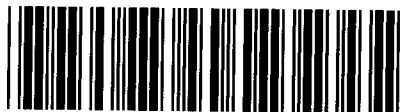




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PUBLIC UTILITY COMMISSION
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APPLICATION OF CITY OF GARLAND,
TEXAS, TO AMEND A CERTIFICATE
OF CONVENIENCE AND NECESSITY
FOR THE PROPOSED RUSK TO
PANOLA DOUBLE-CIRCUIT 345-KV
TRANSMISSION LINE IN RUSK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

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BEFORE THE

PUBLIC UTILITY COMMISSION OF
TEXAS

**REPLY OF LUMINANT GENERATION COMPANY LLC AND LUMINANT ENERGY
COMPANY LLC TO SOUTHERN CROSS'S MOTION FOR REHEARING**

TO THE HONORABLE PUBLIC UTILITY COMMISSION OF TEXAS:

COME NOW Luminant Generation Company LLC and Luminant Energy Company LLC (collectively, Luminant) and file this Reply to the Motion for Rehearing filed by Southern Cross Transmission LLC (Southern Cross or SCT).

I. INTRODUCTION

Southern Cross's Motion for Rehearing mischaracterizes the authority of the Public Utility Commission of Texas (Commission) over the SCT Project¹ as being extremely narrow and subordinate to the jurisdiction of the Federal Energy Regulatory Commission (FERC) in all respects. On this basis, Southern Cross argues that the Commission has overstepped its authority by imposing various conditions on the SCT Project. To the contrary, the FERC's jurisdiction over the SCT Project is what is limited. The Commission's Final Order imposes reasonable conditions "on the construction, operation, management, and regulatory treatment" of the SCT Project and on the SCT Project's "participation in the ERCOT market,"² squarely within the authority granted the Commission in 2015 amendments³ to Section 37.051 of the Public Utility

¹ In this Reply, the term "SCT Project" is used as a short-hand to refer both to Southern Cross's direct current (DC) tie and Garland's double-circuit 345-kV transmission line in Rusk and Panola counties that, through that tie, will interconnect ERCOT with the SERC Reliability Corporation.

² See Order at 2 (Sept. 8, 2016).

³ See Act of Sept. 1, 2015, 84th Leg., R.S., ch. 1275 (SB 933), §1; Act of Sept. 1, 2015, 84th Leg., R.S., ch.1162 (SB 776), § 1.

411

Regulatory Act (PURA).⁴

II. REPLY TO MOTION FOR REHEARING OF SCT

Southern Cross claims that the 2015 amendments to PURA § 37.051 (which added, *inter alia*, PURA § 37.051(c-2)) allow “the Commission to prescribe reasonable conditions to protect the public interest that are consistent with SCT’s FERC interconnection order,” but do not “expand the Commission’s authority.” Instead, Southern Cross contends that “any condition the Commission imposes in its order granting Garland’s application for a [certificate of convenience and necessity] (CCN) must therefore be authorized by other PURA provisions.” Southern Cross goes on to state that the “Commission’s authority over SCT is limited” and emphasizes that “SCT is a FERC-regulated interstate transmission company that does not and will never own facilities in Texas.”⁵

Southern Cross’s constrained view of the Commission’s authority under PURA § 37.051(c-2) improperly adds words to the statute that the Legislature did not include, stripping the provision of any force and effect. Through Senate Bills 933 and 776,⁶ the Legislature expressly authorized the Commission to impose reasonable conditions on the interconnection of the SCT Project in order to protect the public interest, with the only caveat that the Commission must approve the CCN for the project and any conditions must be consistent with the FERC order directing interconnection of the project with ERCOT. If, as Southern Cross maintains, those conditions must further be grounded in existing sections of PURA (a “requirement” that appears nowhere in PURA § 37.051(c-2)), then it is unclear what, if anything, the new statutory section accomplishes. It is a bedrock rule of statutory interpretation that a statute should not be interpreted in a manner that renders it without effect.⁷

⁴ Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.016 (West 2007 & Supp. 2015) (PURA).

⁵ See Motion for Rehearing of Southern Cross Transmission LLC at 1–2 (Oct. 3, 2016).

⁶ See *supra* note 3.

⁷ See TEX. GOV’T CODE § 311.021; *City of San Antonio v. City of Boerne*, 111 S.W.3d 22, 25 (Tex.2003); see also *Spence v. Fenchler*, 180 S.W. 597, 601 (1915) (“It is an elementary rule of construction that, when possible to do so, effect must be given to every sentence, clause, and word of a statute so that no part thereof be rendered superfluous or inoperative.”).

Further, Southern Cross has flipped the jurisdictional balance on its head by suggesting that the FERC, rather than the Commission, has primary authority over the SCT Project. PURA § 37.051(c-2) effectively maintains the existing jurisdictional balance between the Commission and the FERC with respect to the ERCOT transmission grid. PURA § 37.051(c-2) empowers the Commission to protect the public interest by imposing reasonable conditions on an interconnection that will allow for significant energy to be imported into or exported out of ERCOT. The new statute thereby enables the Commission to fulfill its statutory responsibilities to ensure the reliability of the electric grid and the proper accounting of electricity⁸ in ERCOT and to safeguard the competitive electric market in ERCOT.⁹ PURA § 37.051(c-2) simply requires that the Commission approve the CCN and not impose any conditions inconsistent with the FERC's interconnection order.

