements. RGEC’s counsel neglected to contact Petty’s counsel within a reasonable timeframe to conduct any sort of negotiations. Instead, Petty first learned of the objections by an email from RGEC’s counsel that was sent approximately two hours before the objections were filed, thereby depriving Petty of an

¹ *Complaint of Petty Group LLP’s Against Rio Grande Electric Cooperative, Inc.*, Docket No. 49795, SOAH Order No. 3 at 2 (Dec. 18, 2019) (requiring motions to compel within 5 calendar days).

² 16 Tex. Admin. Code (“TAC”) § 24.144(d).

opportunity to timely review the objections. Further, RGEC made no effort before filing or after to call to discuss the requests.³

Since receiving the email from RGEC's counsel on May 6, 2020, Petty's counsel has attempted to contact RGEC's counsel via both phone and email communications in an attempt to negotiate the existing disputes diligently and in good faith. Due to the noncompliance of RGEC's counsel with PUC rules, RGEC's Objections should be denied and Petty respectfully requests that the Commission compel RGEC to respond to Petty's Sixth RFIs as filed on May 1, 2020.

RGEC's failure to comply with Commission rules related to discovery, as well as the frivolous nature of its objections as discussed below, constitutes an abuse of the discovery process and appears to be a tactic of delay rather than any legitimate concern regarding the scope and burdensomeness of the requests.

II. PETTY'S RESPONSES TO OBJECTIONS

While Petty believes that RGEC's Objections should be denied due to failure to comply with the Commission's procedural rules, for sake of completeness, Petty also provides its responses to RGEC's Objections, which are detailed below. RGEC grouped together certain RFIs when making its Objections, and therefore, Petty will also respond to these Objections using the same groupings indicated by RGEC.

A. *Response to RGEC's Objections to Petty RFI Nos. 6-2 and Petty 6-3:*

Petty 6-2: For each testifying expert that has provided testimony for you in this case, please provide (to the extent not provided earlier):

- (a) A list of all cases in which the testifying expert has submitted testimony, from 2015 to the present;

³ See Attachment A (copy of email from RGEC's counsel).

- (b) Copies of all prior testimony, articles, speeches, published materials and peer review materials written by the testifying expert, from 2015 to the present;
- (c) The testifying expert's billing rate for this proceeding; and
- (d) All documents and communications, including e-mail correspondence, provided to, reviewed by, or prepared by or for the testifying expert in anticipation of the testifying expert filing testimony in this proceeding.

Petty 6-3: For each consulting expert whose mental impressions or opinions have been reviewed by one or more of your testifying experts in this case, please provide (to the extent not provided earlier):

- (a) A list of all cases in which the consulting expert has submitted testimony, from 2015 to the present;
- (b) Copies of all prior testimony, articles, speeches, published materials and peer review materials written by the consulting expert, from 2015 to the present;
- (c) The consulting expert's billing rate for this proceeding; and
- (d) All documents and communications, including e-mail correspondence, provided to, reviewed by, or prepared by or for the consulting expert in anticipation of the testifying expert filing testimony in this proceeding.

RGEC specifically objects to subsections (b) and (d) of these RFIs, claiming that they are not relevant to the issues in this proceeding, nor likely to lead to discoverable information, and that they are overly broad and unduly burdensome. RGEC's objections to subsections (b) and (d) are baseless. Petty requests the cooperative be compelled to respond to the RFIs in their entirety.

Petty's RFI requests regarding consulting and testifying expert qualifications are routine questions frequently posed in PUC proceedings. The requests are narrowly tailored and appropriately limited in time and scope. Tex. R. Civ. P. 192.3(a) provides that "a party may obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or the defense of any other party." Further, a discovery request is relevant "if the information

sought appears reasonably calculated to lead to the discovery of admissible evidence.”⁴ These requests meet that standard.

To determine whether an expert is qualified to make the opinions in his or her testimony, the Commission must be able to evaluate the expert’s knowledge, skill, experience, training, or education in order to determine if they are satisfactorily experienced to form an opinion.⁵ Copies of prior testimony, articles, speeches, published materials, and peer review materials written by the expert are critical to making that determination, as well as determining whether experts have made prior inconsistent statements regarding the issues upon which they opine. Accordingly, the information requested in Petty RFI 6-2 and 6-3, including section (b), is information that is routinely requested by litigants. Additionally, Tex. R. Civ. P. 192.3(e) specifically denotes certain items that are discoverable related to an expert, including the subject matter on which a testifying expert will testify, the 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 the case in which the discovery is sought, regardless of when and how the factual information was acquired, the expert’s mental impressions and opinions formed or made in connection with the case in which discovery is sought, and any methods used to derive them, and the expert’s current resume and bibliography, among other things. Petty has already limited its requested to only the past five years, making its requests specifically limited in time.

