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SOAH DOCKET NO. 473-16-2751
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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
STATE OFFICE
OF ADMINISTRATIVE HEARINGS

INITIAL BRIEF OF THE CITY OF GARLAND

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INITIAL BRIEF OF THE CITY OF GARLAND

I. INTRODUCTION

On February 25, 2016, the City of Garland (Garland), doing business as Garland Power & Light (GP&L), filed an Application with the Public Utility Commission of Texas (Commission) to amend a certificate of convenience and necessity (CCN) for a proposed double-circuit 345-kV Transmission Line in Rusk and Panola Counties (Garland Project).¹

Garland's Application was filed pursuant to Public Utility Regulatory Act (PURA)² § 37.051(c-1), (c-2), (g) and (i), as enacted during the last session of the Texas Legislature. Subsections (c-1) and (g) require a CCN application for, respectively, a facility that enables additional power to be imported into or exported out of the Electric Reliability Council of Texas (ERCOT) power grid and a municipally-owned transmission facility located outside the boundaries of the municipality. Subsections (c-2) and (i) direct the Commission, not later than the 185th day after the application is filed, to approve an application under subsections (c-1) or (g) for a facility that is to be constructed under an interconnection agreement appended to an offer of settlement approved in a final order of the Federal Energy Regulatory Commission (FERC) issued in Docket No. TX11-01-001, directing physical connection between the ERCOT and the SERC Reliability Council (SERC) regions under Sections 210, 211, and 212 of the Federal Power Act (FPA), and authorize the Commission to prescribe reasonable conditions to protect the public interest that are consistent with the FERC order. The statute is referring to the order in FERC Docket No. TX11-1-001, *Southern Cross Transmission LLC*, 147 FERC ¶ 61,113 (2014) (*Southern Cross*), which directs physical connection between the ERCOT and SERC regions under Sections 210, 211, and 212 of the FPA.

¹ CCN Application Form and Attachments 1-9, Garland Ex. 1.

² TEX. GOV'T CODE ANN. § 11.001 *et seq.*

The Garland Project is a facility that is to be constructed under an interconnection agreement appended to the offer of settlement approved by FERC in *Southern Cross*, and this Application is therefore governed by PURA § 37.051(c-2) and (i).³ The Garland Project will interconnect the new Rusk Switching Station in Rusk County, to be constructed and owned by Oncor Electric Delivery Company (Oncor), to the new Panola Switching Station in Panola County at the Texas-Louisiana border, to be constructed by Rusk Interconnection LLC (Rusk), an affiliate of Southern Cross Transmission LLC (SCT), and owned by Garland.⁴ The Rusk Station will be interconnected with the ERCOT grid and the Panola Station will be interconnected to a new high-voltage direct current (HVDC) converter station to be owned by SCT adjacent to the Panola Station across the border in Louisiana.⁵ FERC ordered Garland to provide the interconnection in accordance with the interconnection agreements attached to the offer of settlement filed in *Southern Cross*.⁶ Among other things, FERC found that the interconnection is in the public interest and determined that it will not cause any ERCOT utility or other entity that is not already a public utility under the FPA to become a public utility under the Act.⁷

In its CCN Application, Garland presented 52 primary alternative segments and developed from a combination of those segments 96 possible routes, which were then narrowed (based upon environmental and land use criteria, input from government agencies, and public input) to 12 routes that were the among the highest ranking routes that contained all feasible segments.⁸ While Garland determined that Route RP5 best addressed the requirements of PURA and the Commission's Substantive Rules,⁹ all routes and segments shown in the Application, as well as any additional routes derived from segments noticed as part of the Application, are viable options for the Commission's selection in this proceeding.¹⁰

³ Garland Ex. 1, Attachment 2.

⁴ Garland Ex. 1 at 3, 5.

⁵ Garland Ex. 1 at 5.

⁶ Garland Ex. 1, Attachment 4 at 8

⁷ Garland Ex. 1, Attachment 4 at 8.

⁸ Garland Ex. 1, Attachment 1 at 3-9, 3-13.

⁹ Garland Ex. 1, Attachment 1 at 8-33; Direct Testimony of Kristi Wise, Garland Ex. 3 at 16.

¹⁰ Garland Ex. 3 at 37.

Although all routes and segments are available for consideration, several landowners testified that the Commission should approve Route RP9 (also known as Route 4M) comprised of segments 1, 7, 9, 13, 23, 24, 28, 31, 34, 41, and 43.¹¹ Commission Staff recommended Route RP5, but concluded that Route RP9 would be a reasonable alternative.¹² The Texas Parks and Wildlife Department (TPWD) recommended Route RP95 as the route having the least impact to fish and wildlife resources and Route RP93 as the route having the second least impact to fish and wildlife resources.¹³

Garland and SCT have joined the intervenor landowners in an unopposed Stipulation Concerning Transmission Line Route (Route Stipulation) supporting selection of Route RP9 by the Commission.¹⁴ The Stipulation Route is comprised of noticed segments that were not changed or modified from the segments as filed in the application and is a viable, feasible, and reasonable route considering the environmental, engineering, and land use constraints in the Garland Project area. Garland supports approval of Route RP9 by the Commission, as agreed in the Route Stipulation, as a reasonable and viable route that reflects community support and satisfies the other considerations the Commission considers in selecting a transmission line route.

¹¹ Direct Testimony of Jeb Stuart James, Panola Landowner Group Ex. 1 at 7; Direct Testimony of Justin Wagstaff, Panola Landowner Group Ex. 2 at 7; Direct Testimony of Venita Judice, Panola Landowner Group Ex. 3 at 16; Direct Testimony of Joe Beard, Panola Landowner Group Ex. 4 at 9; Direct Testimony of Tiffany Hull, Panola Landowner Group Ex. 5 at 11; Direct Testimony of Julia H. Greggs, Panola Landowner Group Ex. 6 at 8; Direct Testimony of Bobby Muhlhauser, Panola Landowner Group Ex. 7 at 10, 12; Direct Testimony of Jim Holder, Panola Landowner Group Ex. 9 at 6; Direct Testimony of Francis Gilbert Barker, Panola Landowner Group Ex. 10 at 7; Direct Testimony of Meredith Gautier, Panola Landowner Group Ex. 11 at 11; Direct Testimony of Fannie Watson, Panola Landowner Group Ex. 12 at 2; Direct Testimony of Ruth Stephens, Panola Landowner Group Ex. 13 at 2; Direct Testimony of Jimmy Hutchinson, Panola Landowner Group Ex. 14 at 2; Direct Testimony of Carl "Buddy" Carswell, Jr., Panola Landowner Group Ex. 15 at 2; Direct Testimony of William Wood, Panola Landowner Group Ex. 16 at 9-10; Direct Testimony of Betty Lou Wood, Panola Landowner Group Ex. 17 at 10; Direct Testimony of Charles N. Spears, Panola Landowner Group Ex. 18 at 2; Direct Testimony of John P. Carroll, Panola Landowner Group Ex. 19 at 1; Direct Testimony of Sandra M. Stein, Panola Landowner Group Ex. 20 at 3; Direct Testimony of Danny Milam, Panola Landowner Group Ex. 21 at 1-2; Direct Testimony of Thomas Patten, Panola Landowner Group Ex. 22 at 2; Direct Testimony of Billy Broadaway, Panola Landowner Group Ex. 23 at 2; Direct Testimony of Kartreba Denese McDaniel Toler, Panola Landowner Group Ex. 24 at 7; Direct Testimony of Jason H. Heinkel, Panola Landowner Group Ex. 25 at 1-2; Direct Testimony of Craig Gibbs, Panola Landowner Group Ex. 26 at 2; Direct Testimony of Joy F. Gibbs, Panola Landowner Group Ex. 27 at 2; Direct Testimony of Jason Spiller, Panola Landowner Group Ex. 28 at 2; Direct Testimony of Johnny Holmes, Panola Landowner Group Ex. 29 at 2.

¹² Direct Testimony of Kevin Mathis, Staff Ex. 1 at 16, 25.

¹³ Staff Ex. 1, Exhibit KM-3 at 5-6.

¹⁴ Route Stipulation.

The routing options for the Project range from approximately 37 miles to 40 miles in length.¹⁵ The estimated cost of the routing options range from approximately \$103,779,478 to \$109,925,443.¹⁶ Garland plans to construct the transmission line primarily on steel monopole structures approximately 135-145 feet tall and requiring a right-of-way of approximately 150 feet wide.¹⁷ However, depending on which route is approved, it is possible that some lattice structures may also be utilized.¹⁸

In addition to routing of the Rusk to Panola line, this case involves consideration of conditions proposed by various parties pursuant to PURA § 37.051 (c-2) and (g), which authorize the Commission to prescribe reasonable conditions to protect the public interest that are consistent with the FERC order in *Southern Cross*. This brief addresses certain of those proposed conditions, while others are addressed in the initial brief of SCT. As described further below, Garland supports certain proposed conditions, or modifications of those conditions, and advocates that certain other proposed conditions are unreasonable and should not be adopted.

