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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

REDACTED

TEXAS INDUSTRIAL ENERGY CONSUMERS'
INITIAL BRIEF

June 10, 2016

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TEXAS INDUSTRIAL ENERGY CONSUMERS' INITIAL BRIEF

I. INTRODUCTION

Southern Cross Transmission, LLC (SCT) is proposing to build a 2000 MW DC Tie (the SCT Tie) between ERCOT and an unspecified location in the Eastern Interconnect.¹ Because the Commission would not allow an interstate carrier like SCT to interconnect to ERCOT, SCT has recruited the City of Garland (Garland) to own and operate the transmission assets that will link to the SCT Tie at the Texas border and ultimately interconnect with existing Oncor transmission lines in ERCOT.² To accomplish this, Rusk Interconnection, LLC (Rusk), an affiliate of SCT, will construct the line and transfer it to Garland, who will then receive a monthly payment for owning the line on top of reimbursements for reasonable operations and maintenance (O&M) expenses.³ While FERC has issued an order requiring the Commission to grant a CCN for this project, the Legislature made clear in recent amendments to PURA § 37.051(c-2) that Commission can—and should—impose conditions upon Garland and SCT as necessary to ensure that the construction and operation of interconnecting facilities complies with the public interest.⁴

To ensure that interconnecting the SCT Tie is consistent with the public interest, several conditions are necessary to maintain reliability, safeguard the PUC's exclusive jurisdiction over

¹ TIEC Ex. 1 (Griffey Dir.) at 7:8-12.

² TIEC Ex. 1 (Griffey Dir.) at 7:14-21.

³ TIEC Ex. 1 (Griffey Dir.) at 8:5-7, 8:14-17, 9:17-10:2; *see also* Tr. (Cline Cr.) at 22:11-24:2 (May 31, 2016).

⁴ *See* Docket 45624, Preliminary Order at 1 (Mar. 22, 2016) (“Commission shall approve the application . . . but may prescribe reasonable conditions to protect the public interest that are consistent with the FERC's final order in *Southern Cross*.”).

ERCOT, and protect ERCOT customers from bearing costs associated with supporting exports over the SCT Tie, from which they receive no benefit.

First, the Commission should ensure that ERCOT customers do not pay any transmission, ancillary service, or other costs associated with exporting power out of ERCOT. To achieve this, the Commission should condition this CCN on export transactions bearing the full cost of supporting exports over the SCT Tie,⁵ and mandate that no costs related to the Rusk or Panola Substations or the Rusk to Panola Line will be allowed in Transmission Cost of Service (TCOS) under any circumstances.⁶ ERCOT's market design is premised on the idea that costs will only be socialized if they benefit *ERCOT customers* as a whole, and forcing ERCOT customers to subsidize exports of cheap ERCOT power to the Eastern Interconnect is antithetical to that idea.⁷ Further, there is *no evidence* that the SCT Tie will provide any countervailing benefits to ERCOT to offset the cost of supporting exports. As discussed in detail below,⁸ the study that SCT presented to prove that the SCT Tie will benefit ERCOT is incomplete, unrealistic, unreliable, and does not support imposing any additional costs on ERCOT customers.

Since the SCT Tie will affect the way the ERCOT grid operates, the Commission should also adopt conditions to ensure that SCT is held accountable to both ERCOT and Commission rules and orders. First, the Commission should require SCT to execute ERCOT's market participant agreement and join the Investor-Owned Utility segment for purposes of participating in ERCOT's stakeholder process, which SCT has already agreed to do.⁹ In addition, the Commission should require Garland and/or Oncor to disconnect from the SCT Tie if SCT challenges the PUC's jurisdiction over it or the applicability of the ERCOT Protocols (or any other ERCOT requirements).¹⁰ Also, the Commission should formalize SCT's commitment to back down SCT Tie exports if ERCOT makes such a request during an ERCOT energy emergency alert (EEA).¹¹ These conditions will ensure that SCT has a stake in the ERCOT

⁵ See TIEC Ex. 1 (Griffey Dir.) at 13:14-17; Section II.A, *infra*.

⁶ See TIEC Ex. 1 (Griffey Dir.) at 13:14-17; Section II.A, *infra*.

⁷ See TIEC Ex. 1 (Griffey Dir.) at 23:17-24:6; Section II.A, *infra*.

⁸ See Section II.A.3, *infra*.

⁹ See TIEC Ex. 1 (Griffey Dir.) at 14:3-5; Section II.B, *infra*.

¹⁰ See TIEC Ex. 1 (Griffey Dir.) at 29:11-14; Section II.B, *infra*.

¹¹ See TIEC Ex. 1 (Griffey Dir.) at 24:7-9; Section II.B, *infra*.

market and incentivize it to work with other stakeholders to resolve any issues surrounding the operation of the SCT Tie.

The Commission should also place conditions on this CCN to protect its exclusive jurisdiction over the ERCOT grid, and to prevent developments that might invoke FERC jurisdiction. Any interconnection to a neighboring power pool entails a risk that FERC will attempt to assert jurisdiction over ERCOT, so the Commission should formalize Garland's commitment that, under the provisions of its Interconnection Agreement with Oncor, it will *immediately* disconnect the facilities linking the SCT Tie to ERCOT if disconnection is necessary to prevent ERCOT or any ERCOT utilities from becoming subject to FERC jurisdiction.¹² In addition, the Commission should condition this CCN on a commitment that each of the entities involved in this transaction will otherwise disconnect the SCT Tie or its interconnecting facilities *immediately* if ordered to do so by the Commission for any reason.¹³ ERCOT's jurisdictional independence is simply too important to put it at risk for the sake of this project.

Finally, the Commission should adopt conditions that minimize the legal uncertainties that could result from the exercise of certain rights in the Transmission Line Agreement between Garland and Rusk. To avoid potential affiliate issues, Rusk has already agreed not to exercise its right to request that Garland upgrade the Rusk to Panola line upon Rusk's request,¹⁴ and the Commission should formalize that commitment.¹⁵ Additionally, the Commission should limit the use of the "put" or "call" options, which would require Garland to transfer the Rusk to Panola line and its associated CCN to Rusk, in order to ensure that Rusk meets PURA's requirements for becoming a new electric utility before taking possession of the facilities or providing electric service.¹⁶

On the whole, the evidence demonstrates that ERCOT customers will receive minimal benefits from this project, primarily from the limited instances where the SCT Tie will be

¹² See Tr. (Cline Cr.) at 28:24-29:4; Section II.D, *infra*.

¹³ See Section II.D.2, *infra*.

¹⁴ See Southern Cross Ex. 6 (Parquet Reb.) at 13:20-22.

¹⁵ See Section II.C, *infra*.

¹⁶ See PURA § 37.051(e); Section II.E, *infra*.

importing power to ERCOT, and will be exposed to a myriad of countervailing cost increases, jurisdictional risks, and other adverse consequences¹⁷ from interconnecting a new DC tie that is intended to drain cheap power from ERCOT and ship it to the Eastern Interconnect.¹⁸ However, since the Commission must approve the CCN application in this case under PURA § 37.051(c-2), the Commission should adopt the conditions recommended below to ensure that this interconnection satisfies the public interest.

II. THE COMMISSION SHOULD IMPOSE CONDITIONS ON THE SCT INTERCONNECTION TO ENSURE THAT IT IS IN THE PUBLIC INTEREST

A. ERCOT customers should not be required to pay incremental ancillary service or transmission costs to support exports over the SCT Tie. (Preliminary Order Issue 4.c and 4.i)

SCT proposes that ERCOT customers should pay certain costs associated with the SCT Tie, such as the costs of the Rusk switching station (and other Oncor interconnecting facilities)¹⁹ and incremental ancillary service and transmission service costs required to support exports.²⁰ Similarly, Garland is seeking to have ERCOT customers bear the risk of SCT defaulting on its payment obligations related to the Rusk to Panola line and the Panola substation,²¹ which are being constructed solely to service the SCT Tie.

These proposals to saddle ERCOT customers with costs associated with the SCT Tie are premised on the claim that ERCOT customers will benefit from this new interconnection,²² and that DC tie load should be treated like native ERCOT load.²³ However, (1) the alleged benefits of the SCT Tie are illusory and based on a flawed modeling exercise, as discussed below, and (2) imposing incremental costs on ERCOT customers to export power out of the state is contrary to the applicable legal and regulatory requirements, as well as sound cost allocation principles.

