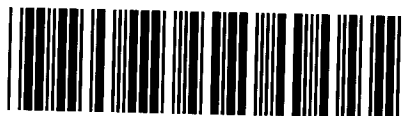




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APPLICATION OF THE CITY OF
GARLAND TO AMEND A
CERTIFICATE OF CONVENIENCE
AND NECESSITY FOR THE RUSK TO
PANOLA DOUBLE-CIRCUIT 345-KV
TRANSMISSION LINE IN RUSK AND
PANOLA COUNTIES

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PUBLIC UTILITY COMMISSION
BEFORE THE FILING CLERK

STATE OFFICE

OF ADMINISTRATIVE HEARINGS

REPLY BRIEF OF THE CITY OF GARLAND

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

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	§ § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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REPLY BRIEF OF THE CITY OF GARLAND

- I. INTRODUCTION**
- II. PROCEDURAL BACKGROUND**
- III. JURISDICTION**
- IV. NOTICE**
- 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*?”

There was no dispute in the parties’ initial briefs 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 final order in *Southern Cross*.

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?”

Several parties presented arguments concerning the following issues discussed in Garland’s initial brief:

Proposed Condition Concerning Garland Cost Recovery

Texas Industrial Energy Consumers (TIEC) and Commission Staff both renew their arguments against inclusion of costs related to the Garland facilities in transmission cost of service (TCOS), although they modify their initial proposed condition to prohibit cost recovery under any circumstances, perhaps in recognition that their initial proposal was potentially unlawful. As Garland pointed out in Mr. Cline’s rebuttal testimony and in its initial brief,

Garland's facilities will likely be in service for many decades as Electric Reliability Council of Texas (ERCOT) open-access transmission facilities, just like any other component of the ERCOT grid. As a result, they could serve generators or other transmission service customers besides Southern Cross Transmission LLC (SCT), and ERCOT could endorse upgrades to the line for reliability or economic reasons.¹ A blanket condition in this case excluding recovery of such costs under any circumstances – even if they are indisputably prudent and required by ERCOT or Commission rules – would likely be unlawful. A transmission rate case would be the proper venue to evaluate specific costs for reasonableness.

Garland also pointed out in testimony and in its initial brief that the Transmission Line Agreement (TLA) between Garland and SCT affiliate Rusk Interconnection LLC (Rusk) provides for Rusk to pay the cost of constructing the Garland facilities, to establish a decommissioning escrow fund to decommission the facilities, and to pay reasonable operations and maintenance expenses.² The construction costs and decommissioning escrow will be paid by Rusk before the facilities are even transferred to Garland. The risk of Rusk defaulting on its operations and maintenance payments is small, and Garland will have funds to decommission the line in the event of such a default.³ As a result, TIEC's and Staff's proposed condition is not necessary.

Perhaps in recognition that their initial proposed condition to prohibit cost recovery under any circumstances was unreasonable and potentially unlawful, TIEC and Staff have both modified their condition in their initial briefs without expressly saying so. For example, although TIEC's brief repeats Mr. Griffey's "no costs under any circumstances" proposal, on the same page it suggests a different condition: "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."⁴ This wording is noticeably different from Mr. Griffey's "no costs under any circumstances" proposal and appears intended to address the overreach involved in that proposal. TIEC's brief also acknowledges that the Garland facilities could become useful for some reason other than serving

¹ Rebuttal Testimony of Darrell Cline, Garland Ex. 8 at 3; Garland's Initial Brief at 8-9.

² Garland Ex. 8 at 3-4; Garland's Initial Brief at 8-9.

³ Garland's Initial Brief at 9.

⁴ TIEC's Initial Brief at 9.

the SCT tie, and proposes a condition that the Commission “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.”⁵

Staff’s brief reflects a similar shift: “Staff recommends that the Commission include a condition that Garland not be able to seek reimbursement for any construction, operation, maintenance, decommissioning or upgrade costs incurred because of the Southern Cross project.”⁶ Without expressly saying so, it appears that both TIEC and Staff have modified their initial “no costs under any circumstances” condition.

However, TIEC’s and Staff’s newly-proposed conditions have several problems. First, the new proposals vary considerably from each other. TIEC’s two new proposals are not even consistent with each other, with one focusing on “costs associated with interconnecting the SCT tie,” while the other focuses on costs that “would have been needed for some reason independent of the existence of the Southern Cross DC tie.” These are two different new conditions, in addition to TIEC’s original condition of no costs in TCOS under any circumstances. Staff’s new proposal offers yet another formulation, based on “costs incurred because of the Southern Cross project.” So the ALJs and the Commission are now faced with a host of proposed conditions that are not consistent with each other.

