

**TREC-2010 Legal Track - Interactive Task**  
**Topic-Specific Guidelines - Topic 301**  
**Updated: 09/29/10**

## **1. Introduction - The Purpose and Use of this Document**

This document is intended to clarify the intent and scope of Topic 301 featured in the TREC-2010 Legal Track's Interactive Task. The document is a summary of the guidance that the Topic Authority for Topic 301 gave to the participating teams in the course of their work on the task. It is intended to guide the volunteer assessors in their review of documents contained in the evaluation samples.

The Interactive Task tests how effective participating teams are at replicating a Topic Authority's conception of relevance across a test population of documents.<sup>1</sup> In assessing the sampled documents on the basis of which the teams' efforts will be evaluated, it is vital that the documents be reviewed in accordance with the Topic Authority's conception of relevance, as outlined in this document. The criteria specified herein represent the Topic Authority's conception of relevance and are the criteria by which assessors should judge the relevance of the documents they review.

While the criteria specified in this document seek to clarify the scope of the topic, it is to be expected that assessors will, in the course of their review, encounter documents that prompt questions that are not addressed by the criteria outlined below. In such instances, the assessors are asked to submit their questions to us via the link on the review platform; we will provide answers to such questions as soon as possible.

Please note that this document is intended to provide topic-specific guidance for determining relevance. Guidance on general procedures for conducting the assessment exercise is provided in a companion document (the "How-To' Guide for Assessors"). Again, assessors with any questions, procedural or topic-specific, should not hesitate to email us their questions.

## **2. Statement and General Characterization of the Topic**

The document request that is the basis for Topic 301 is stated as follows (see Complaint K).

All documents or communications that describe, discuss, refer to, report on, or relate to onshore or offshore oil and gas drilling or extraction activities, whether past, present or future, actual, anticipated, possible or potential, including, but not limited to, all business and other plans relating thereto, all anticipated revenues

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1 For purposes of this document, the words "relevant" and "responsive" are interchangeable.

therefrom, and all risk calculations or risk management analyses in connection therewith.

The request targets documents that fall into one or more of three categories:

1. Any documents related to the business of onshore or offshore oil and gas drilling or extraction activities.
2. Business Plans and other documents providing information regarding revenues from oil and gas drilling or extraction activities.
3. Documents reflecting risk calculations or risk management analyses about oil and gas drilling or extraction activities.

### **3. Guidelines for Determining Responsiveness**

As explained in the “How-To” Guide, the Topic Authority in this exercise plays the part of a senior attorney overseeing a large document production. An attorney in that role must weigh his/her obligations under the document request, as well as the risks of having the completeness and accuracy of the production challenged in court. The outcome of these considerations is found in the topic characterization (above) and the guidelines provided below.

Documents that discuss, or are evidence of, the following subject matter are to be considered responsive for purposes of this exercise.

#### **3.1. Responsive Subject Matter, Topic 301 Generally.**

- 3.1.1. Each document is to be evaluated for responsiveness within the “four-corners” of the document. Responsiveness should not be speculative. A document must provide responsive information without requiring the consideration of tangential information.
- 3.1.2. There are no date restrictions that apply to this topic. Each document is to be assessed for responsiveness regardless of its date.
- 3.1.3. Drafts or redlined versions of documents responsive to this topic should also be considered responsive. Legal privileges should not be considered when assessing responsiveness to this topic.
- 3.1.4. All documents responsive to this topic, regardless of which category or categories they fall within, must contain substantive evidence related to the business of or activities surrounding oil and gas drilling or extraction.
- 3.1.5. Documents may relate to the business of oil and gas drilling and extraction anywhere in the world, not just in the United States.

- 3.1.6. Documents responsive to this topic may discuss either or both onshore or offshore oil and gas drilling or extraction activities. This would include documents discussing the transportation of oil and/or gas along pipelines.
- 3.1.7. All documents responsive to this topic should relate specifically to activities performed by the company, not just to general industry activity or the business of oil and gas drilling or extraction generally. Documents that discuss oil and gas drilling or extraction activities generally, or as applicable to the industry at large, without specifically referencing activity performed by the company are nonresponsive.

### **3.2. Documents Responsive to Topic 301, Category 1.**

- 3.2.1. Documents that discuss the company's actual past or present oil and gas drilling or extraction activities are responsive.
- 3.2.2. Documents that discuss the company's planned or anticipated future oil and gas drilling or extraction activities are responsive even if the future activity is not carried out.
- 3.2.3. Documents that discuss possible or potential oil and gas drilling or extraction activities to be undertaken by the company are responsive even if the activity is not carried out.

