Control Number: 45624

Item Number: 430

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

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 OF TEXAS**

TEXAS INDUSTRIAL ENERGY CONSUMERS' INITIAL BRIEF ON REHEARING

December 14, 2016

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I. INTRODUCTION

The Commission's Final Order (Order) complies with all applicable federal and state laws and regulations in prescribing reasonable conditions to protect the public interest against the impacts of the Southern Cross Transmission, LLC (SCT) DC tie (SCT Tie). As discussed below, the Order is consistent with Public Utility Regulatory Act (PURA) §§ 37.051(c-1) and (c-2), section 212 of the Federal Power Act (FPA), and the Federal Energy Regulatory Commission's (FERC) Interconnection Order in Docket TX-11-001 (Interconnection Order). SCT's arguments to the contrary are misplaced and unsupported by any binding precedent or other law. As such, SCT's attempt to undermine the Commission's reasoned decision should be rejected.

TIEC reurges the limited changes proposed in its Motion for Rehearing, which (1) clarify that costs are being assigned to both SCT and "entities transacting over the tie," and (2) supplement the supporting findings of fact for this direct assignment consistent with the record and the Commission's prior Open Meting discussion. With those changes, the Order should be adopted on rehearing and SCT's motion should be denied.

II. RESPONSES TO THE COMMISSION'S QUESTIONS

A. The Commission's Order does not violate the dormant Commerce Clause of the U.S. Constitution.

The Commission's Order does not violate the dormant Commerce Clause because it does not discriminate, either facially or in effect, between similarly situated in-state and out-of-state interests. The Supreme Court has made clear that a regulation does not violate the dormant Commerce Clause simply because it may burden some out-of-state companies.[1] Any incidental burden that the Commission's conditions impose on out-of-state interests is cost-based, supported by the record evidence, and narrowly tailored to address the unique, well-documented impacts of DC tie transactions on ERCOT. The Order appropriately recognizes that exports from ERCOT to other regions have different cost, reliability, and other impacts on the ERCOT system versus transactions occurring solely within the ERCOT market, and the Commission's conditions are reasonably designed to protect ERCOT customers from undue harm given these

[1] *Exxon Corp. v. Maryland*, 437 U.S. 117, 126 (1978) ("The fact that the burden of a state regulation falls on some interstate companies does not, by itself, establish a claim of discrimination against interstate commerce.").

facts. Because the Commission's conditions are rooted in well-established differences between transactions across the SCT Tie and transactions occurring solely within ERCOT, and apply equally to both Texas-based and out-of-state entities, the Order is not discriminatory and does not constitute "economic protectionism" that is prohibited by the dormant Commerce Clause.

The dormant Commerce Clause prohibits interstate protectionism that impedes Congress's power "[t]o regulate Commerce . . . among the several States."[2] Dormant Commerce Clause jurisprudence is "driven by concerns about economic protectionism—that is, regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors."[3] The "common thread" running through these cases is the proscription of "[s]tate interfere[nce] with the natural functioning of the interstate market either through prohibition or through burdensome regulation."[4] Put more precisely, state action[5] only "violates the dormant Commerce Clause where it ***discriminates*** against interstate commerce either facially, by purpose, or by effect."[6] If a state action improperly discriminates against interstate commerce, then it is only valid if the state "can demonstrate, under rigorous scrutiny, that it has no other means to advance a legitimate local interest."[7] Absent such discrimination, on the other hand, a state

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[2] U.S. Const., Art. I, § 8, cl. 3.

[3] *Dep't of Revenue of Ky. v. Davis*, 553 U.S. 328, 337-38 (2008). Importantly, however, courts have made clear that the dormant Commerce Clause "protects the interstate market, [but] not particular interstate firms, from prohibitive or burdensome regulations." *Exxon Corp.*, 437 U.S. at 127-28.

[4] *McBurney v. Young*, 133 S.Ct. 1709, 1720 (2013).

[5] Courts have applied the general dormant Commerce Clause framework to state agency adjudications and permitting decisions. *See, e.g., Fla. Transp. Servs., Inc. v. Miami-Dade County*, 703 F.3d 1230 (11th Cir. 2012); *Liberty Disposal, Inc. v. Scott*, 684 F. Supp. 2d 1047, 1054 (N.D. Ill. 2007).

