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APPLICATION OF THE CITY OF §  
GARLAND TO AMEND A §  
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AND NECESSITY FOR THE RUSK TO §  
PANOLA DOUBLE-CIRCUIT 345-KV §  
TRANSMISSION LINE IN RUSK AND §  
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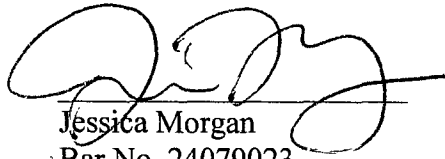
**COMMISSION STAFF'S REPLY TO MOTIONS FOR REHEARING**

Respectfully Submitted,

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## TABLE OF CONTENTS

<b>I. BACKGROUND .....</b>	<b>3</b>
<b>II. STAFF'S REPLY TO SOUTHERN CROSS'S MOTION FOR REHEARING .....</b>	<b>3</b>
<b>A. All of the conditions imposed by the Commission are reasonable conditions to protect the public interest. (Southern Cross's Point of Error No. 19).....</b>	<b>4</b>
<b>B. The Commission's decision in this proceeding is not discriminatory. (Southern Cross's Point of Error Nos. 1, 10, and 12).....</b>	<b>5</b>
<b>C. The Order does not exceed the Commission's statutory authority. (Southern Cross's Point of Error No. 2) .....</b>	<b>7</b>
<b>D. None of the conditions in the Order are contrary to PURA or Commission rules. (Southern Cross's Point of Error Nos. 3-5, 12, 14).....</b>	<b>9</b>
<b>E. The Order articulates rational, well-reasoned connections between the evidence and the Commission's decision. (Southern Cross's Point of Error Nos. 6, 7, 13 and 15) .....</b>	<b>10</b>
<b>F. Southern Cross's due process rights were not violated by the Commission's decision in this proceeding. (Southern Cross's Point of Error Nos. 9 and 16).....</b>	<b>12</b>
<b>G. The Commission did not err in requiring Southern Cross to obtain all necessary regulatory approvals prior to condemning land. (Southern Cross's Point of Error Nos. 17-18).....</b>	<b>13</b>
<b>III. STAFF'S RESPONSE TO TIEC'S MOTION FOR REHEARING.....</b>	<b>14</b>
<b>IV. CONCLUSION .....</b>	<b>14</b>

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

**COMMISSION STAFF'S REPLIES TO MOTIONS FOR REHEARING**

**COMES NOW** the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files these Replies to Motions for Rehearing. In support thereof, Staff shows the following:

**I. BACKGROUND**

On September 8, 2016, the Commission issued an order (Order)<sup>1</sup> in this proceeding adopting the Proposal for Decision (PFD), except as modified in the Order. On October 3, 2016, Southern Cross Transmission LLC (Southern Cross) and Texas Industrial Energy Consumers (TIEC) filed Motions for Rehearing. Pursuant to Tex. Gov't Code Ann. § 2001.146(b), a reply to a motion for rehearing must be filed not later than the 40<sup>th</sup> day after the date the order that is the subject of the motion is signed. The 40<sup>th</sup> day after signing of the order is October 18, 2016. Therefore, this Reply is timely filed.

**II. STAFF'S REPLY TO SOUTHERN CROSS'S MOTION FOR REHEARING**

Staff supports the Commission's decision in this proceeding and respectfully recommends denial of Southern Cross's Motion for Rehearing. Southern Cross objects to the Commission's decision based upon 19 Points of Error. Generally, Southern Cross requests a rehearing on the basis that the Commission's decision is unreasonable, discriminatory, violates the Public Utility Regulatory Act (PURA)<sup>2</sup> and Commission rules, fails to satisfy the Texas

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<sup>1</sup> *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*, Docket No. 45624, Order (Sep. 8, 2016).

<sup>2</sup> Tex. Util. Code Ann. §§ 11.001-58.303 (West 2016), §§ 59.001-66.017 (West 2007 & Supp. 2015) (PURA).