II. PROCEDURAL BACKGROUND

Garland filed its Application on February 25, 2016. Pursuant to the Preliminary Order in this case, PURA §§ 37.051(c-2) and (i) direct the Commission to act on the application within 185 days (by Monday, August 29, 2016).¹⁹

On February 29, 2016, the Director of Commission Advising and Docket Management issued the Commission's Order Requesting List of Issues and Order of Referral, requesting a list of issues to be addressed and referring this proceeding to the State Office of Administrative Hearings (SOAH). SOAH Administrative Law Judge (ALJ) Casey Bell issued SOAH Order No. 1 (March 2, 2016) assuming jurisdiction, notifying participants of certain procedural matters, and convening a telephonic prehearing conference for March 9, 2016. At the March 9 prehearing conference, the ALJ granted unopposed interventions and approved a procedural schedule. SOAH Order No. 2 (March 15, 2016) memorialized the prehearing conference and established the procedural schedule, including the convening of the Hearing on the Merits on

¹⁵ Garland Ex. 1 at 4.

¹⁶ Staff Ex. 1 at WP-6.

¹⁷ Garland Ex. 1 at 4.

¹⁸ Garland Ex. 1 at 4.

¹⁹ Preliminary Order at 1 (Mar. 22, 2016).

May 31 – June 3, 2016. SOAH Order No. 2 also notified the parties of certain procedural requirements, including document service and other important actions necessary for parties to take prior to and during the Hearing on the Merits. SOAH Order No. 2 also described the discovery procedures for this proceeding and adopted a protective order.

On May 22, 2016, the Commission issued its Preliminary Order, which identified the issues to be addressed in this proceeding.

SOAH Order No. 3 (April 6, 2016) suspended traditional service requirements and provided for modifications for service procedures with a few exceptions. SOAH Order No. 4 (April 14, 2016) granted numerous interventions that were unopposed and notified the parties that no route adequacy hearing would be held as no party had challenged route adequacy by the established deadline. SOAH Order No. 4 also granted Texas Industrial Energy Consumers' (TIEC) motion to compel SCT's responses to certain TIEC request for information. SOAH Order No. 5 (April 27, 2016) granted motions for good-cause exception to SOAH Order No. 3 for two intervenors, granted unopposed requests to intervene, and denied TIEC's motion to compel SCT to respond to certain TIEC request for information. SOAH Order No. 6 (May 5, 2016) granted intervenor Larry Fields' request for reinstatement, dismissed intervenor Terry Hooper from the proceeding, and scheduled a prehearing conference on TIEC's motions to compel SCT's responses to certain TIEC requests for information. SOAH Order No. 7 (May 19, 2016) denied TIEC's motions to compel. SOAH Order No. 8 (June 3, 2016) dismissed the intervenors who did not file direct testimony or a statement of position, granted intervenor John Paul Davis' request to withdraw from the proceeding, and adjourned the hearing.

Southern Cross intervened and filed its direct testimony on February 25, 2016, the day Garland filed the Application. Other Intervenors filed direct testimony on April 27, May 2, and May 16, 2016. Commission Staff filed direct testimony on May 11, 2016. Garland filed rebuttal testimony and intervenors filed cross-rebuttal testimony on May 24, 2016. The hearing on the merits was held on May 31-June 3, 2016. On June 8, 2016, the intervening landowners, Garland and SCT filed an unopposed Route Stipulation and a motion to admit the Route Stipulation into evidence.

PURA §§ 37.051(c-2) and (i) and the Preliminary order establish August 29, 2016 as the deadline for the Commission to issue a final order in this proceeding.

III. JURISDICTION

The City of Garland operates a municipally-owned utility providing service under CCN No. 30063.²⁰ The Commission has jurisdiction over this matter pursuant to PURA § 37.051. SOAH has jurisdiction, pursuant to Texas Government Code § 2003.049 and PURA § 14.053, over all matters relating to the conduct of a hearing in this matter.

IV. NOTICE

Garland complied with the requirements of 16 Tex. Admin. Code § 22.52 (TAC) by providing proper notice to utilities, city and county governments, the Office of Public Utility Counsel (OPUC), and directly affected landowners.²¹ In addition, Garland provided published notice in the *Henderson Daily News* and *Panola Watchman* newspapers having general circulation in Panola and Rusk Counties.²² Garland also provided notice for and hosted two public meetings in Carthage, Texas in December 2015 to inform landowners and solicit additional public input about the Project.²³ On April 26, 2016, pursuant to Tex. Parks & Wild. Code Ann. § 26.002(a), Garland representatives sent notice to TPWD and the Sabine River Authority.²⁴ Pursuant to Tex. Parks & Wild. Code Ann. § 26.002, Garland representatives published notice of the Texas Parks & Wildlife Code Chapter 26 hearing in qualifying newspapers, *Henderson Daily News* and *Panola Watchman*, on May 8, May 15, and May 22, 2016.²⁵

V. DISCUSSION

A. Application (Preliminary Order Issue No. 1)

Preliminary Order Issue No. 1 states: “Is this application for a facility to be constructed under an interconnection agreement appended to an offer of settlement approved in the FERC’s final order in *Southern Cross*?”

Garland has established that this case is an application for a facility to be constructed under an interconnection agreement appended to an offer of settlement approved in the FERC’s

²⁰ Garland Ex. 1 at 2.

²¹ Proof of Notice, Garland Ex. 5 at 11-63; Supplemental Proof of Notice, Garland Ex. 6.

²² Garland Ex. 5 at 5-10.

²³ Garland Ex. 1 at 10.

²⁴ Chapter 26 Proof of Notice, Garland Ex. 7.

²⁵ Garland Ex. 7.

final order in *Southern Cross*. No party has contested this issue. Garland's Application included the offer of settlement approved in *Southern Cross*.²⁶ Appended to the offer of settlement is an interconnection agreement between Garland and Oncor Electric Delivery Company LLC (Oncor) that identifies the Rusk to Panola transmission line as a facility to be constructed under that agreement.²⁷

B. Reasonable Conditions to Protect the Public Interest (Preliminary Order Issue No. 2)

Preliminary Order Issue No. 2 states: "[W]hat reasonable conditions consistent with the FERC's final order in *Southern Cross*, if any, should the Commission prescribe in order to protect the public interest?"

PURA § 37.051(c-2) and (g) authorize the Commission to prescribe reasonable conditions in this case to protect the public interest that are consistent with the FERC order in *Southern Cross*. Several parties have proposed conditions for the Commission to consider in connection with its approval of this CCN application. In particular, Commission Staff has proposed a list of conditions in its Statement of Position and TIEC witness Charles Griffey identified a list of proposed conditions in his direct testimony. Luminant Generating Company LLC and Luminant Energy Company LLC (Luminant) also proposed certain conditions. The testimony of several intervening landowners also included a proposed condition relating to use of condemnation authority for the Garland Project. Garland supports some of the proposed conditions, or supports them with modifications, while others are unreasonable and should not be adopted. Some of the proposed conditions relate more to SCT, and are addressed in SCT's initial brief.

Proposed Condition Concerning Garland Cost Recovery

TIEC witness Charles Griffey proposes a condition that "[n]o costs related to the Rusk or Panola Substations or to the Rusk to Panola Line shall be allowed in TCOS under any circumstances."²⁸ Commission Staff echoes this ill-advised and potentially unlawful recommendation.²⁹ The proposed condition should be rejected.

²⁶ Garland Ex. 1 at Attachment 2.

²⁷ Garland Ex. 1, Attachment 2 at 33 of 58.

²⁸ Direct Testimony of Charles Griffey, TIEC Ex. 1 at 13.

²⁹ Staff Statement of Position (SOP) at 12-13.

As Mr. Griffey and Staff acknowledge,³⁰ Garland has entered into a Transmission Line Agreement (TLA) with SCT affiliate Rusk Interconnection LLC (Rusk) under which Rusk will pay the costs of constructing and decommissioning the Garland facilities, as well as reasonable operations and maintenance expenses. The TLA is rigorous concerning these issues. For example, it provides that Rusk will pay the costs of constructing the Rusk to Panola line and the Panola station, and will convey them to Garland prior to energization for \$1.³¹ As a result, there is no risk that Garland will incur construction costs for the facilities (other than \$1). Similarly, Rusk will fund a decommissioning escrow account prior to transfer of the facilities, and the TLA contains specific provisions for determining and periodically updating the amount of the escrow account, including determination by an independent technical expert if necessary.³² As a result, there is little risk that the decommissioning fund will be underfunded or that Garland will incur costs to decommission the facilities. Rusk will also reimburse Garland for payments in lieu of taxes made by Garland to local taxing authorities.³³ Finally, the TLA contains detailed provisions for determining the reasonable operations and maintenance expense to be reimbursed by Rusk, again including determination by an independent technical expert if necessary.³⁴ As a result, Garland has provided through the TLA that costs properly attributable to SCT will be paid by Rusk. Garland will not seek to recover costs paid by Rusk in TCOS. TIEC's and Staff's proposed condition is therefore unnecessary.

