

149 FERC ¶ 61,015
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

Golden Spread Electric Cooperative, Inc., and
Sharyland Utilities, L.P.

Docket No. EL14-81-000

ORDER GRANTING PETITION FOR DECLARATORY ORDER

(Issued October 3, 2014)

1. In this order, we grant a petition for a declaratory order (Petition) filed by Golden Spread Electric Cooperative, Inc. (Golden Spread) and Sharyland Utilities, L.P. (Sharyland) (collectively, Petitioners) requesting that the Commission: (1) disclaim jurisdiction over transmission and interconnection facilities that would deliver power from the Antelope Elk Energy Center, located solely within Texas, to the Electric Reliability Council of Texas (ERCOT) electric grid, as well as the transmission and sales of energy over those facilities; and (2) confirm, based on the specific facts and circumstances set out in the petition, that Golden Spread may operate the proposed Antelope Elk Energy Center as a switchable generation resource between the Southwest Power Pool, Inc. (SPP) and ERCOT grids. We also grant Petitioners' request that we declare that the electric utilities in ERCOT that are not currently subject to the Commission's jurisdiction as "public utilities" under the Federal Power Act (FPA) will not become public utilities as a result of the interconnection of the Antelope Elk Energy Center with the ERCOT grid.

I. Background

2. On October 6, 2008, the Public Utility Commission of Texas (Texas Commission) issued an order that: (1) designated five Competitive Renewable Energy Zones (CREZ) throughout Texas; (2) determined that transmission lines should be constructed to interconnect the CREZs with the transmission grid controlled by ERCOT; and (3) identified the major CREZ transmission improvements to be constructed.¹ The

¹ *Petition for Designation of Competitive Renewable-Energy Zones*, Docket No. 33672 (Public Utility Commission of Texas, Oct. 6, 2008) (CREZ Order).

Texas Commission allowed generators in the Texas Panhandle to interconnect with regions outside ERCOT, such as SPP, as long as they did not simultaneously interconnect with ERCOT.²

3. To preserve the jurisdictional *status quo*, the Texas Commission required that either the generators themselves or the transmission service provider that interconnects the generator to the ERCOT grid obtain an order from the Commission disclaiming jurisdiction over: (1) the proposed transmission lines to ERCOT; (2) transmission service over the proposed transmission lines; and (3) the utilities in ERCOT that are not currently public utilities under the FPA.³ The Texas Commission required that such disclaimer be obtained as a condition precedent to approving a certificate of convenience and necessity to the transmission service provider for construction of the CREZ lines.⁴

4. After issuance of the CREZ Order, the Texas Commission issued another order determining which entities would be assigned as transmission service providers to construct, own, and operate the CREZ lines. In that order, the Texas Commission assigned the transmission service provider role for the Texas Panhandle region to Cross Texas Transmission, LLC and Sharyland.⁵

5. Golden Spread is a non-profit electric generation and transmission cooperative that serves load within SPP and the western region of ERCOT. Golden Spread is subject to Commission regulation as a public utility.⁶ Sharyland is an investor-owned, Texas-based

² *Id.* at 23.

³ The Texas Commission directed entities to obtain a declaratory order from the Commission similar to the one issued in Docket No. EL06-81-000, a proceeding that involved the interconnection of switchable generation resources to ERCOT and the Southeastern Electric Reliability Council. Petition at 9 (citing *Cottonwood Energy Company, LP*, 118 FERC ¶ 61,198 (2007) (*Cottonwood*)).

⁴ CREZ Order at 24.

⁵ *Petition for Selection of Entities Responsible for Transmission Improvements Necessary to Deliver Renewable Energy from Competitive Renewable-Energy Zones*, Docket No. 35665 (Pub. Util. Comm'n of Texas, May 15, 2009); Electric Transmission Texas, LLC November 6, 2012 Petition for Declaratory Order at 4.

⁶ Petitioners assert that nothing in the Petition alters the *status quo* with respect to Golden Spread's Commission-jurisdictional facilities and transactions outside of ERCOT that are in interstate commerce. Petition at 6.

electric utility that is regulated by the Texas Commission. Sharyland operates as a “wires-only” company within ERCOT.⁷

II. Petition for Declaratory Order

6. On July 3, 2014, Petitioners filed the instant Petition. In support, they explain that the Antelope Elk Energy Center comprises Golden Spread’s existing Antelope Generating Station (Antelope), a 168.12 MW natural gas-fired facility, consisting of eighteen 9.34 MW natural gas-fired, quick-start reciprocating engine generators, that is currently interconnected to the SPP grid, and the planned Elk Generating Station (Elk), which will consist of three 202 MW natural gas-fired combustion turbines, with the possibility of adding a fourth 202 MW unit in the future. The Antelope Elk Energy Center will be interconnected to SPP through two connections and will also be interconnected with ERCOT over the planned Sharyland transmission interconnection facilities, an approximately 55-mile long 345 kV single-circuit transmission line on double-circuit capable structures. Golden Spread will also build and own generator interconnection facilities within the Antelope Elk Energy Center to interconnect with Sharyland’s transmission interconnection facilities.⁸ The proposed point of interconnection with ERCOT is located on existing transmission facilities built and operated by Sharyland pursuant to the CREZ initiative and for which the Commission has already disclaimed jurisdiction.⁹

7. Petitioners state that, upon completion of the generator and transmission interconnection facilities, the Antelope units and one Elk unit will be able to interconnect as switchable generation resources with either SPP or ERCOT.¹⁰ Petitioners aver that the

⁷ *Id.* at 5-6.

⁸ *Id.* at 6-8.

⁹ *Cross Texas Transmission, LLC, et al.*, 129 FERC ¶ 61,106 (2009) (*Cross Texas*).

¹⁰ Petitioners state that the SPP Market Working Group, in consultation with SPP staff, SPP’s Market Monitor, and other SPP stakeholders, found that the existing SPP Integrated Marketplace Protocols, business practices, guidelines, and other governing documents accommodated and did not preclude grid switching. Golden Spread further coordinated with SPP operations staff with regard to providing SPP sufficient unit availability information for performing the Multi-Day Reliability Assessment. Golden Spread and ERCOT developed an agreed-upon process for operating switchable generation resources between ERCOT and SPP. Petition at 21-24, Attachment GS-4 (Wise Affidavit).

generation resources and generator interconnection facilities will include equipment and procedures to ensure that simultaneous interconnection with SPP and ERCOT will not occur. Further, Petitioners explain that the auxiliary power systems in both the Antelope and Elk units will be configured in such a way as to prevent any flow of power between SPP and ERCOT.¹¹

8. Petitioners state that Golden Spread expects to make all or some of the switchable generation resources available to ERCOT when they are not needed by Golden Spread to meet SPP requirements.¹² Petitioners explain that, due to Golden Spread's summer peaking load shape, the switchable generation resources should be available to ERCOT for the majority of hours in the year. Further, Petitioners state that these resources will be available to either SPP or ERCOT to address emergency conditions pursuant to an emergency coordination agreement between SPP and ERCOT that specifies how each of the switchable resources will be coordinated between the regions during emergency conditions.¹³

9. Petitioners assert that, because the generator interconnection facilities that serve to create switchable generation resources will not permit synchronous or asynchronous interconnection between SPP and ERCOT, the standards for a Commission disclaimer of jurisdiction, as set forth in *Cottonwood* and *Cross Texas*, have been satisfied. Further, Petitioners state that Sharyland's transmission interconnection facilities will be located entirely within Texas and will transmit power that is produced and consumed solely within Texas. Petitioners also assert that the planned switchable generation resources will provide numerous interregional benefits, including economic benefits resulting from increased competition in the ERCOT and SPP markets, reliability benefits through rapid injections of electric energy during extreme events in SPP or ERCOT, and better integration of intermittent wind resources in both regions due to the quick-start capability of units at the Antelope Elk Energy Center.¹⁴

¹¹ Petition at 14-20.

¹² Petitioners note that the Commission has already made clear that a market participant offering an SPP resource into a higher-priced market is not engaging in physically withholding. *Id.* at 30 (citing *Southwest Power Pool, Inc.*, 141 FERC ¶ 61,048, at P 451 (2012); SPP Open Access Transmission Tariff, Attachment AG, Section 4.6.4).

¹³ Petition at 21-24.

¹⁴ *Id.* at 4, 25-32.

III. Notice of Filing and Responsive Pleadings

10. Notice of Petitioners' filing was published in the *Federal Register*, 79 Fed. Reg. 41,547 (2014), with interventions and protests due on or before August 4, 2014. On August 1, 2014, Xcel Energy Services Inc. (Xcel) filed a motion to intervene and motion requesting an extension of time until August 18, 2014 for comments. On August 4, 2014, motions to intervene were filed by Tri-County Electric Cooperative, Inc., SPP, and ERCOT. The Texas Commission filed a notice of intervention. On August 7, 2014, the Commission issued a notice of extension of time for comments up to and including August 18, 2014.

11. On August 18, 2014, Xcel filed comments on behalf of its utility operating company affiliate, Southwestern Public Service Company (SPS). Xcel notes that SPS will be the transmission operator and a transmission planner for the facilities that interconnect to SPP. As such, Xcel states that it has identified some potential reliability and market operations issues associated with Golden Spread's plan to operate several of the Antelope and Elk units as switchable generation resources. However, Xcel states that these issues can be addressed with SPP independent of the Commission's review of the jurisdictional issues presented by the Petition. Thus, Xcel affirms that it does not oppose the specific relief requested by Golden Spread and Sharyland in the Petition.¹⁵

12. On September 2, 2014, Golden Spread filed an answer to Xcel's comments. Golden Spread acknowledges that SPS will be a transmission operator and planner for some of the interconnection and transmission facilities addressed in the Petition. Golden Spread affirms that it will coordinate with SPS to address necessary operational protocols and processes prior to the commencement of operations. However, Golden Spread asserts that Xcel's concerns are beyond the scope of the proceeding and have been or will be addressed in the SPP collaborative process. Accordingly, Golden Spread asserts that the Commission should grant the Petition because it remains unopposed.¹⁶

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 (2014), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

¹⁵ Xcel August 18, 2014 Comments at 2-3.

¹⁶ Golden Spread September 2, 2014 Answer at 1-3.

14. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Golden Spread's answer because it provided information that assisted us in our decision-making process.

B. Commission Determination

15. Section 201(b)(1)¹⁷ of the FPA states that:

The provisions of this Part shall apply to the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce The Commission shall have jurisdiction over all facilities used for such transmission or sale of electric energy. . . .

16. Section 201(e) states that “[t]he term ‘public utility’ . . . means any person who owns or operates facilities subject to the jurisdiction of the Commission under this subchapter,” other than facilities subject to such jurisdiction solely by reason of certain enumerated sections of the FPA, including sections 210, 211, and 212.¹⁸

17. We find that Sharyland would not be a “public utility” under section 201 of the FPA as a result of the proposed transmission interconnection facilities that will deliver power from the Antelope Elk Energy Center to the ERCOT grid because, except as a result of Commission orders issued under sections 210, 211, or 212 of the FPA, it would not own or operate facilities used for transmission or wholesale sale of electric energy in interstate commerce. The Commission finds that the interconnection proposed here does not disturb the jurisdictional *status quo*. All of Sharyland's facilities will be located entirely within the State of Texas, and all electric energy will be produced, transmitted, and consumed solely within the State. Moreover, no energy produced at the Antelope Elk Energy Center will be commingled with energy transmitted in interstate commerce except as a result of Commission orders issued under sections 210, 211, or 212 of the FPA.

18. In addition, based on Petitioners' representations regarding the proposed operation of some of the Antelope Elk Energy Center generation resources as switchable generation resources between the SPP and ERCOT markets, we find that these facilities will be operated in a manner that does not result in the transmission or sale for resale of electric energy involving any commingling of electric energy between ERCOT and SPP, except

¹⁷ 16 U.S.C. § 824b(1) (2012).

¹⁸ *Id.* § 824(e).

as a result of Commission orders issued under sections 210, 211, or 212 of the FPA. As presented by Golden Spread in its petition,¹⁹ nothing in this order will affect our jurisdiction over Golden Spread's facilities and rates.

19. We find that this situation is thus analogous to that presented in *Blue Summit Wind, LLC*,²⁰ *Cross Texas*, and *Cottonwood*. In those cases, the Commission disclaimed jurisdiction over transmission lines connecting generators located in non-ERCOT portions of Texas to the ERCOT grid, where the interconnections at issue were configured and operated in such a manner that electric energy would not be commingled between the two regions. The Commission also confirmed that the jurisdictional *status quo* would not be disturbed by the purchase of auxiliary station power from non-ERCOT utilities if the overall interconnection and station power arrangement did not create a risk of commingling.²¹

20. Thus, we will grant the Petition as follows. With the exception of our jurisdiction pursuant to sections 210, 211, and 212 of the FPA, our reliability jurisdiction under section 215 of the FPA, and our authority under any other FPA provisions that provide for limited jurisdiction over Sharyland and/or its facilities, the Commission disclaims jurisdiction over: (1) the transmission and interconnection facilities that deliver power from the Antelope Elk Energy Center from a site in the SPP region of Texas to an interconnection point within ERCOT; and (2) transmission and sales of energy over these interconnection facilities. Moreover, the utilities in ERCOT that are not currently public utilities under the FPA will not become public utilities as a result of the interconnection of the Antelope Elk Energy Center with the ERCOT grid. Finally, Golden Spread may operate the proposed Antelope Elk Energy Center as a switchable generation resource between SPP and ERCOT without jeopardizing the jurisdictional *status quo*.

The Commission orders:

Petitioners' petition for a declaratory order disclaiming jurisdiction over the transmission and interconnection facilities between the Antelope Elk Energy Center and the ERCOT grid, as well as the transmission and sales of electric energy over those facilities, is hereby granted, as discussed in the body of this order. The utilities in ERCOT that are not currently public utilities under the FPA will not become public utilities as a result of the interconnection of the Antelope Elk Energy Center with the

¹⁹ Petition at 6.

²⁰ 142 FERC ¶ 61,031 (2013).

²¹ *Id.* PP 20-22; *Cross Texas*, 129 FERC ¶ 61,106 at PP 22-24; *Cottonwood*, 118 FERC ¶ 61,198 at P 17.

ERCOT grid, as discussed in the body of this order. Golden Spread may operate the Antelope Elk Energy Center as a switchable generation resource between SPP and ERCOT without jeopardizing the jurisdictional *status quo*, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.