¹⁷ See TIEC Ex. 1 (Griffey Dir.) at 10:16-19, 17:10-23:5; Section II.A, *infra*.

¹⁸ See Southern Cross Ex. 3 (Wolfe Dir.) at 17:14-15 (“The simulations show that the SCT project would result in export flows out of ERCOT during the bulk of the hours.”) and Exhibit EW-2 at 10 of 33.

¹⁹ Southern Cross Ex. 6 (Parquet Reb.) at 12:16-22.

²⁰ Southern Cross Ex. 11 (Hudson Reb.) at 3:10-12 (“In particular, I reject the notion that this docket is an appropriate venue for the Commission to depart from longstanding policies on cost allocation in relation to transmission upgrades and ancillary services.”).

²¹ See TIEC Ex. 1 (Griffey Dir.) at 15:6-17.

²² Southern Cross Ex. 1 (Parquet Dir.) at 12:9-13:8.

²³ See Southern Cross Ex. 11 (Hudson Reb.) at 10:19-23.

To ensure that interconnection of the SCT Tie is in the public interest pursuant to PURA § 37.051(c-2), the Commission should instead adopt the following conditions recommended by TIEC witness Mr. Griffey:

- Export transactions over the SCT Tie must bear the full cost of supporting those transactions, including both transmission and ancillary services costs;
- No costs related to the Rusk or Panola Substations or the Rusk to Panola Line shall be allowed in TCOS under any circumstances; and²⁴
- The Commission should require Staff to ensure that all Transmission Service Providers (TSPs) are including their costs in the DC tie export charges, so that exports appropriately contribute to recovery of ERCOT transmission costs.

1. All incremental transmission and ancillary service cost increases to exports over the SCT Tie should be directly charged to those exports. (Preliminary Order Issue 4.i)

Under the “loads pay” cost allocation method in ERCOT, transmission costs are socialized to all customers based on their share of the system’s peak demand.²⁵ Similarly, the costs of the ancillary services that ERCOT buys each day to maintain reliability, such as Responsive Reserve Service (RRS), Regulation Service (Reg-Up or Down), and Non-Spinning Reserve Service (NSRS),²⁶ are charged to all customers based on their “load ratio share” of total ERCOT usage.²⁷ As Mr. Griffey explained, the concept of “loads pay” within ERCOT was premised on ERCOT being an electrical “island,” separate from grids in other parts of the country, such that the costs of transmission and ancillary service needed to deliver generation to customers generally benefit the entire “island” and all loads should share in those costs.²⁸ The “loads pay” concept was neither designed nor intended to saddle loads with incremental costs

²⁴ TIEC Ex. 1 (Griffey Dir.) at 13:14-17.

²⁵ P.U.C. Subst. R. 25.192. This rule explains that Transmission Service Providers (TSPs) charge their costs to Distribution Service Providers (DSPs) using a “postage stamp” rate, which is developed by dividing total transmission costs by the average system-wide demand during the four coincident peaks (4CP) in June, July, August and September. This rate is then charged to each DSP based on their share of the 4CP demand. The DSPs then pass this cost through to end-use retail customers, which has the effect of socializing total transmission costs among all ERCOT customers.

²⁶ ERCOT Nodal Protocols § 3.17.

²⁷ ERCOT Nodal Protocols § 4.2.1.2.

²⁸ TIEC Ex. 1 (Griffey Dir.) at 23:17-24:6.

necessary to facilitate exports out of the “island” over a DC tie.²⁹ Therefore, it is neither discriminatory nor contrary to the requirements of PURA or the Commission’s Substantive Rules to treat costs required to facilitate exports differently from costs required to serve native ERCOT loads.³⁰ Rather, assigning full responsibility for ancillary service and transmission costs required to support exports over the SCT Tie is necessary to ensure that the interconnection in the public interest.

As SCT witness Mr. Hudson acknowledged, the export charges to transactions over the SCT Tie are intended to pay for the existing transmission system in ERCOT,³¹ which is used to transport ERCOT generation to the point of export. But if any additional transmission facilities are built to support SCT Tie exports, placing those facilities in Transmission Cost of Service (TCOS) rates would incrementally raise transmission costs for all ERCOT ratepayers.³² This would effectively require ERCOT customers to subsidize the costs of exporting power to another area of the country. Similarly, if additional ancillary services are required due to the SCT Tie interconnection, this would increase not only the quantity of the services that must be procured (i.e., the number of megawatts), but also the cost per megawatt that customers would pay for even the existing quantities.³³ This is because all ancillary service providers must be paid based on the same clearing price, and that clearing price generally increases as greater quantities are procured.³⁴ All of these incremental costs should be assigned to exports over the SCT Tie to ensure that exports to other areas of the country are not being subsidized by ERCOT customers.

SCT’s own analysis indicates that the DC tie will be *exporting* power from ERCOT the vast majority of the time, with average exports of 774 MWs per hour in the year studied.³⁵ These exports do not benefit ERCOT customers. While the additional export capability may allow

²⁹ TIEC Ex. 1 (Griffey Dir.) at 23:17-24:6.

³⁰ See TIEC Ex. 1 (Griffey Dir.) at 12:16-13:8; see also PURA § 35.004(d) (requiring postage stamp pricing only for electric transmission service *within* ERCOT).

³¹ Tr. (Hudson Cr.) at 231:25-232:8 (Jun. 1, 2016).

³² Tr. (Hudson Cr.) at 232:10-23 (Jun. 1, 2016).

³³ Tr. (Hudson Cr.) at 233:14-234:9 (Jun. 1, 2016).

³⁴ Tr. (Hudson Cr.) at 232:25-233:13 (Jun. 1, 2016).

³⁵ Southern Cross Ex. 3 (Wolfe Dir.) at 17:14-15 (“The simulations show that the SCT project would result in export flows out of ERCOT during the bulk of the hours.”) and Exhibit EW-2 at 10 of 33. See also TIEC Ex. 1 (Griffey Dir.) at 10:16-19 (noting that imports are *de minimis*).

ERCOT generators (including curtailed wind units) to sell more electricity by opening a new market,³⁶ this does not benefit ERCOT *customers*, who SCT would have pay for additional ancillary services, transmission upgrades, and other costs required to support the DC tie operations. As Mr. Griffey explained, “Cost responsibility should generally follow benefits, so export transactions should bear the cost of the upgrades necessary to support additional exports.”³⁷

To ensure that the interconnection of the SCT Tie is in the public interest, the Commission should adopt a condition that export transactions must bear the full costs they impose on the system, including both transmission and ancillary services costs.

2. ***No costs associated with the Rusk or Panola substations, the Rusk to Panola line, or any other transmission upgrades required to support the SCT Tie should be allowed in TCOS under any circumstances. (Preliminary Order Issue 4.c)***

The Commission should also include a condition that neither Garland nor Oncor may charge ratepayers for any capital, O&M, or decommissioning costs associated with interconnecting the SCT Tie to ERCOT.³⁸ ERCOT ratepayers should not be forced to subsidize the construction of transmission infrastructure that is only necessary to enable the export of power from ERCOT.³⁹ Any benefit that is derived from exports over the Southern Cross DC tie will inure to the owners of the tie and/or exporting entities, so those parties should be required to bear the cost of constructing or upgrading any transmission facilities required to support the exports.⁴⁰

³⁶ Tr. (Wolfe Cr.) at 76:7-77:16 (Jun. 1, 2016).

³⁷ TIEC Ex. 1 (Griffey Dir.) at 25:1-2; *see also id.* at 12:13-19 (“[I]t is appropriate for the Commission to follow the general principle that customers should not have to pay to support exports of energy from ERCOT, and ensure that exporting entities bear the full cost of exporting power.”).

³⁸ TIEC Ex. 1 (Griffey Dir.) at 17:2-4.

³⁹ TIEC Ex. 1 (Griffey Dir.) at 12:13-19 (“[I]t is appropriate for the Commission to follow the general principle that customers should not have to pay to support exports of energy from ERCOT, and ensure that exporting entities bear the full cost of exporting power.”).

⁴⁰ TIEC believes the specific facts of this case—specifically, the size of the tie and the evidence showing that it will be exporting the vast majority of the time—support this condition to ensure that the interconnection is in the public interest. At this time, TIEC is basing this recommendation on the specific facts of this case and is not seeking to establish a general rule regarding cost allocation for DC ties.