Moreover, the Garland facilities are likely to be in service for more than 50 years,³⁵ and will be ERCOT open access facilities.³⁶ It is not possible to predict or prejudge the costs that may arise related to them during their useful lives. In the event that Garland ever seeks recovery of costs related to the Panola Substation or the Rusk to Panola line through TCOS, the Commission will have the opportunity to review those costs in the appropriate venue – a transmission rate case – where the specific circumstances can be considered.

³⁰ TIEC Ex. 1 at 14-15, Staff SOP at 12.

³¹ Direct Testimony of Darrell Cline, Garland Ex. 2 at 11; Tr. at 22 (May 31, 2016); Confidential Exhibit DWC-2, Garland Ex. 2A at 16 of 111.

³² Garland Ex. 2A, at Exhibit 1.1(a) (Decommissioning Escrow Agreement), §§ 2.2 and 2.3.

³³ Garland Ex. 2A at Exhibit 1.1(b) (Facilities Agreement), § 2.8.

³⁴ *Id.* at § 3.2.4.

³⁵ Tr. at 33 (May 31, 2016).

³⁶ Garland Ex. 2 at 12.

It is entirely possible that Garland could be required to incur a variety of costs related to the facilities during their 50+ year life. For example, Garland has an obligation to interconnect new generation to these open access facilities if requested under applicable Commission rules.³⁷ Similarly, Garland is required to maintain compliance with NERC reliability standards, including upgrading these facilities if necessary to do so.³⁸ It is also possible that ERCOT and the Commission could require upgrades that meet the Commission's economic benefit test, under which the benefits of the upgrades are determined to exceed their costs.³⁹ In each of these cases, and probably others not foreseeable at this time, Garland would be required to incur costs to upgrade the facilities under applicable legal and regulatory standards.

Staff's and TIEC's proposal to preclude for all time any TCOS recovery of costs related to these facilities – even if those costs are mandated by ERCOT, the Commission, or applicable legal requirements and are indisputably prudent – is at best ill-advised and at worst would violate the law by precluding the recovery of prudently-incurred costs. A more reasonable and lawful approach would be to consider costs related to these facilities if and when they are proposed to be included in TCOS in a transmission rate case. At that time, the prudence and reasonableness of the specific costs at issue could be considered by the Commission, and an informed decision could be made about whether to include them in TCOS.

Finally, TIEC raises the specter that Rusk could default on its obligation to pay reasonable operations and maintenance expenses under the TLA.⁴⁰ However, Pattern is a significant and credible operator in the energy and transmission business,⁴¹ and in Garland's view it is reasonable to anticipate that Pattern will honor its obligations. If Rusk were to default in its obligation to pay reasonable and necessary operations and maintenance expenses, it is likely that the SCT project would not be in operation, and Garland would use the decommissioning escrow fund to decommission the Garland line unless it was serving other ERCOT customers.⁴²

³⁷ Garland Ex. 2 at 12; Tr. at 25 (May 31, 2016); PUC Substantive Rules 25.191(d)(3) and 25.198(b).

³⁸ Garland Ex. 1, Attachment 2 at 22 of 58.

³⁹ See Rebuttal Testimony of Darrell Cline, Garland Ex. 8 at 3-4; PUC Substantive Rule 25.101(b)(3)(A)(i).

⁴⁰ TIEC Ex. 1 at 15.

⁴¹ See SCT Ex. 1 at 3.

⁴² Garland Ex. 8 at 3.

Proposed Condition Concerning Condemnation of Easements

Several landowner intervenors and Commission Staff have proposed a condition restricting condemnation of easements for the Garland line until certain SCT milestones have been met.⁴³ The Route Stipulation between Garland, SCT, and the intervenor landowners resolves this issue. It provides:

Garland, Southern Cross, and Rusk Interconnection LLC agree that they will not, nor will they cause any of their affiliates to, seek condemnation of any landowner's land in Panola County for the Garland Project as described in the Direct Testimony of Darrell W. Cline, so long as the landowner provides access to the land for surveying and design purposes, until such time as Southern Cross provides the Public Utility Commission of Texas with evidence that it has secured the funding to construct the complete interconnection project, including the Garland Project and the Southern Cross Transmission Project as described in the Direct Testimony of David Parquet.⁴⁴

Staff has indicated that it does not oppose the Route Stipulation. As a result, the Route Stipulation resolves this issue.

Proposed Condition that Garland and the Pattern Companies be Treated as Affiliates

TIEC witness Mr. Griffey proposes that the Commission condition approval of this application on Garland being treated as an affiliate of SCT and the Pattern companies, based on Mr. Griffey's concern about a provision in the TLA between Garland and Rusk under which Garland would upgrade the facilities at Rusk's request.⁴⁵ Mr. Griffey asserts this provision could give Rusk and its affiliates a competitive advantage not available to other market participants.⁴⁶

In response, SCT has agreed that Rusk will not ask Garland to upgrade the Rusk to Panola line under the TLA provision referred to by Mr. Griffey.⁴⁷ This should address Mr. Griffey's concern about that provision. Mr. Griffey cites no other reason to treat Garland as an affiliate of SCT or Pattern, and Garland and SCT/Pattern are not affiliates within the meaning of PURA §§ 11.003(2) and 11.006. Neither Garland nor SCT/Pattern own more than 5% of the

⁴³ Panola Landowner Group Ex. 1 at 8; Panola Landowner Group Ex. 2 at 7-8; Panola Landowner Group Ex. 3 at 15; Panola Landowner Group Ex. 4 at 9-10; Panola Landowner Group Ex. 5 at 11-12; Panola Landowner Group Ex. 6 at 8-9; Panola Landowner Group Ex. 7 at 9-10; Panola Landowner Group Ex. 9 at 7-8; Panola Landowner Group Ex. 10 at 7-8; Panola Landowner Group Ex. 24 at 7-8; Staff SoP at 13.

⁴⁴ Garland Ex. 12 at ¶ 6.

⁴⁵ TIEC Ex. 1 at 13, 26.

⁴⁶ TIEC Ex. 1 at 26.

⁴⁷ Rebuttal Testimony of David Parquet, SCT Ex. 6 at 6, 13-14.

voting securities of the other, nor does Garland exercise control over SCT/Pattern or vice versa.⁴⁸ As a result, Mr. Griffey's proposed condition should be rejected.

Proposed Condition Concerning Put and Call Provisions of the TLA

TIEC witness Mr. Griffey recommends that the Commission impose a condition that exercising the put or call options in the TLA will not lead to transfer of a CCN to SCT or Rusk without Commission approval.⁴⁹ As Mr. Griffey recognizes, Garland and SCT have already agreed that exercise of the put and call options will not transfer a CCN to Rusk.⁵⁰ Garland and SCT have also acknowledged that only the Commission could provide Rusk or SCT with a CCN,⁵¹ and the TLA expressly provides for Commission approval of any transfer under its put or call provisions.⁵² As a result, Garland will agree to a condition that, in relation to any exercise of the put and call options in the TLA, Garland will abide by the provisions of PURA § 37.154 relating to Commission approval of a transfer of rights under a CCN.⁵³

Proposed Conditions Concerning Disconnection of SCT

TIEC witness Mr. Griffey proposes that the Commission prescribe a condition that Garland disconnect the Rusk to Panola line at Panola station in three circumstances: 1) if FERC ever asserts jurisdiction over ERCOT due to the line; 2) if a synchronous connection is ever made to the line outside the State of Texas; or 3) if SCT fails to follow an ERCOT protocol or Commission rule or order, and as a result, the Commission orders disconnection of the facilities.⁵⁴ Garland generally agrees with conditions 1 and 3, but does not understand condition 2, which should be rejected.

Mr. Griffey's first condition is already addressed in the interconnection agreement between Garland and SCT that is attached to the FERC Offer of Settlement provided with Garland's application in this proceeding. That agreement provides:

5.6 In the event that the Federal Energy Regulatory Commission or any court with jurisdiction issues an order or decision that has the effect of

⁴⁸ Garland Ex. 8 at 5.

⁴⁹ TIEC Ex. 1 at 13.

⁵⁰ TIEC Ex. 1 at 27.

⁵¹ *Id.* at Exhibit CSG-2 at 44-45 (Garland's response to TIEC RFI 2-3); 57 (SCT's response to TIEC RFI 2-34).