Additionally, to aid in the alleged burden of these RFIs, Petty would have been amenable to RGEC submitting copies of the documents requested in subsection (b) insofar as they relate to harmonics, power quality, IEEE 519, electric distribution systems, or variable frequency drives, and simply having RGEC provide a list of the titles of the other documents without providing

⁴ Tex. R. Civ. P. 192.3(a).

⁵ See Tex. R. of Evid. 702.

copies. However, as discussed above, RGEC's counsel has not yet returned any of Petty's communications to allow for these negotiations. Accordingly, RGEC's objection to subsection (b) of Petty 6-2 and 6-3 should be denied in its entirety.

RGEC's objection to subsection (d) of Petty 6-2 and 6-3 is similarly frivolous and should be denied. Subsection (d) requests documents and communications provided to, reviewed by, or prepared by or for the testifying or consulting expert in anticipation of the testifying expert filing testimony in this proceeding. These documents and communications are expressly discoverable under Tex. R. Civ. P. 192.3(e)(6), which states that for testifying and consulting experts, a party may discover "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 a testifying expert's testimony." RGEC even cited to this exact provision in its recent Motion to Compel and Request for In Camera Inspection filed on April 30, 2020.⁶ Tex. R. Civ. P. 193.1(c) provides that a party "may object to written discovery only if a good faith factual and legal basis for the objection exists at the time the objection is made." No such good faith basis exists when RGEC objects to documents that are expressly discoverable under the rules.

Moreover, the information sought in these RFI are directly relevant to this proceeding. Texas jurisprudence has historically applied a broad standard for relevance. Tex. R. of Evid. 401 states that evidence must satisfy two elements to be relevant. First, the offered evidence must be relevant, which means the evidence must make the existence of a fact "more or less probable than it would be without the evidence."⁷ Second, the proposition to be proved must be material, meaning

⁶ See *Complaint of Petty Group LLP's Against Rio Grande Electric Cooperative, Inc.*, Docket No. 49795, RGEC's Motion to Compel Responses to its First and Second RFIs to Petty and Request for In Camera Inspection (Apr. 30, 2020) (citing to this specific provision five times).

⁷ Tex. R. Evid. 401(a); see also *Morale v. State*, 557 S.W.3d 569, 573 (Tex. 2018); *JBS Carriers, Inc. v. Washington*, 564 S.W.3d 830, 836–37 (Tex. 2018); *Perez v. State*, 830 S.W.2d 684, 687–88 (Tex. App.—Corpus Christi 1992); *CNA Ins. v. Scheffey*, 828 S.W.2d 785, 787–88 (Tex. App.—Texarkana 1992); *Blackburn v. State*, 820 S.W.2d 824, 825–26 (Tex. App.—Waco 1991).

the evidence must support a proposition that is a fact of consequence in determining the action;⁸ it has any tendency to make a fact more or less probable than it would be without the evidence; and (2) the fact is of consequence in determining the action.”⁹ RGEC, on the other hand, defines evidence to be relevant if it is “likely to lead to discoverable information.”¹⁰ The information requested in subsection (b) of the referenced RFIs allows for the parties and the Commission to properly evaluate whether the experts are truly qualified to give the opinions they state in their testimony. The information sought is directly relevant to this proceeding as it seeks to establish RGEC’s witnesses’ expertise. Additionally, the information requested in subsection (d) is discoverable under Tex. R. Civ. P. 192.3(e)(6) and relevant to this proceeding so that the parties and the Commission are aware of the surrounding circumstances possibly impacting the opinions of RGEC’s experts. Thus, both subsection (b) and (d) of the aforementioned RFIs meet the standard for relevance and RGEC should be compelled to respond.

RGEC also claims that because it has not yet filed testimony in this proceeding, it has no testifying experts at this date.¹¹ Petty filed its Sixth RFIs on May 1, 2020, requiring a response within ten calendar days, or May 11, 2020.¹² RGEC’s direct testimony in this proceeding is also due on May 11, 2020.¹³ Therefore, on the date that RGEC’s responses to Petty’s Sixth RFIs are due, RGEC will have filed its direct testimony and identified its testifying experts. Therefore, these RFIs are both relevant and appropriate.

