

137 FERC ¶ 61,230
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

City of College Station, Texas

Docket No. TX11-2-000

PROPOSED AND FINAL ORDER DIRECTING INTERCONNECTION AND
TRANSMISSION SERVICES
AND APPROVING SETTLEMENT AGREEMENT

(Issued December 19, 2011)

1. In this order, we grant the City of College Station, Texas's (College Station) request under section 210 of the Federal Power Act (FPA)¹ and direct Entergy Texas, Inc. (Entergy Texas) to provide an interconnection between Entergy Texas's College Station Junction and College Station's Switch Station. We also grant College Station's request under section 211 of the FPA² and direct Entergy Texas to provide transmission services for power flows within the Electric Reliability Council of Texas's (ERCOT) transmission grid. The directed interconnection and transmission services will only be used during emergencies declared by the Governor of Texas, as set forth in the Texas Public Utility Regulatory Act.³ We also approve a settlement among the parties and direct Entergy Texas to file an executed Interconnection Agreement.

I. Background

2. ERCOT is a regional reliability entity and independent system operator serving most of Texas, including 85 percent of Texas load and 75 percent of its land area. College Station, a city with a population of approximately 94,000, is situated in the east central area of Texas and is part of the ERCOT region. The SERC Reliability Corporation (SERC) serves as a regional reliability entity in all or portions of 16 central

¹ 16 U.S.C. § 824i (2006).

² 16 U.S.C. § 824j (2006).

³ Texas Util. Code. Ann. § 39.151 (Vernon 1998 & Supp. 2005).

and southeastern states, including a small portion of eastern Texas. The ERCOT and SERC regions are electrically isolated from each other, and the eastern portion of ERCOT borders the western portion of the SERC region in eastern Texas. Entergy Texas is a corporation organized under Texas law that is a wholly owned subsidiary of Entergy Corporation, a utility holding company. Entergy Texas is a public utility that owns and operates an electric utility system in Texas, serving approximately 408,000 customers in southeastern Texas. Entergy Texas is part of the SERC region.

3. College Station explains that several areas of Texas have suffered extended electric outages in the recent past, primarily resulting from hurricane damage. College Station reports that, in certain circumstances, emergency interconnections with neighboring utility systems that operate in other reliability regions have facilitated service restoration in the affected areas. As a result of these recent declared weather emergencies, the Texas legislature enacted certain reliability legislation which prompted the Public Utility Commission of Texas (Texas Commission) staff to recommend that College Station and Entergy Texas construct an interconnection that would normally be open, but could be closed under declared emergencies to permit Entergy Texas load in the College Station area to be connected with ERCOT, once the load is disconnected from its normal configuration. This interconnection could provide emergency support to both the ERCOT and Entergy Texas systems. The ERCOT grid could isolate part of its transmission system and transfer approximately 100 MW of ERCOT load in the College Station area to Entergy Texas's transmission system in the SERC region to permit faster service restoration in the event of a prolonged outage due to a declared emergency. Conversely, the proposed interconnection would allow Entergy Texas, during a declared emergency, to transfer a significant amount⁴ of its western transmission system to the ERCOT system without negatively affecting the ERCOT system or the remainder of the Entergy Texas system.⁵

4. To facilitate the proposed emergency use-only service, College Station and Entergy Texas plan to construct a 138 kV interconnection between Entergy Texas's College Station Junction and College Station's Switch Station. Entergy Texas's direct interconnection facilities will include a 138 kV breaker, metering, and a portion of the fiber tie for communications at its College Station Junction and approximately 500 feet of 138 kV transmission line that will terminate on College Station's 138 kV A-frame dead-end structure. College Station's facilities will include ERCOT metering; a portion of the fiber tie for communications; tying into the existing ring bus at College Station's Switch Station by installing an additional 138 kV breaker, associated switches and

⁴ Current studies indicate that approximately 170 MW of connected load in the SERC region could be transferred to the ERCOT system. Application at 2.