### **3.3. Documents Responsive to Topic 301, Category 2.**

- 3.3.1. Documents must discuss revenue derived from oil and gas drilling or extraction activities.
- 3.3.2. Documents may be "high-level" or "company-wide" documents that have, as a component, a discussion of revenue derived from oil and gas drilling or extraction activities. A document may be responsive to this topic even if it covers a much broader report on or discussion about financial information.

### **3.4. Documents Responsive to Topic 301, Category 3.**

- 3.4.1. Documents must involve a risk analysis or risk calculation of the company's oil and gas drilling or extraction activities.

## 4. Examples of Responsive and Nonresponsive Documents

### 4.1. Topic 301 Generally.

#### 4.1.1. Examples of *Responsive* documents.

- Documents involving offshore drilling by Mariner Energy, a Louisiana-based petroleum exploration and production company partially owned by the company.
- Documents involving offshore drilling by BHLP.
- Documents discussing Project Seabreeze.
- Minutes or reports that discuss oil and gas drilling or extraction activity by the company or any subsidiaries.
- Documents about the UBP Task Force.

#### 4.1.2. Examples of *Nonresponsive* documents.

- Newspaper articles and other third-party media coverage, including auto-generated emails (e.g. NY Times Daily News Summary), about oil and gas drilling or extraction generally or about the oil and gas industry, unless they are forwarded onwards with substantive comments by company employees that tie the articles to the company's activities.
- Sections of the Code of Federal Regulations ("CFR") relating to the regulation of oil and gas drilling or extraction.
- Testimony of government officials (e.g. Alan Greenspan) regarding the oil and gas industry.
- Deposition transcripts of company employees are nonresponsive, unless they specifically discuss the company's oil and gas drilling or extraction activities, revenues therefrom, or risk analyses in connection therewith.
- Documents related to interactions with political figures discussing policy considerations relevant to the oil and gas industry.
- Documents from the US WTO promoting open markets for energy services, including oil and gas drilling.
- Documents about Indian Mesa, a wind energy related entity.
- The company's document retention notice.
- A calendar entry or meeting request or notice stating nothing further than the time, place, and attendees for a meeting with industry participation.
- A list of companies, some of which provide oil and gas drilling services, with no further context.

- A list of outside counsel who are assigned to various contracts with companies who engage in oil and gas extraction activities.
- The company's response to an RFP for IT solutions.
- Documents that discuss staffing or headcount for the company's oil and gas drilling or extraction businesses.

## 4.2. Topic 301, Category 1.

### 4.2.1. Examples of *Responsive* documents.

- Weekly internal reports that discuss, among other topics, the company's oil and gas drilling or extraction activities.
- Internal company newsletters, including "EnTouch," that discuss, among other topics, the company's oil and gas drilling or extraction activities.
- Issues of BTU Weekly that discuss, among other topics, the company's actual or planned activity related to oil and gas drilling or extraction.
- Shareholder presentations, financial presentations, or reports that discuss the company's oil and gas drilling or extraction activities.
- Press releases, Qs&As, and talking points that discuss the company's oil and gas drilling or extraction activities.
- Construction Agency Agreement that relates to constructing a facility for, among other things, the extraction of gas.
- Plans to survey, analyze and process 3D seismic data for oil and gas extraction.
- A list of generators and suppliers.
- Documents discussing the company's plans for oil and gas drilling or extraction activities in specific locations nationally or internationally.

### 4.2.2. Examples of *Nonresponsive* documents.

- Communication from the company's corporate counsel providing a "representative recitation of services" for core company trademarks.
- Memo from the US WTO, promoting open markets for energy services, including oil and gas drilling.
- A list of companies, some which provide oil and gas drilling services.
- Weekly natural gas reports prepared by third parties that do not specifically mention the company's oil and gas drilling or extraction activities.

### 4.3. Topic 301, Category 2.

#### 4.3.1. Examples of *Responsive* documents.

- Copies of the company's 10Ks and 10Qs and other SEC filings.
- Copies of the company's audited financial statements.
- Copies of the company's annual reports.
- Copies of the company's business plans, profit plans and other documents that provide information on the company's assets, liabilities, equity, income and expenses, some of which relates to oil and gas drilling or extraction activities.
- Shareholder presentations or reports that discuss the company's revenues derived from oil and gas drilling or extraction activities.
- Press releases, Qs&As, and talking points that discuss the company's revenues derived from oil and gas drilling or extraction activities.
- Documents discussing the company's financial goals and objectives.
- Spreadsheets of invoices or payments, some of which involve oil and gas drilling companies.
- Agreements related to revenues generated from the business of oil and gas drilling or extraction including, without limitation, Gas Purchase Agreements, Purchase and Sale Agreements, Termination Agreements, Gas Gathering Agreements, Field Services Agreements, Gas Turbine Purchase Agreements, Compression Administration Agreements, Energy Management Services Agreements.
- Enron Online Management Report related to gas trading and other documents related to the price of natural gas.
- Batch funding requests.
- Management's Discussion and Analysis of Financial Condition and Results of Operations.
- Documents showing financial transactions around a project, Raptor-I, involving oil and gas exploration and transportation.
- Memo re EES Canada discussing potential revenue related to deregulation.
- Global Contract Report indicating volumes and value of oil contracts; Credit Letter Log indicating volumes and levels of crude oil.
- Spreadsheets of financial reconciliations or profits and losses tied to the company's oil and gas drilling or extraction activities.

