



Control Number: 49795



Item Number: 130

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

COMPLAINT OF PETTY GROUP, LLP	§	BEFORE THE
AGAINST RIO GRANDE ELECTRIC	§	PUBLIC UTILITY COMMISSION
COOPERATIVE, INC.	§	OF TEXAS

**RIO GRANDE ELECTRIC COOPERATIVE INC.'S
RESPONSE TO MOTION TO COMPEL**

Rio Grande Electric Cooperative, Inc. ("RGE") files this Response to Petty's Group LLP's ("Petty") Motion to Compel Responses to Petty's Sixth Requests for Information. In support of this motion, RGE respectfully shows as follows:

I. RESPONSES TO SPECIFIC REQUESTS

a. RFI Nos. 6-2 and 6-3

It is well settled that the discovery requests must be relevant to the subject matter of a proceeding, which Petty has acknowledged in its motion. RGE has already spoken with Petty counsel and provided information responsive to RFI Number 6-2(b) related to harmonics on a distribution system. To the extent that Petty seeks information on other topics, RGE is not required to provide that information because it is overbroad and not relevant to any of the Commission's issues in this case.

Number 6-3 deals with information from consulting experts, and RGE has not retained any consulting experts, and made clear in its responses that it does not have any information responsive to that request for that reason.

The only remaining issue is with part 6-2(d), which requests:

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.

RGE has already provided information responsive to this request with respect to David Mueller

and Danny Wells. With respect to Rogelio Andrade and Amber Conrad, these individuals are RGEC employees and therefore not discoverable. ***Further, RGEC is not required to complete a privilege log for communications between RGEC counsel and RGEC employees because RGEC is a party to this lawsuit.***

Texas Rule of Civil Procedure 193.3(c) provides an exemption to the privilege log requirement, stating:

Without complying with paragraphs (a) and (b) [privilege log sections], a party may withhold a privileged communication to or from a lawyer or a lawyer's representative or a privileged document of a lawyer or lawyer's representative

- (1) created or made from the point at which a party consults a lawyer with a view to obtaining professional legal services from the lawyer in the prosecution or defense of a specific claim in litigation in which the discovery is requested and
- (2) concerning the litigation in which the discovery is requested.

This rule applies to communications between a party and its lawyer. *In re Monsanto Co.*, 998 S.W.2d 917. 924 (Tex. App.—Waco 1999)(orig. proceeding). Accordingly, RGEC is not required to produce a privilege log for communications between counsel and any RGEC employees after the complaint in the instant lawsuit was filed and this information is not discoverable.

These communications also include RGEC's counsel's core work product, which is not discoverable. Core work product is defined as: "the attorney's or the attorney's representative's mental impressions, opinions, conclusions, or legal theories." *In re Bexar County Criminal Dist. Attorney's Office*, 224 S.W.3d 182 (Tex. 2007). (quoting Tex. R. Civ. P. 192.5(b)(1)). Core work product "is inviolate and flatly 'not discoverable,' subject to narrow exceptions" which do not apply here. Core work product is sacrosanct and its protection impermeable, and RGEC is not required to produce any documents constituting core work product. *Id.* at 187–88.

Finally, Petty has argued in its response to RGEC's motion to compel that its communications with its experts are not discoverable because they do not relate directly to the issues on which the witness filed testimony. *See* Petty's Response to RGEC's Motion to Compel at 6 (Item 109). If Petty is correct in this assertion, the RGEC likewise should not have to produce anything that was not specifically reviewed or relied upon in anticipation of testimony from its experts.

b. RFI Nos. 6-4, 6-5, 6-6 and 6-7

Although the scope of discovery is broad, it is limited by the legitimate interests of the opposing party to avoid overly broad requests, harassment, or disclosure of privileged information. *Fethkenher v. Kroger Co.*, 139 S.W.3d 24, 29-30 (Tex. App.—Fort Worth 2004, no pet.). A central consideration in determining overbreadth is whether discovery requests could have been more narrowly tailored. Discovery may not be used as a fishing expedition or to impose unreasonable expenses on the opposing party.

