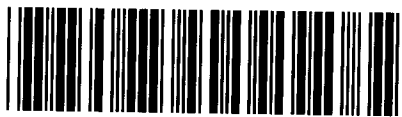




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APPLICATION TO THE CITY OF  
GARLAND TO AMEND A  
CERTIFICATE OF CONVENIENCE  
AND NECESSITY FOR THE RUSK TO  
PANOLA DOUBLE-CIRCUIT 345-KV  
TRANSMISSION LINE IN RUSK AND  
PANOLA COUNTIES

§  
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§

BEFORE THE UTILITY COMMISSION  
THE AGILEN

STATE OFFICE OF

ADMINISTRATIVE HEARINGS

**SOUTHERN CROSS TRANSMISSION LLC'S MOTION TO STRIKE  
INTERVENOR TESTIMONY**

Southern Cross Transmission LLC (SCT) files this Motion to Strike the portions of the Direct Testimony of Charles S. Griffey, filed on behalf of Texas Industrial Energy Consumers (TIEC). This Motion is being timely filed within the deadline established in this case by the ALJ.

**I. LEGAL STANDARDS**

P.U.C. PROC. R. 22.221(a) provides that the Texas Rules of Civil Evidence as applied in nonjury civil cases in the courts of Texas shall be followed in contested cases. The rule further provides that "[i]rrelevant, immaterial, or unduly repetitious evidence shall be excluded." Under TEX. R. CIV. EVID. 401, "'relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Portions of testimony filed by Mr. Griffey are irrelevant and should be excluded from the evidentiary record in this case as described below.

TEX. R. CIV. EVID. Rule 702 addresses testimony by an expert witness. The very first requirement for the admission of expert testimony under TEX. R. CIV. EVID. Rule 702 is that the person be qualified. Whether the expert witness has the necessary qualifications is a preliminary question for the Administrative Law Judge under Rule 104(a).

## **II. WITNESS AND PORTIONS OF TESTIMONY**

Pursuant to the Texas Rules of Evidence and the Commission's Procedural Rules, SCT respectfully requests that portions of the Direct Testimony of Charles S. Griffey filed by TIEC, which purports to interpret and apply the law, be struck. More specifically, SCT moves to strike the following:

**Page 12, Line 22 – Page 13, Line 8:**

**Q. WOULD SUCH A FINDING VIOLATE POSTAGE STAMP PRICING OR DISCRIMINATE AGAINST THE SCT PROJECT?**

A. No. PURA § 35.004(d) requires postage stamp pricing for electric transmission service *within* ERCOT – not for exports from ERCOT. While PURA § 35.004(b) requires the Commission to ensure that *non-discriminatory* service is provided for certain entities within ERCOT, SCT has admitted that it does not meet the definition of any of the entities listed in this subsection, and SCT should not be permitted to claim the benefits of being a TSP in ERCOT while disclaiming the corresponding obligations. Finally, PURA § 35.004(e) requires only that ancillary services be provided at prices, terms and conditions that are not unreasonably preferential, prejudicial, discriminatory, predatory, or anti-competitive. Taken together, the Commission has the authority to ensure that ERCOT customers do not subsidize exports from ERCOT. [Internal citations omitted.]

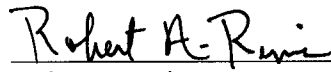
Mr. Griffey, in his quoted testimony, paraphrases sections of PURA and then jumps to a conclusion regarding the authority of the Commission that results from stringing together the cited provisions of PURA. The above quote is inadmissible because Mr. Griffey's personal opinion regarding the law is irrelevant. Further, Mr. Griffey is not licensed as a lawyer; he does not have a legal education; and, he does not possess any other qualification that would make him qualified to interpret or apply state law. Mr. Griffey's qualifications are contained in Exhibit CSG-1 to his Direct Testimony. Mr. Griffey is a Chemical Engineer with a Masters in Business and Public Management. He is also a Chartered Financial Analyst. He is not a lawyer. He has neither the specialized education nor does his resume reflect that he has the experience to be

qualified to opine as an expert witness on the interpretation or application of the law. Mr. Griffey's personal opinion regarding the law and legal issues simply is not relevant.

### **III. CONCLUSION**

For the foregoing reasons, SCT respectfully requests that the ALJ excludes from evidence the portions of Mr. Griffey's Direct Testimony described above and grant SCT such other relief to which it has shown itself entitled.

Respectfully submitted,



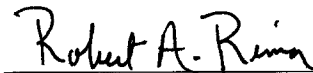
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*ln w/permission*

*Attorney for Southern Cross Transmission LLC*

### **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 4, 2016.



Robert A. Rima

*ln w/permission*