[6] *Allstate Ins. Co. v. Abbott*, 495 F.3d 151, 160 (5th Cir. 2007) (emphasis added). State action is facially discriminatory if it explicitly creates "differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter." *United Haulers Ass'n, Inc. v. Oneida-Harkimer Solid Waste Mgmt. Auth.*, 550 U.S. 330, 338 (2007). A state action is discriminatory by purpose if there is a "clear and consistent pattern of discriminatory action." *Allstate Ins. Co.*, 495 F.3d at 160. A state action discriminates "by effect" if it substantially disadvantages out-of-state businesses compared to similarly situated in-state businesses. *Id.* at 162-63.

[7] *C&A Carbone, Inc. v. Town of Clarkstown, N.Y.*, 511 U.S. 383, 392 (1994).

action will be upheld unless it places an incidental burden on interstate commerce that is "clearly excessive in relation to the putative local benefits."[8]

The Commission's Order is not facially discriminatory because (1) it makes clear that the conditions imposed on SCT are due to the different cost and reliability implications of transactions between power pools compared to transactions within ERCOT,[9] and (2) it treats out-of-state and in-state users of the tie identically. On this latter point, it is clear that Texas businesses transacting over the tie would be subject to the same requirements as non-Texas firms. This fact alone is enough to prove that the Commission's Order is not impermissibly discriminatory. Dormant Commerce Clause jurisprudence is clear that a state "impermissibly discriminates only when a state discriminates among ***similarly situated*** in-state and out-of-state interests."[10] That is, a state may impose differential treatment based on the ***type of business*** an entity is conducting as long as it is not discriminating based on the entity's contacts within the state.[11] So, for example, Texas can (and already does) treat entities transacting over DC ties differently than native ERCOT load based on the fact that they place different burdens on the ERCOT grid,[12] but it would be impermissibly discriminatory for Texas to pass a law exempting only Texas-based companies from paying DC tie export charges. The key distinction is not whether the impact of a state action falls on entities located outside of that state, but whether the discrimination itself was designed to advantage in-state firms. Therefore, because the

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[8] *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970) ("Where [a state action] regulates evenhandedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits.").

[9] *See* Docket No. 45624, Order at 2 ("This 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.").

[10] *Int'l Truck & Engine Corp. v. Bray*, 372 F.3d 717, 725 (5th Cir. 2004) (emphasis added).

[11] *Ford Motor Co. v. Tex. Dep't of Transp.*, 264 F.3d 493, 502 (5th Cir. 2001) (finding that a Texas statute that forbade motor vehicle manufacturers from engaging in retail sales did not have a discriminatory effect because the statute "did not discriminate based on Ford's contacts with the State, but rather on the basis of Ford's status as an automobile manufacturer"). This principle holds true even if only out-of-state entities conduct the type of business being regulated. *Id.* at 726; *see also General Motors Corp. v. Tracy*, 519 U.S. 278 (1997) (upholding preferential tax treatment for natural gas LDCs even though they were all located within the state of Ohio).

[12] DC tie exports are subject to curtailment before native loads during an Energy Emergency Alert (EEA), and are currently charged for transmission on a different basis than native loads. *See* ERCOT Nodal Protocol § 6.5.9.4.6; PUC Subst. R. 25.192(e).

Commission's Order is grounded in the practical differences between ERCOT load and users of the SCT Tie, it does not facially discriminate against out-of-state economic interests.[13]

Because the conditions imposed in the Commission's Order are based on the unique nature of the proposed project and its impact on the ERCOT grid compared to other types of transactions, it is clear that the Commission "regulate[d] even-handedly to effectuate a legitimate local public interest, and [the] effects on interstate commerce are only incidental."[14] Moreover, the Commission's Order is not discriminatory by effect. A state action discriminates "by effect" only if the state action substantially advantages in-state businesses over similarly situated out-of-state businesses by, for example, driving out-of-state businesses from the market.[15] But imposing reasonable costs on SCT Tie transactions will do no such thing. Indeed, the Commission and ERCOT have long treated transactions over DC ties differently from native loads without controversy and without dissuading out-of-state entities from using those ties. For instance, DC tie exports are subject to curtailment before native loads during an Energy Emergency Alert (EEA),[16] and are currently charged for transmission on a different basis than native loads.[17] Under SCT's analysis, all of these existing regulations would violate the dormant Commerce Clause because they apply only to DC tie transactions. No one has ever made such a claim and it simply proves too much. Instead, the conditions imposed by the Commission's Order are a reasonable response to the specific cost and operational impacts of the SCT Tie on ERCOT's customers, and do not run afoul of the dormant Commerce Clause.