⁵ *Id.*

buswork, and an A-frame dead-end structure with isolation switches; and making the associated engineering and programming changes to accommodate the proposed switching schemes. Entergy Texas will also make the necessary modifications to allow disconnection of a portion of Entergy Texas's transmission grid to be transferred to the College Station interconnection.

5. College Station states that it is willing to interconnect with Entergy Texas for use during declared emergencies, and Entergy Texas is willing to provide the requested transmission service during declared emergencies, only if College Station obtains a Commission order under sections 210, 211, and 212⁶ of the FPA in which the Commission agrees to maintain the jurisdictional status quo of College Station, ERCOT, and other ERCOT entities.⁷

II. College Station Application and Offer of Settlement

6. College Station requests that the Commission issue an order requiring the physical interconnection of the 138kV transmission line, to be constructed by Entergy Texas, with the transmission facilities of College Station at its Switch Station substation. College Station also requests that the order direct Entergy Texas to provide, during declared emergencies, transmission service to College Station using the proposed emergency use-only interconnection.

7. In addition, College Station submitted an executed Offer of Settlement between College Station and Entergy Texas. The Offer of Settlement resolves the terms and conditions for the service. The Offer of Settlement provides for the execution by College Station and Entergy Texas of an unexecuted Interconnection Agreement, which is attached to the Offer of Settlement. The Interconnection Agreement specifies the terms and conditions that would govern the interconnection of College Station's and Entergy Texas's transmission facilities, including the facilities that will be constructed by College Station and Entergy Texas and the allocation of cost responsibility between them. In the Offer of Settlement, College Station and Entergy Texas have also agreed that, subject to Commission approval of the College Station Application and the Offer of Settlement, College Station and Entergy Texas will provide transmission services pursuant to a declared emergency by the Governor of Texas.

8. The Offer of Settlement is conditioned upon, among other things, the Commission issuing an order consistent in all material respects with the proposed Order Directing Interconnection and Transmission Services and Approving Settlement attached to the

⁶ 16 U.S.C. § 824k (2006).

⁷ College Station Application at 4, 13-14.

Offer of Settlement. Consistent with the Commission's previous orders,⁸ the proposed order would be issued pursuant to sections 210, 211, and 212 of the FPA and, therefore, would retain College Station's, ERCOT's, and other ERCOT utilities' status as transmission and distribution companies that are not "public utilities" within the meaning of section 201(b)(2) of the FPA.⁹

III. Notice, Intervention, and Responsive Pleadings

9. Notice of College Station's application was published in the *Federal Register*, 76 Fed. Reg. 61,687 (2011), with interventions and protests due on or before October 27, 2011. A timely motion to intervene was filed by Bryan Texas Utilities. Timely motions to intervene and comments were filed by CenterPoint Energy Houston Electric, LLC (CenterPoint) and Entergy Services, Inc. (Entergy), acting as agent for the Entergy Operating Companies¹⁰ and on behalf of Entergy Texas. The Texas Commission filed a notice of intervention and comments. On October 28, 2011, the Texas Commission filed supplemental comments answering CenterPoint's comments. On November 3, 2011, College Station and Entergy filed a joint answer to CenterPoint's comments.

10. The Texas Commission and Entergy both support College Station's application, as long as College Station obtains an order under sections 210, 211, and 212 of the FPA in which the Commission agrees to maintain the jurisdictional status quo of College Station, ERCOT, and other ERCOT entities.¹¹

11. While generally supportive of College Station's application, CenterPoint asserts that the application is unclear as to whether the SERC load available for transfer during a declared emergency is entirely within the state of Texas and whether it would be disconnected from the rest of the SERC region such that emergency energy flows would

⁸ See *Brazos Elec. Power Coop. Inc.*, 118 FERC ¶ 61,199 (2007) (*Brazos*); and *Kiowa Power Partners, LLC*, 99 FERC ¶ 61,251 (2002).

⁹ See 16 U.S.C. § 824(e) (2006).

