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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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BEFORE THE
PUBLIC UTILITY COMMISSION
FILING CLERK

STATE OFFICE OF

ADMINISTRATIVE HEARINGS

**SOUTHERN CROSS TRANSMISSION LLC'S RESPONSE
TO TEXAS INDUSTRIAL ENERGY CONSUMERS'
REPLY CONCERNING MOTION TO COMPEL**

On April 11, 2016, Texas Industrial Energy Consumers (TIEC) filed a reply (Reply) to Southern Cross Transmission LLC's (SCT's) response to TIEC's April 1, 2016 motion to compel related to TIEC RFI 1-18. In the alternative, TIEC's Reply moved to strike the direct testimony of SCT witness Ellen Wolfe. Since SOAH Order No. 2 does not provide for a reply to a response to a motion to compel, TIEC's Reply should be disregarded or struck. For the reasons discussed below and in SCT's previous response to TIEC's motion to compel, both TIEC's motion to compel and its motion to strike should be denied.

I. Overview

TIEC's Reply relies on claims that SCT "manipulated" or "failed to retain" data and "deliberately resisted legitimate and predictable discovery." Unsupported, inflammatory claims are not a substitute for factual or legal analysis, which are largely missing from TIEC's Reply. TIEC's claims are unreasonable and unjustifiably impugn the integrity of Ellen Wolfe, a respected expert in electric system modeling.¹ TIEC appears to not comprehend, or at least

¹ In 2004, Ms. Wolfe was the lead consultant retained by ERCOT to model the benefits of transitioning the ERCOT system to a nodal market, which has been the most important change to the ERCOT market since the introduction of retail competition in Texas. See *Activities Related to the Implementation of a Nodal Market for the Electric Reliability Council of Texas*, Project No. 28500, Independent Cost-Benefit Analysis Report (Dec. 21, 2004). Ms. Wolfe has also been retained by the Regional State Commissions of the Southwest Power Pool ("SPP") on the

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refuses to acknowledge, how the widely-used UPLAN program² for modeling electric system operations functions and is used throughout the electric industry. TIEC's Reply makes no effort to address the rules regarding discovery of electronic data, which do not support its Reply. For all of these reasons, TIEC's motion to compel and motion to strike lack merit and should be denied.

II. TIEC's Unreasonable Request

TIEC's Reply is premised largely on its claim that SCT should have retained all of the intermediate hourly data processed by the UPLAN program or at least should have predicted the data TIEC would ask for and retained that. Neither of those alternatives would have been reasonable if they were even possible.

An understanding of the breadth of TIEC's request in its RFI 1-18 is helpful to illustrate the unreasonableness of TIEC's position. Among other things, TIEC 1-18 requests hourly data for each node modeled by UPLAN. As Ms. Wolfe explained in her affidavit attached to SCT's response to TIEC's motion to compel, over 74,000 nodes were modeled by UPLAN (over 4,000 in ERCOT and over 70,000 in the Eastern Interconnect) for the study in this case.³ The program modeled operation of the ERCOT and Eastern Interconnect systems for a year, and there are 8760 hours in a year (365 days X 24 hours).⁴ Three cases were run for SCT (Base Case, SCT Only case, and SCT + 2,000 MW case).⁵ By requesting hourly nodal data in its RFI 1-18, TIEC

benefits of SPP implementing a nodal energy imbalance market, by the FERC on the benefits of Entergy and Cleco joining the SPP, by groups of utilities in the northwestern and southwestern United States on the benefits of joining regional transmission organizations, and by numerous other utilities and market participants. Direct Testimony of Ellen Wolfe at 2-3 and Exhibit EW-1.

² UPLAN is widely used by many utilities, market participants, and regional transmission organizations (RTOs) throughout the country, including ERCOT. Wolfe Affidavit at 1.

³ Wolfe Affidavit at 2.

⁴ In actuality, the SCT economic study modeled the year 2020, which is a leap year containing 366 days (8784 hours), so the total amount of data records requested by TIEC 1-18 is slightly higher than stated above.

⁵ Direct Testimony of Ellen Wolfe at 8-9.

requested almost 2 billion data records (74,000 nodes X 8760 hours X 3 cases = 1,944,720,000 records). In something of an understatement, Ms. Wolfe's affidavit states: "It was not practical to report out all of the hour data from the computer simulations Storing this level of data would significantly slow the processing time and quickly consume the large storage capacity of the modelers' computer systems."

Ms. Wolfe's affidavit goes on to explain: "UPLAN is capable of reporting out an almost unlimited amount of simulation-based information. However, because of its vast capabilities, decisions must be made at the time the modeling is initiated so that the information reported out is manageable." Despite TIEC's unsupported assertions, identifying the information to report out of UPLAN is not "manipulation" or "failure to retain data," it is how UPLAN is used to model electric system operations. The modeler directs UPLAN to report the data that is sought by the study, in this case the effects of adding the SCT tie between ERCOT and the Eastern Interconnect. The modeler does not report massive, unmanageable amounts of intermediate data, such as the nearly 2 billion hourly simulations that the computer performed to calculate the results that it reported. UPLAN is used every day across the country to model electric system performance without reporting or saving every intermediate calculation that is accumulated into its reported results. UPLAN results are considered to be reliable, accurate simulations of electric system operations and are widely relied on in the industry, including by ERCOT.⁶

TIEC's claim that it cannot effectively "validate and/or challenge" SCT's modeling result without the data requested in TIEC 1-18 is not credible.⁷ TIEC's Reply gives no indication why it needs nearly 2 billion hourly records or what it would do with them if it had them. TIEC does not explain what it means by "validating" the modeling result, but there is no legitimate reason to

⁶ Wolfe Affidavit at 1.