Nor does the Commission's Order have a discriminatory effect on the interstate flow of electricity. Federal courts have used the dormant Commerce Clause to "invalidate local laws

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[13] Additionally, there is no allegation or evidence that the Commission's decision was animated by purposeful discrimination. SCT has never alleged that the Commission's Order is part of a "clear and consistent pattern of discriminatory action," and absent evidence establishing such a pattern, there is no need to discuss purposeful discrimination further. *Allstate Ins. Co.*, 495 F.3d at 160. Relevant factors in this determination include: "(1) whether a clear pattern of discrimination emerges from the effect of the state action; (2) the historical background of the decision, which may take into account any history of discrimination by the decisionmaking body; (3) the specific sequence of events leading up the challenged decision, including departures from normal procedures; and (4) the legislative or administrative history of the state action, including contemporary statements by decision makers." *Id.* These factors are simply not present in this case.

[14] *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970).

[15] *See Allstate Ins. Co.*, 495 F.3d at 162-63.

[16] *See* ERCOT Nodal Protocol § 6.5.9.4.6.

[17] *See* PUC Subst. R. 25.192(e).

that impose commercial barriers or discriminate against an article of commerce by reason of its origin or destination out of State."[18] Such discrimination is not present here. Rather, the conditions imposed by the Commission merely reflect the actual costs associated with interconnecting the SCT Tie to ERCOT and transacting across that tie and are not designed to erect an unjustified barrier to transactions across state lines. As an analogy, assessing a toll on a bridge that crosses state lines clearly impacts the flow of interstate commerce, but would not violate the dormant Commerce Clause if the toll merely recovered the costs of constructing, maintaining, and operating the bridge,[19] and as long as the toll applied equally to both in-state and out-of-state entities—just as the Commission's Order recovers the costs of interconnecting and operating the SCT Tie equally from both the Texas and non-Texas entities that use it. Importantly, the costs assigned to SCT and the entities using the SCT Tie were not designed to limit interstate commerce, but to appropriately allocate the costs created by this project to the entities that will use the project and receive its benefits. Because the conditions are based on cost-causation, and not economic protectionism, they are not discriminatory and do not implicate the dormant Commerce Clause.

At most, the Commission's Order places an incidental burden on interstate commerce—but such a burden, if it exists at all, does not implicate the dormant Commerce Clause because it is not "clearly excessive in relation to the putative local benefits."[20] Courts have made clear that when assessing the benefits of a state action, they cannot "second-guess the empirical judgments of lawmakers concerning the utility of legislation" and will "credit a putative local benefit so long as an examination of the evidence before or available to the lawmaker indicates that the regulation is not wholly irrational in light of its purposes."[21] Here, the Commission's Order easily passes review because it only assigns costs to SCT and transactions over the tie that are directly caused by SCT Tie operations. These conditions are justified by the benefit of preventing ERCOT customers from subsidizing a project that provides them with no benefits

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[18] *See, e.g., C & A Carbone, Inc.*, 511 U.S. at 390.

[19] *See, e.g., Automobile Club of New York, Inc. v. Port Auth. of New York & New Jersey*, 842 F. Supp. 2d 672, 677-78 (S.D.N.Y. 2012) (dismissing a claim that an increase in tolls on several bridges spanning the New York-New Jersey border violated the dormant Commerce Clause).

[20] *Pike*, 397 U.S. at 142.

[21] *Int'l Truck & Engine Corp.*, 372 F.3d at 728.

and, instead, will increase their energy costs in most hours. Correcting a potential free rider problem is not a Commerce Clause violation, and any incidental burden the Commission's Order imposes on interstate commerce is tailored to the legitimate state objective being pursued, and is therefore not excessive.