⁸ Tex. R. Evid. 401(b); *see also Blackburn*, 820 S.W.2d at 825–26; *Trans-State Pavers, Inc. v. Haynes*, 808 S.W.2d 727, 732–33 (Tex. App.—Beaumont 1991); *Dion v. Ford Motor Co.*, 804 S.W.2d 302, 310 (Tex. App.—Eastland 1991); *Morale*, 557 S.W.3d at 573.

⁹ Tex. R. of Evid. 401; *see also Morale v. State*, 557 S.W.3d 569, 573 (Tex. 2018); *In re N. Cypress Med. Ctr. Operating Co., Ltd.*, 559 S.W.3d 128, 131 (Tex. 2018).

¹⁰ RGEC’s Objections at 2.

¹¹ RGEC’s Objections at 2.

¹² *See Complaint of Petty Group LLP’s Against Rio Grande Electric Cooperative, Inc.*, Docket No. 49795, SOAH Order No. 3 at 2 (Dec. 18, 2019) (requiring responses to RFIs within 10 calendar days).

¹³ *See* SOAH Order No. 5 at 1 (Apr. 15, 2020) (requiring RGEC to file its direct testimony by May 11, 2020).

Additionally, RGEC requests an extension of its requirement to file a corresponding privilege log to May 22, 2020.¹⁴ Commission rules require that if a party's objection is founded upon a claim of privilege, they must file within two working days of filing its objections, an index that lists, for each document: the date and title of the document, the preparer or custodian of the information, to whom the document was sent and from whom it was received, the privilege(s) or exemption(s) that is claimed, and a full and complete explanation of the claimed privilege.¹⁵ This index is commonly referred to as a privilege log. Petty is sympathetic to the unusual circumstances presented by the COVID-19 crisis having also filed its direct testimony during the crisis. Indeed, Petty agreed to RGEC's request for a more than two-week extension to its testimony deadline,¹⁶ but a two-week extension for the privilege log is not warranted, nor reasonable based on the circumstances. The parties are preparing for a mediation scheduled for June 3, 2020. Petty needs adequate time to review both the direct testimony and discovery documents to prepare for this mediation, as well as identify any items on the privilege log that should be addressed. Should mediation fail, Petty must also be in a position to timely prepare rebuttal testimony and prepare for hearing. The extension RGEC requests would be prejudicial toward Petty, as it strategically limits the amount of time Petty has to review and prepare for the upcoming mediation. Petty notes that RGEC was served these RFIs ten days before their testimony deadline, putting RGEC on notice of this requirement well in advance.

This extension request is part of a larger issue. Just as RGEC failed to timely remedy dangerous power quality issues on its system and respond to Petty's complaint with the cooperative, it also has a history of failing to timely respond to discovery requests in this

¹⁴ RGEC's Objections at 2.

¹⁵ 16 TAC 22.144(d)(2).

¹⁶ See RGEC's Motion to Amend and Abate the Procedural Schedule and Petty's Response Deadline to the Motions to Strike Direct Testimony and Request for Expedited Consideration (Apr. 14, 2020).

proceeding. Indeed, Petty was forced to file a motion to compel the discovery responses to Petty's First and Third RFIs to RGEC, as RGEC did not timely file objections or responses to those requests.¹⁷ Accordingly, Petty can agree to an extension of the privilege log requirement to May 13, 2020, two days after RGEC's direct testimony is due, and five calendar days after Commission rules' deadline. This should give RGEC sufficient time to address both its testimony and discovery obligations.

B. **Response to RGEC's Objections to Petty RFI Nos. 6-4 and Petty 6-5:**

Petty 6-4: For each witness filing testimony on your behalf in this proceeding, please provide copies of all communications, including but not limited to e-mail correspondence and text messages, between the witness, including the witness' representatives, colleagues, and/or employees, and RGEC related to harmonics for the time period 2010 to the present.

Petty 6-5: For each witness filing testimony on your behalf in this proceeding, please provide copies of all communications, including but not limited to e-mail correspondence and text messages, between the witness, including the witness' representatives, colleagues, and/or employees, and any other person related to harmonics on the RGEC system for the time period 2010 to the present.