⁵² TIEC Ex. 1 at 13.

⁵³ Garland Ex. 8 at 5-6.

⁵⁴ TIEC Ex. 1 at 13-14.

making void a prior order issued by the Federal Energy Regulatory Commission that disclaimed jurisdiction over ERCOT, Oncor Electric Delivery Company LLC ("Oncor"), GPL, CenterPoint Energy Houston Electric, LLC ("CenterPoint") and other ERCOT utilities in connection with the creation of an interconnection between ERCOT and another reliability region covered by this agreement, the Parties shall have the right, and shall coordinate their efforts, to immediately disconnect the Point of Interconnection if disconnection is necessary to prevent ERCOT, Oncor, GPL, CenterPoint or other ERCOT utilities from becoming subject to the plenary jurisdiction of the Federal Energy Regulatory Commission. The Point of Interconnection disconnected pursuant to this paragraph shall be immediately reconnected upon the issuance of a subsequent emergency, interim or permanent order by the Federal Energy Regulatory Commission addressing the interconnection and disclaiming jurisdiction.⁵⁵

In addition, Garland witness Mr. Cline agreed at the hearing that Garland would immediately disconnect its line if necessary to prevent ERCOT or any ERCOT utilities from becoming subject to FERC jurisdiction.⁵⁶ As a result, Garland agrees that it will abide by the interconnection agreement and disconnect its facilities if FERC asserts jurisdiction over ERCOT due to the Rusk to Panola line.

Garland does not understand Mr. Griffey's second proposed basis for disconnection, which appears to be premised on an impossibility and should therefore be rejected. Mr. Griffey proposes that Garland should disconnect if a synchronous connection is ever made to Garland's line outside the State of Texas,⁵⁷ but no part of the Rusk to Panola line will be located outside Texas, and as a result there will be no physical way to connect to the line except inside Texas.⁵⁸ Unless TIEC can explain how the basis for Mr. Griffey's proposal could ever occur, the proposed condition should not be adopted.

Finally, Garland generally agrees to Mr. Griffey's third proposed basis for disconnection. Garland will comply with any final and non-appealable Commission order that directs it to disconnect the Rusk to Panola line. Garland does not understand Mr. Griffey to be suggesting that Garland should waive, in advance and for all time, any judicial recourse it might have with respect to such a Commission order.⁵⁹

⁵⁵ Garland Ex. 1, Attachment 2 at 46-47 of 58.

⁵⁶ Tr. at 28-29 (May 31, 2016).

⁵⁷ TIEC Ex. 1 at 13.

⁵⁸ Garland Ex. 8 at 7.

⁵⁹ See Garland Ex. 8 at 7-8.

C. Routing Issues (Preliminary Order Issue No. 2a)

Preliminary Order Issue No. 2a states: “Is it appropriate for the Commission to specify a route as a reasonable condition? If so, which route should be selected?”

1. Appropriateness of Route as a Reasonable Condition, and Route to be Selected

Because Garland seeks to amend its CCN for a new transmission line, it is appropriate for the Commission to specify a route as a reasonable condition for approval of the Application.⁶⁰ No party challenges this conclusion.

The Commission should approve Route RP9, the route agreed to by the intervening landowners, Garland and SCT in the unopposed Route Stipulation. Route RP9 is comprised of segments 1, 7, 9, 13, 23, 24, 28, 31, 34, 41, and 43.⁶¹ No party is opposed to the Commission’s selection of this route and it appears to enjoy unanimous community support among landowner intervenors. Route RP9 also satisfies the criteria the Commission considers in selecting transmission line routes, as discussed below. Route RP9 is a reasonable and viable option that Garland and Rusk will construct following approval by the Commission.

Garland retained Burns & McDonnell Engineering Company, Inc. (Burns & McDonnell) to prepare an *Environmental Assessment and Alternative Route Analysis Report for the Rusk to Panola 345-kV Transmission Line Project* (EA) for the proposed transmission line Project.⁶² Burns & McDonnell evaluated routes using routing criteria addressing factors such as land use, aesthetics, cultural resources, the number of potentially affected habitable structures, and potential environmental impacts for each of the alternative routes.⁶³ Burns & McDonnell balanced its environmental and land use analysis with engineering and construction constraints,

⁶⁰ Staff Ex. 1 at 10.

⁶¹ Garland Ex. 1 at Attachment 1; Panola Landowner Group Ex. 1 at 7; Panola Landowner Group Ex. 2 at 7; Panola Landowner Group Ex. 3 at 16; Panola Landowner Group Ex. 4 at 9; Panola Landowner Group Ex. 5 at 11; Panola Landowner Group Ex. 6 at 8; Panola Landowner Group Ex. 7 at 10, 12; Panola Landowner Group Ex. 9 at 6; Panola Landowner Group Ex. 10 at 7; Panola Landowner Group Ex. 11 at 11; Panola Landowner Group Ex. 12 at 2; Panola Landowner Group Ex. 13 at 2; Panola Landowner Group Ex. 14 at 2; Panola Landowner Group Ex. 15 at 2; Panola Landowner Group Ex. 16 at 9-10; Panola Landowner Group Ex. 17 at 10; Panola Landowner Group Ex. 18 at 2; Panola Landowner Group Ex. 19 at 1; Panola Landowner Group Ex. 20 at 3; Panola Landowner Group Ex. 21 at 1-2; Panola Landowner Group Ex. 22 at 2; Panola Landowner Group Ex. 23 at 2; Panola Landowner Group Ex. 24 at 7; Panola Landowner Group Ex. 25 at 1-2; Panola Landowner Group Ex. 26 at 2; Panola Landowner Group Ex. 27 at 2; Panola Landowner Group Ex. 28 at 2; Panola Landowner Group Ex. 29 at 2. Burns & McDonnell identified this route in the EA as Route RP9. Garland Ex. 9 at 2.

⁶² Garland Ex. 1 at 8.

⁶³ Garland Ex. 1, Attachment 1 at 3-9, Attachment D.

costs, public input, and community values.⁶⁴ Burns & McDonnell assembled a team of professionals representing various environmental disciplines to engage in the necessary data acquisition, routing analysis, and environmental impacts assessment of the Project.⁶⁵ This process allowed for an evaluation of multiple Commission routing factors, including providing for a review of the overall impact on environmental integrity of the Project.

Garland (through Burns & McDonnell) engaged in an extensive multi-step process to determine potential environmental impacts, and used the information gathered to engage in substantial mitigation of potential impacts through that process. The environmental study process involved delineating a study area, collecting agency input, gathering data regarding the study area, performing constraints mapping, identifying preliminary alternative routes, and reviewing and adjusting alternative routes following field reconnaissance.⁶⁶ Burns & McDonnell reviewed the preliminary alternative routes with regard to cost, construction, engineering, right-of-way (ROW) maintenance issues, and constraints.⁶⁷ Burns & McDonnell solicited information and comments from a variety of local offices and officials with interest in the Project area.⁶⁸

Following these preliminary stages, Burns & McDonnell engaged in a process to identify the 96 primary alternative routes.⁶⁹ Burns & McDonnell considered a variety of information, including among other things: input received from the public; input from various correspondence with public officials and representatives of state and federal agencies; previously identified preliminary alternative routes that provide geographic diversity; as well as an inventory and tabulation of a number of routes addressing in various ways each environmental/land use criterion.⁷⁰ Based on input, comments, and information received by Burns & McDonnell at and following two public open-house meetings in December 2015, Burns & McDonnell identified modifications to portions of existing preliminary alternative route segments and some segments were added, deleted, or revised.⁷¹

⁶⁴ Garland Ex. 1 at Appendix D.

⁶⁵ Garland Ex. 3 at 7.

⁶⁶ Garland Ex. 3 at 7.

⁶⁷ Garland Ex. 1, Attachment 1 at 3-1

⁶⁸ Garland Ex. 1, Attachment 1 at Appendix A.

⁶⁹ Garland Ex. 1, Attachment 1 at 3-9.

⁷⁰ Garland Ex. 1, Attachment 1 at 3-9.

⁷¹ Garland Ex. 1, Attachment 1 at 3-9.

2. The Effect of Granting the Certificate on the Recipient and any Electric Utility Serving the Area

PURA § 37.056(c)(3) directs the Commission to consider the effect of granting the certificate on the recipient of the certificate and any electric utility serving the proximate area. As described in Mr. Cline's direct testimony, Garland has been providing service to its ratepayers since 1923, owns and operates both high voltage transmission lines and electric generating stations, is a qualified scheduling entity (QSE) within ERCOT, and has strong bond ratings.⁷² It has the capability to operate the facilities in this case reliably and effectively.