Gov't Code requirements for agency decisions, and has denied Southern Cross due process. Staff disputes all points of error identified by Southern Cross as being unfounded. The Commission is tasked with the responsibility of fostering a viable competitive market while protecting the public interest by ensuring the reliability of the market as a whole. The Commission's decision in this proceeding appropriately balanced the economic interests of Southern Cross with the Commission's statutory duty to protect the public interest in approving the application. Further, the Commission's decision takes great care not to place the reliability of the entire ERCOT system at risk for the economic desires of a single market participant.

The reasonable conditions imposed by the Commission do not discriminate against interstate commerce or Southern Cross as a market participant, and are well within the authority granted to the Commission by PURA and Commission rules. The Commission also articulated rational, well-reasoned connections between the evidence and its decision. Through Staff's Statement of Position and cross-examination, Southern Cross not only had ample notice that costs should be allocated to it, but it had an opportunity to respond, both at hearing and during briefing. Southern Cross's Motion for Rehearing should be denied on all points of error.

**A. All of the conditions imposed by the Commission are reasonable conditions to protect the public interest. (Southern Cross's Point of Error No. 19)**

The Order adopted specific conditions allocating costs to Southern Cross,<sup>3</sup> prohibiting cost recovery of certain facilities, and requiring regulatory approvals prior to condemnation of land that are reasonable and necessary to protect the public interest and the reliability of the ERCOT system. Southern Cross challenges these conditions as unreasonable and thus contrary to PURA § 37.051 (c-2).<sup>3</sup> The Legislature, in enacting PURA § 37.051 (c-2), explicitly delegated authority to the Commission to prescribe conditions the Commission determines are reasonable to protect the public interest. The Commission exercised this authority and determined "that the public interest demands that ERCOT ratepayers should not bear any of the costs associated with the Garland project or the Southern Cross DC tie."<sup>4</sup> The Commission also discussed its concern for ratepayers bearing the full financial burden of this project during the August 25, 2016 Open Meeting.<sup>5</sup> The conditions imposed by the Commission are reasonable as required by PURA §

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<sup>3</sup> See Motion for Rehearing of Southern Cross Transmission LLC at 20–21 (Oct. 3, 2016) (Southern Cross's Mt. for Rehearing).

<sup>4</sup> Order at 3.

<sup>5</sup> See Open Meeting Tr. at 34:5–35:17 (Aug. 25, 2016).

37.051 (c-2) in shifting the financial risk to Southern Cross as a means of protecting both the ratepayers of Texas and the ERCOT market. The Commission appropriately considered the potential for any benefits of the project along with its statutory duty to protect the public interest and the reliability of the ERCOT market. Staff recommends Southern Cross's Motion for Rehearing on points of error related to the reasonableness of the conditions be denied.

**B. The Commission's decision in this proceeding is not discriminatory. (Southern Cross's Point of Error Nos. 1, 10, and 12)**

Southern Cross asserts the Order in this proceeding is discriminatory on two different grounds. Southern Cross, in Point of Error No. 1, argues the Commission's decision to allocate costs to Southern Cross, assign incremental and ancillary service costs to imports and exports over the DC tie, and prohibit recovery of any costs associated with the project is discriminatory against interstate Commerce resulting in a constitutional violation of the dormant Commerce Clause.<sup>6</sup>

The United States Supreme Court has interpreted the Commerce Clause to prohibit excluding out-of-state market participants from in-state markets,<sup>7</sup> excluding in-state market participants from out-of-state markets,<sup>8</sup> imposing costs on out-of-state market participants that in-state participants would not have to bear,<sup>9</sup> and controlling out-of-state prices.<sup>10</sup>

Southern Cross's DC Tie is substantively different from each of these scenarios. Southern Cross requests that ERCOT ratepayers pay for the construction of intrastate

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<sup>6</sup> Southern Cross's Mt. for Rehearing at 3-5.

<sup>7</sup> E.g. *Lewis v. BT Inv. Managers, Inc.*, 447 U.S. 27 (1980) (striking Florida law prohibiting out-of-state companies from owning or controlling Florida investment firms); *City of Philadelphia v. New Jersey*, 437 U.S. 617 (1978) (striking down law prohibiting in-state landfills from accepting out of state refuse); *Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dept. of Nat. Res.*, 504 U.S. 353 (1992) (striking state ordinance prohibiting private landfill operators from accepting waste that originates outside the county in which their facilities are located);

<sup>8</sup> E.g., *New England Power Co. v. New Hampshire*, 455 U.S. 331 (1982) (striking a state law prohibiting the export of hydroelectric power); *Hughes v. Oklahoma*, 441 U.S. 322 (1979) (striking a state law prohibiting the out-of-state export of minnows); and *S.-Cent. Timber Dev., Inc. v. Wunnicke*, 467 U.S. 82 (1984) (striking Alaska law prohibiting purchasers of state-owned timber from processing it outside the state).