#### 4.3.2. Examples of *Nonresponsive* documents.

- Derivatives Trading Agreements and related documents.

#### 4.4. Topic 301, Category 3.

##### 4.4.1. Examples of *Responsive* documents.

- Risk management policies, proposals, and other documents that discuss operational risk management.
- Probabilistic Risk Assessment (“PRA”) or other systematic or comprehensive safety assessments or analyses to evaluate risks.
- Documents that assess the magnitude or severity of the possible adverse consequence(s) of an event or failure and the likelihood or probability of occurrence of each consequence.
- Regulatory Risk Management Reports.
- Spill Prevention Control and Countermeasure Plans (“SPCC”).
- Emails that evaluate candidates to handle risk management.
- Risk Assessment and Deal Approval Sheet for Energy and Facilities Management.
- Memo re Legal Risks re Storage and Gas Purchase Agreement, particularly the sections on environmental liability and abatement.
- Enterprise risk management (“ERM”) documents.
- Interconnect Agreements that discuss the delivery of the commodity, rather than drilling or extraction and allocate risks to each party.
- Documents involving risk assessment of emissions.
- Documents assessing risk of supply-side strategies.
- External due diligence for a pipeline project in Illinois.
- Documents referencing Standard Industrial Classification “SIC” codes as they relate to the company’s oil and gas drilling or extraction business.

##### 4.4.2. Examples of *Nonresponsive* documents.

- Documents that discuss risk associated with corporate activities other than the company’s oil and gas drilling or extraction.
- Documents that discuss risk associated only tangentially with oil and gas drilling or extraction, such as investment in or trading of securities involving oil and gas drilling or extraction.

- Risk Assessment and Control Deal Approval Sheets and other documents that assess financial and legal risk pertaining to a financial transaction, rather than risk associated with oil and gas drilling or extraction.
- Material generated by third-party hosted risk management conferences, including agendas and brochures.
- Project Merlin Due Diligence Report and other documents that analyze proposed corporate acquisitions or perform due diligence into financial and legal soundness of the proposed acquisition rather than evaluate oil and gas drilling or extraction activity.

**TREC-2010 Legal Track - Interactive Task**  
**Topic-Specific Guidelines - Topic 302**  
**Updated: 11/09/10**

**1. Introduction - The Purpose and Use of this Document**

This document is intended to clarify the intent and scope of Topic 302 featured in the TREC-2010 Legal Track's Interactive Task. The document is a summary of the guidance that the Topic Authority for Topic 302 gave to the participating teams in the course of their work on the task. It is intended to guide the volunteer assessors in their review of documents contained in the evaluation samples.

The Interactive Task tests how effective participating teams are at replicating a Topic Authority's conception of relevance across a test population of documents.<sup>1</sup> In assessing the sampled documents on the basis of which the teams' efforts will be evaluated, it is vital that the documents be reviewed in accordance with the Topic Authority's conception of relevance, as outlined in this document. The criteria specified herein represent the Topic Authority's conception of relevance and are the criteria by which assessors should judge the relevance of the documents they review.

While the criteria specified in this document seek to clarify the scope of the topic, it is to be expected that assessors will, in the course of their review, encounter documents that prompt questions that are not addressed by the criteria outlined below. In such instances, the assessors are asked to submit their questions to us via the link on the review platform; we will provide answers to such questions as soon as possible.

Please note that this document is intended to provide topic-specific guidance for determining relevance. Guidance on general procedures for conducting the assessment exercise is provided in a companion document (the "How-To' Guide for Assessors"). Again, assessors with any questions, procedural or topic-specific, should not hesitate to email us their questions.

**2. Statement and General Characterization of the Topic**

The document request that is the basis for Topic 302 is stated as follows (see Complaint K).

All documents or communications that describe, discuss, refer to, report on, or relate to actual, anticipated, possible or potential responses to oil and gas spills, blowouts or releases, or pipeline eruptions, whether past, present or future, including, but not limited to, any assessment, evaluation, remediation or repair activities, contingency plans and/or environmental disaster, recovery or clean-up efforts..