No existing facilities of other utilities will be utilized for the Project.⁷³ Southwestern Electric Power Company (SWEPCO), Deep East Texas Electric Cooperative, Inc. (DETEC), Rusk County Electric Cooperative, Inc. (Rusk EC), and Panola-Harrison Electric Cooperative, Inc. (Panola EC) each own facilities and serve customers in the area of Garland's proposed line.⁷⁴ Garland has executed an agreement with each entity that provides for Garland to keep each utility informed about the project and to coordinate with each utility concerning such paralleling or crossing of facilities, and to avoid or mitigate impacts on their facilities.⁷⁵ Garland and Rusk have committed to make reasonable efforts to coordinate with these neighboring utilities to mitigate impacts of the Rusk to Panola line on their facilities.⁷⁶

At ERCOT's direction, Oncor prepared the Southern Cross HVDC Tie Study Report, the Facilities Study Report, and the Southern Cross HVDC Tie Short-Circuit Report, that analyzed effects on other utilities and the ERCOT grid.⁷⁷ Based on those studies, the Order in *Southern Cross* found that nothing in the application indicated that the requested interconnection and transmission service would impair the continued reliability of the affected electric systems.⁷⁸ The FERC order also stated that compliance with the Order and the Offer of Settlement will not cause ERCOT, Oncor, CenterPoint, or any other ERCOT utility or other entity that is not already a public utility to become a "public utility" as that term is defined by section 201 of the FPA and

⁷² Garland Ex. 2 at 4-5.

⁷³ Garland Ex. 1, Attachment 4 at 6.

⁷⁴ Garland Ex. 8 at 8.

⁷⁵ SWEPCO Letter Agreement, Garland Ex. 10; Cooperatives Letter Agreement, Garland Ex. 11.

⁷⁶ Garland Ex. 8 at 8.

⁷⁷ Garland Ex. 1 at 6; Direct Testimony of David Parquet, SCT Ex. 1 at 9, Exhibit DP-2, SCT Ex. 2.

⁷⁸ Garland Ex. 1, Attachment 4 at 6-7.

subject to the jurisdiction of the Commission.⁷⁹ In addition, ERCOT has indicated that it believes that the Oncor studies are sufficient to reliably interconnect the SCT project.⁸⁰

3. Community Values

The term “community values” is included as a factor for the consideration of transmission line route certification under PURA § 37.056(c)(4)(A). Garland supports Commission approval of Route RP9, as provided for in the unopposed Route Stipulation, because it is supported by all of the intervening landowners in the case and therefore reflects community values.

Although the term “community values” is not formally defined by statute or in Commission rules, the Commission has recognized a working definition as “a shared appreciation of an area or other natural or human resource by members of a national, regional, or local community.”⁸¹ Some items that may potentially be considered “community values” are also evaluated separately as required by statute and the Commission’s Application form.⁸² The EA evaluated the impact of the Project on community values in Sections 8.3.1 (community values and community resources), 8.2 (impacts on natural resources), 8.3.2 (socioeconomic patterns) and 8.4 (impacts on cultural resources).⁸³ The proposed project would not result in the disruption or preemption of any recreational activities, but would have some temporary or permanent impact on visual aesthetics.⁸⁴

In order to ensure that the alternative routes properly reflected the values and concerns of affected communities, Burns & McDonnell sought input from the local community about the Project by providing published and written notice and holding open houses, as discussed in detail in Chapter 6 of the EA.⁸⁵ In December 2015, two open houses were held at the Carthage Civic

⁷⁹ Garland Ex. 1, Attachment 4 at 8.

⁸⁰ Rebuttal Testimony of Stan Gray, SCT Ex. 10 at WP/SG Rebuttal Testimony/1.

⁸¹ *Application of LCRA Transmission Services Corporation to Amend its Certificate of Convenience and Necessity (CCN) for a 138-kV Transmission Line in Kerr County*, Docket No. 33844, Final Order at Finding of Fact No. 65 (Mar. 4, 2008).

⁸² PURA § 37.056(c)(4)(A-D); Garland Ex. 1 at 8-16.

⁸³ Garland Ex. 1, Attachment 2 at 8-9 – 8-32.

⁸⁴ Garland Ex. 3 at 39.

⁸⁵ Garland Ex. 1, Attachment 2 at 6-1-6-9.

Center located at 1702 South Adams, Carthage, Texas.⁸⁶ Direct notice was mailed to approximately 631 owners of approximately 1,078 properties within 500 feet of the centerline for each of the routes being presented at the open-house meetings.⁸⁷ These open houses used an interactive information station format to solicit input and share information with attendees in an informal atmosphere.⁸⁸

At the open houses, Burns & McDonnell addressed with attendees the purpose and need for the Project, locations of proposed routes that were under consideration, possible impacts to individual properties, and the physical parameters of the proposed line.⁸⁹ A total of 119 people registered their attendance at the open house meetings.⁹⁰ Burns & McDonnell also distributed questionnaires soliciting comments on landowner concerns.⁹¹ Landowners were asked to consider the following factors: distance from residences and businesses; loss of trees; construction along existing transmission lines; distance from public facilities (parks, schools, religious centers, cemeteries); visibility of the line; impacts to agricultural lands, floodplains and wetlands, wildlife, and historic and cultural resources; paralleling property boundaries; and total length of line.⁹²

Based on information gathered at the open houses, several segments were modified to reduce impacts to habitable structures and other land use features to the extent feasible, and some new segments were added and others deleted.⁹³ Generally, these modifications were made to further reduce the number of habitable structures within 500 feet of the centerline of a proposed route; to improve the paralleling of apparent property lines; to improve the paralleling of compatible ROW; and to reduce other potential land use impacts to ranching/farming and proposed airstrip operations.⁹⁴

⁸⁶ Garland Ex. 3 at 12.

⁸⁷ Garland Ex. 1, Attachment 2 at 6-9.

⁸⁸ Garland Ex. 3 at 13.

⁸⁹ Garland Ex. 1, Attachment 2 at 6-10.

⁹⁰ Garland Ex. 1 at 10.

⁹¹ Garland Ex. 1, Attachment 2 at 6-10.

⁹² Garland Ex. 1, Attachment 2 at 6-11, 6-12.

⁹³ Garland Ex. 1, Attachment 1 at 3-9, 7-1.

⁹⁴ Garland Ex. 1, Attachment 1 at 7-1, 7-9.

In addition, local, state, and federal agencies and officials were contacted by letter in October and November 2015 to solicit comments, concerns and information regarding the potential impact of the proposed transmission line.⁹⁵ A number of responses were received and considered, and Burns & McDonnell utilized comments and information from governmental agencies in the preparation of the existing environment sections of the EA, in the development of the constraints maps, and in the selection and evaluation of alternative routes.⁹⁶

4. Recreational and Park Areas

PURA § 37.056(c)(4)(B) directs the Commission to consider the impact of the line on recreational and park areas. Parks and recreational areas are defined by the Commission in its Application form as areas being owned by a governmental body or an organized group, club, or church.⁹⁷ Based on field reconnaissance and a review of the TPWD Texas Natural Resource Information System (TNRIS) and Environmental Systems Research Institute, Inc. digital data, there are two parks or recreational areas crossed by two proposed routes: the George W. Pirtle Scout Reservation is crossed by Route RP28 and land managed by the Sabine River Authority (SRA) for hunting (Unit 630) is crossed by Route RP82.⁹⁸

Route RP9, as provided for in the Route Stipulation, does not cross any recreational and park areas and has one recreational and park area located within 1,000 feet, like most of the other proposed routes.⁹⁹

5. Historical and Aesthetic Values

PURA § 37.056(c)(4)(C) directs the Commission to consider the impact of the line on historical and aesthetic values. Although an on-the-ground cultural resources survey has not been conducted, cultural High-Probability Areas (HPAs) have been identified by cultural specialists along the proposed routes using U.S. Geological Survey topographic maps.¹⁰⁰ Burns

⁹⁵ Garland Ex. 1, Attachment 1 at Appendix A.

⁹⁶ Garland Ex. 1, Attachment 1 at 6-3.

⁹⁷ Garland Ex. 1 at 15.

⁹⁸ Garland Ex. 3 at 24.

⁹⁹ Staff Ex. 1 at WP-6; Garland Ex. 1, Attachment 2 at D-1.

¹⁰⁰ Garland Ex. 3 at 25. HPAs are locations that are usually identified as having a high probability for the occurrence of prehistoric sites and include areas where the proposed Project crosses water, stream confluences, drainages, alluvial terraces, wide floodplains, upland knolls, and areas where lithics (workable stone) could be found.

