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

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PUBLIC UTILITY COMMISSION  
FILING CLERK  
BEFORE THE STATE OFFICE  
OF  
ADMINISTRATIVE HEARINGS

**TEXAS INDUSTRIAL ENERGY CONSUMERS' REPLY TO  
SOUTHERN CROSS TRANSMISSION, LLC'S RESPONSE TO TIEC'S  
MOTION TO COMPEL AND ALTERNATIVE MOTION TO STRIKE**

**I. INTRODUCTION**

Texas Industrial Energy Consumers (TIEC) files this reply to Southern Cross Transmission, LLC's (SCT's) response to TIEC's April 1, 2016 motion to compel (the Motion to Compel) in order to address new information and claims introduced in SCT's response. The reply is timely filed pursuant to PUC Procedural Rule 22.78(a), which requires responsive pleadings to be filed within five working days after receipt of the pleading to which the response is made. TIEC reurges its motion to compel SCT to respond to TIEC 1-18. In the alternative, TIEC moves to strike the direct testimony of SCT witness Ellen Wolfe.

**II. REPLY TO SCT'S RESPONSE TO THE MOTION TO COMPEL**

As discussed in the Motion to Compel and admitted in SCT's response, SCT has failed to provide information responsive to TIEC's Request for Information (RFI) 1-18. SCT admits that it has not produced hourly data that falls within the scope of TIEC 1-18 despite the fact that such data exists<sup>1</sup> or, at a minimum, existed,<sup>2</sup> and was used in Ms. Wolfe's model. In its response to the Motion to Compel, SCT states that "decisions must be, and were, made before the processing occurred regarding what information is reported out [of Ms. Wolfe's model] as well as what

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<sup>1</sup> Docket No. 45624, Response of Southern Cross Transmission, LLC to Texas Industrial Energy Consumers' Motion to Compel a Response to TIEC 1-18 (SCT's Response), Affidavit of Ellen Wolfe (Wolfe Affidavit) at ¶ 8 (Apr. 5, 2016) ("This means that within the depths of the resultant database *hourly data should exist*." (emphasis added)).

<sup>2</sup> Wolfe Affidavit at ¶ 7 ("During its computations *UPLAN had the hourly nodal data to which TIEC 1-18 refers*." (emphasis added)).

information is even retained in the resultant database.”<sup>3</sup> This is a roundabout way of saying that SCT’s consultants *could* have retained all of the hourly data underlying Ms. Wolfe’s conclusions,<sup>4</sup> *but decided not to*. Absent such data, it is impossible for TIEC’s attorneys and consultants to evaluate the quality of SCT’s economic modeling or effectively question the validity of the aggregated results presented in Ms. Wolfe’s testimony.

SCT has submitted testimony about the results of Ms. Wolfe’s modeling, and parties are entitled to evaluate the validity of the underlying data in that model as well as SCT’s usage of the data to develop the numbers that Ms. Wolfe presents. SCT’s response to TIEC’s motion to compel does not obviate the parties’ need for this data or otherwise excuse SCT’s failure to produce it. It is inconsequential that SCT chose not to retain the underlying hourly information used in its modeling so that other parties could inspect that data to test both its integrity and usage. SCT cannot selectively introduce manipulated or aggregated versions of data to support its case while shielding the underlying data from disclosure. For these reasons, SCT should be required to respond to TIEC 1-18 or, alternatively, the portions of Ms. Wolfe’s testimony that rely on the requested data should be stricken.

### III. ALTERNATIVE MOTION TO STRIKE PORTIONS OF ELLEN WOLFE’S TESTIMONY

If SCT is unwilling or unable to produce the data requested by TIEC 1-18, then the Commission should strike the Direct Testimony of Ellen Wolfe, the entirety of which is based on the hourly data that SCT is seeking to withhold. Parties should not be permitted to perform economic modeling that purportedly supports their case, provide only aggregated or manipulated results, fail to retain the underlying data that would allow other parties to test the information presented, and then use the decision not to retain the backup data as an excuse to avoid discovery. By failing to retain the data underlying Ms. Wolfe’s modeling, SCT has deliberately resisted legitimate and predictable discovery. If SCT does not produce the requested

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<sup>3</sup> SCT’s Response at 2; *see also* Wolfe Affidavit at 6 (“Hourly data was reported for some of the variables, such as flows on the SCT project, but hourly data was not reported for many data strings. Instead, for those data strings, the computer was asked to compute aggregate metrics and report the summary results.”).