These RFIs include an overbroad request for communications dating back 10 years. The ALJ should deny the requests for communications going back that far because it would be unduly burdensome for RGEC to search for and review those communications for 10 years. These RFIs also request irrelevant information because even Petty admits that there is no evidence of any knowledge of harmonics issues before 2014. *See* Petty's Motion to Compel at 9 (Item 111).

RGEC has already produced information responsive to this request as it has produced over 6000 pages of non-privileged communications from the past 5 years. RGEC should not be required to produce communications between counsel and RGEC after the complaint was filed for the reasons discussed in the previous section.

c. RFI No. 6-8

RGEC objected to producing contracts with other customers because those contract have no bearing on RGEC's relationship with Petty or any of the issues set out by the Commission in this matter. Because this request seeks information that is not relevant to the issues in the lawsuit, the motion to compel should be denied.

II. PETTY'S ALLEGATIONS OF FAILURE TO COMPLY WITH RULES

Due to the effect that COVID-19 has had on all parties and counsel, RGEC chose not to focus on Petty's failure to comply with the rules in filing its motion to compel, but chose instead to focus on the merits. However, Petty attempts to paint RGEC in an unfavorable light and makes the failure to discuss objections and timeliness before filing a central issue in its motion to compel, but Petty is not entitled to any relief on this basis due to its own repeated requests for extensions to deadlines and failures to comply with the rules and deadlines.

Petty's first request for an extension was for responses to RGEC's first requests for information. RGEC served these on November 26, 2019, and Petty was allowed an extension until December 18, 2019, over two weeks past the deadline. *See* Item No. 46, Letter to ALJ. Petty was then unable to meet the initial deadline of filing its direct testimony, and requested a *four week* extension, which RGEC granted. *See* Item No. 61, Agreed motion to modify procedural schedule. This is longer than any extension RGEC has asked for or received.

RGEC then sent its second set of RFIs to Petty on March 26, 2020,¹ to which objections were due on March 31, 2020 and a privilege log on April 2, 2020 and responses due on April 5, 2020. Petty did not timely file (and did not ever file) objections, but instead filed its responses

¹ RGEC filed these RFIs and served them on counsel on March 26, 2020. *See* Exhibit A. Due to a technical issue with central filing, they did not appear on the interchange until a later date. Petty experienced a similar issue. *See* Exhibit B.

on April 8, 2020 and a privilege log on April 13, 2020, 11 days after the deadline. Petty never contacted RGEC to ever discuss these objections. While counsel for RGEC did have an oversight in failing to contact Petty to discuss objections to the 6th RFIs, this oversight is easily excusable. Counsel for RGEC was working with experts on a very tight deadline for testimony. Furthermore, the RFIs were filed on a Friday, and the deadline for objections is five days, leaving essentially only three working days to file objections all while attempting to complete testimony. Nonetheless, counsel for RGEC has since reached out to Petty to discuss the objections and is optimistic some objections will be resolved. Moreover, some of the objections will depend on the ALJ's ruling on RGEC's motion to compel (for example, whether information is required to be reviewed or relied up by the expert) For these reasons, Petty is not entitled to any relief related to any timeliness argument.

PRAYER

For these reasons, RGEC requests the ALJ deny the motion to compel and allow RGEC until one week after its ruling on this motion to file its privilege log to the extent any is required based on the rulings on the pending motions to compel. RGEC respectfully requests that the Commission grant any and all other relief, legal and equitable, to which it is justly entitled.

Respectfully submitted,

Shea & Associates, PLLC

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**ATTORNEYS FOR RIO GRANDE ELECTRIC
COOPERATIVE, INC.**

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document will be served on all parties of record on May 18, 2020 in accordance with 16 TAC § 22.74 and the Commission's Orders regarding electronic filing and service.

/s/ Tammy Shea

PUC Filing submission confirmation.

To tshea@tshealaw.com

Filing Complete

Next Steps:

YOU HAVE COMPLETED THE ELECTRONIC PORTION OF YOUR FILING, HOWEVER, IN ORDER FOR THE PUC TO BE ABLE TO PROCESS YOUR FILING, YOU MUST SUBMIT THE FOLLOWING INFORMATION TO THE CENTRAL RECORDS EMAIL (CentralRecords@puc.texas.gov) :

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WE APPRECIATE YOUR COOPERATION AND PATIENCE DURING THIS TIME.