<sup>9</sup> E.g., *Oregon Waste Sys., Inc. v. Dep't of Envtl. Quality of State of Or.*, 511 U.S. 93 (1994) (striking Oregon tax on the disposal of out-of-state waste); *Chem. Waste Mgmt., Inc. v. Hunt*, 504 U.S. 334 (1992) (striking Alabama tax on the disposal of out-of-state waste); and *Hunt v. Washington State Apple Advert. Com'n*, 432 U.S. 333 (1977) (striking North Carolina statute that would increase the cost of importing Washington apples).

<sup>10</sup> E.g., *Healy v. Beer Inst., Inc.*, 491 U.S. 324 (1989) (striking Connecticut law prohibiting beer distributors from selling beer at lower prices in neighboring states) and *Brown-Forman Distillers Corp. v. New York State Liquor Auth.*, 476 U.S. 573 (1986) (striking New York law prohibiting liquor distributors from selling liquor at lower prices in neighboring states).

transmission facilities to facilitate Southern Cross's access to ERCOT. Because of the project's immense size, ERCOT will be forced to incur costs that were not incurred during the construction of other DC Ties. Specifically, ERCOT must perform multiple studies and protocol revisions, execute coordination agreements, and potentially acquire additional ancillary services in order to reliably interconnect the Southern Cross DC Tie.<sup>11</sup> Southern Cross is not seeking access to a state market as it presently exists, but is instead attempting to alter the market to its benefit. The conditions imposed upon Southern Cross in the Order simply recognizes the unique nature of this project rather than rising to discrimination against interstate commerce. Interpreting the Commerce Clause as requiring intrastate markets to subsidize the participation of out-of-state participants would be a drastic expansion from the existing precedent.

Southern Cross further claims the conditions directly assigning incremental transmission costs and ancillary service costs to imports and exports over the Southern Cross DC Tie are discriminatory in violation of both PURA §§ 39.001(c) and 35.004(e).<sup>12</sup> PURA § 39.001(c) prohibits the Commission from discriminating against market participants in ERCOT. Specifically, Southern Cross argues it is discriminated against by the condition potentially assigning ancillary service costs to QSEs importing energy into ERCOT when the Commission currently does not assign these costs to any QSEs importing over the existing ties.<sup>13</sup> However, the evidentiary record is clear regarding the novel and distinctive characteristics of this project requiring major overhauls to ERCOT protocols and operations.<sup>14</sup> With respect to ancillary services, the Southern Cross DC Tie has the capacity to import and export up to 2000MW and will become the most severe single contingency (MSSC).<sup>15</sup> NERC standards require ERCOT to

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<sup>11</sup> Order at 2–3.

<sup>12</sup> Southern Cross's Mt. for Rehearing at 11–14.

<sup>13</sup> Order at 11–12.

<sup>14</sup> *Id.* at 2; see Direct Testimony of Dan Woodfin, ERCOT Ex. 2 at 12:2-8 (April 27, 2016) (discussing the challenge the Southern Cross DC Tie presents to the ramp capability of ERCOT); *Id.* at 14 (discussing the changes necessary to incorporate Southern Cross DC Tie into outage coordination); Tr. at 271:9-272:10 (Lasher Cross) (June 1, 2016); Woodfin Direct, ERCOT Ex. 2 at 17:1-14 (citing NERC Standard BAL-002-1 R3 (Disturbance Control Performance)); Direct Testimony of Warren Lasher, ERCOT Ex. 1 at 9:20-10:6 (April 27, 2016) (discussing potential adjustments to ERCOT's planning assumptions for identification of transmission upgrades); Tr. at 271:9-272:10 (Lasher Cross) (June 1, 2016); Bruce Supp. Direct, Southern Cross Ex. 5 at 11:10-22 (noting that there could be modifications to ERCOT's current assumptions that could lead to better modeling).