Finally, ***even if*** the Commission's Order would otherwise run afoul of the dormant Commerce Clause, there is no violation here because the Commission was expressly authorized to impose conditions to protect ERCOT customers under FERC's Interconnection Order and the FPA. The dormant Commerce Clause arises solely from the desire to not have the states impinge on the federal government's power to regulate interstate commerce. The Supreme Court has explained, however, that "Congress, if it chooses, may exercise this power indirectly by conferring upon the States an ability to restrict the flow of interstate commerce that they would not otherwise enjoy."[22] "If Congress ordains that the States may freely regulate an aspect of interstate commerce, any action taken by a State within the scope of the congressional authorization is rendered invulnerable to Commerce Clause challenge."[23] As discussed below, the FERC Interconnection Order[24] and FPA § 212[25] direct the Commission to regulate the SCT Tie in a way that ensures that ERCOT ratepayers do not bear the incremental costs created by the tie. Because the Commission's Order falls squarely within the scope of that authority, the Commission was acting within the realm of explicit Congressional authorization and its actions do not implicate the "dormant" Commerce Clause.

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[22] *Lewis v. BT Inv. Managers*, 447 U.S. 27, 44 (1980).

[23] *W. & So. Life Ins. Co. v. State Bd. of Equalization of Calif.*, 451 U.S. 648, 652-53 (1981).

[24] *Southern Cross Transmission LLC; Pattern Power Marketing LLC*, 147 FERC ¶ 61,113 at P 20 (May 15, 2014) ("[C]osts for the facilities identified in the Garland/Southern Cross interconnection agreement are the responsibility of the Project and will not be recovered from ERCOT ratepayers, and [] the facilities identified in the Oncor/Garland interconnection agreement will be subject to the jurisdiction of the Texas Commission and allocated pursuant to established ERCOT rules.").

[25] 16 U.S.C. § 824k(k) ("Rates, charges, terms, and conditions for transmission services provided pursuant to an order under section 824j of this title shall ensure that, to the extent practicable, costs incurred in providing the wholesale transmission services, and properly allocable to the provision of such services, are recovered from the applicant for such order and not from a transmitting utility's existing wholesale, retail, and transmission customers.").

B. The Commission has the authority to directly assign the costs of the SCT Tie to SCT (and entities using the SCT Tie) to protect the public interest.

1. The FERC Interconnection Order and Section 212(a) of the Federal Power Act Require Direct Assignment of Costs to the SCT Tie.

The FERC Interconnection Order explicitly allows the Commission to directly assign the costs of the SCT Tie, including all of the additional costs associated with the project identified in the Commission's Order.[26] Indeed, in combination with provisions of the FPA, the FERC Interconnection Order ***requires*** that the costs be directly assigned. SCT's argument appears to be based on a loose application of the federal preemption doctrine and a claim that the Commission's Order conflicts with federal law, which should instead control. However, in the context of preemption, a conflict does not occur unless it is "physically impossible to comply with both federal and state law, or that state law impede the accomplishment and execution of the full purposes and objectives of Congress."[27] That is not the case here.

The FERC Interconnection Order instructs the Commission that the costs of the SCT Tie are not to be placed upon ERCOT ratepayers and recognizes the Commission's jurisdiction over allocating transmission-related costs within ERCOT under subsection 212(k) of the FPA.[28] In exercising its authority to allocate transmission-related costs, which includes costs for necessary "associated" services,[29] the Commission must abide by subsection 212(a),[30] which requires that costs be assigned to the applicant requesting the interconnection:

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[26] *See* 147 FERC ¶ 61,113 at P 18; *see also* 16 U.S.C. § 824k(k).

[27] Under the Supremacy Clause of the United States Constitution, Congress may preempt state regulation in three ways: (1) by "clearly and expressly articulating its desire to preempt an area," or express preemption; (2) by "occupying a field so pervasively as to naturally exclude" state regulation, or field preemption; and (3) by "directly conflicting with" state regulation, or conflict preemption. *Texas Midstream Gas Servs., LLC v. City of Grand Prairie*, 608 F.3d 200, 210 (5th Cir. 2010). Express preemption and field preemption are not applicable here.