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Tracking Number: PYASVGFD

Filing Submitted on	3/26/2020 2:29:23 PM
Control Number	49795 COMPLAINT OF PETTY GROUP, LLP AGAINST RIO GRANDE ELECTRIC COOPERATIVE, INC.
Filing Party	RIO GRANDE ELECTRIC COOPERATIVE, INC.
Filing Type	REQUEST FOR INFORMATION
Description	RGEC's Second RFIs to Petty
Documents	2nd RFI to Petty.pdf
Addendum Included	No
Submitted By	Tammy Shea 400 N. Sam Houston Pkwy E Suite 413 Houston, TX 77396 7134100856 tshea@tshealaw.com

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3/26/2020 3:31 PM

RGEC's Second RFIs

To rustin.tawater@puc.texas.gov <rustin.tawater@puc.texas.gov> • Meghan Griffith <mgriffiths@jw.com>

Please see attached.

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- 2nd RFI to Petty.pdf (223 KB)

RE: PUC 49795, Petty Group, LLP's Responses to RGEc's Second RFIs [IMAN-JWDOCS.FID3613835]

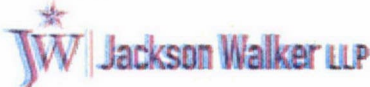
To tshea <tshea@tshealaw.com> • dbarron@cozen.com <dbarron@cozen.com> • rustin.tawater@puc.texas.gov <rustin.tawater@puc.texas.gov> • Eleanor D'Ambrosio <eleanor.dambrosio@puc.texas.gov> • jsimonet@cozen.com <jsimonet@cozen.com> Copy Griffiths, Meghan E. <mgriffiths@jw.com> • Ferri, Jennifer A. <jferri@jw.com> • Pat Starkie <pstarkie@jw.com>

Ms. Shea: Attached is the confirmation we received from Central Records on Wednesday of the filing of Petty's Responses to RGEc's Second Requests for Information. There does seem to be a delay in processing filings at Central Records.

I am not sure why you did not receive a Sharefile notification. Here is a link to the site in case anyone is having trouble locating it.

<https://jacksonwalker.sharefile.com/home/shared/fof3ceed-9456-4036-90a2-397fba8241bb>

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From: tshea <tshea@tshealaw.com>
Sent: Thursday, April 9, 2020 11:37 AM
To: Brown Willis, Donna <dwillis@jw.com>; dbarron@cozen.com; rustin.tawater@puc.texas.gov; D'Ambrosio, Eleanor <Eleanor.D'Ambrosio@puc.texas.gov>; jsimonet@cozen.com
Cc: Griffiths, Meghan E. <mgriffiths@jw.com>; Ferri, Jennifer A. <jferri@jw.com>; Starkie, Pat <pstarkie@jw.com>
Subject: Re: PUC 49795, Petty Group, LLP's Responses to RGEc's Second RFIs [IMAN-JWDOCS.FID3613835]

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

Thank you. I did not get a filing notification (this has been an issue on previous cases too as I think they are short staffed given the issues with Corona). However, I also did not get the shared filed notice.

On April 8, 2020 5:24 PM Brown Willis, Donna <dwillis@jw.com> wrote:

We have filed Petty Group, LLP's Responses to RGEc's Second RFIs with PUC.

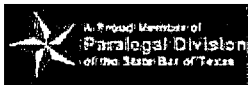
Both the public and confidential documents are being uploaded to a Sharefile site are being uploaded to our Sharefile site. Please let me know if you have any issues with accessing the documents on Sharefile.

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- PUC Filing Submission Confirmation; PUC Docket 49795; Petty's Responses to RGEC's Second Requests for Information.pdf (62 KB)
- 25578838_1_Public-Petty Group, LLP's Responses to Rio Grande Electric Cooperative, Inc.'s Second Requests for Information.pdf (885 KB)
- image001.jpg (6 KB)
- image002.jpg (3 KB)