Garland has reserved its right to recover the cost of transmission assets in TCOS, and Garland has admitted that it may seek to recover construction, O&M, and decommissioning costs associated with the Rusk to Panola line and the Panola substation.⁴¹ SCT's current plan is for Oncor to attempt to place the Rusk substation into TCOS, with Rusk promising to pay for that asset *only* if Oncor is unsuccessful in socializing the cost to all ERCOT ratepayers.⁴²

The applicants intend to include the costs of these facilities in TCOS even while recognizing that the projects are being constructed solely to support the SCT Tie. Mr. Cline admitted at the hearing that the Rusk to Panola line and the Panola substation are being constructed solely to serve the SCT Tie,⁴³ and there are currently no plans to interconnect generators or other transmission service customers to those facilities.⁴⁴ Additionally, there is no evidence that the Rusk substation is needed for any reason other than supporting exports over the Southern Cross DC tie, and even Mr. Parquet was unaware of whether there was any economic or reliability need for that facility other than to support the DC tie.⁴⁵

Further, Garland should not be allowed to shift the financial risk associated with contracting with Rusk onto ERCOT customers when Garland will reap all the financial benefits of that transaction. As it stands, Rusk plans to give Garland the line for \$1, cover all reasonable O&M expenses for the line, and pay Garland a monthly fee on top of that.⁴⁶ Essentially, Garland is being handsomely rewarded for bearing the small risk that Rusk will default on its O&M payments or that the line will be decommissioned and the decommissioning escrow fund will not be sufficient to cover the associated costs. Yet, Garland still plans to shift as much of that risk as possible over onto ERCOT customers while keeping all of the profit for itself.⁴⁷ However, it was Garland's decision to contract with Rusk, and it is Garland who stands to benefit from owning,

⁴¹ TIEC Ex. 1 (Griffey Dir.) at 9:10-12.

⁴² TIEC Ex. 1 (Griffey Dir.) at 8:12-14, 9:8-10, 15:3-6; Tr. (Parquet Cr.) at 129:17-20 (Jun. 1, 2016).

⁴³ Tr. (Cline Cr.) at 21:24-22:2 (May 31, 2016).

⁴⁴ Tr. (Cline Cr.) at 22:3-6 (May 31, 2016).

⁴⁵ Tr. (Parquet Cr.) at 129:21-130:7 (Jun. 1, 2016).

⁴⁶ TIEC Ex. 1 (Griffey Dir.) at 8:14-17, 9:10-13, 9:17-10:2; Tr. (Cline Cr.) at 22:11-24:2 (May 31, 2016).

⁴⁷ TIEC Ex. 1 (Griffey Dir.) at 15:6-17 ("Effectively, Garland is proposing that ERCOT customers, not Garland, bear the credit risk of transacting with Rusk, while Garland will receive all the financial benefits of this transaction."); see Tr. Cline Cr. at 24:3-20 (May 31, 2016).

operating, and maintaining these facilities, so Garland should bear the risk of Rusk defaulting on its obligations related to this project.⁴⁸

In rebuttal testimony, Mr. Cline argued that the Commission should leave open the possibility of placing costs associated with the Rusk to Panola line or the Panola substation in TCOS because other generation or transmission service customers could (hypothetical) interconnect to those facilities, or ERCOT could endorse upgrades to those facilities for economic or reliability reasons.⁴⁹ However, both of those conditions involve the facilities becoming useful for some reason *other* than simply servicing the DC tie, and at the hearing, Mr. Cline could not list any other circumstance under which it would be reasonable to place the costs associated with these facilities into TCOS.⁵⁰ Therefore, at most, the Commission should allow recovery of such costs through TCOS *only after* Garland makes a showing that the Rusk to Panola line or the Panola substation would have been needed for some reason independent of the existence of the Southern Cross DC tie, and should adopt a condition memorializing that decision.

The Rusk substation should also not be included in TCOS. SCT's affiliate, Rusk, has promised to fund the construction of that asset, but only in the event that Oncor is not successful in including it in TCOS.⁵¹ Again, since this substation is being constructed to support exports across the Southern Cross DC tie, ERCOT customers should not be forced to subsidize it. Instead, Rusk, whose affiliate SCT stands to benefit from the station's construction, should bear the cost to build it.

3. *The Commission should ensure that all TSPs' costs are reflected in export charges so that exports over the SCT line appropriately contribute to transmission costs in ERCOT. (Preliminary Order Issue 2)*

Exports over the SCT Tie will use the ERCOT transmission system to move power from the generation point to the export point. Export fees for DC tie transactions are intended to cover

⁴⁸ TIEC Ex. 1 (Griffey Dir.) at 16:11-20.

⁴⁹ Garland Ex. 8 (Cline Reb.) at 3:8-13; Tr. (Cline Cr.) at 24:21-26:6 (May 31, 2016).

⁵⁰ Tr. (Cline Cr.) at 24:21-26:6 (May 31, 2016).

⁵¹ Tr. (Parquet Cr.) at 129:17-20 (Jun. 1, 2016).

the costs of using the existing transmission system.⁵² However, as SCT has acknowledged, not all TSPs currently include their transmission costs in the export charges, which means that the costs to exports for using the existing transmission system are currently understated and do not appropriately contribute to the TSPs' revenue requirements. This, in effect, requires ERCOT customers to provide certain transmission facilities that exporters are using free-of-charge.

In discussing how to value the potential economics of the SCT tie, *** [REDACTED]

[REDACTED]

[REDACTED]

***⁵³ As DC tie export capability increases significantly with interconnection of the SCT Tie, the Commission should remedy this problem to ensure that DC tie exports are appropriately contributing to the costs of the existing transmission grid. In rebuttal testimony, SCT witness Mr. Bruce suggested that the Commission should expeditiously address this and any other issues related to charges for DC Ties in a rulemaking to avoid any regulatory uncertainty.⁵⁴ TIEC agrees that a rulemaking on PUC Subst. R. 25.192 (which governs export charges) would be the appropriate avenue for resolving this issue, but recommends that the final order in this case direct Staff to ensure that such a rulemaking is opened and that these issues are resolved before the SCT Tie is placed in service.

4. SCT's "benefits" analysis is flawed, unreliable, and does not support requiring ERCOT customers to subsidize the costs of transactions over the SCT Tie. (Preliminary Order Issue 4.c and 4.i)

SCT contends that ERCOT customers should pay the incremental transmission and ancillary service costs discussed above based on purported benefits that SCT manufactured through a fundamentally flawed modeling exercise by Resero Consulting.⁵⁵ This faulty analysis is incomplete, unrealistic, unreliable, and does not support imposing any additional costs on ERCOT customers.

⁵² See Tr. (Hudson Cr.) at 231:25-232:8 (Jun. 1, 2016).

⁵³ TIEC Ex. 1A (Griffey Dir., HSPM) at 22:7-9, citing Southern Cross Supplemental Response to TIEC 2-12 (attached to Mr. Griffey's testimony at Exhibit CSG-2, p. 4).

⁵⁴ Southern Cross Ex. 9 (Bruce Reb.) at 27:15-29:11.

⁵⁵ Southern Cross Ex. 3 (Wolfe Dir.) at Exhibit EW-2.

a. **SCT's analysis artificially manufactured the purported benefits of the SCT Tie by using inappropriate assumptions to model flows on the existing DC ties.**

In its “benefits” analysis, Resero improperly modeled all the existing DC ties as if they were not capable of exporting, which had the effect of creating artificial congestion and wind curtailments in the base case model that only the SCT Tie could solve because it provided the only export path. As a result, all of the purported “savings” from export transactions (which are mostly fictional, as discussed below) were attributed exclusively to the SCT Tie—purely as an artifice of the modeling approach.⁵⁶

There are two DC ties interconnecting to the Southwest Power Pool (SPP) and three DC ties to Mexico.⁵⁷ The five existing DC ties that link ERCOT to the SPP and Mexico represent a combined 1,250 MW of potential exports.⁵⁸ These ties are all bi-directional in reality, but Resero modeled them as import-only, which consequently “trapped” certain low-cost power in ERCOT (mainly wind and solar).⁵⁹ Resero then forced the Mexico ties to import an additional 430 MW of power every hour, regardless of economics,⁶⁰ and assumed that a substantial amount of wind generation would be added between now and the model year 2020.⁶¹ By creating a base case in which *no exports* were allowed over the existing DC ties, while 430 MW of additional power was forced into the system from Mexico even in low load and high wind hours, Resero improperly reduced overall demand in ERCOT (including DC tie demand), and thereby increased curtailments of renewable generation in ERCOT.⁶² Resero then relieved those renewable curtailments in the change cases by allowing exports, but *only over the SCT line*. This made it appear as though the SCT line was responsible for any production cost savings driven by export capability, when the same impact would have appeared in the base case if it had

⁵⁶ TIEC Ex. 1 (Griffey Dir.) at 22:12-15.