The operative language of this request focuses on documents or email communications that address actual or potential "responses to oil and gas spills," which would include evaluations of the responses to a past spill or other environmental incident including remediation efforts

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1 For purposes of this document, the words "relevant" and "responsive" are interchangeable.

involving oil and gas; discussions or evaluations of current or ongoing responses, capabilities or remediation efforts; and discussions of plans to potential events and related risks.

### **3. Guidelines for Determining Responsiveness**

As explained in the “How-To” Guide, the Topic Authority in this exercise plays the part of a senior attorney overseeing a large document production. An attorney in that role must weigh his/her obligations under the document request, as well as the risks of having the completeness and accuracy of the production challenged in court. The outcome of these considerations is found in the topic characterization (above) and the guidelines provided below.

The Topic Authority for Topic 302 interprets the document request “narrowly” and views the operative terms to be “oil spill responses” with a specific focus on documents that involve planning for such events and the analysis of responses such as “assessments” “contingency plans” and “clean up efforts”. In order to be relevant to the topic, therefore, a document must contain both a reference to a pertinent spill incident (hypothetical or real) *and* a reference to a response (hypothetical or real) to the incident. More specific criteria are as follows.

#### **3.1. On incidents**

- 3.1.1. Pertinent incidents are (hypothetical or real) unplanned leaks, spills, or releases of oil or gas.
- 3.1.2. Planned releases (e.g., a planned gas release) are *not relevant*.
- 3.1.3. Again, reference to a pertinent incident *alone* does not suffice to make a document relevant; in order to be relevant the document must also include reference to a response to the incident (as defined in 3.2 below).

#### **3.2. On responses**

- 3.2.1. Relevant response activities include the following (hypothetical or real).
  - 3.2.1.1. Assessments of an incident.
  - 3.2.1.2. Assessments of response capabilities for an incident.
  - 3.2.1.3. Contingency plans for an incident.
  - 3.2.1.4. Remediation efforts.
  - 3.2.1.5. Training for response to incidents.
  - 3.2.1.6. Environmental studies and audits that pertain to an incident.
- 3.2.2. Also relevant are any documents related to the above activities (e.g., discussions of training manuals or oil spill response manuals would be relevant).
- 3.2.3. Also relevant are evaluations of the effectiveness of any of the above response activities.
- 3.2.4. Bans on oil drilling are *not relevant*.

#### **3.3. Additional considerations**

- 3.3.1. News articles are relevant if they refer both to a spill incident and to a response to it (in accordance with the above criteria).

- 3.3.2. Administrative documents. Admin documents that refer to relevant subject matter are relevant. (For example, a scheduling email that referred to oil spill training would be relevant. Documents related to an employment application (resumes, interview appointments) could be relevant, but only if they referred to a response to a spill incident.)
- 3.3.3. Contracts. Contracts that contain terms specifying a party's response obligations in the event of a spill are relevant.
- 3.3.3.1. However, terms that specify monetary indemnification requirements in the event of a spill do not suffice to make a contract relevant.
- 3.3.4. Legal rulings. Discussions of legal rulings are relevant only if they contain reference to a response to a spill incident (as defined by the above criteria).
- 3.3.5. Geographic restrictions. No geographic constraints apply to the assessment of relevance; i.e., discussions of responses to non-US spills (e.g., the Transredes spill in Bolivia) are relevant.
- 3.3.5.1. However, discussions of legal obligations under foreign law are *not relevant*.
- 3.3.6. Date restrictions. No date constraints apply to the assessment of relevance (the date of a document can be ignored for purposes of assessing relevance).
- 3.3.7. On parties other than Enron. The document request is written without a restriction to party; accordingly, documents discussing any party (Enron or not) engaging in the activities that meet the criteria of relevance are *relevant*.
- 3.3.8. On non-English content. In making a relevance assessment, consider only English content; non-English content is *not relevant*.

**TREC-2010 Legal Track - Interactive Task**  
**Topic-Specific Guidelines - Topic 303**  
**Updated: 12/10/10**

**1. Introduction - The Purpose and Use of this Document**

This document is intended to clarify the intent and scope of Topic 303 featured in the TREC-2010 Legal Track's Interactive Task. The document is a summary of the guidance that the Topic Authority for Topic 303 gave to the participating teams in the course of their work on the task. It is intended to guide the volunteer assessors in their review of documents contained in the evaluation samples.

The Interactive Task tests how effective participating teams are at replicating a Topic Authority's conception of relevance across a test population of documents.<sup>1</sup> In assessing the sampled documents on the basis of which the teams' efforts will be evaluated, it is vital that the documents be reviewed in accordance with the Topic Authority's conception of relevance, as outlined in this document. The criteria specified herein represent the Topic Authority's conception of relevance and are the criteria by which assessors should judge the relevance of the documents they review.