⁷ TIEC's Reply at 5.

think that the UPLAN program is not capable of accurately adding up hourly simulations into cumulative results. As noted above, UPLAN is widely used in the electric industry without any need to check that it accurately reports the results of its intermediate simulations and calculations.

As for TIEC's ability to challenge the model results, TIEC has served 39 RFIs, not counting subparts, relating to Ms. Wolfe's study in addition to TIEC 1-18. The questions cover a wide range of topics including various inputs into and outputs from the model, underlying calculations related to model outputs, assumptions used in the model, transmission topology in the model, levels of wind curtailment, treatment of reserves in the model, generators included in the model, gas price forecasts in the model, etc. SCT has produced a substantial amount of information in response to these requests, including at least 15 spreadsheets containing data related to model inputs or results. As a result, it appears likely that TIEC will file testimony challenging the model results. TIEC's Reply suggests that its efforts to discredit the model have already begun.

In addition to asserting that SCT should have retained nearly 2 billion records of intermediate hourly data processed by UPLAN, TIEC's fallback position appears to be that SCT should have predicted the data that TIEC would request and retained that data. See TIEC's Reply at 2, asserting that TIEC's request was "predictable." Following this line of reasoning, apparently not only were the requests in TIEC 1-18 predictable, but so were the other requests for intermediate data scattered throughout TIEC's other 39 RFIs related to the SCT economic study. In some instances, such data was reported by UPLAN and has been provided to TIEC. In other instances, SCT did not predict that TIEC would ask for the data ("failed to predict" in TIEC terminology). TIEC's suggestion that parties should predict what other parties may ask for

in discovery and save information based on such predictions is patently unreasonable. TIEC's Reply provides no support for its assertion that SCT should have retained all of the massive, unmanageable intermediate UPLAN data or at least should have predicted and retained the data that TIEC would later request. No such requirement exists.

III. TRCP 196.4

Texas Rule of Civil Procedure 196.4 addresses production of electronic or magnetic data, but it does not support TIEC's Reply and TIEC does not cite it. TRCP 196.4 applies to data or information that exists in electronic or magnetic form but is not available to the responding party through reasonable efforts, so it would not directly apply to intermediate UPLAN data that was not retained but would apply to data that exists on the modeler's computer but is not reasonably accessible. The rule establishes a key principle that applies to an unreasonable demand for data like TIEC's: "If the court orders the responding party to comply with the request, *the court must also order that the requesting party pay the reasonable expenses of any extraordinary steps required to retrieve and produce the information.*"⁸

Ms. Wolfe's affidavit indicates that it would cost at least \$10,000 to attempt to extract additional ERCOT nodal information from the modeler's computers, if it could be recovered at all, and approximately \$50,000 to rerun the simulation, which still would not ensure production of all the information sought by TIEC 1-18.⁹ TRCP 196.4 is clear – if TIEC wants to attempt to obtain additional modeling information that is not reasonably accessible to SCT in order to serve its own purposes, TIEC must pay the costs of that effort. That is a far cry from the position taken by TIEC in its Reply. Rule 196.4 also highlights an obvious point – TIEC is fully capable of

⁸ Tex. R. Civ. P. 196.4 (emphasis added).

⁹ Wolfe Affidavit at 2.

contracting for electric system modeling, just as SCT has done, and specifying the results that it wants reported out of the model.

IV. TIEC'S MOTION TO STRIKE

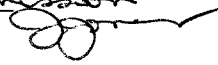
Although TIEC's Reply does not establish any basis for discovery sanctions, TIEC proposes one of the most extreme sanctions available – striking Ms. Wolfe's testimony. Texas law permits such an extreme sanction only in very limited circumstances that TIEC's Reply has not even attempted to show. In a leading case, *Transamerican Natural Gas Corp. v. Powell*, 811 S.W.2d 913, 918 (Tex. 1991), the Texas Supreme Court reversed a similar sanction, concluding that “[d]iscovery sanctions cannot be used to adjudicate the merits of a party's claims or defenses unless a party's hindrance of the discovery process justifies a presumption that its claims or defenses lack merit.” The Court added that “[s]anctions which are so severe as to preclude presentation of the merits of the case should not be assessed absent a party's flagrant bad faith or counsel's callous disregard for the responsibilities of discovery under the rules.”¹⁰ Numerous other courts have rejected extreme sanctions of the type proposed by TIEC.¹¹ TIEC has not shown that any discovery sanction is justified, much less the extreme sanction of striking testimony.

For the foregoing reasons, Southern Cross Transmission LLC respectfully requests that TIEC's motion to compel and motion to strike be denied.

¹⁰ *Id.*

¹¹ See, for example, *Chrysler Corp. v. Blackmon*, 841 S.W.2d 844 (Tex. 1992), *Roberts v. Golden Crest Waters, Inc.*, 1 S.W.3d 291 (Tex.App. 1999, no pet.), *GTE Mobilnet of South Texas v. Telecell Cellular, Inc.*, 955 S.W.2d 286 (Tex.App. 1997, writ denied), *Jones v. Andrew*, 873 S.W.2d 102 (Tex.App.1994, no writ), *State Farm Ins. Co. v. Pults*, 850 S.W.2d 691 (Tex.App.1993, no writ), and *First Bank and Federal Deposit Ins. Corp. v. Shiflett*, 843 S.W.2d 610 (Tex.App. 1992, writ denied).

Respectfully submitted,

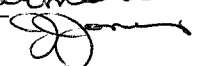
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CERTIFICATE OF SERVICE

I certify that a true and correct copy of this document was served by electronic mail, facsimile, hand-delivery, overnight delivery, or First Class U.S. Mail on Texas Industrial Energy Consumers on April 14, 2016.

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