⁵⁷ See TIEC Ex. 5 (Map of Existing DC Ties).

⁵⁸ TIEC Ex. 1 (Griffey Dir.) at 17:13-15.

⁵⁹ See Tr. (Wolfe Cr.) at 69:9-14 (Jun. 1, 2016) (“Q: So you would agree that in your base case . . . except for the Southern Cross Tie, none of the existing DC ties were capable of exporting? A: In the way we modeled them, *we modeled them only in the import direction.*”) (emphasis added).

⁶⁰ TIEC Ex. 1 (Griffey Dir.) at 20:1-4.

⁶¹ Tr. (Wolfe Cr.) at 62:8-63:7 (Jun. 1, 2016).

⁶² TIEC Ex. 1 (Griffey Dir.) at 17:15-17.

been correctly specified.⁶³ Resero's assumption that no exports could ever occur over the existing DC ties contradicts reality, reasonable modeling practices, and common sense.

All of the existing DC ties are capable of either importing or exporting based on economics.⁶⁴ This means when prices in ERCOT are *lower* than prices in the area on the other side of a DC tie (and the difference is sufficient to cover transaction fees), you would expect to see *exports* out of ERCOT. Conversely, when prices in ERCOT are *higher* than in the area on the other side of a DC tie (and the difference is sufficient to cover transaction fees), you would expect to see *imports* into ERCOT. Imports and exports over the SCT Tie were modeled based on these exact economics.⁶⁵ However, despite Resero having the capability to dispatch the SPP ties economically,⁶⁶ *** [REDACTED]

*** SCT and Resero instead chose to model the SPP ties as if they were only capable of importing, and did not allow any exports over the tie under any circumstances.⁶⁸ This is patently unrealistic and unreasonable, and effectively attributed exports that may have flowed over the SPP ties to the SCT Tie instead—as well as any purported production cost savings associated with such exports.⁶⁹

Resero defended this assumption by citing ERCOT's study practices, in which the SPP ties are generally modeled as an efficient generator that is only capable of importing into ERCOT.⁷⁰ But as Mr. Griffey noted and Mr. Lasher confirmed, ERCOT only uses this approach to identify transmission upgrades needed *within* ERCOT—not to model the economics of a DC

⁶³ TIEC Ex. 1 (Griffey Dir.) at 12:5-10 (“[T]he increase in assumed wind production, reduction to overall production costs, and the corresponding wheeling revenue are all solely a product of the way the modeling was performed.”); see also *id.* at 17:17-18, 21:17-22:2.

⁶⁴ Tr. (Wolfe Cr.) at 64:16-18, 69:5-14 (Jun. 1, 2016).

⁶⁵ Tr. (Wolfe Cr.) at 70:3-17 (Jun. 1, 2016).

⁶⁶ Tr. (Wolfe Cr.) at 74:6-21 (Jun. 1, 2016).

⁶⁷ TIEC Ex. 1A (Griffey Dir., HSPM) at 19:1-5. At some unknown point during the project, this approach ** [REDACTED] *** and the existing DC ties were modeled as import-only. See TIEC Ex. 1A (Griffey Dir., HSPM) at 19:1-14.

⁶⁸ Tr. (Wolfe Cr.) at 68:15-19 (Jun. 1, 2016) (“Q: You did not allow exports over [the SPP] ties. Is that correct? A: That part’s correct, yes. We didn’t model it as a generator. *We constrained the flow so that it would only go in one direction.*”) (emphasis added); see also *id.* at 69:9-14.

⁶⁹ As Ms. Wolfe admitted under cross examination, since the SCT tie was the only tie that was modeled with export capabilities, it was the only tie that was capable of providing production cost savings through exports. See Tr. (Wolfe Cr.) at 71:13-23 (Jun. 1, 2016).

⁷⁰ See ERCOT Ex. 1 (Lasher Dir.) at 8:17-9:4.

tie itself, which is an entirely different exercise with an entirely different purpose.⁷¹ Mr. Lasher also stated that if ERCOT had the capability to model DC ties based on economics, as Resero has for the SPP ties, this approach would be a better, more accurate way to model expected DC tie flows.⁷² In addition, Ms. Wolfe acknowledged that the SPP ties are generally closer to the areas of wind curtailment in ERCOT than the SCT Tie,⁷³ and that “shift factors” (i.e., flows on transmission lines created by increases in generator output) generally correlate with distance.⁷⁴ Given this, it is reasonable to expect that if economic exports had been allowed over existing DC ties in the model, significant economic exports over the SPP ties would have been observed, which would have decreased export flows over the SCT Tie.⁷⁵ This would have dramatically changed the purported “savings” calculated by Resero, and renders the modeling results unreliable and unrealistic.

Resero’s treatment of the three ties with Mexico also contradicts both reality and ERCOT’s modeling practices. Like the SPP ties, Resero modeled the DC ties to Mexico as if they could only import, even though these ties are also bi-directional.⁷⁶ Resero does not have the capability to model the economic dispatch of the DC ties to Mexico as it does for the SPP ties.⁷⁷ Nonetheless, Resero did not even follow ERCOT’s practice for modeling the Mexico DC ties. ERCOT allows the ties to either import or export in its modeling based on historical flows (rather than projected economics),⁷⁸ and under that approach the Mexico ties generally *export*.⁷⁹ Resero, instead, modeled the Mexico ties as importing 430 MW of zero-cost, “must-take” energy at all times, with no export capability.⁸⁰ Ms. Wolfe acknowledges this error, but contends that it

⁷¹ TIEC Ex. 1 (Griffey Dir.) at 20:14-19; Tr. (Lasher Cr.) at 271:14-25 (Jun. 1, 2016).

⁷² Tr. (Lasher Cr.) at 272:1-10 (Jun. 1, 2016).

⁷³ Tr. (Wolfe Cr.) at 84:13-22 (Jun. 1, 2016).

⁷⁴ Tr. (Wolfe Cr.) at 81:10-82:2 (Jun. 1, 2016).

⁷⁵ Tellingly, unlike for the Mexico ties, Ms. Wolfe did not perform a shift factor analysis comparing the relative electrical distance of either the SPP ties or the proposed SCT tie from the areas of wind curtailment. *See* Tr. (Wolfe Cr.) at 84:25-85:6 (Jun. 1, 2016).

⁷⁶ Tr. (Wolfe Cr.) at 63:20-64:1 (Jun. 1, 2016).

⁷⁷ *See* Southern Cross Ex. 3 (Wolfe Dir.) at 9:13-12:19 (describing how the Resero model interconnected models of the Eastern Interconnect and ERCOT, with no mention of a model for the Mexico grid).

⁷⁸ Tr. (Wolfe Cr.) at 65:3-13 (Jun. 1, 2016).

⁷⁹ TIEC Ex. 1 (Griffey Dir.) at 20:12-17.

⁸⁰ Tr. (Wolfe Cr.) at 63:24-64:6 (Jun. 1, 2016).

would not have significantly impacted the results because the Mexico ties are so distant from the areas of wind curtailment in the model.⁸¹ This ignores that importing 430 MW of additional generation (which is equivalent to reducing demand) will contribute to system congestion and impact generator dispatch throughout the system, including backing down wind generation in low-load hours. Ms. Wolfe's after-the-fact justification also ignores that the SCT tie line is nowhere near the areas of wind curtailment (and farther from them than the artificially constrained SPP ties),⁸² and yet was attributed with "savings" from allowing additional wind generation to be produced and then exported.⁸³

Further, Ms. Wolfe's claim that low shift factors demonstrate that Panhandle wind will not flow over the DC ties to Mexico is beside the point. Ms. Wolfe notably did not provide the shift factors between the Panhandle and SCT,⁸⁴ so there is no reason to think they are any different than the shift factors between the Panhandle and the Mexico ties. Both the Mexico and SCT ties are geographically distant from the Panhandle,⁸⁵ yet Resero claims "production cost" benefits for SCT from relieving wind curtailments while at the same time maintaining that it would be impossible for the Mexico ties to impact these curtailments. These assumptions are flatly inconsistent and not credible. Ms. Wolfe also ignores that putting 430 MW of zero-cost, must-take power from Mexico onto the grid every hour would necessarily force 430 MW of other generation in ERCOT to back down, which would often create wind curtailments in low-load periods because fossil-fuel units would already have been backed down to the greatest possible extent. Unless the model is rerun with these errors corrected (which Resero has not done), there is no way to determine the magnitude of the distortions it created. The flaws in Resero's modeling of the ties with Mexico further undermines any validity of SCT's production cost savings analysis.

