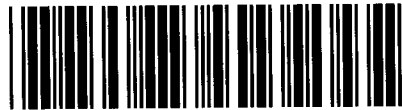


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PUC DOCKET NO. 45624
SOAH DOCKET NO. 473-16-2751

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APPLICATION OF THE CITY OF §
GARLAND, TEXAS, FOR A §
CERTIFICATE OF CONVENIENCE §
AND NECESSITY FOR THE §
PROPOSED RUSK TO PANOLA §
DOUBLE-CIRCUIT 345-KV §
TRANSMISSION LINE IN RUSK §
AND PANOLA COUNTIES, TEXAS §

PUBLIC UTILITY COMMISSION
BEFORE THE CLERK

PUBLIC UTILITY COMMISSION
OF TEXAS

THE CITY OF GARLAND'S RESPONSE
TO ORDER REQUESTING LIST OF ISSUES

The City of Garland respectfully submits the following list of issues in response to the Commission's Order Requesting List of Issues dated February 29, 2016.

I. Background and Overview

This Application is filed pursuant to PURA § 37.051(c-1), (c-2), (g) and (i), as enacted during the last session of the Texas Legislature.¹ Subsections (c-1) and (g) require a certificate of convenience and necessity (CCN) application for, respectively, a facility that enables additional power to be imported into or exported out of the ERCOT power grid and a municipally-owned transmission facility located outside the boundaries of the municipality. Subsections (c-2) and (i) direct the Commission, not later than the 185th day after the application is filed, to approve an application under subsections (c-1) or (g) for a facility that is to be constructed under an interconnection agreement appended to an offer of settlement approved in a final order of the Federal Energy Regulatory Commission (FERC) issued in Docket No. TX11-01-001, directing physical connection between the ERCOT and SERC regions under Sections 210, 211, and 212 of the Federal Power Act (FPA), and authorize the Commission to prescribe reasonable conditions to protect the public interest that are consistent with the FERC order. The

¹ Acts 2015, 84th Leg., R.S., ch.1162 (SB 776); Acts 2015, 84th Leg., R.S., ch.1275 (SB 933).

statute is referring to the order in FERC Docket No. TX11-1-001, *Southern Cross Transmission LLC*, 147 FERC ¶ 61,113 (2014), which directs physical connection between the ERCOT and SERC regions under Sections 210, 211, and 212 of the FPA.

The transmission line proposed by Garland in this proceeding (the Project) is a facility that is to be constructed under an interconnection agreement appended to the offer of settlement approved by FERC in *Southern Cross*, and this Application is therefore governed by PURA § 37.051(c-2) and (i). The Project will interconnect the new Rusk Switching Station in Rusk County to the new Panola Switching Station in Panola County at the Texas-Louisiana border. The Rusk Station will be interconnected with the ERCOT grid and the Panola Station will be interconnected to a new high-voltage direct current (HVDC) converter station to be owned by Southern Cross Transmission LLC adjacent to the Panola Station across the border in Louisiana. FERC ordered Garland to provide the interconnection in accordance with the interconnection agreements attached to the offer of settlement filed in *Southern Cross*. Among other things, FERC found that the interconnection is in the public interest and determined that it will not cause any ERCOT utility or other entity that is not already a public utility under the Federal Power Act to become a public utility under the Act.

In light of this background, this case involves issues typically considered in a CCN proceeding, except as modified by § 37.051(c-2) and (i). As discussed further below, § 37.051(c-2) and (i) modify the issues typically addressed in a CCN case in two ways: 1) by directing that the Commission shall approve the application for a specific facility, § 37.051(c-2) and (i) remove the issues of need and project alternatives from consideration in this case; and 2) § 37.051(c-2) and (i) authorize the Commission to prescribe reasonable conditions to protect the public interest that are consistent with the FERC order in *Southern Cross*.

One additional set of issues in this case arises from Chapter 26 of the Parks and Wildlife Code. One of the line segments proposed by Garland crosses the Sabine River Authority's Unit # 630 recreational hunting area, and may therefore be subject to the provisions of Chapter 26. Chapter 26 requires notice, a hearing, and certain findings before a department, agency, political subdivision, county, or municipality of the state may approve any program or project that requires the use or taking of any public land designated and used as a park, recreation area, scientific area, wildlife refuge, or historic site.

The Commission addressed Parks and Wildlife Code Chapter 26 in Docket No. 38435,² a CCN case that involved crossing the Caprock Canyons State Park Trailway. In that case, the Commission approved the utility's provision of notice pursuant to Chapter 26 and holding the Chapter 26 hearing concurrent with the CCN hearing. Garland proposes to follow the same process employed in Docket No. 38435 for addressing the requirements of Parks and Wildlife Code Chapter 26, including providing the notice required by Chapter 26 at the appropriate time and holding a hearing that concurrently addresses both the CCN issues and Chapter 26.

The issues listed below to be considered or not considered reflect issues typically included in a preliminary order in a CCN case, with the modifications discussed above.

II. Issues to be Addressed by SOAH

Pursuant to Tex. Gov't Code § 2003.049(e) (Vernon 2008 & Supp. 2015), the Commission must provide to the ALJ a list of issues or areas to be addressed in any proceeding referred to SOAH. The following issues should be addressed by SOAH in this docket:

² *Application of Cross Texas Transmission, LLC for a Certificate of Convenience and Necessity for the Silverton to Tesla 345-kV CREZ Transmission Line*, Docket No. 38435, Order (Jan. 19, 2011).