¹⁰ The Entergy Operating Companies include: Entergy Arkansas, Inc.; Entergy Gulf States Louisiana L.L.C.; Entergy Louisiana, LLC; Entergy Mississippi, Inc.; Entergy New Orleans, Inc.; and Entergy Texas, Inc. Entergy Services, Inc. is a service company affiliate of the Entergy Operating Companies and acts as their agent with respect to the execution and administration of certain contracts in proceedings at the Commission.

¹¹ Texas Commission Comments at 3, Entergy Comments at 4-5.

not be involved in interstate commerce. CenterPoint states that, based on discussions with College Station, it understands that, when SERC load is served during a declared emergency, this load will be located entirely within the state of Texas and isolated from the rest of the Entergy Texas transmission system in the SERC region before ERCOT serves load. In order to ensure this understanding, CenterPoint requests that the Commission condition its approval on fully isolating the SERC load located in Texas from the Entergy Texas transmission system in the SERC region before any emergency transmission service is provided.¹²

12. CenterPoint also notes that paragraph (g) in the Offer of Settlement is ambiguous as to whether College Station “may be or will be” transmitting electricity in interstate commerce via the transmission service that Entergy Texas is directed to provide pursuant to the requested section 211 order or whether College Station “may be or will be” transmitting electricity in interstate commerce when ERCOT or College Station is serving SERC load. CenterPoint requests that this provision in the Offer of Settlement be clarified to maintain the current jurisdictional status quo so that neither ERCOT nor any ERCOT entity becomes a public utility, as defined in section 201(e) of the FPA.¹³ In its supplemental comments, the Texas Commission agrees with CenterPoint that the Commission should condition the interconnection on the SERC load located in Texas being fully isolated from the Entergy transmission system in the SERC region before any emergency transmission service is provided.¹⁴

¹² CenterPoint Comments at 6-7.

¹³ CenterPoint Comments at 7-8. CenterPoint suggests the following edits to paragraph (g) in the Offer of Settlement:

As a result of this Offer of Settlement, College Station may be or will be ~~transmitting~~receiving electricity ~~into or from~~ areas which are operating in interstate commerce by virtue of the interconnection required by the Offer of Settlement and the transmission of electric power by [Entergy Texas] pursuant to the Section 211 order to, from or within the ERCOT grid, including the ownership or use of facilities therefore, College Station, however, shall not be subject to jurisdiction under Section 201 of the FPA by virtue of Section 201(b)(2) of the FPA.

¹⁴ Texas Commission Supplemental Comments at 1-2.

13. In their joint answer, College Station and Entergy confirm CenterPoint's understanding. Additionally, although College Station and Entergy state that they do not believe modifications are necessary to paragraph (g) in the Offer of Settlement, they do not oppose modifying the Offer of Settlement per CenterPoint's suggestion.¹⁵

IV. Discussion

A. Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. As the subject of the request for a section 210 and 211 order and as a party to the Offer of Settlement, Entergy is already a party to the proceeding. Therefore, we dismiss Entergy's motion to intervene as moot, and consider its comments. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept College Station and Entergy's answer and Texas Commission's supplemental comments because they have provided information that has assisted us in our decision-making process.

B. Statutory Requirements

15. Sections 210, 211, and 212 of the FPA outline specific requirements for a Commission order that requires interconnection or transmission. Below, we discuss the relevant requirements of each section.

1. Jurisdiction

16. Pursuant to section 210(a) of the FPA, any "electric utility" may request an order requiring physical interconnection of its facilities with "the transmission facilities of any electric utility." Pursuant to section 211(a) of the FPA, any "electric utility" may request an order requiring a "transmitting utility to provide transmission services." An "electric utility is defined under the FPA, in relevant part, as a "person or Federal or State agency ... that sells electric energy."¹⁶ A "transmitting utility" is defined in section 3(23) of the FPA as an entity that "owns, operates, or controls facilities used for the transmission of electric energy - - (A) in interstate commerce; (B) for the sale of electric energy at wholesale."

¹⁵ College Station and Entergy Answer at 3-6.

¹⁶ 16 U.S.C. § 796 (2006).