<sup>15</sup> Woodfin Direct, ERCOT Ex. 2 at 17:8–11.

maintain sufficient contingency reserves to cover the loss of the MSSC.<sup>16</sup> Thus, it is possible that the Southern Cross DC Tie could disproportionately impact ancillary service costs making it fair to assign these additional costs to Southern Cross. The conditions assigning incremental costs and ancillary services to Southern Cross are not discriminatory, but rather imperative to the reliability of the ERCOT market.

Southern Cross also claims the condition assigning ancillary services costs to it is discriminatory in violation of PURA § 35.004(e) because the Commission does not directly assign ancillary service costs on any other market participant. However, the Order is not discriminatory against Southern Cross because the evidentiary record supports allocation of costs to Southern Cross due to the novel nature of the project and the Commission's requirement to protect the public interest. The Commission's conditions merely require Southern Cross and its QSEs to bear the full financial burden of the project rather than providing it with a competitive advantage over other market participants in ERCOT.

**C. The Order does not exceed the Commission's statutory authority. (Southern Cross's Point of Error No. 2)**

The Commission's decision allocating costs to Southern Cross does not exceed the Commission's statutory authority. In Point of Error No. 2, Southern Cross alleges the Commission lacks the statutory authority to assign costs to Southern Cross because Southern Cross is not nor will it be an electric utility as defined in PURA § 31.002 or a buyer or seller of electricity in ERCOT.<sup>17</sup> PURA grants broad authority to the Commission to not only regulate the business of public utilities, but also "to do anything specifically designated or implied by this title that is necessary and convenient" in order to exercise its authority.<sup>18</sup> The Commission also has the authority to regulate the "manner in which a utility provides transmission service."<sup>19</sup> Additionally, PURA § 37.052(c-2) authorizes the Commission to "prescribe reasonable conditions to protect the public interest." This statutory provision is a clear designation of authority for the Commission to protect the public interest. The Commission exercised this designated authority by finding the public interest demanded that ERCOT ratepayers not bear

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<sup>16</sup> NERC Standard BAL-002-1 R3 (Disturbance Control Performance), Staff Ex. 35.

<sup>17</sup> Southern Cross's Mt. for Rehearing at 5-6.

<sup>18</sup> PURA § 14.001.

<sup>19</sup> Order at 2; *see* PURA § 38.002 (granting the Commission the regulatory authority to adopt rules regarding the standards of service).



any costs associated with this project.<sup>20</sup> Further, the Commission's decision contains numerous findings of fact stating the allocation of specific costs to Southern Cross is "protective of the public interest."<sup>21</sup> Despite Southern Cross's claims otherwise, the Commission's allocation of costs to Southern Cross is well within the Commission's statutory authority because PURA specifically designates such authority to the Commission in PURA § 37.052(c-2) and the Commission's allocation of costs is necessary for the purposes of exercising the Commission's broad regulatory authority.

Southern Cross also attempts to argue the Order exceeds the Commission's statutory authority because it violates FERC's exclusive jurisdiction to allocate transmission costs to Southern Cross,<sup>22</sup> asserting that:

The Commission's order *presumably* would require Texas utilities to recover intrastate transmission costs through interstate rates charged to entities using [Southern Cross]'s tie, which is contrary to the exclusive authority of FERC under section 212 of the Federal Power Act and to approve interstate transmission rates. The Commission's order therefore conflicts with the limitation in PURA § 37.051(c-2) requiring that its conditions be consistent with [Southern Cross]'s FERC interconnection order.<sup>23</sup> [emphasis added]

There is no scenario in which intrastate transmission costs would be recovered through interstate rates by imposing costs on Southern Cross. The conditions simply protect ratepayers from being subjected to costs from which little or no benefit will be derived, thereby subsidizing Southern Cross's entry into the market. Pursuant to PURA § 37.052(c-2), the Commission may only impose conditions that are in the public interest and consistent with FERC's interconnection order (FERC Order).<sup>24</sup> The FERC Order directed Garland, Oncor, and CenterPoint to provide interconnection and transmission services to Southern Cross consistent with the terms and conditions of a settlement.<sup>25</sup> There is no evidence in the FERC Order that FERC considered or

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<sup>20</sup> Order at 3.