<sup>4</sup> Ms. Wolfe admits that she and her team had both the data and the ability to retain it. *See* Wolfe Affidavit at ¶ 8 (“During its computations *UPLAN had the hourly nodal data to which TIEC 1-18 refers.*”) (emphasis added); *see also id.* at ¶ 5 (“UPLAN is capable of reporting out an almost unlimited amount of simulation-based information.”).

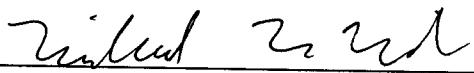
information, then the appropriate sanction for such conduct is for the Commission to strike Ms. Wolfe's testimony.<sup>5</sup>

#### IV. CONCLUSION

For the foregoing reasons, TIEC hereby requests that its Motion to Compel be granted, or, in the alternative, that the Direct Testimony of Ellen Wolfe be stricken.

Respectfully submitted,

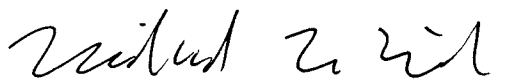
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ATTORNEYS FOR TEXAS INDUSTRIAL  
ENERGY CONSUMERS

#### CERTIFICATE OF SERVICE

I, Michael McMillin, Attorney for TIEC, hereby certify that a copy of the foregoing document was served on all parties of record in this proceeding on this 11th day of April, 2016 by hand-delivery, facsimile, electronic mail and/or First Class, U.S. Mail, Postage Prepaid.

  
\_\_\_\_\_  
Michael McMillin

<sup>5</sup> See P.U.C. Proc. R. 22.161(b)(2) (allowing for sanctions for "abusing the discovery process in seeking, making or resisting discovery."); P.U.C. Proc. R. 22.161(c)(8) (sanctions may constitute "striking pleadings or testimony."). An affidavit compliant with P.U.C. Proc. R. 22.161(e) is attached to this filing.

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

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**AFFIDAVIT OF MICHAEL MCMILLIN**

**STATE OF TRAVIS** )

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**COUNTY OF TRAVIS** )

Before me, the undersigned authority, on this day personally appeared the person known by me to be Michael McMillin, who, after being sworn by me, states as follows:

1. My name is Michael McMillin. I am over eighteen years of age, am of sound mind and competent to make this Affidavit. I have personal knowledge of every statement contained in this Affidavit, and every statement contained herein is true and correct and based on my own personal knowledge.

2. Southern Cross Transmission, LLC (SCT) filed the Direct Testimony of Ellen Wolfe in Docket No. 45624. The purpose of that testimony was to present and explain the results of certain modeling performed by Ms. Wolfe and other consultants.

3. In the same docket, Texas Industrial Energy Consumers (TIEC) filed Request for Information (RFI) 1-18, which requested much of the hourly nodal data underlying the modeling discussed in Ms. Wolfe's testimony. After SCT claimed that much of that data was impossible or impractical to obtain, on April 1, 2016, TIEC filed a Motion to Compel the production of that data.

4. As laid out in the Affidavit of Ellen Wolfe that was attached to SCT's Response to TIEC's Motion to Compel, hourly data responsive to TIEC 1-18 existed during the modeling process and could have been retained. However, due to choices made by Ms. Wolfe and other consultants employed by SCT, that data was either not retained or was retained in a manner that makes it potentially impractical to produce in response to discovery requests.

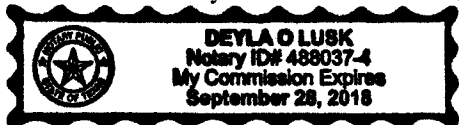
5. Without the data requested by TIEC 1-18, it will be difficult or impossible for TIEC's attorneys and consultants to effectively validate and/or challenge the results of the modeling presented in the Direct Testimony of Ellen Wolfe.

6. I hereby swear and affirm that my answers contained in this testimony are true and correct to the best of my knowledge, information and belief.

Michael McMillin

Michael McMillin

SUBSCRIBED AND SWORN to before me on this the 1<sup>th</sup> of April 2016 to certify which witness my hand and seal of office.



Deyla O Lusk

Notary Public