- b. SCT's analysis inappropriately counted the revenue from exports as "production cost savings" based on Locational Marginal Prices, which created purported "benefits" when no actual benefit would be provided to ERCOT customers.**

⁸¹ Tr. (Wolfe Cr.) at 78:19-25 (Jun. 1, 2016).

⁸² Tr. (Wolfe Cr.) at 84:13-22 (Jun. 1, 2016).

⁸³ See generally Tr. (Wolfe Cr.) at 111:7-113:4 (Jun. 1, 2016).

⁸⁴ See Tr. (Wolfe Cr.) at 84:25-85:6 (Jun. 1, 2016).

⁸⁵ See TIEC Ex. 5.

Resero's production cost savings analysis also quantified certain "benefits" from DC tie exports that would not actually provide any savings to ERCOT customers, who be burdened with the incremental transmission or ancillary service costs to support the SCT Tie exports. In Resero's analysis, exports over the SCT Tie were assumed to reduce production costs in ERCOT based on the quantity exported times the Locational Marginal Price (LMP) at the export point (the export "node").⁸⁶ So, if the LMP at the export node were \$20 and 5 MWs were exported, this would show up as a production cost "savings" of \$100, even though it provides no actual savings to ERCOT customers. Under this approach, if additional zero-cost energy were produced by ERCOT generators (i.e, wind) and then immediately exported to serve customers in *another area of the country*, this would be counted as a "savings" to ERCOT.⁸⁷

Ms. Wolfe acknowledged that the exports Resero attributed to the SCT Tie were generally from increased wind and solar production.⁸⁸ Increasing export capability may give wind or solar generation companies a new market for their product, but it does not provide any savings to ERCOT customers and does not justify requiring customers to pay incremental costs associated with the SCT Tie. Ms. Wolfe acknowledged that if additional wind generation were produced at zero cost in ERCOT (which would not change overall production costs) and then *directly exported* over the tie, without serving any ERCOT customers along the way, Resero's model would count the export revenues as production cost "savings" (at MWs exported * LMP).⁸⁹ But this export activity provides absolutely no savings to ERCOT customers. Also, by valuing exports at the LMP and including this as "production cost savings," Resero is comparing apples to oranges. Production cost savings calculate the collective fuel and O&M expense of all generators required to serve load in a given scenario.⁹⁰ LMPs are market prices, which generally

⁸⁶ Tr. (Wolfe Cr.) at 87:19-88:4 (Jun. 1, 2016) ("Q: And so in order to get the . . . the cost of the imports and exports that you used to adjust the production costs, is it correct that you took the megawatt value of imports and exports and multiplied it by the locational marginal price? A: Yes.").

⁸⁷ See Tr. (Wolfe Cr.) at 112:19-113:4 (Jun. 1, 2016) ("Q: Assuming no other changes relative to the base case, no additional imports, no other changes in dispatch, *the only change is the SCT Tie is allowing wind to be exported, that would show as production cost savings in the amount of the LMP at that export node times the megawatts being exported. Is that correct?* A: *I guess so.* . . . It would be a credit of sales, and if nothing else is going on, then we would show that credit in sales as a production cost benefit.") (emphasis added).

⁸⁸ Tr. (Wolfe Cr.) at 76:7-21 (Jun. 1, 2016).

⁸⁹ See Tr. (Wolfe Cr.) at 111:7-113:4 (Jun. 1, 2016).

⁹⁰ See Tr. (Siddiqi Cr.) at 255:6-18 (Jun. 1, 2016) (explaining that production cost calculations do not account for factors that create scarcity pricing).

will not be less than a generator's actual costs, but may be *much higher* due to congestion or other scarcity pricing features in the market. As Mr. Siddiqi explained at the hearing, a production cost calculation does not include the impact of scarcity pricing on LMPs,⁹¹ nor does it account for congestion or other market price impacts that may be reflected in LMPs. By crediting exports as "revenue" based on the export LMPs, Resero inappropriately combined market pricing with a production cost calculation, skewing the model in favor of projecting purported "benefits."

Similarly, in Resero's model, if one megawatt of power were imported into ERCOT over the SPP tie line at a given LMP, and then exported to over the SCT Tie at a *higher* LMP, this would also show up as a "production cost savings" while providing no benefit to ERCOT customers. For example, if one megawatt of electricity were imported from SPP at \$10, and then sold over the SCT tie at \$20, this would show up as a \$10 reduction in production costs in SCT's model—even though the net power provided to ERCOT would zero, and that megawatt would essentially just be "passing through" ERCOT on its way to SERC from the SPP.⁹² Again, this type of activity may provide new sources of profit for generators in the SPP or ERCOT, but it does not provide any savings to ERCOT customers.

The evidence shows that the vast majority of the production cost savings Resero identified for the SCT tie came from importing power from SPP and then exporting it over the SCT tie at a higher price. Of the \$173 million in production cost savings Resero identified in the case where SCT was added, \$148 million were the result of this "Import/Export" adjustment.⁹³ As discussed with Ms. Wolfe at the hearing, even under the most favorable assumptions, no more than \$5 million of the "Purchases" (i.e., imports) identified by Resero were related to imports over the SCT ties.⁹⁴ This necessarily means that the vast majority of the remaining

⁹¹ *Id.*

⁹² See Tr. (Wolfe Cr.) at 94:5-95:2 (Jun. 1, 2016).

⁹³ TIEC Ex. 7 (SCT Response to TIEC 1-26, Attachment 1, page 1 of 2, "Import/Export Benefit" row compared to "Societal Benefit" row); see also Tr. (Wolfe Cr.) at 97:12-98:8 (Jun. 1, 2016).

⁹⁴ This \$5 million value for total imports is generous. It comes from a hypothetical posed to Ms. Wolfe at the hearing wherein the most favorable possible assumptions were used to estimate the value of the imports in the model. For the imports to be worth \$5 million, all 50 gigawatt hours of imports in Ms. Wolfe's model were assumed to have come in when the LMP at the export node were \$100. LMPs for that node were not provided, but \$100 is 33% higher than the highest LMP that was recorded for the Rusk node. As such, \$5 million is likely higher than the actual value of the imports. See generally Tr. (Wolfe Cr.) at 105:16-109:17 (Jun. 1, 2016) (walking through the hypothetical).

“savings” from the “Import/Export” adjustment (and, correspondingly, the savings as a whole) were the result of (1) importing power from the SPP and then exporting it over the SCT Tie in the same hour, and (2) crediting the LMP of the export to production cost instead of crediting the incremental production cost. Again, buying power from one region and wheeling it to another region through ERCOT provides no cost savings to ERCOT customers, nor does counting the difference between LMPs as a reduction in production costs provide any real savings to ERCOT customers.

In sum, Resero’s production cost modeling exercise was deeply flawed, and quantified purported “benefits” that provide no savings to customers. The results of this study do not justify imposing incremental costs for transmission, ancillary services, or any other item associated with the SCT on ERCOT customers.

- c. SCT’s “consumer savings” analysis should be completely disregarded because SCT and Resero allegedly did not retain, and were unable to provide, any underlying LMP data for other parties to review and scrutinize.**

Resero also conducted a “consumer savings” calculation that purported to calculate the savings to consumers that the SCT Tie would provide based on changes in market prices.⁹⁵ This would have been a more appropriate way to attempt to measure the impact that the SCT Tie will have on ERCOT customers than a production cost calculation. However, Resero and SCT chose “not to retain” any of the hourly data underlying these calculations once the modeling exercise was completed, and they were unable to provide this data upon request from TIEC.⁹⁶ As a result, there is no way for TIEC or any other party to review the LMP assumptions in either the base or change cases to determine whether they were reasonable, or whether they were similarly plagued with inaccurate and unrealistic assumptions that inflated the purported benefits of the SCT Tie. In Order No. 5, the ALJs found that this requested information was both relevant and discoverable, but denied TIEC’s motion to compel because Resero/SCT submitted affidavits explaining that they no longer had the information. The ALJs appropriately cautioned that they would “take these facts into consideration in weighing any testimony regarding the model and its

⁹⁵ Southern Cross Ex. 3 (Wolfe Dir.) at 5:2-4, 17:1-10, 21:1-7.