& McDonnell reviewed maps on file with the Texas Archaeological Laboratory and the Texas Historical Commission (THC) Archeological Sites Atlas to identify known and recorded archaeological sites and historic resources within 1,000 feet of the centerline of the routes.¹⁰¹

Route RP9, the route agreed to in the unopposed Route Stipulation, crosses 70,690 feet of HPAs, crosses no recorded cultural sites, and would be located within 1,000 feet of one recorded cultural site.¹⁰² Garland's proposed routes cross between 57,740 feet and 102,100 feet of HPAs¹⁰³ and would be located within 1,000 feet of between one and five recorded cultural sites.¹⁰⁴ Once a route is approved by the Commission, Garland will work with the THC to determine what, if any, sites will be affected and what mitigation efforts could be required to limit impacts.¹⁰⁵

6. Environmental Integrity

PURA § 37.056(c)(4)(D) directs the Commission to consider the impact of the line on environmental integrity. Chapter 8.0 of the EA addresses impacts on environmental integrity. Construction of the Project is not anticipated to have any significant adverse effects on the physiographic or geologic features and resources in the area.¹⁰⁶ Construction and operation of the transmission line would not result in any significant impacts to the existing physiography, surface water features, groundwater and aquifers.¹⁰⁷ Construction and operation of the transmission line could result in some temporary adverse impacts to wildlife, primarily from the removal of large trees within or near the proposed Project that could provide feeding, shelter, or nesting habitat for some species.¹⁰⁸ Impacts to most species would be temporary and short-term during construction and would consist primarily of displacement and disturbance.¹⁰⁹

¹⁰¹ Garland Ex. 3 at 25-26.

¹⁰² Staff Ex. 1 at WP-6.

¹⁰³ Garland Ex. 3 at 25.

¹⁰⁴ Garland Ex. 3 at 26.

¹⁰⁵ Garland Ex. 3 at 26.

¹⁰⁶ Garland Ex. 3 at 26-29.

¹⁰⁷ Garland Ex. 3 at 29-30.

¹⁰⁸ Garland Ex. 3 at 33.

¹⁰⁹ Garland Ex. 3 at 33.

Land clearing would consist only of tree and shrub removal.¹¹⁰ Any potential impact to topography would be minimal and temporary in nature and would be from the use of heavy construction equipment and excavation required for the construction of new foundations and support structures.¹¹¹ The Project would result in temporary, minor impacts to the soils within the ROW during construction activities; no significant long-term impacts to soils are anticipated along any of the proposed routes. No impacts to threatened or endangered plant species are expected.¹¹² Upon approval of a final route by the Commission, detailed environmental surveys will be conducted along the proposed transmission line to identify any potential wildlife, water, or vegetation concerns and develop management measures to minimize adverse impacts.¹¹³ Garland and Rusk will obtain the appropriate permits and coordinate with the appropriate federal, local, and state agencies.¹¹⁴

7. Engineering Constraints

Commission Substantive Rule 25.101(b)(3)(B) requires that engineering constraints be considered in routing a transmission line. Design for the Project meets or exceeds the requirements for construction as defined in the National Electrical Safety Code (NESC) and any local or ERCOT design requirements.¹¹⁵ In addition to being required by law, these requirements will also be specified by Garland and Rusk to the Engineering, Procurement and Construction (EPC) contractor.¹¹⁶

None of the routes filed in the Application are anticipated to have any impact on communication towers. There are no known commercial AM radio towers located within 10,000 feet of the centerline of any preliminary alternative routes.¹¹⁷ The number of other electronic installation located within 2,000 feet of the centerline of the preliminary alternative routes range

¹¹⁰ Garland Ex. 3 at 27.

¹¹¹ Garland Ex. 3 at 27.

¹¹² Garland Ex. 3 at 31.

¹¹³ Garland Ex. 3 at 31.

¹¹⁴ See Garland Ex. 3 at 31.

¹¹⁵ Direct Testimony of Chris McCall, Garland Ex. 4 at 9.

¹¹⁶ Garland Ex. 4 at 9.

¹¹⁷ Garland Ex. 3 at 19.

from zero to eleven towers, depending on the route.¹¹⁸ Stipulation Route RP9 has four FM towers within 2,000 feet of the centerline.¹¹⁹

Stipulation Route RP9 is not within 10,000 feet of any FAA-registered airstrips or airports with runways less than 3,200 feet in length or within 5,000 feet of a heliport.¹²⁰ None of Garland's proposed routes were within 10,000 feet of any FAA-registered airstrips or airports with runways less than 3,200 feet in length; and there are no heliports within 5,000 feet of the preliminary alternative routes.¹²¹ The Panola County-Sharpe Field is a FAA-registered airport with at least one runway longer than 3,200 feet and is located within 20,000 feet of two of the preliminary alternative routes (RP16 and RP93).¹²² One new private airstrip (Hilltop Springs Airport) was identified within 10,000 feet of the centerline of Routes RP5, RP8, RP10, RP16, RP28, RP41, RP46, RP50, RP53, and RP82.¹²³ No impact has been demonstrated to any of the FAA-registered airports with runways shorter than 3,200 feet or to private airstrips.¹²⁴

The proposed Project does not cross any known cropland or pastureland irrigated by traveling irrigation systems, either rolling or pivot type.¹²⁵

8. Costs

Commission Substantive Rule 25.101(b)(3)(B) also requires that costs be considered in routing a transmission line. Garland's estimated cost includes the costs of engineering, acquiring right-of-way, procurement of materials and supplies, construction labor and transportation, and administration. The estimated costs for the twelve preliminary alternative routes range from approximately \$103.8 million to approximately \$109.9 million.¹²⁶ The estimated cost to construct Stipulation Route RP9 is approximately \$109 million.¹²⁷

¹¹⁸ Garland Ex. 3 at 19-20.

¹¹⁹ Staff Ex. 1 at WP-6.

¹²⁰ Staff Ex. 1 at WP-6.

¹²¹ Garland Ex. 3 at 20-21.

¹²² Garland Ex. 3 at 20.

¹²³ Garland Ex. 3 at 21.

¹²⁴ Garland Ex. 3 at 20-21.

¹²⁵ Garland Ex. 1 at 14.

¹²⁶ Staff Ex. 1 at WP-6.

¹²⁷ Staff Ex. 1 at WP-6.

A transmission line constructed on any of the routes will be engineered so that the line itself will be as electrically efficient and reliable as possible taking into consideration a number of factors.¹²⁸ Various factors, such as line length and number of angle structures, will make lines located on some alternative routes less cost-efficient than others. However, any of the alternative routes can be engineered so that electrical efficiency and reliability will be adequate for that route.¹²⁹ Single-pole structures have been chosen for the Project since they require a smaller footprint and significantly reduced construction requirements as related to similar lattice tower options.¹³⁰ Additionally, during the public meetings held for this Project, landowners indicated a preference for the single-pole steel design.¹³¹

These costs are only estimates as of the time of the filing of the Application. Once the final routes have been approved by the Commission, Garland will survey the approved line routes and final engineering design will be performed. After the final engineering design is completed, costs to construct the approved routes will then be re-estimated based on material and construction bids. Until that time, the costs reflected in the record are only estimates.

9. Moderation of Impact on Affected Landowners

As explained in Chapter 6 and 7 of the EA, Burns & McDonnell and Garland gathered landowner comments and concerns through open-house meetings in December 2015. After the public open-house meetings, based on the input and comments received by meeting attendees, Burns & McDonnell modified the preliminary alternative routes by adjusting, removing, and adding routing segments.¹³² Once the Commission chooses a route for this Project, Garland will work with affected landowners to make minor route modifications to minimize the impact of the line to a landowner's property, if feasible.¹³³

¹²⁸ Garland Ex. 4 at 9.

¹²⁹ Garland Ex. 4 at 9.

¹³⁰ Garland Ex. 4 at 7.

¹³¹ Garland Ex. 1 at 4; Attachment 1 at 6-12.

¹³² Garland Ex. 1, Attachment 1 at 3-9.

¹³³ Garland Ex. 9 at 5.

10. Existing Compatible Rights-of-Way, Property Lines or Other Features

Commission Substantive Rule 25.101(b)(3)(B) requires that compatible rights-of-way, property lines, and other features be considered in routing a transmission line. The use of vacant positions on existing multiple circuit transmission lines was not an option for the Project.¹³⁴ All routes were designed to parallel existing ROW and disturbed areas (where possible) to limit potential impacts to land cover and land use.¹³⁵ Because the majority of the study area is wooded, the majority of the proposed routes have a significant amount of woodland within the ROW.¹³⁶ Garland's proposed routes cross from 712.9 to 768.8 acres of woodland within the proposed ROWs.¹³⁷ Stipulation Route RP9 crosses 733.9 acres of woodland within the proposed ROW.¹³⁸

Burns & McDonnell's route delineation and route evaluation process considered utilizing and paralleling existing compatible property boundaries, natural features, and cultural features where practical and reasonable.¹³⁹ By paralleling existing corridors, potential impacts to property, community values and community resources, and viewsheds were limited.¹⁴⁰ Natural or cultural features such as areas of concentrated residential development, wetlands, floodplains, cemeteries, parks and recreation areas, airports or airstrips, and center-pivot irrigation were avoided where reasonable and feasible.¹⁴¹

11. Prudent Avoidance

Prudent avoidance is defined in 16 TAC § 25.101 as "the limiting of exposures to electric and magnetic fields that can be avoided with reasonable investments of money and effort."¹⁴² The Commission's policy of prudent avoidance is that the process of routing a proposed transmission line should include consideration of routing options that entail reasonably avoiding

¹³⁴ Garland Ex. 3 at 36.