A second problem with the new proposals is that none of them can be applied without examination of specific costs in future rate cases. Over the 50+ year life of the Garland facilities, it may not always be clear whether specific costs are “because of” or “associated with” or “independent of” the SCT tie. As Garland noted in its testimony and initial brief, the appropriate place to consider such costs, if TCOS recovery is ever requested, is in a transmission rate case where the specific circumstances can be evaluated.

TIEC’s and Staff’s new proposed conditions are simply an attempt to preview possible issues in a future transmission rate case that are not ripe for decision. As a result, TIEC and Staff are effectively asking for an advisory opinion concerning hypothetical costs that may not ever be requested in rates. The Commission lacks jurisdiction to issue advisory opinions and frequently

⁵ TIEC’s Initial Brief at 11 (emphasis omitted).

⁶ Staff’s Initial Brief at 21.

declines to provide opinions on hypothetical facts that may never come to pass and are not ripe for decision.⁷

A third problem is that TIEC's and Staff's revised conditions could still unlawfully preclude recovery of prudently-incurred costs required by ERCOT or Commission rule. For example, during the 50+ year life of the Garland facilities ERCOT could conduct an economic analysis under 16 Tex. Admin. Code § 25.101(b)(3)(A)(i) and conclude that the benefits of an upgrade to the Garland facilities exceed the costs of the upgrade. It is also possible that ERCOT could order an upgrade for reliability reasons. In either event, Garland's costs of the making the upgrade would be required by ERCOT or by Commission rule, and therefor prudently-incurred. The costs could also be, at least in part, "associated with," incurred "because of," or not "independent of" the Southern Cross project. As a result, the revised conditions could still deny recovery of prudently-incurred costs ordered by ERCOT or required by a Commission rule.

The only reasonable resolution of this issue is to reject TIEC's and Staff's proposed conditions – whichever version is considered – as unworkable, unreasonable, and potentially unlawful. The Commission will retain full authority to consider costs related to the Garland facilities in a transmission rate case in the event such costs are proposed to be included in TCOS. This will allow specific consideration of the facts relating to such costs, rather than attempting to address hypothetical future costs in this case.

Proposed Condition Concerning Condemnation of Easements

As noted in Garland's initial brief, Garland, SCT and the Panola Landowners Group have reached an agreement in the unopposed Stipulation Concerning Transmission Line Route (Route Stipulation) that restricts condemnation of easements for the Garland line until SCT secures funding for the Garland facilities and the SCT Project.⁸ This provision of the Route Stipulation was negotiated between Garland, SCT and the intervening landowners, and the resulting agreement meets each of their interests and concerns. Staff does not oppose the Route Stipulation and indicates that it "in part" satisfies Staff's concern about condemnation of

⁷ E.g., *Application of Electric Transmission Texas, LLC for Regulatory Approvals Related to Installation of a Sodium Sulfur Battery at Presidio, Texas*, Docket No. 35994, Order No. 11 (Nov. 19, 2008); *Petition of Central Power and Light Company for Declaratory Order and Approval of Plan of Divestiture*, Docket No. 27120, Order of Dismissal on Rehearing (May 22, 2003).

⁸ Garland's Initial Brief at 10.

easements.⁹ However, Staff continues to propose that additional conditions be imposed on condemnation of easements beyond those agreed to by the landowner intervenors in this case. Specifically, Staff proposes the following:

Garland can condemn land and begin construction only after Garland, or Southern Cross, files evidence that Southern Cross: (1) has obtained all necessary regulatory approvals in Louisiana where the Southern Cross DC Tie is to be built; (2) has secured funding for the full cost of the Southern Cross DC Tie, Southern Cross Line, and Garland Project, and (3) has constructed at least 75% of the Southern Cross DC Tie in Louisiana.¹⁰

For the reasons discussed in SCT's reply brief, Staff's proposed additional conditions are not reasonable or workable. The ALJs and the Commission should approve the restrictions on condemnation provided in the Route Stipulation and reject Staff's effort to expand those restrictions.

Proposed Condition Concerning Put and Call Provisions of the TLA

In their rebuttal testimony, both Garland's Mr. Cline and SCT's Mr. Parquet recognized that any exercise of the put or call provisions of the TLA would require Commission approval, noted that the TLA already provides for seeking such approval, and agreed to a condition that Garland and SCT/Rusk will abide by the provisions of PURA § 37.154 in connection with any transfer of the Garland facilities under the put or call provisions.¹¹ In its initial brief, TIEC makes a lengthy argument that PURA § 37.051(e), rather than or perhaps in addition to § 37.154, should apply to any transfer of facilities under the put and call provisions.¹²

By agreeing to make a filing with the Commission under § 37.154 in connection with any exercise of the put and call provisions, Garland and SCT did not intend to create an extended debate about which provisions of PURA would apply to such a filing. PURA § 37.154 seemed like the obvious choice, since it applies to the transfer of certificate of convenience and necessity (CCN) rights, which is what a put or call transfer would be. As § 37.051(e) states on its face and

⁹ Staff's Initial Brief at 24.

¹⁰ Staff's Initial Brief at 25.

¹¹ Garland Ex. 8 at 5-6; Rebuttal Testimony of David Parquet, SCT Ex. 6 at 6, 11.

¹² TIEC's Initial Brief at 23-26.

TIEC's initial brief concedes, that provision applies to a CCN to *construct* transmission capacity rather than a transfer of existing facilities and associated CCN rights.¹³

In addition, TIEC is effectively asking the Commission for an advisory opinion concerning a hypothetical future exercise of the put and call options that may never occur and is not ripe for decision. Garland has no plan to transfer the facilities under the TLA and does not believe that Rusk does either. The Commission lacks jurisdiction to issue advisory opinions and frequently declines to provide opinions about hypothetical facts that may never come to pass and are not ripe for decision.¹⁴

Proposed Conditions Concerning Disconnection of SCT

In their initial briefs, TIEC and Staff largely repeat the arguments in Mr. Griffey's testimony and in Staff's Statement of Position concerning disconnection of SCT under various conditions.¹⁵ With two exceptions, there does not appear to be much difference between Garland, TIEC and Staff with respect to this issue. The exceptions are TIEC/Staff's proposal that Garland disconnect if a synchronous connection is ever made to the Garland facilities outside the State of Texas and TIEC's concern over the timing of a disconnection.

With respect to the first issue, neither TIEC nor Staff have yet explained how it could be possible to make a synchronous connection to the Garland facilities outside the State of Texas when the Garland facilities will be located entirely within Texas. As noted in Garland's initial brief, absent such an explanation this condition appears to be premised on an impossibility and should therefore be rejected.¹⁶

With respect to TIEC's second concern, relating to disconnection in response to a Commission order, TIEC appears to have misconstrued Garland's intent or perhaps Garland's commitment was not worded as clearly as it could have been. Garland did not intend to suggest that it would wait until all appeals had run before complying with a Commission order to disconnect, only that it reserved its right to pursue such appeals. Garland is aware (as TIEC presumably is aware) that Commission orders are effective during the pendency of an appeal,

¹³ PURA § 37.051(e) (emphasis added); TIEC's Initial Brief at 24 ("PURA § 37.051(e) only addresses the factors that must be considered for a non-utility to 'construct' transmission in ERCOT...").

¹⁴ *E.g.*, Docket No. 35994, Order No. 11 (Nov. 19, 2008); Docket No. 27120, Order of Dismissal on Rehearing (May 22, 2003).

¹⁵ TIEC's Initial Brief at 22-23; Staff's Initial Brief at 26.

¹⁶ Garland's Initial Brief at 12.

absent a stay or other order suspending their effectiveness.¹⁷ Garland will comply with an effective Commission order, and there is no basis for TIEC's suggestion to the contrary.

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?"

No party opposes the Commission specifying a route as a reasonable condition in this case, nor does any party oppose selection of Route RP9 as provided in the Route Stipulation.

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

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


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

G. Texas Parks & Wildlife Issues

VI. CONCLUSION

Garland respectfully requests that the ALJs and the Commission approve Route RP9, as agreed to in the unopposed Route Stipulation, and adopt reasonable conditions and decline to adopt unreasonable conditions as discussed in Garland's initial and reply briefs.

Respectfully submitted,



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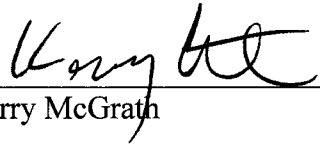
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¹⁷ Tex. Gov't Code Ann. § 2001.176(b)(3); PURA §§ 15.001, 15.004.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this document was served to all parties on June 17, 2016 via the Public Utility Commission of Texas Interchange website pursuant to SOAH Order No. 3.



Kerry McGrath