17. College Station operates a municipally-owned electric utility system serving the electric needs of customers within its certificated service area. As a result, we find that College Station is an “electric utility” eligible to request an order requiring interconnection and transmission services pursuant to sections 210 and 211 of the FPA.

18. Entergy Texas owns and operates transmission facilities that are used for the sale of electric energy at wholesale. As such, Entergy Texas qualifies as an “electric utility” that can be the subject of a Commission order under section 210 of the FPA. Entergy Texas is also a public utility that owns and operates facilities used for the transmission of electric energy in interstate commerce and at wholesale, making it a “transmitting utility” for purposes of the section 211 of the FPA. Accordingly, the Commission has jurisdiction under sections 201(b), 210, and 211 of the FPA to issue an order requiring Entergy Texas to interconnect with College Station and provide transmission service during declared emergencies. Exercise of this jurisdiction, however, will not cause College Station, ERCOT, or any ERCOT utility that is not already a public utility to be a public utility under Part II of the FPA.¹⁷

2. Good Faith Request

19. College Station, Entergy Texas, and the Texas Commission have been engaged in discussions concerning the technical and legal issues raised by the proposed emergency use-only interconnection and related transmission service since early February 2011. Both College Station and Entergy Texas are willing to interconnect and provide transmission service during declared emergencies pursuant to a Commission order under sections 210, 211, and 212 of the FPA.¹⁸ In addition, College Station and Entergy Texas have agreed upon the terms and conditions under which both the interconnection and the associated transmission services would be provided, as reflected in the Offer of Settlement filed as part of College Station’s application. Accordingly, the parties have waived their rights under section 213(a) of the FPA,¹⁹ which provides a formal process for discussing specific rates, terms, and conditions of transmission service, and have arrived at a consensus in their own way.

¹⁷ Section 201(b)(2) of the FPA states that compliance with Commission orders under sections 210 or 211 shall not make an entity subject to Commission jurisdiction for any purposes other than the purposes specified in those orders. 16 U.S.C. § 824(b)(2) (2006).

¹⁸ College Station Application at 21.

¹⁹ 16 U.S.C. § 824l(a) (2006).

3. Section 212 (c) – Proposed Order

20. Section 212(c)(1) provides that, before issuing a final order under section 210 or 211, the Commission must issue a proposed order setting a reasonable time for the parties to agree to the terms and conditions for carrying out the order, including the appointment of any compensation for costs. Section 212(c)(2) provides that, if the parties are able to agree within the allotted time, the Commission will issue a final order reflecting the agreed-upon terms and conditions in that agreement, if the Commission finds them acceptable.

21. In the instant application, College Station and Entergy Texas were able to agree upon both the terms and conditions under which the interconnection for emergency purposes would be provided, as well as the terms and conditions under which the associated transmission services would be provided during declared emergencies, as reflected in the fully-executed Offer of Settlement filed as part of College Station's application. As the parties have come to an agreement regarding the rates, terms, and conditions for carrying out the requested services, we find it unnecessary to issue a proposed order as provided in section 212(c)(1). Accordingly, we now issue this combined proposed and final order incorporating by reference the terms and conditions agreed upon by the parties in the Offer of Settlement, except as otherwise provided herein.²⁰

4. Public Interest and Reliability

22. Section 210(c) states that no order for interconnection pursuant to section 210 of the FPA may be issued by the Commission unless the Commission determines that the application is in the public interest and: (1) would encourage overall conservation of energy or capital; (2) optimize the efficiency of use of facilities and resources; or (3) improve the reliability of any electric utility system of Federal power marketing agency to which the order applies. The order must also meet the requirements of section 212. The issuance of an order requiring transmission services under section 211(a) of the FPA requires a finding that the order is in the public interest and meets the requirements of section 212 of the FPA. In addition, section 211(b) precludes a transmission order that would unreasonably impair the continued reliability of affected electric systems.