¹³⁵ Garland Ex. 3 at 27.

¹³⁶ Garland Ex. 3 at 27.

¹³⁷ Garland Ex. 3 at 27.

¹³⁸ Staff Ex. 1 at WP-6.

¹³⁹ Garland Ex. 3 at 36.

¹⁴⁰ Garland Ex. 3 at 39.

¹⁴¹ Garland Ex. 3 at 36.

¹⁴² 16 TAC § 25.101(a)(4).

population centers and other locations where people gather with a reasonable investment of money.¹⁴³ Prudent avoidance does not mean that a proposed transmission line must avoid habitable structures at all costs, but that reasonable alternatives must be considered.¹⁴⁴ Burns & McDonnell determined the number, distance, and direction of habitable structures located within 500 feet of the centerline of each route through interpretation of aerial photography and verification during reconnaissance surveys along public roads, where possible.¹⁴⁵ Burns & McDonnell, to the extent reasonable and in accordance with the policy of prudent avoidance, attempted to avoid habitable structures in the routing of the preliminary, primary, and proposed routes.¹⁴⁶

The number of habitable structures located within 500 feet of the proposed route centerlines ranges between 13 and 27.¹⁴⁷ Stipulation Route RP9 has 13 habitable structures within 500 feet of the centerline.¹⁴⁸ The Stipulation Route and the routes and route segments proposed in the application conform to the Commission's policy of prudent avoidance in that they reflect reasonable investments of money and effort to limit exposure to electric and magnetic fields.

There are no alternative routes that would have a less negative impact on landowners. The routing and constraints mapping process employed by Burns & McDonnell was designed to identify and reduce the impact to land use and environmentally sensitive areas: individual residences, rural subdivisions, airstrips, cemeteries, known historic and archaeological sites, wetlands, parks, churches and schools. Information of the same general type on community values, parks and recreation areas, archeological and historic sites, aesthetics, and environmental integrity is presented for the alternative routes in the EA. Garland supports the selection of Route RP9 provided for in the Route Stipulation as a reasonable route that achieves the Commission's policy of prudent avoidance.

¹⁴³ See Garland Ex. 9 at 6.

¹⁴⁴ Garland Ex. 9 at 6.

¹⁴⁵ Garland Ex. 3 at 40.

¹⁴⁶ Garland Ex. 9 at 6.

¹⁴⁷ Garland Ex. 1, Attachment 1 at Appendix D.

¹⁴⁸ Staff Ex. 1 at WP-6.

D. Representations Made in *Southern Cross* (Preliminary Order Issue No. 2b)

Preliminary Order Issue No. 2b states: “Should the Commission require Southern Cross and Garland to give effect to the representations that they made in *Southern Cross*?”

Garland fully expects to honor the representations it made in *Southern Cross*. The key commitment made by Garland was that it would not seek to recover from wholesale or retail customers in Texas the costs incurred in constructing the interconnection facilities identified in the Garland/SCT Interconnection Agreement.¹⁴⁹ Garland reiterates that commitment here, and has entered into the TLA with SCT affiliate Rusk to effectuate the commitment. As discussed previously, under the TLA Rusk will construct the Rusk to Panola Line and the Panola Station and transfer those facilities to Garland for \$1 prior to energization.¹⁵⁰ As a result, Garland will not seek to include in rates any costs associated with construction of those facilities. In addition, the TLA provides for Rusk to fund a decommissioning escrow account for the facilities prior to transferring them to Garland and to pay reasonable operations and maintenance expenses for the facilities.

E. Application of PURA § 37.051(c-2) to *Southern Cross* (Preliminary Order Issue No. 3)

Preliminary Order Issue No. 3 states: “Is Southern Cross subject to the requirements of PURA § 37.051(c-2) and to the Commission's imposition of reasonable conditions?”

This issue is addressed in SCT's brief.

1. Market Participant Agreement (Preliminary Order Issue No. 3a)

Preliminary Order Issue No. 3a states: “[S]hould Southern Cross be required to execute the Market Participant Agreement with ERCOT? If so, then what type of market participant would be appropriate as applied to Southern Cross?”

Garland agrees with SCT that the Commission should condition the CCN by requiring that SCT execute an ERCOT Market Participant Agreement before Garland energizes the Project, and that the Commission should provide instructions or guidance to ERCOT to make the bylaw and protocol revisions necessary to allow SCT to execute such an agreement by June 1, 2017.¹⁵¹

¹⁴⁹ Garland Ex. 1, Attachment 2 at 10 of 58.

¹⁵⁰ Garland Ex. 2 at 11; Tr. at 22 (May 31, 2016); Confidential Exhibit DWC-2, Garland Ex. 2A at 16 of 111.

¹⁵¹ Garland Ex. 2 at 12; SCT Ex. 9 at 8.

2. Coordination Agreement (Preliminary Order Issue No. 3b)

Preliminary Order Issue No. 3b states: “Should the Commission require Southern Cross and ERCOT to negotiate and execute an agreement addressing coordination issues? If so, which regulatory authority would have the authority to decide any disputes between Southern Cross and ERCOT?”

This issue is addressed in SCT’s brief.

F. ERCOT Issues (Preliminary Order Issue No. 4)

These issues are addressed in SCT’s brief.

G. Texas Parks & Wildlife Issues

1. Texas Parks & Wildlife Department Recommendations (Preliminary Order Issue No. 5)

Preliminary Order Issue No. 5 states: “On or after September 1, 2009, did the Texas Parks and Wildlife Department provide any recommendations or informational comments regarding this application?”

TPWD provided comments and recommendations in letters dated November 24, 2015 and April 18, 2016.¹⁵² TPWD recommended that the transmission line avoid crossing riparian areas, wetlands, and open water habitat; preferred that the Garland Project cross streams in a perpendicular manner and avoid placing lines parallel to streams; recommended using buffer areas to protect wildlife; and recommended consulting with various federal and state agencies for guidance with certain plants and animals.¹⁵³ Garland and Burns & McDonnell have already taken into consideration much of the substance of the comments and recommendations offered by TPWD.¹⁵⁴ As Commission Staff witness Mr. Mathis testified, “Garland has the resources and the procedures in place for accommodating the recommendations and comments by TPWD.”¹⁵⁵

a. Modifications to the proposed project as a result of recommendations/comments. (Preliminary Order Issue No. 5a)

Preliminary Order Issue No. 5a states: What modifications, if any, should be made to the proposed project as a result of any recommendations or comments?

¹⁵² Staff Ex. 1 at Exhibit KM-3; Garland Ex. 1, Attachment 1, Appendix A at A-5.

¹⁵³ Garland Ex. 9 at 8.

¹⁵⁴ Garland Ex. 9 at 8.

¹⁵⁵ Staff Ex. 1 at 11.

TPWD addressed a number of recommendations concerning mitigating the impact of the Garland Project. These comments were in regards to potential impacts on threatened or protected species or their habitats; vegetation clearing activities during bird nesting season; limiting potential impacts to wetlands; routing the line along existing roads, pipelines, transmission lines, or other utility rights-of-way to reduce habitat fragmentation; and surveying the selected route for state-listed threatened or endangered species to avoid disturbing their habitat to the extent feasible.¹⁵⁶ Both Garland and Commission Staff introduced testimony addressing the TPWD letter. Garland witness Ms. Kristi Wise testified that many of TPWD's recommendations had been identified and evaluated in the EA.¹⁵⁷ Staff witness Mr. Kevin Mathis testified that Garland has the resources and the procedures in place for accommodating the recommendations and comments by TPWD.¹⁵⁸ The routing conditions offered by Mr. Mathis are typically included in the Commission's Ordering Paragraphs in CCN proceedings and sufficiently address TPWD's concerns.¹⁵⁹ Accordingly, no modifications need to be made to the proposed project.

b. Conditions or limitations to be included in the final order as a result of TWPD's recommendations/comments. (Preliminary Order Issue No. 5b)

Preliminary Order Issue No. 5b states: What conditions or limitations, if any, should be included in the final order in this docket as a result of any recommendations or comments?