RGEC objects to these requests claiming that they are overly broad and unduly burdensome in that they request information dating back ten years.¹⁸ RGEC claims that a review of ten years of communications would take week and states that it "would most likely take up time that employees need to be spending on essential duties."¹⁹ Petty understands the constraints imposed on all parties due to the current COVID-19 crisis. The current circumstances do not, however, negate RGEC's duty to comply with reasonable discovery requests.

RGEC suggests a two year limitation on these communications, which is unreasonable given the facts of this complaint. If RGEC's time limitation were granted, it would substantially

¹⁷ See *Complaint of Petty Group LLP's Against Rio Grande Electric Cooperative, Inc.*, Docket No. 49795, Petty's Motion to Compel Responses to Its First and Third Requests for Information to RGEC (Nov. 22, 2019).

¹⁸ RGEC's Objections at 3.

¹⁹ RGEC's Objections at 3.

prejudice Petty’s case and allow RGEC to hide relevant communications regarding exactly when RGEC knew it had harmonics problems on its distribution feeder serving the Petty Ranch and what RGEC did to timely correct (or ignore) the power quality problems. The Commission’s Power Quality Rule, PUCT Subst. R. § 25.51 provides: “[i]f an electric utility determines that its operation or facilities, or the operations or facilities of a third party other than a customer, created excessive harmonics that causes or is reasonably likely to cause a customer to receive unsafe, unreliable or inadequate electric service, the electric utility shall remedy the excessive harmonics condition at the earliest practical date.”²⁰ According, the communications sought in Petty 6-4 and 6-5 are directly relevant to this case and narrowly tailored to the power quality issues being raised.

Moreover, RGEC’s claim that it is difficult to look for communications back to 2010 rings hollow. The discovery conducted thus far has presented evidence that RGEC was made aware of the harmonics issues on the Brundage Line as early as 2014.²¹ The direct testimony of Robert D. Grubb explains this evidence, referencing the “Eaton Report” dated October 2014, which was commissioned by RGEC to evaluate power quality issues on its system. The Eaton Report describes harmonics issues on the Brundage Line. Accordingly, RGEC undoubtedly has communications related to harmonics issues prior to RGEC’s commissioning of this report, which are rightfully discoverable in this proceeding. It is critical that all evidence showing RGEC’s knowledge of harmonics issues on their system is provided to Petty and the Commission to adequately assess whether RGEC provided continuous and adequate service. Also at issue in this proceeding is whether RGEC instructed customers causing harmonics issues on its system to install filters or take other adequate measures to correct any power quality issues caused by their large motor loads. These factors provide evidence as to issues raised in the Commission’s Preliminary

²⁰ 16 TAC § 25.51(c)(5).

²¹ See Direct Testimony of Robert D. Grubb, P.E. at 17 and Ex. RG-7 (Apr. 3, 2020).

Order, including whether RGEC failed to provide continuous and adequate service to Petty, in violation of Public Utility Regulatory Act (PURA) § 37.151 and whether RGEC violated the power quality standards adopted by the Commission under that section and set forth in 16 TAC § 25.51 (the Power Quality Rule).²²

Further, Petty has already limited the scope of this request to only include communications related to harmonics issues. RGEC should have capabilities to run searches through their system for such communications. Therefore, these RFIs are not overly broad or burdensome, but rather are narrowly tailored questions seeking information specifically relevant to this proceeding.

Additionally, once again in their Objections, RGEC raises the claim that because it has not yet filed testimony in this proceeding, it has no testifying experts at this date.²³ As stated above, Petty filed its Sixth RFIs on May 1, 2020, requiring a response within ten calendar days, or May 11, 2020.²⁴ RGEC's direct testimony in this proceeding is also due on May 11, 2020.²⁵ Therefore, on the date that RGEC's responses to Petty's Sixth RFIs are due, RGEC will have filed its direct testimony and identified its testifying experts. Therefore, these RFIs are appropriate.

Further, RGEC again seeks a waiver of its privilege log requirements. As stated above, Commission rules require that if a party's objection is founded upon a claim of privilege, they must file within two working days of filing its objections, an index that lists, for each document: the date and title of the document, the preparer or custodian of the information, to whom the document was sent and from whom it was received, the privilege(s) or exemption(s) that is claimed, and a full and complete explanation of the claimed privilege.²⁶ RGEC states that some of

²² Preliminary Order at 2 (Dec 13, 2019).

²³ RGEC's Objections at 3.

