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

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

SOAH ORDER NO. 5
RULING ON REQUESTS TO INTERVENE,
TIEC'S MOTION TO COMPEL, AND
REQUESTS FOR TRADITIONAL SERVICE

Requests to Intervene

By the March 28, 2016 deadline set forth in SOAH Order No. 2, Sherri Waters filed a request to intervene in this proceeding. On March 30, 2016, two days after such deadline, Larry Fields, Johnny Holmes, and Jason Spiller filed requests to intervene in this proceeding. On April 4, 2016, the City of Garland (Garland) filed objections to these requests, asserting that Ms. Waters, Mr. Fields, Mr. Holmes, and Mr. Spiller are not directly affected landowners and therefore do not have justiciable interests required for standing to intervene. On April 21, 2016, Mr. Spiller and Mr. Holmes submitted a request for reinstatement as parties to the case, contending that they are limited partners in a partnership that owns property that is directly affected by a proposed route. Mr. Spiller and Mr. Holmes assumed that because SOAH Order No. 4 did not grant their requests for intervention, their requests had been denied.

As to Ms. Waters, Garland withdrew its objection to her intervention after she provided additional documentation showing that she is a directly affected landowner. Therefore, her request is **GRANTED**, and she is now a party to this proceeding as an intervenor.

As to Mr. Holmes and Mr. Spiller, their request for reinstatement shows that they are limited partners in the Esther B. Holmes Limited Partnership (LP), which is already an

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intervenor in this case pursuant to SOAH Order No. 4. Therefore, their requests to intervene are **GRANTED**, and Mr. Holmes and Mr. Spiller are permitted to participate in the hearing as intervenors in their capacity as limited partners of the Esther B. Holmes LP.

Mr. Fields did not file a response to Garland's objections to their requests to intervene. Therefore, based on Garland's representations that the property tax records indicate that Mr. Fields is not a directly affected landowner, and the lack of evidence submitted by Mr. Fields to the contrary, the ALJ **DENIES** Mr. Fields' request to intervene. If Mr. Fields has evidence to corroborate his statement in his request that one or more of Garland's proposed routes would cross his property, he is **ORDERED** to file such evidence with the ALJ on or before May 4, 2016. If Mr. Fields files such evidence, the ALJ will reconsider Mr. Fields' request to intervene.

TIEC's Motion to Compel SCT To Respond to TIEC RFI 1-18

On April 1, 2016, Texas Industrial Energy Consumers (TIEC) filed a motion seeking an order requiring Southern Cross Transmission (SCT) to respond to TIEC Request for Information (RFI) 1-18. RFI 1-18 requests an excel file, showing several different types of data by the hour, relating to the economic study referred to in direct testimony filed by SCT witness Ellen Wolfe. TIEC's motion indicates that SCT provided some of the information requested by RFI 1-18, but not all. TIEC contends that the information not provided does exist and is available, and that it was input to a computer model used in the development of Ms. Wolfe's direct testimony concerning the economic benefit analysis she performed for the transmission line at issue in this case. TIEC argues that SCT's selective production of data that went into the model used by Ms. Wolfe for her testimony is improper and failed to meet SCT's duties under the discovery rules.

In response, both SCT and Ms. Wolfe, via her sworn affidavit, represented that they do not have the data that TIEC seeks by its motion. SCT argues that it complied with the rule regarding responses to discovery because it provided a complete response based on the information reasonably available to it. According to SCT and Ms. Wolfe, an excel file with the

hourly data sought by TIEC does not exist. SCT and Ms. Wolfe explain that because there was so much data involved in the computer modeling, decisions were made about what information the model would report so that it was “manageable,” and that it was not “practical” to report out all of the hourly data from the modeling because it was so voluminous. The data sought by TIEC, according to SCT and Ms. Wolfe, was not retained by the software program used to run the model because of decisions made by those persons who designed the model. SCT states that the modeler directed the software program to report the data sought by the study, in this case, the effects of adding the SCT tie between ERCOT and the Eastern Interconnect. Ms. Wolfe testifies that it would cost approximately \$10,000 to produce the additional hourly nodal information for the ERCOT portion of the model, and approximately \$50,000 to obtain the nodal information for the Eastern Interconnect portion of the model.

The ALJ has reviewed the motion, the responses, and the additional briefing filed by TIEC and SCT. The ALJ finds that the information sought by TIEC is relevant and discoverable. The ALJ understands from Ms. Wolfe’s affidavit that the information sought by TIEC’s motion was present during the modeling. However, based on decisions made during the design of the model, the information was not retained, or at least not in a way in which it could be easily obtained. The ALJ will take these facts into consideration in weighing any testimony regarding the model and its results as they pertain to the economic analysis discussed in Ms. Wolfe’s testimony. However, the information sought by TIEC does not currently exist in an excel file in SCT’s possession, and based on Ms. Wolfe’s uncontroverted sworn testimony, it would require more than a reasonable effort by SCT to create the excel file sought by TIEC. Under the circumstances, the ALJ finds that the information sought by TIEC’s motion is not in SCT’s constructive or actual possession, custody, or control. Therefore, TIEC’s motion is **DENIED**.

Requests for Traditional Service

On April 14, 2016, Intervenor Elizabeth Lane filed a motion seeking a good-cause exception to SOAH Order No. 3, which suspended traditional service in this proceeding. On April 15, 2016, Intervenor Gloria Moffett also filed a motion seeking a good-cause exception to SOAH Order No. 3. These motions are **GRANTED**, and all parties are ordered to serve

Ms. Lane and Ms. Moffett by mail with all filings at the addresses provided for them on the service list.

SIGNED April 27, 2016.



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STYLE/CASE: **CITY OF GARLAND**

SOAH DOCKET NUMBER: **473-16-2751**

REFERRING AGENCY CASE: **45624**

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