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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. 7
DENYING MOTIONS TO COMPEL

On Friday, May 13, 2016, the Administrative Law Judges (ALJs) convened a prehearing conference to discuss TIEC's pending motions to compel Southern Cross to respond to requests for information (RFIs) TIEC 2-12 and TIEC 3-1. Southern Cross, TIEC, Public Utility Commission staff, the City of Garland, and Luminant Energy Company/Luminant Generation Company all made appearances, but argument was confined to Southern Cross and TIEC.

The ALJs have reviewed affidavits filed by Southern Cross in its Supplemental Response to TIEC's Motion to Compel Regarding TIEC 2-12 and Submission of Documents for *In Camera* Review (Southern Cross Supplemental Response), the cases cited by Southern Cross, and the record made during the May 13 prehearing conference and find as follows:

Southern Cross established that the material sought by TIEC in RFI 2-12 and RFI 3-1 is part of another project not associated with the 2015 economic analysis (2015 Project) about which TIEC sought information with respect to Southern Cross's position in this case. Southern Cross avers that Resero Consulting performed a competitively-sensitive analysis "that identifies the customer benefits and production cost savings in ERCOT," but that is separate and apart from the 2015 Project that is the subject of TIEC's RFI 2-12.¹ In his affidavit, David Parquet, Senior Vice-President of Pattern Development, states that the 2015 model runs that comprise the 2015 Project about TIEC inquired in its RFI are separate and apart from another project

¹ Southern Cross Supplemental Response at 2.

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designated as TO6, which is part of a separate task order. In her affidavit, Resero Consulting's President, Ellen Wolfe, corroborates Mr. Parquet's assertion that the redacted material provided for *in camera* review does not pertain to the 2015 Project, but rather, pertains to the separate project discussed by Mr. Parquet. However, through argument at the prehearing conference it became apparent that the material concerning the TO6 project could reasonably lead to the discovery of admissible evidence for purposes of determining what types of reasonable conditions the Commission might consider prescribing in approval of City of Garland's application. Therefore, assuming Southern Cross made a timely and effective relevance objection to TIEC RFI 2-12 and 3-1, it is **OVERRULED**.

Southern Cross also asserted that at least some of the material sought by TIEC's requests is trade secret information and thus precluded from discovery. Based on the review of Mr. Parquet's and Ms. Wolfe's affidavits, the ALJs find that the information concerning the TO6 project constitutes a trade secret under Tex. R. Evid. 507.

TIEC argues that the confidentiality of the material sought in TIEC 2-12 can be protected by the protective order currently in place in this case. Southern Cross responds that the protective order does not offer sufficient protection to the trade secret material because TIEC's expert cannot, in essence, forget what he sees. Moreover, that circumstance will provide the expert with valuable information he can exploit in other engagements with other clients who would be at a competitive advantage vis-à-vis Southern Cross because they would understand the basis of Southern Cross's pricing strategy. This is very similar to the situation discussed in *In Re Union Pacific Railroad Company*, 294 S.W.3d 589 (Tex. 2009).

TIEC provided no evidence that production of the requested information would substantially impair its ability to present its case. Once Southern Cross established that the information requested was a trade secret, the burden shifted to TIEC to “demonstrate with specificity exactly how the lack of the information will impair the presentation of the case on the merits to the point that an unjust result is a real, rather than a merely possible threat.” *In Re Bridgestone/Firestone, Inc.*, 106 S.W.3d 730, 733 (Tex. 2003). Because TIEC did not meet its burden, its Motion to Compel is **DENIED**.

SIGNED May 19, 2016.



CASEY A. BELL
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS



FERNANDO RODRIGUEZ
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS