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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 §

BEFORE THE PUBLIC UTILITY COMMISSION
FILING CLERK

PUBLIC UTILITY COMMISSION

OF TEXAS

THE CITY OF GARLAND'S REPLY TO EXCEPTIONS

V. DISCUSSION

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?"

In their Exceptions, TIEC and Staff propose a condition that no costs related to the Rusk or Panola Substations or to the Rusk to Panola Line shall be allowed in transmission cost of service (TCOS) under any circumstances.¹ The PFD did not adopt this proposed condition, and it should be rejected. Under an agreement between Garland and a Southern Cross Transmission (SCT) affiliate, Garland will not pay the costs of constructing or decommissioning the Garland facilities to interconnect the Southern Cross project, and will be reimbursed for the facilities' reasonable operations and maintenance expenses, so it will not seek to include such costs in TCOS. However, those facilities will become ERCOT open access facilities, and it is not possible to foresee all the costs that may arise related to them over their 50+ year useful lives. Such costs could include generation interconnection or other upgrades required by Commission or ERCOT requirements and it would be unreasonable, if not unlawful, to preclude such cost recovery in advance in this case. A future transmission rate case would be the proper forum to consider such costs, in the event Garland ever seeks to include them in TCOS.

As TIEC and Staff acknowledge,² Garland has entered into a Transmission Line Agreement (TLA) with SCT affiliate Rusk Interconnection LLC (Rusk) under which Rusk will

¹ TIEC's Exceptions at 10; Staff's Exceptions at 5-6.

² Staff's Exceptions at 5; TIEC Ex. 1 at 14-15.

pay the costs of constructing and decommissioning the Garland facilities, as well as reasonable operations and maintenance expenses. The TLA is rigorous concerning these issues. For example, it provides that Rusk will pay the costs of constructing the Rusk to Panola line and the Panola station, and will convey them to Garland prior to energization for \$1.³ As a result, there is no risk that Garland will incur construction costs for the facilities (other than \$1). Similarly, Rusk will fund a decommissioning escrow account prior to transfer of the facilities to Garland, and the TLA contains specific provisions for determining and periodically updating the amount of the escrow account, including determination by an independent technical expert if necessary.⁴ As a result, there is little risk that the decommissioning fund will be underfunded or that Garland will incur costs to decommission the facilities. Rusk will also reimburse Garland for payments in lieu of taxes made by Garland to local taxing authorities.⁵ Finally, the TLA contains detailed provisions for determining the reasonable operations and maintenance expense to be reimbursed by Rusk, again including determination by an independent technical expert if necessary.⁶ As a result, Garland has provided through the TLA that costs properly attributable to SCT will be paid by Rusk. Garland will not seek to recover costs paid by Rusk in TCOS. TIEC's and Staff's proposed condition is therefore unnecessary.

Moreover, the Garland facilities are likely to be in service for more than 50 years,⁷ and will be ERCOT open access facilities.⁸ It is not possible to predict or prejudge the costs that may arise related to them during their useful lives. In the event that Garland ever seeks recovery of costs related to the Panola Substation or the Rusk to Panola line through TCOS, the Commission will have the opportunity to review those costs in the appropriate venue — a transmission rate case — where the specific circumstances can be considered.

It is entirely possible that Garland could be required to incur a variety of costs related to the facilities during their 50+ year life. For example, Garland has an obligation to interconnect

³ Direct Testimony of Darrell Cline, Garland Ex. 2 at 11; Tr. at 22 (May 31, 2016); Confidential Exhibit DWC-2, Garland Ex. 2A at 16 of 111.

⁴ Garland Ex. 2A, at Exhibit 1.1(a) (Decommissioning Escrow Agreement), §§ 2.2 and 2.3.

⁵ Garland Ex. 2A at Exhibit 1.1(b) (Facilities Agreement), § 2.8.

⁶ *Id.* at § 3.2.4.

⁷ Tr. at 33 (May 31, 2016).

⁸ Garland Ex. 2 at 12.

new generation to these open access facilities if requested under applicable Commission rules.⁹ Similarly, Garland is required to maintain compliance with NERC reliability standards, including upgrading these facilities if necessary to do so.¹⁰ It is also possible that ERCOT and the Commission could require upgrades that meet the Commission's economic benefit test, under which the benefits of the upgrades are determined to exceed their costs.¹¹ In each of these cases, and probably others not foreseeable at this time, Garland would be required to incur costs to upgrade the facilities under applicable legal and regulatory standards.

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

Finally, Staff raises the specter that Rusk could default on its obligation to pay expenses under the TLA.¹² As discussed above, construction and decommissioning costs will be pre-funded before the project is transferred to Garland, so once the project is built and transferred to Garland there is no possibility of default for those costs. In addition, Pattern is a significant and credible operator in the energy and transmission business,¹³ and in Garland's view it is reasonable to anticipate that Pattern will honor its obligations. If Rusk were to default in its obligation to pay reasonable and necessary operations and maintenance expenses, it is likely that the SCT project would not be in operation, and Garland would use the decommissioning escrow fund to decommission the Garland line unless it was serving other ERCOT customers.¹⁴

⁹ Garland Ex. 2 at 12; Tr. at 25 (May 31, 2016); PUC Substantive Rules 25.191(d)(3) and 25.198(b).

¹⁰ Garland Ex. 1, Attachment 2 at 22 of 58.

¹¹ See Rebuttal Testimony of Darrell Cline, Garland Ex. 8 at 3-4; PUC Substantive Rule 25.101(b)(3)(A)(i).


¹² Staff's Exceptions at 5.

¹³ See SCT Ex. 1 at 3.

¹⁴ Garland Ex. 8 at 3.

Because TIEC's and Staff's proposed condition is unreasonable and probably unlawful, Garland respectfully requests that it be rejected.

Respectfully submitted,



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ATTORNEYS FOR THE CITY OF GARLAND

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this document was served to all parties on August 9, 2016 via the Public Utility Commission of Texas Interchange website pursuant to SOAH Order No. 3.


Kerry McGrath