The FERC's interconnection order, in contrast, necessarily is limited in scope, because the FERC's jurisdiction with respect to ERCOT is limited in scope. Under the current regime, electric utilities that own the facilities that form the interconnected ERCOT transmission system are not subject to the FERC's plenary jurisdiction and are not deemed "public utilities" under the Federal Power Act (FPA) because they are interconnected with the interstate transmission grid solely by virtue of FERC orders¹⁰ under FPA §§ 210,¹¹ 211,¹² and 212.¹³ Interconnections approved by the FERC under these statutory sections do not make such electrical utilities "public utilities" within the meaning of the FPA and only vest the FERC with limited jurisdiction over

⁸ PURA § 39.151.

⁹ *Id.* § 39.001.

¹⁰ See, e.g., *Central Power and Light Co.*, 40 FERC ¶ 61,077 (1987); *Central Power and Light Co.*, 17 FERC ¶ 61,078 (1981), as corrected by the Errata Notice issued November 5, 1981, and Order on Rehearing, 18 FERC ¶ 61,100 (1982) (the "DC ties" cases, connecting ERCOT to the Southwest Power Pool through two high voltage direct current interconnections); see also *Kiowa Power Partners, LLC*, 99 FERC ¶ 61,251 (2002) (directing Oncor Electric Delivery Company ("Oncor") to provide interconnection with Kiowa Power Partners, LLC's ("Kiowa") generating facilities in Oklahoma and to provide transmission services necessary for Kiowa to deliver energy and ancillary services into the ERCOT grid at the point of interconnection; also directing Reliant Energy HL&P to provide transmission service to, from, and over Kiowa's interconnection facilities). All of these orders resulted from settlement agreements.

¹¹ 16 U.S.C. § 824i.

¹² *Id.* § 824j.

¹³ *Id.* § 824k.

them—i.e., only what is necessary to enforce the interconnection orders.¹⁴ The FERC’s authority to order interconnection and enforce interconnection orders does not equate to authority over the ERCOT transmission grid or the ERCOT wholesale electric market—those remain exclusively within the Commission’s jurisdiction.

In short, by empowering the Commission to impose reasonable conditions on the interconnection and dispatch of the SCT Project, while requiring the Commission to approve the CCN to interconnect the project and impose conditions that are consistent with the FERC’s interconnection order, PURA § 37.051(c-2) maintains the existing jurisdictional balance. Under the existing framework, the Commission has broad authority under PURA to ensure reliability and safeguard the competitiveness of the market, while the FERC’s jurisdiction in ERCOT pursuant to Sections 210, 211, and 212 of the FPA is limited to interconnection orders.

Finally, although SCT has emphasized that it will not own any facilities in Texas, the location of SCT’s converter facilities outside the state has no impact on the Commission’s authority to impose reasonable conditions on the *interconnection* of the SCT facilities to the ERCOT grid. That would be completely contrary to the Legislature’s intent as expressed in Senate Bills 933 and 776 and would ignore the reality that, wherever the converter station is located, SCT will be importing and exporting power into and out of Texas via an interconnection *within* Texas and thereby engaging in conduct over which the Commission has direct regulatory responsibility.¹⁵ Thus, the conversion facilities could be five miles or five hundred miles from the Texas border, but it will not change the fact that under the current jurisdictional regime between the FERC and Texas, the SCT Project will interconnect *within* Texas and is subject to the Commission’s jurisdiction and public interest review under PURA § 37.051(c-2), as well as its general statutory mandates in PURA to safeguard the reliability of the ERCOT grid¹⁶ and the competitiveness of the electric market in ERCOT.¹⁷ The only jurisdictional significance of the SCT Project locating its converter station outside the state is that SCT might not meet the definition of “electric utility” in PURA, because that definition requires the ownership or

¹⁴ See *id.* § 824(b)(2), (e) (stating that compliance with an order under FPA §§ 210, 211, and 212 does not subject an electric utility to FERC jurisdiction or make the utility a “public utility”).

¹⁵ See, e.g., PURA §§ 39.001, 39.151.

¹⁶ *Id.*

¹⁷ *Id.* § 39.001.

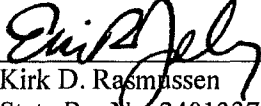
operation of facilities in the state.¹⁸ However, the Legislature addressed this issue by adopting a specific CCN requirement for new interconnections allowing the import or export of power into or out of ERCOT and by specifically subjecting the SCT Project to that requirement.

III. CONCLUSION AND PRAYER

Luminant respectfully requests that the Commission deny the motion for rehearing of Southern Cross, as discussed herein.

Respectfully submitted,

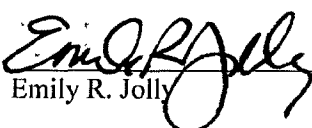
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ATTORNEYS FOR LUMINANT
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LUMINANT ENERGY COMPANY LLC

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing has been served on all parties of record on this, 18th day of October, 2016, in accordance with SOAH Order No. 3 issued in this docket.


Emily R. Jolly

¹⁸ See *id.* § 31.002(6) (defining “electric utility” as “a person or river authority that owns or operates for compensation in this state equipment or facilities to produce, generate, transmit, distribute, sell, or furnish electricity in this state”).