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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
BEFORE THE HEARING CLERK

STATE OFFICE OF
ADMINISTRATIVE HEARINGS

**SOUTHERN CROSS TRANSMISSION LLC'S RESPONSE
TO TIEC'S MOTION TO COMPEL REGARDING TIEC 3-1**

Southern Cross Transmission LLC (SCT) files this response to TIEC's Motion to Compel Regarding TIEC 3-1 (TIEC's Motion). TIEC's Motion was filed on Thursday, April 28, so SCT's response is timely filed.

I. INTRODUCTION

TIEC's RFI 3-1 is largely a retread and attempt to end-run the discovery dispute currently pending before the ALJ with respect to TIEC 2-12. In response to TIEC's motion to compel with respect to RFI 2-12, SCT has already objected to production of information not related to the studies provided with the direct testimony of Ellen Wolfe, has already provided affidavits related to that information, and has submitted the subject documents to the ALJ for *in camera* inspection. Before the ALJ has even had an opportunity to rule on TIEC's previous assertions concerning those documents, TIEC has now served an additional RFI, and an additional motion to compel, concerning the very same documents. TIEC's Motion should be denied.

II. TIEC IS REQUESTING PRIVILEGED TRADE SECRETS

SCT has already submitted affidavits establishing that the information requested by TIEC contains privileged trade secrets and has submitted the documents to the ALJ for *in camera* review. A trade secret is a formula, pattern, device or compilation of information that is used in

the trade-secret holder's business and gives the holder an advantage over competitors.¹ In determining whether information is a trade secret, the courts generally consider certain non-dispositive factors such as the extent to which the information is known outside the business, the extent to which it is known by employees and others involved in the business, measures taken to guard the secrecy of the information, the value of the information to the business and its competitors, the amount of effort or money expended in developing the information, and the ease or difficulty with which the information could be properly acquired or duplicated by others.²

The previously-submitted affidavits of David Parquet and Ellen Wolfe³ establish, among other things, the following elements of the trade secret privilege:

- The extent to which the information is known outside the business and by employees and others involved in the business: Ms. Wolfe performed additional analyses for SCT for competitively sensitive business/commercial purposes.⁴ That information is known only by those Pattern employees, outside counsel, consultants, and others specifically working on the SCT project.⁵ Pursuant to her non-disclosure agreement with SCT, Ms. Wolfe has disclosed the information only to those Pattern employees, outside counsel, and consultants specifically working on the SCT project.⁶
- Measures taken to guard the secrecy of the information: Each of the persons who have access to the information have executed a strict non-disclosure agreement.⁷ In addition, SCT carefully redacted the information it provided in response to TIEC 2-12.
- The value of the information to the business and its competitors: A developer's development pipeline and ability to collect and analyze market data are among its greatest assets.⁸ The kind of information redacted by SCT in response to TIEC 2-12, in the hands of a competitor, could be extremely harmful to SCT. Disclosure of such information could give a competitor or potential counterparty an unreasonable and unfair advantage by knowing SCT's negotiating and planning strategy, or could allow a competitor to disrupt sensitive discussions.⁹

¹ *Computer Assocs. Int'l v. Altai, Inc.*, 918 S.W.2d 453, 455 (Tex. 1996).

² *In re Union Pacific Railroad*, 294 S.W.3d 589, 592 (Tex. 2009).

³ See Southern Cross Transmission LLC's Supplemental Response to TIEC's Motion to Compel Regarding TIEC 2-12 and Submission of Documents for In Camera Review (filed April 25, 2016).

⁴ Parquet affidavit at ¶ 6.

⁵ *Id.* at ¶ 9.

⁶ Wolfe affidavit at ¶ 8.

⁷ Parquet affidavit at 9.

⁸ *Id.* at ¶ 8.

⁹ *Id.* at ¶ 8.

- The amount of effort or money expended in developing the information: Pattern has expended significant resources in developing the SCT project and the information redacted by SCT in response to TIEC 2-12 is based on several years of work.¹⁰
- The ease or difficulty with which the information could be properly acquired or duplicated by others: It would be extremely difficult for the information developed by SCT and the studies performed for SCT to be acquired or duplicated by others without the same or greater expenditure of time and study resources as incurred by SCT over the last several years.¹¹

Once a trade secret has been established, the party requesting discovery has the burden to show that the trade secret should be disclosed.¹² A trade secret should be disclosed only if doing so is necessary to prevent fraud or injustice; that is, disclosure is required only if the information is necessary for fair adjudication of a claim or defense.¹³ TIEC has not shown and cannot show that disclosure of the information is necessary for a fair adjudication of a claim or defense, much less to prevent fraud or injustice. Absent such a showing, disclosure of such information is not authorized or justified, even under the protective order, which cannot protect against or reverse the harm that even inadvertent disclosure of the information would cause.

III. RETREAD OF TIEC 2-12 DISPUTE

TIEC's RFI 3-1 requests unredacted copies of the same documents and communications that were the subject of TIEC 2-12. In propounding RFI 3-1, at minimum, TIEC is seeking a second bite of the apple and using a new request and a new motion to compel to argue about the trade secret privilege properly accorded much of the redacted information included in SCT's response to TIEC 2-12. SCT responded to TIEC 3-1 recognizing that the constraints applicable to the redacted documents and communications had already been established and argued.

¹⁰ *Id.* at ¶¶ 10, 12.

¹¹ *Id.* at ¶ 12.

¹² *In re Continental Tire, Inc.*, 979 S.W.2d 609, 613 (Tex. 1998).

¹³ *Id.* at 612.

TIEC's Motion to Compel regarding TIEC 3-makes it clear that TIEC's purpose is to do an end-run around the motion already pending before the ALJ regarding TIEC 2-12.

Specifically, TIEC has chosen to disregard the Texas Rules of Civil Procedure and request information that it knows it is not entitled to. The affidavit of Ellen Wolfe attached as part of SCT's response to TIEC's Motion to Compel Regarding TIEC 2-12 specifically states the factual basis for the redacted information. In her uncontroverted sworn statement, Ms. Wolfe states: "Redacted material between Resero and LCG includes, for example, pricing of services performed by LCG and the pricing of services provided to SCT, discussions regarding logistics, project planning, timing of deliverables, details discussed between Resero and LCG regarding work for other clients, and other work for SCT, not pertaining to the modeling performed for the 2015 study supporting my direct testimony."¹⁴

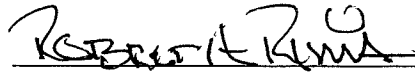
TIEC knows that such evidence is neither discoverable nor admissible, but ignores information in its possession establishing that it is not entitled to the information redacted by SCT and Resero. TIEC 3-1 cannot be viewed in a vacuum, and TIEC should not be allowed to pretend this is a new request unrelated to the affidavits of David Parquet and Ellen Wolfe addressing the exact same information now requested in TIEC 3-1.

Despite TIEC's effort to the contrary, TIEC 3-1 must be viewed in context. TIEC has already framed the dispute concerning production of the redacted information that is pending before the ALJ, and must be held responsible for knowing the requested information has already been established as trade secret or unrelated to Ms. Wolfe's study in this proceeding.

Wherefore, Southern Cross Transmission LLC respectfully requests that TIEC's Motion to Compel be denied.

¹⁴ Wolfe affidavit at ¶ 6.

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 TIEC on May 2, 2016.


Robert A. Rima