



# RAILROAD COMMISSION OF TEXAS

## HEARINGS DIVISION

### **ORDER REGARDING EXCEPTION TO INITIAL DISCLOSURES PURSUANT TO TEXAS RULE OF CIVIL PROCEDURE 194**

On January 1, 2021, an amended version of Texas Rule of Civil Procedure (TRCP) 194 became effective, requiring parties to a case to automatically provide initial disclosures, whereas the prior version of the rule required disclosure only upon request by a party. Commission rule § 1.51(6) references TRCP 194 rather than providing specific language (See 16 Tex. Admin. Code § 1.51(6) (request to a party for disclosures pursuant to Texas Rules of Civil Procedure 194)). As such, clarification is needed regarding whether parties to proceedings within the jurisdiction of the Railroad Commission of Texas (RRC) should follow the current amended version of TRCP 194. Given that it is unnecessary for many parties before the RRC to engage in the discovery process, it would be overly burdensome to require initial disclosures automatically be provided.

Therefore, in the interest of justice and with good cause shown pursuant to 16 Tex. Admin. Code § 1.3(a) (Exceptions and Suspension of Rules), an ongoing exception to 16 Tex. Admin. Code § 1.51(6) is hereby GRANTED for all cases in the Hearings Division. The exception shall remain in place until Rule § 1.51(6) is amended by the RRC. Parties to a case before the Hearings Division should follow the language set out below unless otherwise directed or ordered by the administrative law judge (ALJ) assigned to the case.

### **REQUEST FOR DISCLOSURES**

#### **(1) Request**

A party may obtain disclosure from another party of the information or material listed below under **(2) Content** by serving the other party, no later than 30 days before the end of any applicable discovery period, the following request: "Pursuant to the order issued by the Hearings Division regarding initial disclosures issued on September 20, 2021, you are requested to disclose, within 30 days of service of this request, information or materials described in the order as follows (provide the language for all relevant items requested from the list below)."

#### **(2) Content**

A party may request disclosure of any or all of the following:

- (a) the correct names of the parties to the contested case;
- (b) the name, address, and telephone number of any potential parties;

(c) the legal theories and, in general, the factual bases of the responding party's claims or defenses;

(d) the name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case;

(e) for any testifying expert:

(1) the expert's name, address, and telephone number;

(2) the subject matter on which the expert will testify;

(3) the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting such information;

(4) if the expert is retained by, employed by, or otherwise subject to the control of the responding party:

(A) 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 testimony; and

(B) the expert's current resume and bibliography;

### **(3) Response**

Unless otherwise ordered by the ALJ or agreed by the parties, responses to written discovery requests shall be made in accordance with 16 Tex. Admin. Code § 1.52. Responses to requests for disclosure and any associated documents thereto shall be served on the requesting party. Notice of service shall be given to all parties.

### **(4) Unresolved Disputes**

If a dispute arises regarding requests for disclosure that is not specifically covered by this order or is unclear under this order, and the parties cannot reach agreement, then the parties should seek resolution by filing a motion with the ALJ assigned to the case.

ISSUED this 20th day of September 2021.



Dana Avant Lewis  
Director, Hearings Division