Application—Route Adequacy

1. Is Garland's application to amend its CCN adequate? Does the application contain an adequate number of reasonably differentiated alternative routes to conduct a proper evaluation? In answering this question, consideration must be given to the number of proposed alternatives, the locations of the proposed transmission line, and any associated proposed facilities that influence the location of the line. Consideration may also be given to the facts and circumstances specific to the geographic area under consideration, and to any analysis and reasoned justification presented for a limited number of alternative routes.³ A limited number of alternative routes is not in itself a sufficient basis for finding an application inadequate when the facts and circumstances or a reasoned justification demonstrates a reasonable basis for presenting a limited number of alternatives. If an adequate number of routes is not presented in the application, the ALJ shall allow Garland to amend the application and to provide proper notice to affected landowners; if Garland chooses not to amend the application, the ALJ may dismiss the case without prejudice.

Route

2. Which proposed transmission line route is the best alternative weighing the factors set forth in PURA § 37.056(c) and 16 TAC § 25.101(b)(3)(B)?
3. Are there alternative routes or facilities configurations that would have a less negative impact on landowners? What would be the incremental cost of those routes?
4. If alternative routes or facility configurations are considered due to individual landowner preference:

³ See *Application of Wood County Electric Cooperative, Inc. for a Certificate of Convenience and Necessity for a Proposed Transmission Line in Wood County, Texas*, Docket No. 32070, Order on Appeal of Order No. 8 at 6 (Nov. 1, 2006).

- a) Have the affected landowners made adequate contributions to offset any additional costs associated with the accommodations?
- b) Have the accommodations to landowners diminished the electric efficiency of the line or reliability?

Texas Parks and Wildlife Department

5. On or after September 1, 2009, did the Texas Parks and Wildlife Department provide any recommendations or informational comments regarding this application pursuant to Section 12.0011(b) of the Texas Parks and Wildlife Code? If so, please address the following issues:
- a) What modifications, if any, should be made to the proposed project as a result of any recommendations or comments?
 - b) What conditions or limitations, if any, should be included in the final order in this docket as a result of any recommendations or comments?
 - c) What other disposition, if any, should be made of any recommendations or comments?
 - d) If any recommendation or comment should not be incorporated in this project or the final order, or should not be acted upon, or is otherwise inappropriate or incorrect in light of the specific facts and circumstances presented by this application or the law applicable to contested cases, please explain why that is the case.

Parks and Wildlife Code Chapter 26

6. Was notice of the hearing provided in accordance with § 26.002 of the Parks and Wildlife Code?

7. Is there no feasible and prudent alternative to the use of public land designated and used as a park, recreation area, scientific area, wildlife refuge, or historic site?
8. Does the Project include all reasonable planning to minimize harm to the land as a park, recreation area, scientific area, wildlife refuge, or historic site, resulting from its use for the Project?

Conditions

9. In approving the application, should the Commission prescribe reasonable conditions to protect the public interest that are consistent with the final order of the Federal Energy Regulatory Commission in *Southern Cross*? If so, what reasonable conditions should be prescribed?

III. Issues Not To Be Addressed

The following issues should not be addressed in this proceeding for the reasons stated:

Need and Project Alternatives

1. Are the proposed facilities necessary for the service, accommodation, convenience, or safety of the public within the meaning of PURA § 37.056(a) taking into account the factors set out in PURA § 37.056(c)?
2. Is the transmission project the better option to meet this need when compared to employing distribution facilities? If Garland is not subject to the unbundling requirements of PURA § 39.051, is the project the better option to meet the need when compared to a combination of distributed generation and energy efficiency?

In light of PURA § 37.051(c-2) and (i), the need for the Project and alternatives to the Project are issues that should not be addressed in this proceeding. Subsections 37.051(c-2) and (i) direct that the Commission shall approve this application not later than the 185th day after it is

filed. By their reference to an interconnection agreement attached to the offer of settlement in the *Southern Cross* case, Subsections 37.051(c-2) and (i) specifically identify the Project as the facility for which the CCN application is to be approved.⁴ The specific provisions of Subsections 37.051(c-2) and (i) directing that the Commission shall approve this application are inconsistent with the general provision of PURA § 37.056(a) stating that the Commission may approve an application and grant a certificate only if it finds that the certificate is necessary for the service, accommodation, convenience, or safety of the public. Under well-established rules of statutory construction, specific, recently-enacted legislation prevails over and is an exception to a previous inconsistent general statutory directive. See Tex. Gov't Code § 311.026; *Jackson v. State Office of Administrative Hearings*, 351 S.W.3d 290, 297 (Tex. 2011). As a result, issues relating to need for the Project or alternatives to the Project should not be addressed in this case.

Compensation/Condemnation Issues

3. What is the appropriate compensation for right-of-way or condemnation of property?

The Commission does not have the authority to adjudicate or set the amount of compensation for rights of way or for condemnation.

⁴ The Offer of Settlement in *Southern Cross* is included in Garland's Application as Attachment 2 to the CCN Application Form. Attached to that Offer of Settlement is an interconnection agreement between Garland and Oncor Electric Delivery Company that specifically identifies the Project in this case as a facility to be constructed under that interconnection agreement. As a result, the language of PURA § 37.051(c-2) and (i) specifically identifies the Project as a facility for which a CCN application shall be approved.

Respectfully submitted,



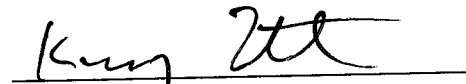
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ATTORNEYS FOR THE CITY OF GARLAND

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this document was served by electronic mail, facsimile, hand-delivery, overnight delivery, or 1st Class U.S. Mail on all parties of record in this proceeding on March 2, 2016.


Kerry McGrath