The conditions and recommendations recommended by TPWD either have been addressed or should not be adopted. TPWD focused on a single issue, protecting fish and wildlife resources, and did not take into consideration other factors identified in PURA § 37.056 and 16 TAC § 25.101.¹⁶⁰ The Commission must balance a variety of factors in selecting a route for a transmission line, and not just a subset of environmental factors.¹⁶¹ TPWD's focus on a single issue (protecting fish and wildlife resources) is subsumed within the Commission's evaluation of a broad range of factors in considering a CCN application for a new transmission

¹⁵⁶ Staff Ex. 1, Exhibit KM-3 at 6-9, 11, 13, 16.

¹⁵⁷ Garland Ex. 9 at 8.

¹⁵⁸ Staff Ex. 1 at 11.

¹⁵⁹ Staff Ex. 1 at 11.

¹⁶⁰ See Staff Ex. 1 at Exhibit KM-3.

¹⁶¹ Garland Ex. 9 at 9.

line, including cost, impact on habitable structures, maintenance, location of historical sites, use of existing right-of-way, paralleling property boundaries, prudent avoidance, engineering constraints and other factors that directly affect Texas citizens and their property.¹⁶²

In response to TPWD's comments, Commission Staff recommends that Garland minimize the amount of flora and fauna disturbed during construction of the Garland Project, except to the extent necessary to establish ROW clearance for the transmission line.¹⁶³ In addition, Commission Staff recommends that Garland revegetate using native species and landowner preferences in doing so.¹⁶⁴ Furthermore, to the maximum extent practicable, Garland should avoid adverse environmental impacts to sensitive plant and animal species and their habitats as identified by the TPWD and the United States Fish and Wildlife Service (USFWS).¹⁶⁵ As Staff witness Mr. Mathis notes, the mitigation measures recommended in his testimony address most of TPWD's concerns.¹⁶⁶

**c. Other Disposition of TPWD's Recommendations/Comments
(Preliminary Order Issue No. 5c)**

Preliminary Order Issue No. 5c states: What other disposition, if any, should be made of any recommendations or comments?

Garland appreciates the TPWD's recommended best practices, and will comply with all applicable statutes and regulations.¹⁶⁷ Garland will make reasonable efforts to allow threatened species to vacate affected areas or be relocated to a suitable nearby area.¹⁶⁸ Garland and Rusk will coordinate with the USFWS, TPWD, and other agencies, as needed, once a route has been approved by the Commission.¹⁶⁹

¹⁶² PURA § 37.056(c)(4)(A-D); 16 TAC § 25.101.

¹⁶³ Staff Ex. 1 at 13.

¹⁶⁴ Staff Ex. 1 at 13.

¹⁶⁵ Staff Ex. 1 at 13.

¹⁶⁶ Staff Ex. 1 at 11.

¹⁶⁷ Garland Ex. 9 at 11.

¹⁶⁸ Garland Ex. 9 at 11.

¹⁶⁹ Garland Ex. 9 at 11.

d. TPWD's Recommendations or Comments that should not be Incorporated (Preliminary Order Issue No. 5d)

Preliminary Order Issue No. 5d states: If any recommendation or comment should not be incorporated in this project or the final order, or should not be acted upon, or is otherwise inappropriate or incorrect in light of the specific facts and circumstances presented in this application or the law applicable to contested cases, please explain why that is the case.

TPWD's recommendation of a mitigation requirement for 1:1 replacement of impacted habitats for unregulated resources is not required by law and could significantly increase the cost of the Project.¹⁷⁰ If any rule or regulation requires Garland and Rusk to develop a mitigation plan and provide compensatory mitigation, Garland and Rusk will work with the respective agencies to determine the appropriate measures and replacement ratio, if applicable.¹⁷¹

2. Texas Parks & Wildlife Code Chapter 26

a. Whether Chapter 26 Notice and Hearing is Required (Preliminary Order Issue No. 6)

Preliminary Order Issue No. 6 states: "Is notice and a hearing as provided in § 26.002 of the Texas Parks and Wildlife Code required in this case?"

Under § 26.001 of the Texas Parks and Wildlife Code, the Commission may not approve any project that requires the use or taking of any public land designated and used prior to the arrangement of the project as a park, recreation area, scientific area, wildlife refuge, or historic site, unless the Commission determines that: (1) there is no feasible and prudent alternative to the use or taking of such land; and (2) the program or project includes all reasonable planning to minimize harm to the land, as a park, recreation area, scientific area, wildlife refuge, or historic site, resulting from the use or taking.¹⁷² One of the line segments proposed by Garland in this case, Segment 39, crosses the Sabine River Authority's Unit # 630 recreational hunting area, and may therefore be subject to the provisions of Chapter 26 of the Texas Parks and Wildlife Code.¹⁷³

¹⁷⁰ Staff Ex. 1, Exhibit KM-3 at 17.

¹⁷¹ Garland Ex. 9 at 13.

¹⁷² See Tex. Parks & Wild. Code Ann. § 26.001(a).

¹⁷³ Garland Ex.1 at 15; Garland Ex. 3 at 24.

b. Whether Notice of Hearing Was Provided (Preliminary Order Issue No. 7)

Preliminary Order Issue No. 7 states: “Was such notice of a hearing provided?”

Garland provided proper notice under Parks and Wildlife Code § 26.002. On April 26, 2016, pursuant to Tex. Parks & Wild. Code Ann. § 26.002(a), Garland representatives sent notice via Federal Express to TPWD and the Sabine River Authority.¹⁷⁴ Pursuant to Tex. Parks & Wild. Code Ann. § 26.002(c) and (d), Garland representatives published notice of the Texas Parks & Wildlife Code Chapter 26 hearing in qualifying newspapers, *Henderson Daily News* and *Panola Watchman*, on May 8, May 15, and May 22, 2016.¹⁷⁵

c. Feasible and Prudent Alternative to the Use of Public Recreation Area (Preliminary Order Issue No. 8)

Preliminary Order Issue No. 8 states: “Is there no feasible and prudent alternative to the use or taking of public land which is designated and used as a park, recreation area, scientific area, wildlife refuge, or historic site?”

Stipulation Route RP9 does not cross any public land implicated by Parks and Wildlife Code Chapter 26. As a result, RP9 is a feasible and prudent alternative to the use or taking of public land which is designated and used as a park, recreation area, scientific area, wildlife refuge, or historic site.

d. Reasonable Planning to Minimize Harm to Recreation Area (Preliminary Order Issue No. 9)

Preliminary Order Issue No. 9 states: “Does the project include all reasonable planning to minimize harm to the land as a park, recreation area, scientific area, wildlife refuge, or historic site, resulting from its use or taking?”

As explained above, Garland included all reasonable planning to minimize any harmful impact on the study area by the proposed Transmission Line route. Garland has conducted an adequate evaluation of potential environmental impacts of the proposed transmission facilities and committed to take the appropriate mitigation measures to protect the environmental integrity of the area.

¹⁷⁴ Garland Ex. 7.

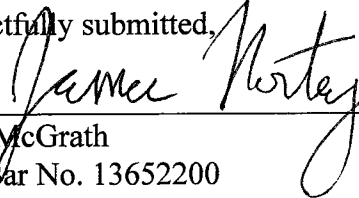
¹⁷⁵ Garland Ex. 7.

VI. CONCLUSION

Garland supports the Commission's selection of Route RP9 as the Commission's approved route in this case, consistent with the unopposed Route Stipulation. Route RP9 is supported by all of the intervenor landowners in this case, and therefore strongly reflects community values. In addition, Route RP9 satisfies the criteria the Commission considers in selecting transmission line routes.

In addition, Garland requests that the Commission adopt the conditions accepted by Garland in this brief and decline to adopt unreasonable conditions for the reasons discussed above.

Respectfully submitted,



Kerry McGrath
State Bar No. 13652200
James A. Nortey, II
State Bar No. 24079063

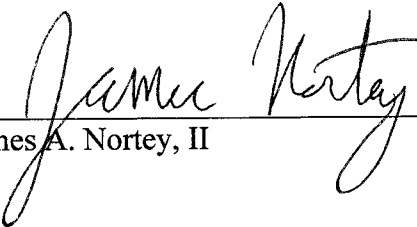
DUGGINS WREN MANN & ROMERO, LLP
P.O. Box 1149
Austin, Texas 78767
Telephone: (512) 744-9300
Facsimile: (512) 744-9399

Brad Neighbor
State Bar No. 14869300
City Attorney
Michael J. Betz
State Bar No. 00783655
Deputy City Attorney
CITY OF GARLAND
200 North 5th Street, Suite 416
Garland, Texas 75040
Telephone: (972) 205-2380
Facsimile: (972) 205-2389

ATTORNEYS FOR THE CITY OF GARLAND

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this document was served to all parties on June 10, 2016 via the Public Utility Commission of Texas Interchange website pursuant to SOAH Order No. 3.



James A. Nortey, II