[28] 147 FERC ¶ 61,113 at P 20 ("[C]osts for the facilities identified in the Garland/Southern Cross interconnection agreement are the responsibility of the Project and will not be recovered from ERCOT ratepayers, and [] the facilities identified in the Oncor/Garland interconnection agreement will be subject to the jurisdiction of the Texas Commission and allocated pursuant to established ERCOT rules.").

[29] This includes, under 16 U.S.C. § 824k(a), "all the costs incurred in connection with the transmission services and necessary associated services, including, but not limited to, an appropriate share, if any, of legitimate, verifiable and economic costs, including taking into account any benefits to the transmission system of providing the transmission service, and the costs of any enlargement of transmission facilities."

[30] 16 U.S.C. § 824k(k) (requiring transmission ratemaking to be "consistent with subsection (a)"); *see also* 147 FERC ¶ 61,113 at P 18.

> Rates, charges, terms, and conditions for transmission services provided pursuant to an order under section 824j of this title ***shall*** ensure that, to the extent practicable, costs incurred in providing the wholesale transmission services, and properly allocable to the provision of such services, ***are recovered from the applicant for such order and not from a transmitting utility's existing wholesale, retail, and transmission customers.***[31]

This provision of the FPA recognizes that—as in this case—requiring a transmission utility to provide transmission services for a wholesale market participant often does not create any benefits for the transmission utility's existing customers. In these instances, it would be inappropriate to require the utility's existing customers to pay those costs or to subsidize the activity. Even though FERC deemed the SCT Tie to be in the public interest, both the FPA and the Commission's statutory mandate under PURA require a narrower inquiry that focuses specifically on protecting ERCOT ratepayers—the existing retail customers of the transmitting utility. As such, FERC's Interconnection Order does not preclude the Commission from directly assigning costs to the SCT Tie and imposing the necessary conditions to protect ERCOT market participants. To the contrary, it fully recognizes the principle that a transmission utility's ratepayers should not foot the bill for projects that do not benefit them. The Commission's Order simply protects ERCOT ratepayers from unjustified costs, and therefore the Order and the conditions it imposes are in full accordance with the both the FPA and the FERC Interconnection Order.

2. *The Commission's Order is well within its statutory authority under state law.*

In response to ongoing development of several large DC tie interconnections to ERCOT, the legislature modified PURA § 37.051 in 2015 to explicitly authorize the Commission to review these interconnections and ensure that they are in the public interest—including imposing any reasonable and necessary conditions on DC tie interconnections.[32] Specific to this project, the legislature provided that the Commission "may prescribe reasonable conditions to protect the public interest that are consistent with the final order of the Federal Energy Regulatory Commission."[33] This statutory language unambiguously gives the Commission an expansive

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[31] 16 U.S.C. § 824k(a) (emphases added).

[32] S.B. 933, 84th Leg., Reg. Sess. (Tex. 2015).

[33] PURA § 37.051(c-2).

grant of authority to impose any reasonable conditions on the SCT Tie that it deems necessary to protect the public interest.

SCT's contention that the Commission can only apply existing rules to new DC tie interconnections is belied by the plain language of PURA § 37.051 as revised in 2015. SCT essentially argues that it is "discriminatory" for the Commission to impose conditions on the SCT Tie that provide differential treatment relative to generally applicable Commission rules, but this is exactly what the legislature authorized. Otherwise, the express language of subsection 37.051(c-1), which provides that it applies "[n]otwithstanding any other provision of" PURA, would be meaningless. Further, such an interpretation would render the entire provision moot, as there would be no need for the Legislature to have amended PURA if it only intended for the Commission to use its *existing* powers and rules to address the novel, fact-specific issues raised by large-scale DC tie interconnections. Indeed, the legislative history is clear that PURA §§ 37.051(c-1) and (c-2) were enacted to address a gap in the Commission's authority to regulate projects like the SCT Tie.[34] Finally, an overly restrictive view of the Commission's authority under subsections 37.051(c-1) and (c-2) contradicts the well-established principle that "when the Legislature expressly confers a power on an agency, it also impliedly intends that the agency have whatever powers are reasonably necessary to fulfill its express functions or duties."[35] In implementing subsections 37.051(c-1) and (c-2), the Commission is not limited by either existing rules or what it would otherwise have been able to do under PURA.

