

132 FERC ¶ 61,261
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

American Electric Power Service Corporation

Docket No. ER10-2057-000

ORDER ACCEPTING AND SUSPENDING PROPOSED RATE SCHEDULES AND
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued September 24, 2010)

1. In this order, we accept for filing the unexecuted restated and amended transmission interconnection agreements between American Electric Power Texas North Company (AEP Texas North) and Southwest Texas Electric Cooperative, Inc. (SW Texas Coop), and AEP Texas North and Taylor Electric Cooperative, Inc. (Taylor Electric) (collectively, Interconnection Agreements) and suspend them for a nominal period, to be effective as of July 28, 2010, subject to refund. We also establish hearing and settlement judge procedures.

I. Background

2. AEP Texas North is one of two parts of American Electric Power Texas (AEP Texas), a unit of American Electric Power, which delivers electricity to 900,000 customers in west and south Texas. AEP Texas provides energy delivery service to consumers.

3. SW Texas Coop is a member-owned electric utility that provides electric service to 9,109 customers within 7,200 square miles of rural West Texas.

4. Taylor Electric is a distribution cooperative with headquarters in Merkel, Texas, serving portions of eight counties.

5. Golden Spread Electric Cooperative, Inc. (Golden Spread) is a tax-exempt, consumer-owned public utility, organized in 1984 to provide service for its rural distribution cooperative members, including SW Texas Coop and Taylor Electric. Its 16-member system serves more than 185,000 retail consumers located in the Oklahoma panhandle and an area covering 24 percent of Texas land area including the Panhandle, South Plains and Edwards Plateau regions.

II. Filing

6. On July 29, 2010, American Electric Power Service Corporation (AEP), on behalf of AEP Texas North, submitted two unexecuted interconnection agreements designed to restate and replace existing interconnection agreements between AEP Texas North and SW Texas Coop, and AEP Texas North and Taylor Electric.

7. AEP states that the Interconnection Agreements reflect changes in the deregulated Texas wholesale electric market and the terms and conditions necessary to insure the integrity of the transmission system by providing for new or modified facility connections required by current electric utility industry standards, rules, and practices. The Interconnection Agreements also update the existing points of interconnection between AEP Texas North and SW Texas Coop, and AEP Texas North and Taylor Electric.

III. Notice of Filing and Responsive Pleadings

8. Notice of AEP's filing was published in the *Federal Register*, 75 Fed. Reg. 48,962 (2010), with interventions, comments, and protests due on or before August 19, 2010. Golden Spread filed a timely motion to intervene and protest, and requested suspension, hearing, and settlement judge procedures.

9. Golden Spread protests several aspects of the Interconnection Agreements.¹ However, Golden Spread believes that it will be possible for Golden Spread and AEP to negotiate a mutually acceptable resolution of Golden Spread's concerns. Accordingly, Golden Spread requests that the Commission impose a nominal suspension, accept the Interconnection Agreements subject to refund, and permit the parties to attempt to resolve these issues through direct negotiations. Among other things, Golden Spread protests AEP's drafting of the Interconnection Agreements as bilateral agreements between AEP and either SW Texas Coop or Taylor Electric.² Golden Spread, as a generation and transmission cooperative, asserts that it performs a variety of services on behalf of its members, including certain services that the Interconnection Agreements purport to assign as obligations of either SW Texas Coop or Taylor Electric. Thus, Golden Spread asserts that the Interconnection Agreements should be redrafted as three-way agreements.

10. Next, Golden Spread protests AEP's proposal to allow any party, at the end of the initial five-year term of the Interconnection Agreements, to cancel the agreements simply

¹ Golden Spread Protest at 3-6.

² *Id.* at 3.

by giving written notice to the other party.³ Golden Spread states that this provision permits AEP to leave retail customers of SW Texas Coop and Taylor Electric entirely without service, even if Golden Spread and its members have scrupulously complied with all of the obligations imposed on them by the Interconnection Agreements.

11. Golden Spread also objects to the provision of the Interconnection Agreements that permits assignment of a party's interest in its agreement without the other party's consent. It states that this provision would permit AEP to assign its interest in the Interconnection Agreements to entities outside of the Commission's jurisdiction, thus depriving Golden Spread of the ability to enforce a FERC-jurisdictional agreement before the Commission.⁴ Golden Spread also objects to the provision that provides that should a regulatory authority with jurisdiction over the parties order a change in the terms of the Interconnection Agreements, and the parties then prove unable to negotiate a satisfactory replacement term, either party may terminate its agreement by giving sixty days' written notice.⁵ Golden Spread states that this provision would permit AEP to veto unilaterally a contractual provision despite the Commission's finding that such provision is just and reasonable.

12. Finally, Golden Spread notes that both Interconnection Agreements contain a new facility schedule for a new delivery point.⁶ Golden Spread states that each of these facility schedules includes language not found in facility schedules for previous points of interconnection, obligating the distribution cooperative to pay costs incurred by AEP if the point of interconnection is cancelled by SW Texas Coop or Taylor Electric because the point of interconnection is not needed.⁷ Golden Spread asserts that the facility schedule provisions should specify that the obligation to pay for the cost of facilities should be net of depreciation and positive salvage value, and the interconnection customer should have the option to take possession of materials and/or equipment in lieu of paying for removal.

³ For the same reasons, Golden Spread objects to provisions that it asserts appear to permit either party to disconnect individual points of interconnection by giving twelve months' written notice. Golden Spread asserts that it appears that AEP could give such notice of disconnection without even waiting until the expiration of the initial term of the agreement. *Id.* at 5.

⁴ *Id.*

⁵ *Id.* at 5-6.

⁶ *Id.* at 6.

⁷ *Id.*

IV. Discussion

A. Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Substantive Matters

14. In its protest, Golden Spread raises issues of fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below. Accordingly, our preliminary analysis indicates that the Interconnection Agreements have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful. Therefore, we will accept them for filing, suspend them for a nominal period, make them effective on July 28, 2010, subject to refund, and set them for hearing and settlement judge procedures.

15. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁸ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.⁹ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

⁸ 18 C.F.R. § 385.603 (2010).

⁹ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

The Commission orders:

(A) The Interconnection Agreements are hereby accepted for filing, suspended for a nominal period, to become effective on July 28, 2010, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning AEP Texas North's proposed rate schedules. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2010), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(D) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of

establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.