⁹⁶ See SOAH Order No. 5 at 2-3.

results as they pertain to the economic analysis discussed in Ms. Wolfe's testimony."⁹⁷ Because SCT was unable to provide the LMP data underlying these "consumer savings" calculations, this analysis should be given *no weight* in determining whether ERCOT customers should be burdened with transmission and ancillary service costs based on the purported benefits of the SCT Tie.

B. The Commission should require SCT to register as a new category of market participant at ERCOT and to abide by ERCOT orders and protocols. (Preliminary Order Issue 2)

The Commission should also require SCT to register as an independent DC tie operator for purposes of ERCOT's Standard Market Participant Agreement, and to join the Investor-Owned Utility segment for purposes of ERCOT governance and participation in the ERCOT stakeholder process.⁹⁸ This is necessary to bind SCT to ERCOT's operating requirements and ensure that SCT is able to coordinate DC tie operations with ERCOT. This requirement appears to be relatively uncontroversial, but should be commemorated in a condition.

At the hearing, Mr. Bruce agreed that SCT should register as a market participant for purposes of participating in the ERCOT stakeholder process, and since it does not fit within the definition of any existing market participant category, a new one should be created.⁹⁹ Mr. Griffey has suggested that there be an "Independent DC Tie Operator" category for market participants.¹⁰⁰ Regardless of what the category is called, the Commission should condition this CCN on SCT executing the ERCOT Standard Market Participant Agreement and require ERCOT to create a market participant category that SCT can join. SCT also appears to agree that the IOU segment would be an appropriate segment for governance purposes and stakeholder participation.¹⁰¹

The Commission should also be diligent in ensuring that SCT will comply with applicable ERCOT requirements given SCT's reluctance to provide an unqualified commitment

⁹⁷ SOAH Order No. 5 at 3.

⁹⁸ TIEC Ex. 1 (Griffey Dir.) at 14:3-5.

⁹⁹ Tr. (Bruce Cr.) at 219:15-220:11 (Jun. 1, 2016); *see also* Tr. (Parquet Cr.) at 130:17-18 (Jun. 1, 2016) ("We are assuming that we'll be a market participant . . .").

¹⁰⁰ TIEC Ex. 1 (Griffey Dir.) at 28:1-29:14.

¹⁰¹ Southern Cross Ex. 9 (Bruce Reb.) at 6:20-22.

to that effect.¹⁰² Mr. Parquet testified that “SCT would accept a condition that it is subject to ERCOT-adopted standards of conduct as long as they do not affect or modify the FERC standards [of conduct].”¹⁰³ As Mr. Griffey observed:

This statement reflects an intent that SCT will only abide by ERCOT protocols unless it chooses to argue that FERC rules control. But ERCOT Market Participants do not get to pick and choose which protocols to follow. If SCT wishes to interconnect with ERCOT and become a market participant, it must abide by all ERCOT Protocols, not just the ones that fit its business model.¹⁰⁴

The Commission should impose a condition that if SCT challenges the PUC’s jurisdiction or the applicability of the ERCOT protocols, Garland shall be required to immediately disconnect the SCT Tie from the Panola substation and/or Oncor shall be required to disconnect the facilities from the Rusk substation.¹⁰⁵ Simply put, if SCT wishes to interconnect with ERCOT, then the Commission should require it to follow the same rules as every other ERCOT market participant.

Similarly, the Commission should explicitly condition this CCN on SCT abiding by its commitment to back down SCT Tie exports if asked to do so by ERCOT during an ERCOT EEA¹⁰⁶ event, and should order Garland and/or Oncor to disconnect the facilities if SCT does not abide by this or other required conditions and ERCOT rules.¹⁰⁷ Explicitly imposing this condition would preclude potential disagreements over jurisdiction or other protocol interpretations that could jeopardize the reliability of the ERCOT grid during emergency conditions.

C. The Commission should include a condition prohibiting Rusk from requesting that Garland upgrade the Rusk to Panola line under the provisions of the Transmission Line Agreement. (Preliminary Order Issue 2)

As discussed in Mr. Griffey’s testimony, affiliate competition issues could arise if Rusk were to exercise certain rights under the Transmission Line Agreement between Rusk and

¹⁰² See TIEC Ex. 1 (Griffey Dir.) at 28:14-21 (emphasis in original).

¹⁰³ Southern Cross Ex. 1 (Parquet Dir.) at 12:4-7.

¹⁰⁴ TIEC Ex. 1 (Griffey Dir.) at 28:17-21.

¹⁰⁵ See TIEC Ex. 1 (Griffey Dir.) at 29:11-14.

¹⁰⁶ TIEC Ex. 1 (Griffey Dir.) at 24:7-9.

¹⁰⁷ TIEC Ex. 1 (Griffey Dir.) at 24:7-15.

Garland that would require Garland to make upgrades to the line upon Rusk's request.¹⁰⁸ To resolve this concern, Mr. Parquet confirmed in his rebuttal testimony¹⁰⁹ and at the hearing¹¹⁰ that Rusk is amenable to a condition preventing it from exercising the right to request upgrades from Garland. Garland witness Mr. Cline also confirmed this understanding.¹¹¹ The Commission should memorialize this by including an explicit condition in its order stating that Rusk (or any successors) will not exercise the right to request upgrades to the Rusk to Panola line under the Transmission Line Agreement.

D. The Commission should condition this CCN on Garland and Rusk committing to disconnect the line in order to prevent FERC from exercising jurisdiction over ERCOT, and in other circumstances as the Commission dictates. (Preliminary Order Issue 2)

At the hearing, Garland witness Mr. Cline confirmed that by committing to abide by Section 5.6 of its Interconnection Agreement with Oncor, Garland is committing to immediately disconnect the line if disconnection is necessary to prevent ERCOT or any ERCOT utilities from becoming subject to FERC jurisdiction.¹¹² The Commission's order should reflect this critical commitment, and require both Garland and Oncor to immediately disconnect the facilities if necessary to protect ERCOT's independence from FERC oversight in the event that a synchronous connection is made to the line outside the State of Texas¹¹³ or FERC otherwise attempts to assert jurisdiction over ERCOT.

Further, the Commission should condition its approval of Garland's application on an explicit assurance that the entities involved in this transaction will disconnect the DC tie and/or interconnecting facilities *immediately* if the Commission orders them to do so for any reason—

¹⁰⁸ TIEC Ex. 1 (Griffey Dir.) at 25:14-27:5.

¹⁰⁹ Southern Cross Ex. 6 (Parquet Reb.) at 13:20-22 ("SCT and Rusk agree that Rusk will not ask Garland to upgrade the Rusk to Panola line under the provision of the Transmission Line Agreement referred to by Mr. Griffey.").

¹¹⁰ Tr. (Parquet Cr.) at 136:12-24 (Jun. 1, 2016).

¹¹¹ Garland Ex. 8 (Cline Reb.) at 4:23-5:2.

¹¹² Tr. (Cline Cr.) at 28:24-29:4 (May 31, 2016) ("*II*s Garland committing to immediately disconnect the line if disconnection is necessary to prevent ERCOT or any ERCOT utilities from becoming subject to FERC jurisdiction? A: Yes. That is – that is my understanding, that our position is to disconnect.") (emphasis added).

¹¹³ While Garland discounts the possibility of such an interconnection occurring, creating conditions regarding this eventuality is prudent, and since the possibility of it occurring is low, such a condition will not pose a substantial burden for Garland. See Garland Ex. 8 (Cline Reb.) at 7:24-29; Tr. (Cline Cr.) at 29:18-30:9 (May 31, 2016).

jurisdictional or otherwise. Maintaining exclusive PUC jurisdiction over ERCOT is critically important to the state's interests, as is maintaining reliability within ERCOT. The Commission should not take the risk that disagreements or other delays in observing a disconnection order could allow FERC to assert jurisdiction or compromise reliability for ERCOT customers. To that end, the Commission should require both Garland and SCT to commit to *immediately* disconnect the facilities upon the issuance of a final Commission order.

In testimony and at the hearing, SCT and Garland have stated that they would disconnect the facilities upon receiving a "final and nonappealable Commission order,"¹¹⁴ and have attempted to reserve their ability to exhaust their appeal rights before complying with a disconnection order.¹¹⁵ However, the Commission should not allow ERCOT's reliability or jurisdictional status to be compromised pending any legal appeals that Garland or Rusk may pursue. Instead, the Commission should explicitly include a condition that Garland and SCT will immediately disconnect their facilities upon receiving a final Commission order requesting that action. If Garland or SCT's appeal of such an order is successful, the line could be reconnected at that time.