<sup>21</sup> See *id.* at Finding of Fact Nos. 42A, 44A, 48B, 119A, 119B (Sep. 8, 2016).

<sup>22</sup> Southern Cross's Mt. for Rehearing at 5–6.

<sup>23</sup> *Id.*

<sup>24</sup> *Southern Cross Transmission LLC, et. al*, 147 FERC ¶ 61,113 (2014), Garland Ex. 1 at Attachment 4 (FERC Order).

<sup>25</sup> *Id.* at P 14.

required studies to determine whether any changes are needed to ERCOT's Protocols, computer systems, or operations in order to reliably interconnect the Southern Cross DC Tie. In addition, in the Offer of Settlement, incorporated by reference in the FERC Order,<sup>26</sup> Southern Cross and Garland agreed to operate the interconnection in compliance with all applicable ERCOT and Commission requirements.<sup>27</sup> Thus, the Commission's Order allocating costs to Southern Cross is not inconsistent with the FERC Order and serves to protect the public interest.

**D. None of the conditions in the Order are contrary to PURA or Commission rules. (Southern Cross's Point of Error Nos. 3–5, 12, 14)**

The Commission's Order is in compliance with all provisions of PURA and Commission rules. Southern Cross claims the conditions directly assigning transmission upgrade costs,<sup>28</sup> incremental transmission costs to support imports and exports over the Southern Cross DC Tie,<sup>29</sup> and ancillary services to Southern Cross violates PURA §§ 35.004(e), 39.004(d), and 39.203(e) and 16 TAC § 25.192. Southern Cross already raised this issue<sup>30</sup> and it was considered by the Commission. Additionally, Southern Cross's attacks on certain cost allocation conditions is premature. The Order first directs ERCOT to study whether these additional services and resulting changes are even needed.<sup>31</sup> ERCOT has not yet determined if any of these additional costs and services are necessary.<sup>32</sup> In fact, the Commission modified the PFD in an effort to allow ERCOT and the Commission to have more flexibility in making certain decisions for allocating these costs based upon additional cost benefit analysis.<sup>33</sup> It is premature for Southern

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<sup>26</sup> *Id.* at Ordering Paragraph (C).

<sup>27</sup> Offer of Settlement at 12, Garland Ex. 1 at Attachment 2.

<sup>28</sup> Southern Cross asserts in Point of Error Nos. 3 and 5 that assignment of transmission upgrade costs are contrary to PURA § 35.004(d) and 16 TAC § 25.192. *See* Southern Cross's Mt. for Rehearing at 6–8.

<sup>29</sup> Southern Cross makes this argument in Point of Error No. 4 and 10. *See id.* at 7.

<sup>30</sup> Southern Cross raised this argument in its initial brief. Initial Brief of Southern Cross Transmission LLC at 11–14, 25–27, and 37–38 (Jun. 10, 2016).

<sup>31</sup> Order at Finding of Fact Nos. 56 and 58.

<sup>32</sup> ERCOT has not made any filings in the Commission project overseeing the implementation of the conditions in the Order. *See Oversight Proceeding Regarding ERCOT Matters Arising Out of The 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)*, Docket No. 46304, Order Creating and Scoping Project (Sep. 8, 2016)

<sup>33</sup> Order at 4.

Cross to claim violations of PURA and Commission rules for changes to cost allocation methods of these conditions when to date neither the Commission nor ERCOT have made any changes.

Further, Southern Cross is simply incorrect in asserting that the Commission's assignment of ERCOT's costs for studies, protocols, operating guides, and system changes to Southern Cross violates PURA § 39.151(e) and 16 TAC § 25.363.<sup>34</sup> To use Southern Cross's own characterization of this statutory provision, PURA § 39.151(e) "prescribes a method by which ERCOT's budgeted activities are to be funded," but not *the only* method for funding ERCOT's activities.<sup>35</sup> PURA § 39.151(e) does not preclude the Commission from acquiring funds for ERCOT's budget in other forms. In fact, pursuant to PURA § 39.151(d), the Commission possesses the "complete authority to oversee" ERCOT's finances, budget and operations. Similarly, the language of 16 TAC § 25.363 does not foreclose the Commission from any other methods of funding ERCOT's activities. Both PURA and Commission rules permit the Commission to directly assign ERCOT's costs to Southern Cross especially where such a condition is protective of the public interest.