The conditions imposed in the Order are reasonable to protect the public interest, and are based on applying the Commission's specialized knowledge and expertise to the facts of this case. Under such circumstances, the Commission "is to be given a large degree of latitude in the methods it uses to accomplish its regulatory function."[36] For instance, Texas courts have explained that:

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[34] *See* House Res. Org., Bill Digest, S.B. 933, 84th Leg., Reg. Sess. (Tex. 2015) ("Current law does not provide a process for projects [interconnecting to the ERCOT grid] to come before the PUC for a CCN. In addition to concerns about potentially bringing federal jurisdiction to the ERCOT grid, the size of these projects could have impacts on grid reliability, wholesale market prices, and costs to operate the grid.").

[35] *Pub. Util. Comm'n v. City Pub. Serv. Bd.*, 53 S.W.3d 310, 316 (Tex. 2001).

[36] *State v. Pub. Util. Comm'n of Texas*, 883 S.W.2d 190, 197 (Tex. 1994).

> Public interest determinations are dependent upon the special knowledge and expertise of the Commission. It is the Commission's task to assess competing policies and determine what is in the public interest. The legislature intended the Commission to make whatever accommodations and adjustments necessary when determining what is in the public interest. In balancing these considerations the agency is required to exercise its expertise to further the overall public interest.[37]

There is an extensive factual record identifying the incremental costs that the SCT Tie will impose on ERCOT ratepayers, and little to no competent evidence that the SCT Tie will provide ERCOT customers with any benefits. Under these facts, the Commission reasoned that it is not in the public interest for ERCOT ratepayers to subsidize the costs of the SCT Tie, and therefore assigned all of the direct costs to SCT and the entities that will be using the SCT Tie. This is exactly the type of determination that is within the Commission's realm of expertise, and within the scope of PURA §§ 37.051(c-1) and (c-2).

Further, arguments that the Commission does not have authority to impose conditions on SCT because SCT is not within the Commission's jurisdiction are purely semantic and do not compromise the legitimacy of the Order. As discussed in TIEC's prior briefing, the Commission's discussion and the evidentiary record indicate that costs were directly assigned "to SCT" as a shorthand, meant to also include potential direct assignment to entities transacting over the tie. TIEC proposed specific modifications in prior briefing that would clarify this intent by referencing "SCT and entities transacting over the tie" throughout.[38] The only costs that are arguably being directly assigned to SCT, in particular, are those associated with the Rusk substation. But this "direct assignment" is merely a reflection of the fact that SCT is contractually obligated to Oncor to pay for these costs if the Commission determines that they should not be placed in Transmission Cost of Service (TCOS) rates. The Commission's Order does not require SCT to pay these costs and, therefore, is not "regulating" SCT or mandating any payment from SCT. Rather, the Order merely provides that these costs ***will not*** be borne by ERCOT customers, which only incidentally forces SCT to decide whether to pay the costs or abandon the project. The Commission is well within its jurisdiction to deny costs from ERCOT-wide TCOS rates as a condition of approving a CCN, and this authority is not undermined simply because it results in SCT either paying the costs or abandoning the project. This is no

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[37] *Pub. Util. Comm'n of Texas v Texas Tel. Ass'n*, 163 S.W.3d 204, 213 (Tex. App.—Austin 2005, no pet.).

[38] *See* TIEC's Motion for Rehearing at 3; TIEC's Response to SCT's Motion for Rehearing at 9-10.

different from denying any cost from the regulated rates of an investor-owned utility, where the effect is that shareholders—who are not directly regulated by the Commission—are forced to bear the costs instead. Decades of Commission precedent affirm that this is authorized under PURA.

III. CONCLUSION

For the reasons discussed above, the Commission's Final Order does not violate the dormant Commerce Clause or the FERC Interconnection Order, nor does it overstep the Commission's authority under PURA. To clarify the intent of the Order, TIEC reurges the additional findings and wording changes proposed in its initial Motion for Rehearing. With those changes, the Commission should affirm its Order and reject SCT's arguments.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Michael McMillin, Attorney for Texas Industrial Energy Consumers, hereby certify that a copy of the foregoing document was served on all parties of record in this proceeding on this 14th day of December, 2016 by hand-delivery, facsimile, electronic mail and/or First Class, U.S. Mail, Postage Prepaid.

Michael McMillin