²⁴ See *Complaint of Petty Group LLP's Against Rio Grande Electric Cooperative, Inc.*, Docket No. 49795, SOAH Order No. 3 at 2 (Dec. 18, 2019) (requiring responses to RFIs within 10 calendar days).

²⁵ See *Complaint of Petty Group LLP's Against Rio Grande Electric Cooperative, Inc.*, Docket No. 49795, SOAH Order No. 5 at 1 (Apr. 15, 2020) (requiring RGEC to file its direct testimony by May 11, 2020).

²⁶ 16 TAC 22.144(d)(2).

the communications responsive to these RFIs may be protected under the attorney-client or attorney work product privileges. If that is the case, these communications should be documented on a privilege log and provided to Petty within two days of filing RGEC's objections. As emphasized above, the parties are currently preparing for negotiations on June 3, 2020 and Petty cannot agree to an extension of RGEC's obligation from May 8, 2020 to May 22, 2020 as such an extension would be prejudicial to Petty.²⁷ Furthermore, it would be inappropriate to allow RGEC to omit "communications between RGEC employees and its attorneys from February 2019 to the present" as RGEC requests.²⁸ While certain documents during this time period may be privileged, these privileges can be waived under certain circumstances, including if they were "provided to, reviewed by, or prepared by or for" an expert witness in anticipation of a testifying expert's testimony."²⁹ Therefore, RGEC's objections to these RFIs should be denied and its legal obligation to provide a privilege log should remain intact.

C. Response to RGEC's Objections to Petty RFI No. 6-6:

Petty 6-6: Please provide copies of all communications, including but not limited to e-mail correspondence and text messages, related to harmonics for the time period 2010 to the present between RGEC and the following entities and their affiliates:

[REDACTED]

The Commission's Power Quality Rule states "[i]f an electric utility determines that its operation or facilities, or the operations or facilities of a third party other than a customer, created excessive harmonics that causes or is reasonably likely to cause a customer to receive unsafe, unreliable or inadequate electric service, the electric utility shall remedy the excessive harmonics condition at the earliest practical date."³⁰ Rather than take responsibility for its failure to maintain

²⁷ RGEC's Objections at 2.

²⁸ RGEC's Objections at 3.

²⁹ See Tex. R. Civ. P. 192.3(e)(6).

³⁰ 16 TAC § 25.51(c)(5).

reasonable power quality on its distribution system, RGEC alleges the entities listed in this RFI are culpable for harmonics problems on the Brundage Line.³¹ Therefore, communications between these entities and RGEC are imperative to evaluating when RGEC first discovered the harmonics issues on its distribution line and RGEC's response to these entities. RGEC objects to the request stating that it is overly broad and unduly burdensome in that it requests information for the last ten years.³² As stated above, Petty understands the constraints imposed on all parties due to the current COVID-19 crisis. The current circumstances do not, however, negate RGEC's duty to comply with reasonable discovery requests. RGEC suggests a two year limitation on these communications, which is unreasonable given the facts presented here. At issue in this case is specifically how long RGEC has been on notice of the harmonics problems on its system, the related damage to its members, and the efforts it took to timely remedy the impaired power quality.

The discovery conducted thus far has presented evidence that RGEC was made aware of the harmonics issues on the Brundage Line as early as 2014. It is critical that all evidence showing RGEC's knowledge of harmonics issues on their system is provided to Petty and the Commission to adequately assess whether RGEC provided continuous and adequate service to Petty. Further, Petty has already limited the scope of this request to only include communications related to harmonics issues. RGEC should have capabilities to run searches through their system for keywords such as harmonics and IEEE 519 to expedite their review of communications. Therefore, these RFIs are not overly broad or burdensome, but rather are narrowly tailored questions seeking information specifically relevant to this proceeding.

³¹ See RGEC's Responses to Petty's Fourth Set of RFIs at 13 (RGEC's Response to Petty RFI 4-12) (Jan. 10 2019); RGEC's Responses to Petty's Fifth Set of RFIs at 7 (RGEC's Response to Petty RFI 5-5) (Mar. 6, 2020).

³² RGEC's Objections at 4.

D. **Response to RGEC's Objections to Petty RFI No. 6-7:**

Petty 6-7: Please provide the annual gross and net revenues received by RGEC for the time period 2010 to the present from the following entities and their affiliates: [REDACTED]

[REDACTED] This request applies to each site or property served by RGEC for the listed parties.

RGEC claims that this RFI is not relevant to this proceeding, when it in fact is directly relevant to the dispute at hand. Tex. R. Civ. P. 192.3(a) states that “[i]n general, a party may obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party.”

As explained above, RGEC has claimed that the entities listed in this RFI have caused or contributed to many of the harmonics problems on the Brundage Line. Therefore, the revenues RGEC received from these entities are directly relevant to this case, as they may be an explanation or motive for RGEC’s response to harmonics issue, or lack thereof. As stated in the Direct Testimony of Petty witness Robert D. Grubb, P.E., RGEC had a [REDACTED] increase in energy sales to oil and gas loads from 2010 to 2018, accompanied by a [REDACTED] increase in energy revenues to those loads.³³ The annual gross and net revenues requested here may demonstrate that RGEC was accepting revenues from these entities, which were causing harmonics issues, without taking into account the adverse quality impacts for other residential customers who happened to also receive service from the Brundage Line. The request is also appropriately restricted in time to the last ten years, as during this is the time period over which these customers began to connect to RGEC’s system and increase RGEC’s revenues. Therefore, this RFI is relevant to this proceeding and properly limited in time and scope.

³³ See Direct Testimony of Robert D. Grubb, P.E. at 25 (Apr. 3, 2020); see also Deposition Tr. of L. Powell at 46-50 (Jan. 28, 2020); Exhibit RG-10.

E. *Response to RGEC's Objections to Petty RFI No. 6-8:*

Petty 6-8: Please provide copies of all electric service agreements, including but not limited to interconnection agreements and facilities extension agreements, between RGEC and any of the following entities: [REDACTED] This request applies to each site or property served by RGEC for the listed parties.

RGEC contends this request is not relevant to this proceeding nor limited to the discovery of admissible information. RGEC also claims that to the extent the request seeks information from each site or property, even those outside the feeder at issue in this case, it is equally not relevant.

As a preliminary point, Petty agrees that it can limit its request to electric service agreements and settlement agreements related to sites on the Brundage Line. However, the overall request for agreements is completely relevant to this proceeding, as these agreements demonstrate the customers RGEC allowed to connect to its system and the penalties, if any, they enforced on these entities for their harmonic contributions. These agreements, which can be provided confidentially to parties and the Commission, may be supporting evidence explaining RGEC's failure to provide Petty with continuous and adequate service.³⁴

Last, this request is not overly broad or unduly burdensome as RGEC claims.³⁵ The request is also appropriately restricted in time to the last ten years, as during this is the time period over which the entities listed in this request began to connect to RGEC's system. Therefore, this RFI is relevant to this proceeding and properly limited in time and scope.

³⁴ See also Tex. R. Civ. P. 192.3(g) (stating that with regard to settlement agreements, "[a] party may obtain discovery of the existence and contents of any relevant portions of a settlement agreement").

³⁵ RGEC's Objections at 5.

III. CONCLUSION AND REQUESTED RELIEF

For the reasons discussed herein, Petty respectfully requests that the ALJs deny RGEC's Objections and grant Petty's motion to compel RGEC's response to Petty RFI Nos. 6-2, 6-3, 6-4, 6-5, 6-6, 6-7, and 6-8; and grant Petty such further relief to which it may be entitled.

Respectfully submitted,

/s/Meghan E. Griffiths
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ATTORNEYS FOR PETTY GROUP, LLP

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the forgoing was served on all parties of record in this proceeding on the 11th day of May, 2020 by hand delivery, facsimile, electronic mail, First Class U.S. Mail, or overnight delivery.

/s/ Alisha Mehta
Alisha Mehta

ATTACHMENT A

From: tshea <tshea@tshealaw.com>
Sent: Wednesday, May 6, 2020 11:56 AM
To: Griffiths, Meghan E. <mgriffiths@jw.com>
Cc: Julia Simonet <jsimonet@cozen.com>; David Barron <dbarron@cozen.com>
Subject: Objections to 6th RFIs

****RECEIVED FROM EXTERNAL SENDER – USE CAUTION****

Meghan,

Attached are our objections to the 6th RFIs that we plan to file today. This is the confidential version. Please let me know if you would like to discuss if there is any room for limitations or agreements on your part. Given the short time period to respond (which included a weekend) and preparation of our testimony, I was not able to get with you before today. However, I am happy to continue the discussion before you have to file your motion to compel to see if there can be agreement.



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