While the criteria specified in this document seek to clarify the scope of the topic, it is to be expected that assessors will, in the course of their review, encounter documents that prompt questions that are not addressed by the criteria outlined below. In such instances, the assessors are asked to submit their questions to us via the link on the review platform; we will provide answers to such questions as soon as possible.

Please note that this document is intended to provide topic-specific guidance for determining relevance. Guidance on general procedures for conducting the assessment exercise is provided in a companion document (the "How-To' Guide for Assessors"). Again, assessors with any questions, procedural or topic-specific, should not hesitate to email us their questions.

**2. Statement and General Characterization of the Topic**

The document request that is the basis for Topic 303 is stated as follows (see Complaint K).

All documents or communications that describe, discuss, refer to, report on, or relate to activities, plans or efforts (whether past, present or future) aimed, intended or directed at lobbying public or other officials regarding any actual, pending, anticipated, possible or potential legislation, including but not limited to, activities aimed, intended or directed at influencing or affecting any actual, pending, anticipated, possible or potential rule, regulation, standard, policy, law or amendment thereto.

The document request is written broadly; covered by the document request (and so to be deemed relevant) are any documents pertaining to the Company's efforts, plans, or policies with regard to lobbying or with regard to legislation or regulations that are the focus of lobbying efforts. In the

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1 For purposes of this document, the words "relevant" and "responsive" are interchangeable.

next section we provide specific criteria for determining what is and is not to be considered responsive to the request.

### **3. Guidelines for Determining Responsiveness**

As explained in the “How-To” Guide, the Topic Authority in this exercise plays the part of a senior attorney overseeing a large document production. An attorney in that role must weigh his/her obligations under the document request, as well as the risks of having the completeness and accuracy of the production challenged in court. The outcome of these considerations is found in the topic characterization (above) and the guidelines provided below.

The specific criteria to be followed in assessing the relevance of documents to Topic 303 are as follows.

#### **3.1. The Company’s lobbying plans, practices, or policies**

- 3.1.1. Plans and practices. Documents pertaining to the Company’s plans or practices with regard to lobbying, whether in the US or abroad, are *relevant*.
  - 3.1.1.1. Documents discussing or evidencing Company efforts or practices with regard to lobbying are *relevant*. Also *relevant* are documents pertaining to the Company’s decisions *not* to lobby on a particular issue.
  - 3.1.1.2. Documents discussing plans to utilize media outlets to shape public policy are *relevant*.
  - 3.1.1.3. Documents discussing talking points intended to influence public discussion of pertinent laws or regulations are *relevant*.
  - 3.1.1.4. Documents discussing the Company’s efforts to win approval of planned business activities are *relevant*.
  - 3.1.1.5. Documents in which there is a mere mention that Enron was a lobbyist (or did lobbying) but in which the focus of the document was not on Enron’s lobbying efforts or plans are *not relevant*. For example, an article that referenced Enron as “a leading energy regulation lobbyist” but that went on to talk about non-lobbying relating activities (e.g., the Enron bankruptcy) would not be relevant.
- 3.1.2. Policy documents. Documents referencing the Company’s policies regarding lobbying are *relevant*.
- 3.1.3. Administrative documents. Documents pertaining to administrative aspects of the Company’s lobbying efforts are *relevant*. Examples include the following.
  - 3.1.3.1. Calendar entries. Calendar entries are *relevant*, (a) if the meeting is with a public official or (b) if the meeting concerns the Company’s lobbying efforts.
  - 3.1.3.2. Budget documents. Documents pertaining to the Company’s budget for lobbying activities are *relevant*.
  - 3.1.3.3. Reporting documents. Documents reporting on the Company’s lobbying activities (including political contributions), and the results of those activities, are *relevant*.

- 3.1.3.4. Procedural documents. Documents discussing registration of lobbyists as lobbyists are *relevant*.
- 3.1.3.5. Employment applications. Resumes, CVs, job interviews for positions at the Company with lobbying responsibilities are *not relevant*.
- 3.1.3.6. Signature lines. An email consisting of just a signature line is *not relevant*.
- 3.1.4. Government Affairs (GA) documents. GA documents (or emails from/to GA members) are not to be considered relevant automatically; their relevance must be decided on a case by case basis (i.e., if they meet the relevance criteria specified herein).
- 3.1.5. Articles and press releases.
  - 3.1.5.1. An article, if it is on the topic of Company's lobbying efforts (past, present, or future) is *relevant*.
  - 3.1.5.2. An article, if it mentions only that the Company is a lobbyist, is *not relevant*.
  - 3.1.5.3. Included under the rubric of articles are: news articles, Enron newsletter articles, editorials, academic papers/articles, and press releases.
- 3.1.6. Ordinary (non-lobbying) business practices and transactions. Documents pertaining to business practices or transactions that are not the focus of lobbying efforts (e.g., a memorandum of understanding outlining the terms of an energy transaction, a discussion of bids on a mineral lease, discussion of (non-lobbying) activities related to a trade association) are *not relevant*.
- 3.1.7. Litigation filings. Litigation filings are, generally, *not relevant*; if, however, a filing contains information in the colloquy regarding the position a party is either taking or lobbying a legislative body or public official to take, then it is *relevant*.

