

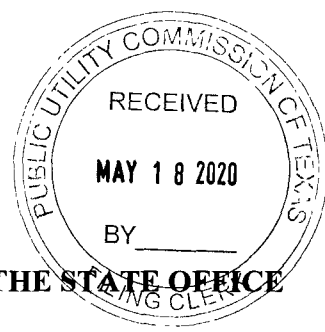
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**SOAH DOCKET NO. 473-20-1118
PUC DOCKET NO. 49795**



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

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**BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS**

**SOAH ORDER NO. 6
CLARIFYING ABATEMENT; STRIKING REPLY AND SUR-REPLY;
RULING ON PRIVILEGE LOG REQUIREMENT**

State Office of Administrative Hearings (SOAH) Order No. 5 issued on April 15, 2020, amended and abated the procedural schedule in this case pursuant to the parties’ request. However, after the abatement of this proceeding, Petty Group, LLP (Petty) and Rio Grande Electric Cooperative, Inc. (RGEC) have continued to make filings related to discovery, including requests for information, objections, motions to compel, and various responses. Based on the filings, it appears that the parties’ request to abate this proceeding was intended to exclude discovery. Accordingly, the Administrative Law Judges (ALJs) clarify that the abatement of this proceeding does not include discovery.

RGEC has a pending motion to compel filed on April 30, 2020, to which Petty filed a response on May 7, 2020. RGEC filed a reply to Petty’s response on May 14, 2020, and Petty filed a sur-reply to RGEC’s reply on May 15, 2020. The procedures for discovery are set forth in 16 Texas Administrative Code (TAC) § 22.144. Under Subsection (d)(1), “[a]ll arguments upon which the objecting party relies shall be presented in full in the objection.” Subsection (e) provides for the party seeking discovery to file a motion to compel, and subsection (f) provides for the party resisting discovery to file a response to the motion to compel. There is no provision for a reply to a response to a motion to compel or a sur-reply. The ALJs will disregard RGEC’s reply and Petty’s sur-reply, and the parties shall refrain from filing future replies and sur-replies in discovery disputes.

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On May 6, 2020, RGEC filed objections to Petty's Sixth Set of Requests for Information (RFIs) and requested an extension of time and partial waiver of the requirement to file a privilege log under 16 TAC § 22.144(d)(2). RGEC requested waiver of the privilege log requirement for communications between RGEC employees and its attorneys from February 2019 (when Petty filed its complaint) to the present because it claims the communications are core work product and not discoverable. In addition, at the time RGEC filed its objections, it had not yet filed its direct testimony and, therefore, contended it was unable to provide a privilege log within two days of filing its objections because it did not have any testifying experts. Further, given its limited resources due to COVID-19 activities, RGEC requested an extension of time until May 22, 2020, to provide a privilege log. RGEC filed its direct testimony on May 11, 2020.

Petty responded on May 11, 2020 stating that RGEC's request for partial waiver of the privilege log requirement is inappropriate because, while certain communications during the referenced time period may be privileged, the privilege can be waived. Petty also states that an extension of the privilege log requirement to May 22, 2020, would be prejudicial to Petty because the parties are currently preparing for mediation on June 3, 2020, and Petty needs adequate time to review the direct testimony, discovery and any items on the privilege log that should be addressed. However, Petty agrees to an extension of the privilege log deadline to May 13, 2020.


If a party's objection is founded upon a claim of privilege, 16 TAC § 22.144(d)(2) requires the party to file a privilege log within two working days of filing the objections. RGEC's request for partial waiver of the privilege log requirement relates to communications that RGEC claims are privileged, and therefore, the requirement for filing a privilege log applies. Accordingly, RGEC's request for partial waiver of the privilege log requirement is **DENIED**. The ALJs acknowledge that COVID-19 has resulted in unprecedented changes to the work environment that may require flexibility in applying the typical timelines in the Commission's rules.¹ RGEC notes that its employees are working from home and must also provide essential services related to providing reliable service. The ALJs find merit in RGEC's request for an extension of time to file

¹ See also *Issues Related to the State of Disaster for the Coronavirus Disease 2019*, Docket No. 50664, Order Suspending Rules (Mar. 16, 2020), available at: http://interchange.puc.texas.gov/Documents/50664_3_1055816.PDF.

its privilege log. Accordingly, the request is **GRANTED** and RGEC's privilege log shall be due on May 22, 2020.

The ALJs will address the pending motions to compel in a future order.

SIGNED May 18, 2020.



CASSANDRA QUINN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS



ELIZABETH DREWS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS