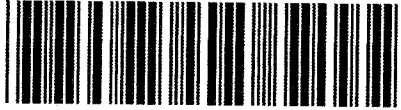


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APPLICATION OF THE CITY OF GARLAND TO AMEND A CERTIFICATE OF CONVENIENCE AND NECESSITY FOR THE RUSK TO PANOLA DOUBLE-CIRCUIT 345-KV TRANSMISSION LINE IN RUSK AND PANOLA COUNTIES	§	PUBLIC UTILITY COMMISSION FILING CLERK OF TEXAS
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COMMISSION STAFF'S EXCEPTIONS TO THE PROPOSAL FOR DECISION

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files these Exceptions to the Proposal for Decision. In support thereof, Staff shows the following:

I. Introduction

On July 27, 2016, the Administrative Law Judges (ALJs) issued a Proposal for Decision (PFD) in this proceeding. Staff commends the ALJs for the well-reasoned decision in a proceeding that involves many novel and highly technical issues. While Staff supports the majority of the ALJs' findings, Staff makes the following exceptions to the PFD that Staff recommends the Commission consider.

II. Staff's Exceptions

A. Recommendations to Protect Texas Ratepayers

In briefing, Staff recommended that the Commission require Southern Cross Transmission LLC (Southern Cross) to pay for some of the Electric Reliability Council of Texas, Inc.'s (ERCOT) expenses and prohibit the inclusion of the Rusk Substation and the Rusk to Panola double-circuit 345-kV transmission line in Rusk and Panola Counties (Garland Project) in Transmission Cost of Service (TCOS) rates.¹ Staff has raised concerns that the benefits of the Southern Cross Project² are speculative given the uncertainties surrounding the project and questions surrounding the

¹ Commission Staff's Initial Brief (Redacted) at 18-22 (Jun. 10, 2016) (Staff's Initial Brief).

² The Southern Cross Project consists of the new, privately funded high-voltage direct current converter station to be owned by Southern Cross located across the border in Louisiana (Southern Cross DC Tie) and a 400-mile transmission line that will interconnect the Southern Cross DC Tie to a yet to be determined end point in the Southern Eastern Reliability Council transmission system (Southern Cross Line).

benefit analysis presented by Southern Cross.³ For instance, Southern Cross has not determined where the project will terminate on the eastern end and has not yet secured financing for the project.⁴ Furthermore, Southern Cross did not provide a net benefits analysis that includes the full costs of the Southern Cross Project to Texas ratepayers, costs such as revising the ERCOT Protocols and modifying ERCOT's operations to reliably interconnect the Southern Cross Project.⁵ Finally, Texas Industrial Energy Consumers (TIEC) identified numerous flaws that call into question Southern Cross's benefits analysis.⁶ Specifically, Southern Cross's 2010 benefits analysis shows that Southern Cross's estimated benefits were overstated by \$539 million.⁷ Due to the uncertainty surrounding the project, Staff continues to recommend that the Commission put protections in place to ensure that Texas ratepayers are not forced to subsidize a privately owned DC tie that provides speculative benefits to Texas ratepayers. Such protections are in the public interest and consistent with the Federal Energy Regulatory Commission (FERC) Order.⁸

1. Southern Cross should fund ERCOT's studies and modifications to the ERCOT Protocols, rules, procedures, and processes that are necessary to protect reliability. (Preliminary Order Issue No. 2)

In its brief, Staff recommended ten conditions related to the interconnection of the Southern Cross Project to the ERCOT transmission system.⁹ The ALJs found that these conditions were necessary to protect the public interest and therefore required that they be met before the energization of the project. While some of the conditions raise general policy questions, five of the conditions are specific to the Southern Cross Project. Specifically, Staff recommended, and the ALJs adopted, conditions that require ERCOT to (1) study and modify ERCOT's Protocols and systems to reflect the addition of *Southern Cross* to a market participant category;¹⁰ (2)

³ Staff's Initial Brief at 8-9.

⁴ See, e.g., Direct Testimony of Ellen Wolfe, Southern Cross Ex. 3 at 4:7 (referring to the endpoints of the Southern Cross DC Tie as the Rusk Substation and "the Mississippi/Alabama 500-kV system"). See also Southern Cross Response to TIEC's Motion to Compel on TIEC RFI 1-15.

⁵ Tr. at 115:16-20, 116:12-17 (Wolfe Cross) (Jun. 1, 2016) (acknowledging that the study did not consider the costs and only studied the benefits side of the equation).

⁶ TIEC Initial Brief (Redacted) at 13-20 (Jun. 10, 2016).

⁷ Staff Initial Brief at 8.

⁸ *Southern Cross Transmission LLC, et. al*, 147 FERC ¶ 61,113 (2014).

⁹ Staff Initial Brief at 11-21.

¹⁰ Proposal for Decision at 29-30 (July 27, 2016) (PFD).

negotiate an agreement with the RTOs/ISOs/Bas on the eastern end of the *Southern Cross Project*;¹¹ (3) study ways to manage the additional congestion caused by the addition of the *Southern Cross Project*;¹² (4) create new tools that will allow ERCOT to coordinate outages, which is made more difficult because of the *Southern Cross Project*;¹³ and (5) study to determine what reactive power services *Southern Cross* should provide.¹⁴ These revisions involve potentially expensive studies and extensive revisions to ERCOT's Protocols, rules, procedures, and processes.¹⁵

In briefing, Staff recommended that Southern Cross pay for these studies and revisions.¹⁶ The ALJs rejected Staff's recommendation on the basis that it would be unreasonable to do so.¹⁷ Staff continues to recommend that requiring Southern Cross to pay for these studies and revisions is in the public interest because it ensures that Texas ratepayers are not required to subsidize Southern Cross's project or bear the risk if the project does not proceed. As explained above, these studies and revisions are only necessary to reliably interconnect the Southern Cross Project. No other market participant or potential market participant is requesting these revisions. While these revisions benefit Southern Cross, it is unknown whether the Southern Cross Project will benefit Texas market participants and ratepayers.

Further, it is unknown at this time whether the Southern Cross Project will actually be constructed because Southern Cross has not obtained financing or the necessary approvals to construct the project.¹⁸ Yet, Southern Cross expects ERCOT to expend time, resources and funds, at the expense of Texas ratepayers, to accommodate Southern Cross's *potential* project. Southern Cross is asking ERCOT market participants and ratepayers to bear the financial risk of making fundamental and expensive changes to the ERCOT system without any financial commitment from

¹¹ *Id.* at 33–34.

¹² *Id.* at 49–50.

¹³ *Id.* at 55.

¹⁴ *Id.* at 59.

¹⁵ ERCOT Witness Ted Hailu testified the single act of creating a new market participant type might be \$100,000, as a low estimate. Direct Testimony of Ted Hailu, ERCOT Ex. 3 at 9:6–7 (Apr. 27, 2016); Tr. at 280:18–281:8 (Jun. 1, 2016).

¹⁶ Staff Initial Brief at 19–20. Commission Staff's Reply Brief at 22–24 (Jun. 17, 2016) (Staff Reply Brief).

¹⁷ PFD at 50.

¹⁸ Southern Cross's Response to Staff RFI 1-9, Staff Ex. 26; *supra* n.3.

Southern Cross. In light of the many unknowns surrounding this project, it is reasonable for the Commission to take steps now to protect Texas ratepayers by requiring Southern Cross to pay for its fair share of the studies and revisions to ERCOT's Protocols, bylaws, and systems.

Staff specifically recommends the following conditions be included as Ordering Paragraphs:

1. Southern Cross must pay ERCOT's costs to study and modify ERCOT protocols and systems to reflect Southern Cross's addition to the market participant category.
2. Southern Cross must reimburse ERCOT for the costs of negotiating and executing a coordination agreement with an ISO, RTO, or BA on the eastern end of the Southern Cross Line.
3. Southern Cross must pay for ERCOT to study congestion management and the cost of implementing a congestion management plan as a result of the additional congestion issues caused by the addition of the Southern Cross Project.
4. Southern Cross must pay for ERCOT to create tools to coordinate outages as a result of the complex coordination issues raised by the interconnection of the Southern Cross DC Tie.
5. Southern Cross must pay ERCOT to conduct a study to determine what reactive power services Southern Cross must provide.

Staff recommends the following revisions to the findings of fact in the PFD:

70. The costs of the SCED/CMP stakeholder process at ERCOT should ~~not~~ be directly assigned to SCT, and ~~but~~ should be undertaken as part of ERCOT's standard practices, should include stakeholders, and should involve the appropriate ERCOT committees and study groups.

107. The cost of the ERCOT PFR and VSS studies should ~~not~~ be directly assigned to SCT, and ~~but~~ should be undertaken as part of ERCOT's standard practices, should include stakeholders, and should involve the appropriate ERCOT committees and study groups.

119. The cost of the ERCOT study regarding the procurement of additional ancillary services, if any, should ~~not~~ be directly assigned to SCT, and ~~but~~ should be undertaken as part of ERCOT's standard practices, should include stakeholders, and should involve the appropriate ERCOT committees and study groups.

2. The Commission should decide now that no costs related to the Garland Project or Rusk Substation shall be allowed in Transmission Cost of Service under any circumstances. (Preliminary Order Issue No. 2)

In briefing, Staff joined TIEC in recommending that the Commission include a condition that neither Garland nor Oncor be permitted to charge ratepayers for costs associated with the construction, operation, maintenance, decommissioning, or upgrade costs incurred for the Rusk Substation and the Garland Project.¹⁹ The Rusk Substation and Garland Project are being constructed for the sole purpose of serving the Southern Cross DC Tie. While Southern Cross, through its affiliate Rusk Interconnection LLC (Rusk), committed to cover the constructions costs, reasonable operation and maintenance costs, and establish an escrow fund to cover decommissioning costs for the Garland Project, there remains the possibility that Rusk could default on its obligation in the future and leave Garland with substantial costs. This risk properly belongs with Garland, not Texas ratepayers, as the Garland Project is being constructed for the sole purpose of interconnecting the privately owned Southern Cross DC Tie.²⁰ The ALJs did not sufficiently address this recommendation in the PFD. Staff reiterates its support for this condition.

The ALJs included a condition that Garland cannot seek to recover from wholesale or retail customers in Texas the costs incurred in the construction of the interconnection facilities identified in the interconnection agreement between Garland and Southern Cross.²¹ But this falls short of Staff's recommendation because it does not specifically forbid Garland from every including the operation, maintenance and decommissioning expenses in its Transmission Cost of Service (TCOS). The Commission should decide now that Garland cannot include *any* costs associated with the Garland Project in its TCOS. To enforce this requirement as well as the ALJ's condition, Staff recommends that the Commission require Garland to clearly account for all construction, operation and maintenance, and decommissioning costs associated with the Garland Project and all payments from Rusk so that the Commission can ensure that those costs are not included in Garland's TCOS.

¹⁹ Staff Initial Brief at 20-22.

²⁰ Tr. at 21:24-22:2 (Cline Cross) (May 31, 2016).

²¹ PFD at Ordering Paragraph 12.

Ratepayers also should not be responsible for construction and operation of the Rusk Substation. As with the Garland Project, the Rusk Substation is being built for the sole purpose of serving the Southern Cross DC Tie, and there are no current plans to interconnect generators or other transmission service customers to the Rusk Substation.²² As Staff noted in briefing, the Rusk Substation is so essential to Southern Cross's project that its affiliate agreed to reimburse Oncor for its investment in the event the Commission does not allow Oncor to include the costs for the Rusk Substation in rate base.²³ It is appropriate for the Commission to decide now that the Rusk Substation will not be included in Oncor's rates to provide certainty and put Southern Cross on notice that it will be required to pay for the Rusk Substation.

Staff recommends the addition of the following Ordering Paragraphs to ensure that the Rusk Substation will not be recovered by Garland or Oncor from Texas ratepayers:

1. Garland will not recover any costs related to the design and construction of the Garland Project in a Transmission Cost of Service in the event Rusk Interconnection LLC defaults on its obligation to Garland to pay for it.
2. Oncor will construct the Rusk Substation.
3. The Rusk Substation will exist solely to serve Southern Cross.
4. Oncor will not include the Rusk Substation in its rate base.
5. Rusk Interconnection LLC will reimburse Oncor for its investment in the Rusk Substation.
6. Oncor will account for and report any associated costs in any of its rate requests that involve transmission or distribution system invested capital costs that relate to the Rusk Substation or the Garland Project.

B. Cost Allocation Issues Should Be Decided by the Commission. (Preliminary Order Issue Nos. 4c and 4i)

Staff has recommended that the Commission require Staff to consider in a project or rulemaking whether changes to the cost allocation methods for transmission upgrades and additional ancillary services is warranted.²⁴ Although the ALJs agreed that these cost allocation issues warrant further study and agreed that the Commission could open a project, the PFD directs

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

²³ *Id.* at 22:3-6.

²⁴ Staff Initial Brief at 16-18.

ERCOT to study them.²⁵ But traditionally cost allocation issues have remained with the Commission rather than ERCOT because cost allocation is a rate-making issue rather than operational issue. Furthermore, changing the cost allocation method for either transmission upgrades or ancillary services may require changes to the Commission's rules.²⁶ Therefore, Staff recommends that the Commission modify the PFD to clarify that Staff is to consider these issues in a rulemaking or project instead of ERCOT.²⁷

Staff recommends the inclusion of the following Ordering Paragraph:

1. Commission Staff shall consider whether changes should be made to the cost allocation methods for transmission upgrades built to facilitate imports/exports over DC Ties in Project No. 46203.
2. Commission Staff shall consider whether changes should be made to the cost allocation methods for ancillary services necessary to facilitate imports/exports over DC Ties in Project No. 46203.

III. Conclusion

Staff supports the majority of the ALJs' findings, but still recommends the inclusion of several conditions necessary to protect Texas ratepayers. Staff recommends conditions requiring Southern Cross to bear the full cost of reliably interconnecting the Southern Cross Project to the ERCOT system. In addition, Staff also recommends the cost allocation issues be decided by the Commission. These additional conditions are necessary for the protection of the public interest and are not contrary to the FERC Order.

²⁵ PFD at 45-46, 65.

²⁶ *See, e.g.* 16 Tex. Admin. Code § 25.192 (Transmission Service Rates Rule).

²⁷ Staff notes that the Commission recently required Staff to open a rulemaking to consider, among other issues, cost allocation issues related to DC ties. *See* June 9, 2016 Open Meeting at 29:15-32:9. Therefore, Staff recommends that the cost allocation issues be considered in that rulemaking, Project No. 46203, rather than opening a new rulemaking or project.

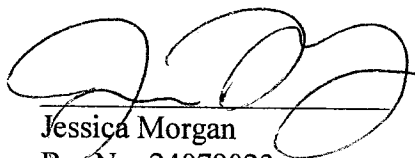
Date: August 4, 2016

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
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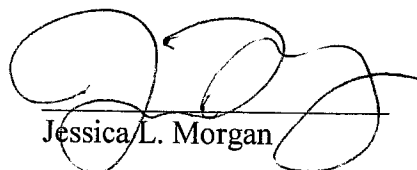
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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on August 4, 2016, in accordance with 16 TAC § 22.74.



Jessica L. Morgan