## **3.2. Legislation or regulations that are the focus of lobbying efforts**

- 3.2.1. Changes to laws or regulations. Any discussion of a change to a law or regulation that is the focus of lobbying activities is *relevant* (e.g., discussions of the Direct Access initiative are *relevant*).
- 3.2.2. Existing laws or regulations and their application. Discussions regarding an existing law/regulation or its application (e.g., the possibility of a loophole), with no reference, explicit or implied, of an effort to change the law/regulation, are *not relevant*.
- 3.2.3. Requests for comment. Reports sent to the Company about a regulatory proposal, if they are sent with the intent of prompting feedback, are *relevant*.
- 3.2.4. Legislative summaries.
  - 3.2.4.1. Legislative summaries, if they contain discussion of regulatory interpretations of the legislation and the Company's position on those interpretations, are *relevant*.
  - 3.2.4.2. Legislative summaries, if they contain no discussion of Company's position, are *not relevant*.

- 3.2.5. Communications with public officials and entities.
- 3.2.5.1. Communications with public officials or entities regarding changes to regulations, standards, policies, or laws are **relevant**.
- 3.2.5.2. Communications with public officials that are part of the Company's ordinary conduct of business, with no discussion of changes to regulations or laws, are **not relevant**. (E.g., a document discussing the royalty payments due for a particular transaction would not be relevant; on the other hand, a document discussing *changes* to regulations regarding when royalty payments are due would be relevant).
- 3.2.6. Third party communications regarding regulations or legislation that are the focus of lobbying efforts (e.g., a letter from a Senator to a Governor or comments made in a press conference) are **relevant**.
- 3.2.7. Political landscape.
- 3.2.7.1. Public officials. Discussions of the political status of public officials that are the focus of lobbying efforts (e.g., key regulators) are **relevant**. However, a bio of a public official, with no reference to the official's position on a law/regulation that is the focus of lobbying efforts, is **not relevant**.
- 3.2.7.2. Polls. Discussions of polls that pertain to issues that are the focus of lobbying efforts are **relevant**.
- 3.2.8. IEP documents. The Independent Energy Producers Association (IEP) is a lobbying organization. Accordingly, all documents concerning IEP's actions/efforts, including admin-type documents (e.g., a scheduling email) are **relevant**.
- 3.2.9. Meetings and Conferences.
- 3.2.9.1. Meetings. Discussions of meetings of public officials at which lobbying or regulations that are the focus of lobbying are discussed (e.g., the CPUC) are **relevant**.
- 3.2.9.2. Conferences. Documents discussing the Company's attendance at a pertinent conference (e.g., a conference on the California energy crisis) are to be assessed as follows.
- 3.2.9.2.1. If the Company gives a presentation at the conference: **relevant**.
- 3.2.9.2.2. If the Company merely attends, but it is known that a public official also attends: **relevant**.
- 3.2.9.2.3. If the Company merely attends, and there is no indication that a public official also attends: **not relevant**.
- 3.2.10. Investigations. Documents discussing investigations of the Company's activities in the California energy markets are **not relevant** (unless they specifically relate to lobbying).
- 3.2.11. Offshore regulatory conditions. Discussions of political/regulatory environment in countries in which Enron could not exert lobbying power are **not relevant**.

3.2.12. FERC refund. Documents discussing the FERC's decision to require refunds are *not relevant*.

### **3.3. Additional Considerations**

3.3.1. Date restrictions. No date constraints apply to the assessment of relevance (the date of a document can be ignored for purposes of assessing relevance).

3.3.2. On parties other than Enron. The document request is written without a restriction to party; accordingly, documents discussing any party (Enron or not) engaging in the activities that meet the criteria of relevance are *relevant*.

3.3.2. On "Enron Mentions" emails. In the document collection, there are instances of broadcast emails to a large number of recipients regarding "Enron mentions" in news articles around the country. While some of the articles included as attachments to such "Enron mentions" emails may relate to lobbying or new rules/regulations, these articles, when attached to an "Enron Mentions" email, are to be assessed as *not relevant* to Topic 303 (on the grounds that the focus of the "Enron Mentions" news is not specifically lobbying). This general rule only applies to the "Enron mentions" emails and does not impact instances where a specific article or articles are sent to groups.