E. The Commission should preclude attempts to create a new utility in ERCOT through the "put" or "call" options under the Transmission Line Agreement. (Preliminary Order Issue 2)

The agreements between Garland and Rusk allow Garland to "put" (transfer) the Rusk to Panola line and other interconnecting facilities back to Rusk, and also allow Rusk to "call" (take) those facilities from Garland.¹¹⁶ However, Rusk is not currently a utility and has no CCN to provide service to the public. PURA § 37.051(e) provides a heightened standard for issuing a CCN for a new entrant to construct transmission facilities in ERCOT. Rusk should not be permitted to sidestep the deliberate requirements the legislature prescribed for new entrant utilities under PURA § 37.051(e) by having Garland place the facilities in service and then transfer them back to Rusk.¹¹⁷ Rather, as a prerequisite to either Garland or Rusk exercising the

¹¹⁴ See Garland Ex. 8 (Cline Reb.) at 7:32-33.

¹¹⁵ See Tr. (Cline Cr.) at 29:5-17 (May 31, 2016); Tr. (Parquet Cr.) at 130:23-132:7 (Jun. 1, 2016).

¹¹⁶ See TIEC Ex. 1 (Griffey Dir.) at 27:6-9.

¹¹⁷ Mr. Parquet indicated at the hearing that Rusk may not be a suitable transferee, so some other entity may eventually step into as a successor prior to any facilities being transferred. See Tr. (Parquet Cr.) at 135:24-136:5

“put” or “call” options, the Commission should explicitly require Rusk (or any non-utility successor) to first apply for a CCN to become a new utility in ERCOT under the requirements of PURA § 37.051.¹¹⁸

In 2009, after significant controversy over the creation of new transmission-only utilities to construct transmission to Competitive Renewable Energy Zones (CREZ), the Legislature created a heightened standard for establishing new utilities in Texas through amendments to PURA § 37.051(e). This section now requires a non-utility seeking to construct transmission in Texas to first show that:

- (1) the applicant has the technical ability, financial ability, and sufficient resources in this state to own, operate, and maintain reliable transmission facilities;
- (2) the applicant has the resources and ability to comply with commission rules, requirements of the independent organization certified under Section 39.151 for the ERCOT power region, and requirements of the National Electric Reliability Council applicable to the provisions of transmission service; and
- (3) for an application filed by a person that is not an electric utility, granting the application will not adversely affect wholesale transmission rates, as compared to the rates projected to be charged if an existing electric utility were to build the transmission facility.”) (emphasis added).¹¹⁹

PURA § 37.051(e) only addresses the factors that must be considered for a non-utility to “construct” transmission in ERCOT, so a reasonable interpretation of this section is that a new entrant *can only* be granted a CCN if it is constructing a project in the first instance, after meeting the requirements above, and cannot receive existing utility assets (or obtain a CCN)

(Jun. 1, 2016). The condition should be framed broadly enough to capture any potential assignment of the put/call options.

¹¹⁸ See Southern Cross Ex. 6 (Parquet Reb.) at 11:12-14 (“SCT recognizes that only the Commission could provide Rusk with a CCN, and has in fact incorporated a requirement for Commission approval of any transfer of the facilities into the agreement.”); see also PURA § 37.051(a) (“An electric utility or other person may not directly or indirectly provide service to the public under a franchise or permit unless the utility or other person first obtains from the commission a certificate that states that the public convenience and necessity requires or will require the installation, operation, or extension of the service.”).

¹¹⁹ See PURA § 37.051(e).

through a transfer.¹²⁰ This interpretation would preclude Garland and Rusk from exercising the “put” or “call” options altogether.

It would also be reasonable to read PURA § 37.051(e) in conjunction with § 37.154 as allowing facilities to be transferred to a new utility, but *only if* the new utility first demonstrates that it meets the requirements of PURA § 37.051(e). While PURA § 37.154 allows facilities to be transferred to another entity if it can provide “adequate” service, it would be reasonable to infer that a new entrant must demonstrate that it can meet the requirements under PURA § 37.051(e) to show that service will be “adequate” within the meaning of § 37.154. This would give effect to both (1) the requirements the legislature intended to apply to new entrants, and (2) the provision allowing utility facilities to be transferred. TIEC believes that this is a reasonable, legally sound reading of the statute, but in any event, the Commission should impose a specific condition to prevent Rusk (or any successor) from becoming a new utility by virtue of receiving facilities from Garland under the “put” or “call” options without first demonstrating that they meet PURA § 37.051(e).

Mr. Cline¹²¹ and Mr. Parquet¹²² were unclear as to whether they believe that Rusk could become a new utility through the “put” or “call” options without first satisfying the requirements of PURA § 37.051(e). Both stated in rebuttal testimony that any CCN transfer between Garland and Rusk would be subject to Commission approval under PURA § 37.154.¹²³ However, this CCN “transfer” provision only requires a showing that the transferee “can provide adequate service.”¹²⁴ Allowing Rusk to become a new utility in Texas by building a facility and then

¹²⁰ The Third Court of Appeals previously allowed a new utility to receive a CCN through a transfer, but this was based on the law as it existed prior to the 2009 amendments to PURA § 37.051. As a result, this case is not precedential on how the transfer provision under PURA § 37.154 should be read in conjunction with the new requirements under PURA § 37.051(e). See *Pub. Util. Com’n of Texas v. Cities of Harlingen*, 311 S.W.3d 610 (Tex. App.—Austin 2010, no pet.).

¹²¹ Tr. (Cline Cr.) at 27:25-28:5 (May 31, 2016) (“Q: So based on your experience and knowledge . . . with PURA and with regulatory issues, do you believe that transferring a CCN to Rusk pursuant to PURA 37.154 would qualify Rusk to provide electric service in Texas? A: I’m not sure.”) (emphasis added).

¹²² Tr. (Parquet Cr.) at

¹²³ See Garland Ex. 8 (Cline Reb.) at 5:21-6:2 (“Garland will agree to a condition that, in relation to any exercise of the put and call options in the Agreement, Garland will abide by the provisions of PURA § 37.154 relating to Commission approval of a transfer of rights under a certificate of convenience and necessity.”); Southern Cross Ex. 6 (Parquet Reb.) at 11:14-18 (“SCT will agree to a condition that, in relation to any exercise of the put and call options in the agreement, SCT and Rusk will abide by the provisions of PURA § 37.154 relating to Commission approval of a transfer of rights under a certificate of convenience and necessity.”).

¹²⁴ See PURA § 37.154(a).

having Garland energize it and transfer it *back* to Rusk would inappropriately sidestep the important requirements for new utilities under PURA § 37.051(e), and should be explicitly prohibited as a condition of approval in this case. Rusk should not be permitted to achieve through a transfer what it could not do by requesting approval to own and operate the facilities in the first place. Instead, the Commission should adopt a condition that explicitly requires Rusk or any successor that is not an existing utility in Texas to file an application to prove that it meets the requirements of PURA § 37.051(e) prior to Garland exercising the “put” or “call” options under the Transmission Line Agreement.

III. CONCLUSION

For the reasons discussed above, TIEC requests that the Commission condition its approval in this case on the following requirements:

1. Export transactions over the SCT tie must bear the full cost of supporting those transactions, including both transmission and ancillary services costs.
2. No costs related to the Rusk or Panola Substations or the Rusk to Panola Line shall be allowed in TCOS under any circumstances.
3. Commission Staff shall open a rulemaking to ensure that all Transmission Service Providers (TSPs) are including their costs in the DC tie export charges, so that exports appropriately contribute to recovery of ERCOT transmission costs.
4. SCT is ordered to register as an “Independent DC Tie Operator” for purposes of ERCOT’s market participant agreement, and shall be included in the Investor-Owned Utility segment for ERCOT governance purposes and participation in the ERCOT stakeholder process.
5. SCT shall abide by all PUC requirements, ERCOT Protocols, Operating Guides, and other requirements. Garland shall disconnect the SCT facilities if SCT does not comply with these requirements and/or challenges the Commission’s or ERCOT authority to enforce any of its requirements.
6. SCT shall curtail exports as required by the ERCOT Protocols during an Energy Emergency Alert (EEA).
7. Rusk shall not request that Garland upgrade the Rusk to Panola line under the terms of the Transmission Line Agreement.
8. Rusk and SCT shall disconnect the SCT upon receiving a final order from the Commission ordering such disconnection to preserve the PUC’s exclusive jurisdiction over ERCOT, or for any other purpose.

