

131 FERC ¶ 61,287
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

American Electric Power Service Corporation

Docket Nos. EC10-8-001
EC10-10-001

ORDER ON REHEARING

(Issued June 29, 2010)

1. On February 5, 2010, Golden Spread Electric Cooperative Inc. (Golden Spread) filed a request for rehearing of the Commission's order approving the applications by American Electric Power Service Corporation (AEP) on behalf of AEP Texas Central Company (Texas Central) and AEP Texas North (Texas North) (together, Applicants) for the disposition of facilities by Texas Central and Texas North to Electric Transmission Texas (ETT).¹ For the reasons discussed below, we deny the request for rehearing.

I. Background

2. In the January 6 Order, the Commission provided authorization under Federal Power Act (FPA) section 203(a)(1)² for Texas Central and Texas North to dispose of certain transmission facilities located within the Electric Reliability Council of Texas (ERCOT) to ETT. The Commission found that the disposition would not adversely affect competition, rates, or regulation, nor would the disposition result in cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company.

3. Golden Spread filed protests to the applications, arguing, among other things, that the applications left the status of certain interconnection agreements between three of Golden Spread's members and Texas North unclear. Golden Spread also argued that the Applicants made no commitment that the terms and conditions of these interconnection agreements would be honored by ETT if the application was approved. In the January 6 Order, the Commission found that the arguments raised by Golden Spread with respect to these interconnection agreements were not germane to the proceeding. The Commission

¹ *American Electric Power Service Corp.*, 130 FERC ¶ 61,013 (2010) (January 6 Order).

² 16 U.S.C. § 824b(a)(1) (2006).

found that: “the proposed transactions do not alter the interconnection agreements held by Golden Spread, and Golden Spread does not provide any evidence that these agreements would be affected by the proposed transactions. Any changes to the interconnection agreements would be subject to Commission approval in a separate proceeding.”³

II. Request for Rehearing

4. Golden Spread seeks rehearing of the January 6 Order. Golden Spread argues that the Commission failed to engage in reasoned decision making by finding, with no support in the record, that permitting the transfer of facilities by an entity regulated by the Commission, and with which Golden Spread’s members have contractual rights relating to those facilities, to an entity that is not regulated by the Commission and that has no contractual relationship with Golden Spread’s members, would not affect the contractual rights of Golden Spread or its members.

5. In its protests, Golden Spread argued that an evidentiary hearing is necessary to ensure that service Golden Spread’s members receive from Texas North pursuant to the existing interconnection agreements is not impaired. In its rehearing request, Golden Spread argues that the Commission authorized the proposed transactions without a hearing and without sufficient evidence that the proposed transactions will not adversely impact the terms and conditions of the interconnection agreements and that those agreements will be honored by ETT. Golden Spread states that, while the Commission found that the interconnection agreements will not be affected by the proposed transactions, the January 6 Order in fact authorizes the disposition of the facilities to which those interconnection agreements pertain, thereby rendering those agreements meaningless.⁴

6. Specifically, Golden Spread states that, as a result of the transactions, Golden Spread’s members will be physically interconnected with facilities owned by ETT but have no agreements with ETT and no way of requiring ETT to carry out the obligations which were incumbent on Texas North when Texas North owned those same facilities.

³ January 6 Order, 130 FERC ¶ 61,013 at P 26.

⁴ Golden Spread attached a copy of the Restated and Amended Interconnection Agreement between Texas North and Taylor Electric Cooperative, one of Golden Spread’s member cooperatives, to its request for rehearing. Under the agreement, Texas North is obligated to install, own, operate and maintain standard facilities and equipment for interconnection, including switches, metering and associated equipment, and reclosers. It does not appear from the record, nor does Golden Spread allege, that any of these facilities and equipment, or the ownership thereof, are affected by the proposed transactions.

Accordingly, Golden Spread argues that to the extent the existing interconnection agreement represents a contractual bridge connecting the facilities of one party to the facilities of another party, the effect of the Commission's January 6 Order is to make the agreement a "bridge to nowhere."⁵

7. Golden Spread also states that the Commission did not address its argument that the proposed disposition of assets might impair Golden Spread's ability to utilize the "to, from and over tariffs" adopted in Docket No. EL79-8, to serve its members' ERCOT loads.⁶

8. On February 19, 2010, AEP filed a comment on the request for rehearing, and on March 1, 2010, Golden Spread filed an answer to AEP's comment.

III. Discussion

9. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2010), bars answers to rehearing requests. Thus, we will reject AEP's and Golden Spread's answers.

10. We deny the request for rehearing. To the extent that the concerns raised by Golden Spread may be relevant to the consideration of whether the proposed transactions are consistent with section 203 of the FPA, Golden Spread has not provided facts sufficient to justify Commission action. Golden Spread provides no evidence or reason for the Commission to conclude that the proposed transactions would adversely affect competition, rates, or regulation, or would result in cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company. Golden Spread only provides speculation about the potential effects of the proposed transactions on certain of its members' interconnection agreements, which Applicants have indicated will remain unchanged after the proposed transactions are completed. In this regard, Golden Spread does not allege that the interconnection agreements bar the sale of Texas North's transmission facilities to ETT or otherwise require Texas North to own those transmission facilities, or that the transactions authorized by the January 6 Order would constitute a default or grounds for non-performance by Texas North. As the Commission stated in the January 6 Order, the proposed transactions do not alter the interconnection agreements between Golden Spread's members and Texas North. In this regard, we understand AEP's statement that the proposed transaction will not impact any contract that Golden Spread has with AEP⁷

⁵ Golden Spread Request for Rehearing at 3.

⁶ *Central Power and Light Co.*, 17 FERC ¶ 61,078 (1981), *order on reh'g*, 18 FERC ¶ 61,100 (1982).

⁷ AEP Nov. 30, 2009 Answer at 3.

to mean that AEP intends and has the ability to honor any obligation AEP may have under the interconnection agreements. AEP has committed that any changes to the interconnection agreements would be subject to Commission approval in a separate proceeding under section 205 of the FPA.⁸

11. Golden Spread's argument that following the proposed transactions, its members' facilities will be interconnected with transmission lines owned by ETT, an entity that will not be subject to FERC jurisdiction with respect to the interconnection agreements at issue, also does not justify rehearing. AEP noted in its initial application that ETT will be subject to the jurisdiction of the Public Utility Commission of Texas. A shift in regulatory authority from the FERC to a state regulatory authority does not constitute grounds for finding that a proposed transaction is not consistent with section 203 of the FPA, absent a state commission intervention.⁹ With respect to Golden Spread's use of "to, from and over" tariffs adopted as part of the resolution of Docket No. EL79-8, Golden Spread again provides no evidence or reason for the Commission to conclude that there is any effect from the proposed transactions that would justify the Commission finding that the proposed transaction is not consistent with section 203 of the FPA. Absent some factual consideration in the record beyond mere speculation, we see no reason for a hearing on these issues or for the requirement of a compliance filing by the Applicants as requested by Golden Spread.

The Commission orders:

Golden Spread's request for rehearing is hereby denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁸ *Id.* at 4.

⁹ *Aquila, Inc.*, 117 FERC ¶ 61,276, at P 56 (2006).