3.3.2.1. On follow-ups to an "Enron Mentions" email. The "Enron Mentions" rule extends to follow-ups on such email, *unless* the follow-up specifically relates to lobbying activities, plans, or efforts.

3.3.3. On non-English content. In making a relevance assessment, consider only English content; non-English content is *not relevant*.

**TREC-2010 Legal Track – Interactive Task**  
**Topic-Specific Guidelines – Topic 304**  
**Updated: 09/29/10**

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## **2. Statement and General Characterization of the Topic**

Topic 304 is based on the following document request:

“all documents or communications that are subject to a claim of attorney-client privilege, work-product, or other any other applicable privilege or protection, whether or not they are responsive to any of the [other] document requests....”

This request seeks the identification of documents that are subject to protection from production in litigation pursuant to the attorney-client privilege or as trial preparation materials under Fed. R. Civ. P. 26, otherwise known as “work product” materials. Together, these types of documents are generically known as “privileged” documents.

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<sup>1</sup> For purposes of this document, the words “relevant” and “responsive” are interchangeable.

### **3. Guidelines for Determining Relevance**

#### **3.1. Background on Attorney-Client and Work Product Materials**

To be protected by the attorney-client privilege, a document must meet four factors. It must a) be a communication b) between “privileged persons” c) made with respect to legal advice or services d) with an expectation of confidentiality. For our purposes, all the documents you encounter in this exercise will meet the first requirement of being a “communication.”

Privileged persons include counsel (lawyers) and client. In this exercise, the client includes the company and its employees. The lawyers can be either in-house counsel (lawyers employed directed by the company) or outside counsel (lawyers who practice at a firm or otherwise not through being employed by the client). Communications between privileged persons, therefore, can include messages between counsel and an employee or employees, between a lawyer and another lawyer or lawyers, or between an employee and other employees where they are discussing a matter of legal advice.

To be protected as an attorney-client privileged communication, a document must be related to a request for legal advice. That is, the communication must be for the primary purpose of seeking, rendering, communicating, or otherwise obtaining legal advice or a related legal service, such as drafting a contract. Hence, communications that provide or seek confidential client information necessary to facilitate the rendition of legal advice with respect to a specific question can also be privileged.

Finally, the attorney-client privilege requires strict confidentiality. If the communication involves any independent, third party other than counsel and the client or its employees, it is quite rare that such communication will be protected under the attorney-client privilege unless the other party is not truly independent, such as an advertising agency subject to the same legal rules as the client.

Documents can also be protected from discovery if they represent or disclose “work product,” that is, a) materials prepared b) by employees or counsel c) in anticipation of litigation that are kept c) confidential from current litigation adversaries. For purposes of this exercise, every document you review will meet the requirement of being “material,” that is, a company record or tangible thing.

Work product materials need not be, but often are, prepared by a client’s lawyers while they are preparing for litigation or under such lawyers’ direction. Whether or not a lawyer is expressly involved in generating the document, the important decision is determining whether a document was prepared “in anticipation of litigation.”

For purposes of determining whether a document is protected by the work product doctrine, “litigation” means any types of adversarial proceeding in which witnesses are put under oath or in which a participant is allowed to submit counterarguments or rebuttal evidence or testimony. Hence, litigation can include judicial, administrative, regulatory or legislative proceedings in which the parties have the right to either (1) cross-examine witnesses, or (2) to present evidence or information to counter subject an opposing party’s presentation. If the litigation is currently pending, materials prepared for that proceeding is protected. To be “reasonably anticipated” litigation, such a proceeding must be identifiable, imminent, likely or probable. If a claim against a client can be articulated with specificity, litigation is also “reasonably anticipated” for purposes of claiming work product protection.

Confidentiality of the material is also required for the work product doctrine to protect it. But that confidentiality requirement is not as strict as under the attorney-client privilege. Hence, where it is consistent with otherwise confidential trial preparation and not shared with current adversaries in the case, litigation preparation materials can still be protected if they are shared with the likes of advertisers, insurers, public relations advisers and other consultants. So long as there is no expectation that the person with whom the material is shared would have an interest in providing it to current adversaries, the work product is still protected.

Work product materials are usually recognizable in two forms, so-called fact or opinion work product. Opinion work product includes the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation. For instance, if someone representing the client, whether employee or counsel, ranks certain facts or potential claims or witnesses in a case in order of importance, that listing would be opinion work product. Documents that are related to considerations of litigation strategy are also protected as opinion work product. All other materials prepared in anticipation of litigation is considered fact or “ordinary” work product. Either type of material is protected under the work product doctrine and both should be marked as protected under Topic 304.