9. Rusk must file an application showing that it meets the standards in PURA § 37.051(e) before it may own or operate the Panola substation, the Rusk to Panola line, or any other utility facilities in Texas.
10. Any requirements in this order that apply to Rusk or Garland must be transferred and assigned to any successor in interest.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Michael McMillin, Attorney for TIEC, hereby certify that a copy of the foregoing document was served on all parties of record in this proceeding on this 10th day of June, 2016 by facsimile, electronic mail and/or First Class, U.S. Mail, Postage Prepaid.



Michael McMillin

EXHIBIT A – PROPOSED FINDINGS AND CONCLUSIONS

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

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

PROPOSED FINDINGS OF FACT

Conditions on Allocation of Transmission and Ancillary Service Costs

1. The SCT Tie is primarily being constructed to facilitate exports from ERCOT to the Eastern Interconnect.
2. Exporting power from ERCOT to another region does not provide benefits to ERCOT customers.
3. SCT's analysis purporting to show benefits to ERCOT from exporting power to other regions is flawed and unreliable.
4. SCT's benefits analysis incorporated inappropriate assumptions regarding the flows on existing DC ties, which created artificial congestion that the SCT Tie was then able to resolve by providing the only export path.
5. SCT's benefits analysis also inappropriately reduced ERCOT production costs based on "sales revenues" from exporting electricity to other regions based on the Locational Marginal Price at the export node. Combining production costs and LMP pricing in this manner is not appropriate, and revenues from export transactions do not reduce the production costs paid by ERCOT customers.
6. SCT's "consumer savings" analysis should be given no weight because SCT was not able to provide the hourly LMP data on which this analysis was based. As a result, neither the parties nor the Commission had any opportunity to evaluate the reasonableness of these calculations or the baseline assumptions.
7. Any benefit derived from exports over the SCT Tie will inure to the owners of the tie and/or the parties to the export transactions. These entities should be responsible for the costs required to conduct export transactions instead of ERCOT customers.
8. Including any transmission costs required to support exports over the SCT Tie in Transmission Cost of Service Rates (TCOS) would incrementally increase ERCOT customers' rates without any corresponding benefit.

EXHIBIT A – PROPOSED FINDINGS AND CONCLUSIONS

9. If additional ancillary services are required to support activity over the SCT Tie, this would increase not only the quantity (megawatts) of the services being procured, but also the market clearing price paid to all providers of that ancillary service. ERCOT customers should not be required to pay for these incremental costs to support exports, as they receive no commensurate benefit.
10. To ensure that interconnecting the SCT Tie is in the public interest, export transactions must bear all of the additional costs they impose on the system, including ancillary service and transmission costs.
11. In addition, as a condition of approval, no capital, O&M, decommissioning, or any other costs associated with the Rusk or Panola substations or the Rusk to Panola line should be included in TCOS rates at any point.
12. Rusk Interconnection, LLC plans to build the Panola Substation and the Rusk to Panola line, and then transfer these assets to Garland for \$1 before they are placed in service. Following this transfer, Rusk will compensate Garland for all reasonable O&M expenses, in addition to paying Garland a monthly fee.
13. Under this arrangement, Garland will receive *** [REDACTED] *** in payments from SCT for owning and operating the Panola substation and the Rusk to Panola line. In exchange for this profit, Garland should bear the full risk of the possibility that SCT will default on its payment obligations.
14. Current charges for exports over DC ties do not include the costs of all Transmission Service Providers (TSPs).
15. This results in exports bearing less than the full cost of using the existing ERCOT transmission system.
16. The Commission should require PUC Subst. R. 25.192 to be amended to include all TSPs' costs before the SCT Tie is placed in service.

Conditions on Following ERCOT and PUC Requirements

17. SCT should be required to execute ERCOT's Standard Market Participant Agreement prior to operating the DC tie.
18. SCT should be required to register as an "Independent DC Tie Operator," a new category of market participant registration at ERCOT, prior to beginning operations.
19. Independent DC Tie Operators are most similar to Investor-Owned Utilities (IOUs) and should be included in that segment for purposes of ERCOT governance and stakeholder processes.

EXHIBIT A – PROPOSED FINDINGS AND CONCLUSIONS

20. Garland and SCT must comply with all requirements under the PUC Rules and the ERCOT Protocols, Operating Guides, and other ERCOT binding documents or requirements.
21. SCT must comply with an ERCOT instruction to curtail exports over the DC Tie during an Energy Emergency Alert (EEA) pursuant to the ERCOT protocols.
22. If SCT challenges the applicability of any PUC or ERCOT requirements, Garland and must immediately disconnect the SCT tie.
23. SCT and Garland must immediately disconnect the SCT tie if a synchronous connection to ERCOT is made outside of Texas, or if otherwise necessary to prevent ERCOT from becoming subject to FERC jurisdiction.
24. SCT and Garland must disconnect the SCT Tie immediately upon receiving a final order from the Commission ordering disconnection.

Condition on Requesting Upgrades

25. As a condition of approval, Rusk may not exercise its right to request that Garland upgrade the Rusk to Panola line under the Transmission Line Agreement.
26. Exercising this option would create affiliate competition issues by allowing Rusk to request a transmission line upgrade that could benefit its generation affiliates.

Conditions on Transferring Facilities

27. Rusk, LLC is not currently a utility in Texas. Rusk must receive a CCN before owning or operating the Rusk to Panola line or the Panola substation.
28. Before becoming a new utility in ERCOT, Rusk must file an application demonstrating that it meets the requirements for a new entrant under PURA § 37.051(e).
29. All conditions in this order that apply to Rusk or Garland must transfer to any successor in interest to the facilities for which this CCN is being issued.

EXHIBIT A – PROPOSED FINDINGS AND CONCLUSIONS

PROPOSED CONCLUSIONS OF LAW

1. Exports over DC ties are not similarly situated to native ERCOT load. Therefore, it is not discriminatory to directly assign transmission or ancillary service costs to these exports, rather than charging them in the same manner as a native ERCOT customer.
2. As a new utility in Texas, Rusk (or any successor in interest) must show that it meets the requirements of PURA § 37.051(e) before owning or operating facilities to provide utility service. This is required to demonstrate that Rusk, as a new utility, can provide “adequate” service within the meaning of PURA § 37.154, which allows utility facilities to be transferred.

PROPOSED ORDERING PARAGRAPHS

1. As conditions of approving the application in this case, the Commission orders the following:
 - a. Export transactions over the SCT tie must bear the full cost of supporting those transactions, including both transmission and ancillary services costs.
 - b. No costs related to the Rusk or Panola Substations or the Rusk to Panola Line shall be allowed in TCOS under any circumstances.
 - c. Commission Staff shall open a rulemaking to ensure that all Transmission Service Providers (TSPs) are including their costs in the DC tie export charges, so that exports appropriately contribute to recovery of ERCOT transmission costs.
 - d. SCT is ordered to register as an “Independent DC Tie Operator” for purposes of ERCOT’s market participant agreement, and shall be included in the Investor-Owned Utility segment for ERCOT governance purposes and participation in the ERCOT stakeholder process.
 - e. SCT shall abide by all PUC requirements, ERCOT Protocols, Operating Guides, and other requirements.
 - f. Garland shall disconnect the SCT facilities if SCT does not comply the requirements of Ordering Paragraph 1(e) and/or challenges the Commission’s or ERCOT authority to enforce any of its requirements.
 - g. SCT shall curtail exports as required by the ERCOT Protocols during an Energy Emergency Alert (EEA).
 - h. Rusk shall not request that Garland upgrade the Rusk to Panola line under the terms of the Transmission Line Agreement.
 - i. Rusk and SCT shall disconnect the SCT upon receiving a final order from the Commission ordering such disconnection to preserve the PUC’s exclusive jurisdiction over ERCOT, or for any other purpose.

EXHIBIT A – PROPOSED FINDINGS AND CONCLUSIONS

- j. Rusk must file an application showing that it meets the standards in PURA § 37.051(e) before it may own or operate the Panola substation, the Rusk to Panola line, or any other utility facilities in Texas.
- 2. Any requirements in this order that apply to Rusk, LLC or Garland must be transferred and assigned to any successor in interest.