**E. The Order articulates rational, well-reasoned connections between the evidence and the Commission's decision. (Southern Cross's Point of Error Nos. 6, 7, 13 and 15)**

Staff recommends the Commission deny Southern Cross's Motion for Rehearing because the Commission's Order is rational, well-reasoned and fully supported by the evidentiary record. Southern Cross objects to the Commission's modifications to the PFD for failing to explain the rationale or identify evidentiary support for requiring Southern Cross to bear all costs associated with the project.<sup>36</sup> Southern Cross also attempts to attack the Commission's modifications to the PFD that allocate costs to Southern Cross as violating Tex. Gov't Code Ann. § 2003.49(g) and 16 TAC § 22.262(a).<sup>37</sup>

The evidentiary record demonstrates that the "existing regulatory requirements, protocols, operating guides, and standards, and possible systems, are inadequate to deal with the import and export of power at the levels proposed by Southern Cross."<sup>38</sup> The record evidence is

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<sup>34</sup> Southern Cross's Mt. for Rehearing at 10–11.

<sup>35</sup> *Id.* at 10.

<sup>36</sup> *Id.* at 8–9, 17.

<sup>37</sup> *Id.* at 15–16 (Point of Error No. 13).

<sup>38</sup> Order at 2; *see* Direct Testimony of Dan Woodfin, ERCOT Ex. 2 at 12:2-8 (April 27, 2016) (discussing the challenge the Southern Cross DC Tie presents to the ramp capability of ERCOT); *Id.* at 14 (discussing the

also clear that these changes to ERCOT are necessitated because the modifications are being made as a direct result of the interconnection of Southern Cross's DC Tie.<sup>39</sup> Considering all of the evidence before it, the Commission determined that the public interest demanded that ERCOT ratepayers not bear any of the costs associated with either the Garland Project or the Southern Cross DC Tie.<sup>40</sup> Thus, the Commission's decision demonstrates a rational connection between the evidence and its reasonable conditions to justify modifying the PFD.

Southern Cross is correct that the Commission may change an Administrative Law Judge's (ALJ) finding of fact or conclusion of law if it determines the ALJ failed to "properly apply or interpret applicable law, Commission rules or policies, or prior administrative decisions."<sup>41</sup> An ALJ's finding of fact or conclusion of law may also be modified if the ALJ issued a finding of fact that is not supported by a preponderance of the evidence.<sup>42</sup> In making this modification, the Commission must articulate the reason and legal basis for such a change in writing.<sup>43</sup> The Order, in modifying some of the ALJ's findings of fact and conclusions of law, complied with Tex. Gov't Code Ann. § 2003.49(g) and 16 TAC § 22.262(a). The Commission clearly articulated that the novel nature of this project necessitates substantive changes to ERCOT rules, protocols, operating guides, systems, and standards to serve the public interest and protect the reliability of the ERCOT market.<sup>44</sup> The Order contains ample findings of fact demonstrating the novel characteristics and necessary changes in order to interconnect the

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changes necessary to incorporate Southern Cross DC Tie into outage coordination); Tr. at 271:9-272:10 (Lasher Cross) (June 1, 2016); Woodfin Direct, ERCOT Ex. 2 at 17:1-14 (citing NERC Standard BAL-002-1 R3 (Disturbance Control Performance)); Direct Testimony of Warren Lasher, ERCOT Ex. 1 at 9:20-10:6 (April 27, 2016) (discussing potential adjustments to ERCOT's planning assumptions for identification of transmission upgrades); Tr. at 271:9-272:10 (Lasher Cross) (June 1, 2016); Bruce Supp. Direct, Southern Cross Ex. 5 at 11:10-22 (noting that there could be modifications to ERCOT's current assumptions that could lead to better modeling).

<sup>39</sup> Currently, ERCOT successfully manages five DC ties that interconnect ERCOT to neighboring regions, the largest being 600 MW. Tr. at 284:14-18 (Woodfin Cross) (June 1, 2016); *see also* Rebuttal Testimony of Ellen Wolfe, Southern Cross Ex. 7 at EW-2-R (Figure 1).