23. We find that the emergency-use only interconnection and the related transmission service requested by College Station and Entergy Texas will be in the public interest. The emergency interconnection and transmission service contemplated by College Station's application would improve the reliability, efficiency, and economy of the transmission service upon which College Station and Entergy Texas will rely

²⁰ See, e.g., *Brazos*, 118 FERC ¶ 61,199 at P 32.

during a declared emergency, increasing the reliability of both the ERCOT grid and the SERC reliability area. As such, we find that the public interest will be served by directing Entergy Texas to provide College Station with the requested interconnection for emergency purposes and by directing Entergy Texas to provide the requested transmission services during declared emergencies, in accordance with this order. For similar reasons, we find that ordering the requested transmission services will not unreasonably impair the continued reliability of the affected electric systems.

5. Rates, Terms, and Conditions

24. Section 212(a) requires that the transmitting utility subject to an order under Section 211 “provide wholesale transmission services at rates, terms, and conditions which permit the recovery by such utility of all costs incurred in connection with the transmission services and necessary associated services....” Furthermore, “such rates, charges, terms, and conditions shall promote the economically efficient transmission and generation of electricity and shall be just and reasonable, and not unduly preferential.”

25. Section 212(k) provides that any order under section 211 “requiring provision of transmission services in whole or in part within ERCOT shall provide that any ERCOT utility which is not a public utility and the transmission facilities of which are actually used for such transmission service is entitled to receive compensation based, insofar as practicable and consistent with subsection (a), on the transmission ratemaking methodology used by the Public Utility Commission of Texas.”²¹

26. Pursuant to the Offer of Settlement, College Station and Entergy Texas have agreed to the terms and conditions under which the physical interconnection of their facilities will be established, so as to permit the delivery over the interconnection in the event of a declared emergency. The terms and conditions of the interconnection are specified in the unexecuted Interconnection Agreement that is attached to the Offer of Settlement. The Interconnection Agreement provides for: (1) the interconnection facilities that will be constructed, owned, operated, and maintained by Entergy Texas; and (2) the interconnection facilities that will be constructed, owned, operated, and maintained by College Station. Entergy Texas and College Station will be compensated for the interconnection facilities and supporting facilities in accordance with the rules of the Texas Commission, and both have made application to the Texas Commission for cost recovery associated with the proposed emergency-use only interconnection. With respect to the transmission services to be provided to College Station, Entergy Texas will be compensated in accordance with its Open Access Transmission Tariff (OATT), which is on file with the Commission. Conversely, in the event that transmission services may

²¹ 16 U.S.C § 824k(k) (2000).

need to be provided to Entergy Texas, College Station will be compensated in accordance with the ratemaking methodology of the Texas Commission.

27. The Commission has previously found that the ERCOT protocols and procedures regarding interconnection and transmission service meet the requirements of section 212 for purposes of directing interconnection and transmission services under sections 210 and 211. Here, under the Offer of Settlement, Entergy Texas and College Station have agreed to utilize the Texas Commission rules and ratemaking methodology for the proposed interconnection and any transmission services provided by College Station. Further, under the Offer of Settlement, Entergy Texas has agreed to provide transmission services to College Station pursuant to the rates, terms, and conditions of its Commission-approved OATT. Therefore, we find that the Offer of Settlement meets the requirements of sections 212(a) and 212(k).

6. Other Regulatory Requirements

28. Section 211(c)(2) prevents the issuance of an order that would require the transmitting utility subject to the order to transmit energy which would replace energy required by contract to the applicant or replace energy currently provided to the applicant pursuant to a rate schedule on file with the Commission. College Station does not purchase electricity from Entergy Texas, under contract or otherwise. Accordingly, this order does not compel any transaction prohibited by section 211(c)(2).