Documents may be subject to one or the other protection, either as attorney-client privileged or as work product, both protections, or neither protection. To ensure accuracy, each document must be analyzed for both protections. If it is subject to either protection or both, mark the document as relevant to Topic 304. If the document is subject to neither protection, mark it as not relevant to Topic 304.

### **3.2. Definitions and Types of Relevant Documents**

Information in any form that was created, received, or distributed by an employee or otherwise created by the defendant and that relates to the defendant or its business will constitute a communication or material potentially subject to the attorney-client privilege or the work product protection. The definition of document is not limited to particular media and includes, for example, information contained on paper or microfilm as well as electronically or magnetically

stored information. For purposes of this exercise, all writings, drawings, graphs, charts, books, and other data compilations which you may encounter should be considered to meet the requirements of being a “communication,” “material” or “tangible thing.”

**3.2.1. Transmitting Documents** For purposes of this exercise, you should assess and designate all individual documents (e.g., email or attachment) as privileged or work product independently. In addition, if an attachment is protected as privileged or work product, an email to which it is attached should also be marked as protected.

**3.2.2. Documents Subject to Redaction** If an entire document is not subject to protection as attorney-client communication or work product, the portion(s) of the document that could be protected are sometimes “redacted,” that is, blacked out before being produced to an opponent in actual litigation. Because redaction was not a part of TREC Legal Track 2010, you should apply the following rule: if any part of the document would be subject to redaction, the entire document should be marked as privileged.

For instance, because draft contracts are most often shared with the other side negotiating the agreement, the only portions of draft contracts, including those that are interlineated with changes, that are protectable are the portions that disclose a confidential request for legal advice or an express piece of legal advice. If a draft contract contains such an interlineated piece of or request for legal advice, the entire draft contract should be marked privileged.

**3.2.3. Topical Documents** Documents that discuss or list lawyers for the client (whether at law firms or in-house) or the assignments on which they are working are not privileged or protected as work product unless they otherwise meet all the other requirements of one or the other of those protections.

### **3.3. Additional Guiding Principles**

- There are no date restrictions that apply to this topic. Assess a document as privileged or work product (or not) regardless of its date.
- As explained in the "How-To" guide, the Topic Authority, in this exercise, plays the part of a senior attorney overseeing a large document production. An attorney in that role must weigh the client’s (here, the defendants’) obligations under the document request as well as the risks of having the completeness and accuracy of the production challenged in court. The outcome of these considerations is the topic definition provided in this document. While assessors may find, in some instances, that the definition of responsiveness includes some documents that do not appear to bear on the allegations in the Complaint, assessors should keep in mind that the Topic Authority has defined the topic somewhat broadly so as to minimize risk of challenge or sanction. Assessors

should adhere to the guidelines in this document even if the document would not otherwise be considered relevant to the litigation.

- Generally, if an attorney-client communication is (1) disclosed to independent third parties, or (2) broadly distributed among company employees (especially employees beyond those with a need for the information) with no indication that the employee recipients are expected to keep the communication confidential, the communication is no longer confidential for purposes of applying the privilege.
- Distribution lists, record custodians, confidentiality labels and other express limitations on further distribution must be considered in making the determination whether a Company Record remained “confidential” after it was created.
- If a lawyer is requesting an employee to prepare some material for the lawyer or to provide the employee’s best recollection about a subject, consider related context (e.g., the transmitting or responding email) to determine whether the work product document would protect the document.

#### **4. Questions and Clarifications**

##### **4.1. Would a document be privileged if it was created for a business purposes as well as a litigation purpose?**

Yes. Material may be protected as work product so long as there is a single, current litigation based reason for creating the document, even if there is also be a business purposes for the document.

##### **4.2. Would a document be protected if it is a communication from a lawyer with respect to business advice?**

No. Business advice, even from a lawyer, if not protected under the attorney-client privilege. If the communication renders both business advice and legal advice in separate portions or sentences of the document, it should be marked as protected. If the business and legal advice are intertwined, you should only mark the document as privileged if the legal advice predominates over the business advice after using your best judgment.

##### **4.3. Would a legal bill be privileged if it merely identifies the lawyer who worked for the company and the topics on which the lawyer worked?**

No. Legal bills are only protected if they reveal a confidential request for or piece of legal advice or otherwise reveal litigation strategy for pending or anticipated cases.

##### **4.4 If a communication is related to a public event in the nature of continuing legal education, is it privileged?**

No. CLE classes are generally not related to confidential legal advice or litigation planning for a client and so are not protected.

#### **4.5 Are communications with lobbyists privileged?**

Generally, no. Lobbying materials and lobbying advice are generally considered business communications and business advice and so are not protected. Use caution, however, because many lobbyists are also lawyers who may from time to time render legal advice as part of their lobbying service, particularly if they opine upon what effect a current piece of legislation may have upon some specific aspect of the client's operations.