<sup>40</sup> Order at 3.

<sup>41</sup> Tex. Gov't Code Ann. § 2003.049(g)(1)(A); 16 TAC § 22.262(a)(1)(A).

<sup>42</sup> Tex. Gov't Code Ann. § 2003.049(g)(1)(B); 16 TAC § 22.262(a)(1)(B).

<sup>43</sup> Tex. Gov't Code Ann. § 2003.049(h); 16 TAC § 22.262(b).

<sup>44</sup> Order at 2-3. *See also* Open Meeting Tr. at 34:5-35:17 (Aug. 25, 2016).

Southern Cross DC Tie.<sup>45</sup> The Commission articulated in writing a rational connection between the facts demonstrating the novel nature of this project requiring extensive substantive changes to ERCOT operations and its decision to allocate all costs to the party necessitating such changes, Southern Cross.

**F. Southern Cross's due process rights were not violated by the Commission's decision in this proceeding. (Southern Cross's Point of Error Nos. 9 and 16)**

The Order does not violate Southern Cross's due process rights because the Commission did not change prior policy and even if it did, Southern Cross was provided notice and an opportunity to be heard. Southern Cross asserts its due process rights were violated by the Commission changing policy regarding the allocation of ERCOT costs and prohibiting recovery of any Rusk substation costs without notice or a hearing.<sup>46</sup> However, the Order is not a departure from previous Commission policy. The Commission has never before considered the interconnection of such a large DC tie into ERCOT and the public interest implications involved. The Order contains multiple findings of fact demonstrating that the existing regulatory requirements, protocols, and systems are inadequate to reliably import and export power at the level proposed by Southern Cross.<sup>47</sup> In addition, as a result of the interconnection of the Southern Cross DC tie, ERCOT must immediately begin updating its rules, protocols, and operations so that ERCOT reliability is not jeopardized.<sup>48</sup> Southern Cross's due process rights were not violated because there is no prior Commission decision, rule or policy regarding how to reliably interconnect such a novel and large DC tie into the ERCOT system.

Further, even if the Commission did have prior policy regarding cost allocation for such a large privately owned DC tie, Southern Cross was afforded notice and an opportunity for hearing. Prior to the hearing on the merits, Staff filed a Statement of Position raising the issue of

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<sup>45</sup> The Order requires ERCOT to study and implement necessary changes in many of the findings of fact and conclusions of law. Order at Finding of Fact Nos. 38–39, 42, 44–48A, 52–56, 58, 63–68, 71–91, 95–101, 103–104, 111–116).

<sup>46</sup> Southern Cross's Mt. for Rehearing at 11, 17–18.

<sup>47</sup> Order at 2 (stating the “docket has demonstrated that existing regulatory requirements, protocols, operating guides, and standards, and possibly systems are inadequate to deal with the import and export of power at the levels proposed by Southern Cross Transmission.”); see also *id.* at Finding of Fact Nos. 38–39, 46, 53, 56, 63–64, 72, 78, 79, 89, and 115 (identifying changes that must be studied and if necessary incorporated into ERCOT practice prior to energization of the Garland project).

<sup>48</sup> *Id.* at 2–3.

allocating ERCOT's costs to Southern Cross.<sup>49</sup> Southern Cross addressed this issue in post hearing briefing and in replies to exceptions to the PFD,<sup>50</sup> and it was rejected by the Commission. Thus, Staff recommends the Commission not grant Southern Cross's Motion for Rehearing for any violation of due process rights as the Commission had no prior policy on cost allocation for a project requiring an overhaul to ERCOT protocols and operations.