29. Section 212(g) prohibits the issuance of an order which is inconsistent with any state law which governs the retail marketing of electric utilities. Also, section 212(h) provides that no order under the FPA may require transmission of electric energy: (1) directly to an ultimate consumer; or (2) to or for the benefit of an entity which would otherwise sell electric energy directly to an ultimate consumer, subject to certain exceptions. We find that the instant order does not compel any transaction prohibited by either section 212(g) or 212(h).²²

C. CenterPoint's Comments

30. CenterPoint requests: (1) the Commission condition its approval on fully isolating the SERC load located in Texas from the Entergy Texas transmission system in the SERC region before any emergency transmission service is provided; and (2) the Commission require certain clarifications to paragraph (g) in the Offer of Settlement. As described in College Station's application, the proposed interconnection is not meant for the regular transmission and sale of power – it will only be closed during declared emergencies. During those times the interconnection is closed and College Station load

²² See *Brazos*, 118 FERC ¶ 61,199 at P 47.

is transferred to Entergy Texas, a synchronous interconnection between ERCOT and SERC will not be created, because College Station load will be disconnected from the rest of ERCOT before any emergency transmission service is provided. Although the application does not request a section 211 order directing College Station to provide transmission service to Entergy Texas, College Station may, in some instances during emergencies, provide such service. A section 211 order is not necessary for such service because any such transmission service will be isolated within Texas. Entergy Texas load will be required to disconnect from SERC before transferring load to College Station. Therefore, in those instances, the interconnection will not be used to transmit power in interstate commerce; all load served will be isolated wholly within the state of Texas.

31. We are not persuaded that modification of the Offer of Settlement is necessary to alleviate CenterPoint's concerns, because CenterPoint's requested clarification does not alter the manner in which College Station and Entergy intend to operate the proposed interconnection. The changes CenterPoint wishes to make are to a section of the Offer of Settlement that describes the principles that should be contained in the Commission order in this proceeding. Those principles are clearly described here. Moreover, the Offer of Settlement governs the rates, terms, and conditions of the services, but does not affect ERCOT's jurisdictional status.

32. Thus, we find that it is unnecessary to adopt CenterPoint's proposed condition. The transmission services that may be provided by College Station during declared emergencies are limited in the manner recommended by CenterPoint. Specifically, in the event that Entergy Texas needs to interconnect to College Station to receive emergency service, the interconnection service directed by this order is limited to situations in which the SERC load in Texas has been fully isolated before it is interconnected to College Station and College Station provides any emergency services.²³ Thus, the parties can be assured that ERCOT's jurisdictional status will not be jeopardized by any of the interconnection or transmission services directed by or contemplated in this order.

D. Conclusion

33. For the reasons discussed in this order, we find that College Station's application satisfies the requirements of sections 210, 211, and 212 of the FPA. Accordingly, we will direct Entergy Texas to establish the requested emergency use-only interconnection,

²³ We also note that the Interconnection Agreement, which was filed with the Offer of Settlement, clearly states that the point of interconnection can only be closed after either Entergy Texas or College Station separates the portion of its system that is to be served "from the rest of their respective transmission systems by isolation at various points." Application, Attachment E, Appendix 2 (unexecuted Interconnection Agreement) at 4.

and we will also direct Entergy Texas to provide the requested transmission services during declared emergencies in accordance with the terms of the settlement between College Station and Entergy Texas. Finally, we will approve the Offer of Settlement.

The Commission orders:

(A) Entergy Texas is hereby directed to interconnect with College Station pursuant to section 210 of the FPA under the applicable tariff and rate schedules, as discussed in the body of this order.

(B) Entergy Texas is hereby directed to provide transmission services to College Station pursuant to section 211 of the FPA under the applicable tariff and rate schedules, as discussed in the body of this order.

(C) The Offer of Settlement is hereby approved and its terms incorporated by reference, as discussed in the body of this order.

(D) Compliance with this order and the Offer of Settlement shall not cause ERCOT, College Station, or any other ERCOT utility or other entity that is not already a public utility to become a “public utility” as that term is defined by section 201 of the FPA and subject to the jurisdiction of the Commission for any purposes other than for the purpose of carrying out the provisions of sections 210 and 211 of the FPA.

(E) This is a final order, effective upon the date of issuance.

(F) Entergy Texas is hereby directed to file an executed Interconnection Agreement within 30 days of the date of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.