**G. The Commission did not err in requiring Southern Cross to obtain all necessary regulatory approvals prior to condemning land. (Southern Cross's Point of Error Nos. 17–18)**

Staff disagrees with Southern Cross's assertions that the Commission violated case law and the Texas Gov't Code in requiring Southern Cross to obtain all necessary regulatory approvals from Louisiana. Southern Cross raises no new issues in Point of Error Nos. 17 and 18 not already considered by the Commission.<sup>51</sup> The Commission gave clear instruction to Southern Cross of its intention and the meaning of the language requiring regulatory approvals before condemnation of land.<sup>52</sup> In receiving this guidance, Southern Cross stated "with that understanding of what the language means—I don't think there's a problem."<sup>53</sup>

Further, the case law cited by Southern Cross is not relevant to Garland's application. Southern Cross cites to the Texas Supreme Court's remand of the Commission's approval of Texas-New Mexico Power Company's (TNP) CCN application for a power plant conditioned upon the company receiving permits from other state and federal agencies before construction and operation of a power plant under a different provision in PURA.<sup>54</sup> Southern Cross mischaracterizes this case law as similar to Garland's application and critical of the Commission's condition requiring regulatory permits. The Commission's approval of Garland's

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<sup>49</sup> Commission Staff's Statement of Position at 4, 12 (May 25, 2016) (recommending conditions requiring Southern Cross to pay for ERCOT's costs and prohibiting recovery of costs for the Rusk Substation in order to protect Texas ratepayers from subsidizing the Southern Cross DC Tie).

<sup>50</sup> Initial Brief of Southern Cross Transmission LLC at 11–14 (June 10, 2016); Reply Brief of Southern Cross Transmission LLC at 17–23 (June 17, 2016) (Southern Cross Reply Brief); and Southern Cross Transmission LLC's Reply to Exceptions at 14–15 (Aug. 9, 2016).

<sup>51</sup> Southern Cross raised this issue in post-hearing briefing and during the Aug. 25, 2016 Open Meeting. Southern Cross Reply Brief at 29–30; Open Meeting Tr. at 10:15–11:17 (Aug. 25, 2016).

<sup>52</sup> *Id.* at 11:10–12, 20–24 (Aug. 25, 2016).

<sup>53</sup> *Id.* at 11:13–14, 16–17 (Aug. 25, 2016).

<sup>54</sup> Southern Cross's Mt. for Rehearing at 19–20. (citing *Texas-New Mexico Power Co. v. Tex. Industrial Energy Consumers*, 806 S.W.2d 230 (Tex. 1991)).

application is distinct in that it is the approval of a transmission line to interconnect ERCOT to a DC tie to import and export power out of ERCOT. In addition, PURA § 37.052(c-2), specifically directs the Commission to impose reasonable conditions to protect the public interest. Protecting property rights is one of the core functions the Commission provides to the public in transmission CCN proceedings. The Commission, in this instance, chose to protect the public interest, and prevent condemnation of private land until certain benchmarks were met. These benchmarks protect the public interest by assuring that a landowner is not faced with a situation where land was condemned for no reason.<sup>55</sup> The cited case law is not applicable and the Commission properly included the condition requiring necessary Louisiana regulatory approval before Southern Cross may condemn any land. Staff respectfully recommends the Commission deny Southern Cross's Motion for Rehearing on these points of error.

### **III. STAFF'S REPLY TO TIEC'S MOTION FOR REHEARING**

No response.

### **IV. CONCLUSION**

Staff recommends the Commission deny Southern Cross's Motion for Rehearing on all points of error. Staff strongly supports the Commission's well-reasoned, comprehensive decision in this proceeding. The conditions imposed by the Commission do not discriminate against interstate commerce or Southern Cross, as a market participant, and are well within the authority granted to the Commission by PURA and Commission rules. The Commission addressed a complex issue and appropriately balanced the economic interests of Southern Cross with its statutory duty to protect the public interest. The Order ensures the continued reliable operation of the ERCOT market for all market participants and Texas ratepayers and provides a clear path forward for Southern Cross's interconnection with ERCOT.

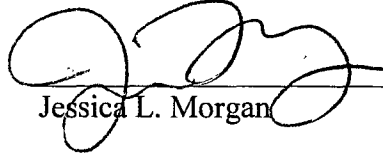
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<sup>55</sup> In the Open Meeting, Chairman Donna Nelson stated the Commission's concern "was that [Southern Cross] condemn land, and then the project doesn't move forward. And in the meantime, that landowner has had their land condemned for no reason. So that's the purpose for the language." Open Meeting Tr. at 11:20-24 (Aug. 25, 2016).

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

**CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on October 18, 2016, in accordance with 16 TAC § 22.74.



Handwritten signature of Jessica L. Morgan, consisting of a large, stylized 'J' and 'M'.

Jessica L. Morgan