152 FERC ¶ 61,094
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Golden Spread Electric Cooperative, Inc. Docket No. ES15-36-000

ORDER AUTHORIZING ISSUANCES OF SECURITIES

(Issued July 31, 2015)

1. On June 19, 2015, as amended on July 2, 2015, Golden Spread Electric Cooperative, Inc. (Golden Spread) filed an application pursuant to section 204 of the Federal Power Act (FPA)[1] (Application) requesting that the Commission authorize Golden Spread to issue: (1) short-term debt in an aggregate amount not to exceed $600 million; and (2) long-term debt in an aggregate amount not to exceed $2 billion. We grant the authorizations as discussed below. In addition, within these authorized limits, we are granting the prospective authorization of notes issued or assumed in connection with Rider A, which we describe in further detail below.

I. Background

2. Golden Spread is a not-for-profit electric generation and transmission cooperative organized under the Texas Electric Cooperative Corporation Act. Golden Spread's corporate purpose is to supply wholesale electric power and energy "at the lowest feasible cost" to its members.[2] Golden Spread's members, in turn, serve retail consumers

---

[1] 16 U.S.C. § 824c (2012).

[2] Golden Spread June 19, 2015 Application at 2. Golden Spread's members are: Bailey County Electric Cooperative Association; Big Country Electric Cooperative, Inc.; Coleman County Electric Cooperative, Inc.; Concho Valley Electric Cooperative, Inc.; Deaf Smith Electric Cooperative, Inc.; Greenbelt Electric Cooperative, Inc.; Lamb County Electric Cooperative, Inc.; Lighthouse Electric Cooperative, Inc.; Lyntegar Electric Cooperative, Inc.; North Plains Electric Cooperative, Inc.; Rita Blanca Electric Cooperative, Inc.; South Plains Electric Cooperative, Inc.; Southwest Texas Electric

(continued ...)

in the Panhandle, South Plains, and Edwards Plateau regions of Texas, the Oklahoma Panhandle, and in southwestern Kansas.

3. Golden Spread's current Commission authorization, which expires on July 31, 2015, provides authorization for Golden Spread to issue: (1) short-term debt in an aggregate amount not to exceed $600 million; and (2) long-term debt in an aggregate amount not to exceed $2 billion. This authorization also included prospective authorization for transactions related to Golden Spread's implementation of Rider A of the wholesale rate pursuant to which it supplies power to its member cooperatives (Rider A Transactions). According to Golden Spread, under this program, any Golden Spread member can invoke Rider A to have Golden Spread acquire or own facilities dedicated to serving that individual member, pursuant to the terms of service detailed in Special Facilities Agreements. Golden Spread states that six members have taken advantage of Rider A and transferred facilities to Golden Spread. In connection with such transfers, Golden Spread assumes existing notes between the member and the National Rural Utilities Cooperative Finance Corporation (CFC) and, when necessary, issues new notes. Golden Spread states that, as explained in a previous FPA section 204 filing (Docket No. ES13-31-000), some notes assumed or issued in connection with Rider A Transactions have terms or interest rates that were set in an earlier period and that, at the time of issuance or assumption, exceeded the typical loan term and interest rate caps. As it previously did in Docket No. ES13-31-000, Golden Spread requests prospective authorization for those previously assumed or issued notes with maturities or interest rates that exceed the limits in its currently effective section 204 authorization.

II. <u>Application</u>

4. Golden Spread requests authorization to issue securities and engage in the financing activities described from August 1, 2015 to July 31, 2017. In order to have access to the best possible rates, terms, and conditions available, Golden Spread requests authorization to issue such debt to the CFC, CoBank, ACB (CoBank), members of Golden Spread, commercial and investment banks, insurance companies, other financial institutions, and sophisticated investors for which registration with the Securities and Exchange Commission (SEC) is not required (including without limitation through private placements and issuance of commercial paper or any securities that meet the requirements of SEC Rule 144A), or through underwritten public offerings registered with the SEC.[3] Golden Spread states that it will use the funds obtained from the issuance

---

Cooperative, Inc.; Swisher Electric Cooperative, Inc.; Taylor Electric Cooperative, Inc.; and Tri-County Electric Cooperative, Inc. (Oklahoma). *Id.* n.6.

[3] *Id.* at 7.

of these debt securities to finance the construction of new electric facilities and the maintenance, modification, and improvement of existing electric facilities, to refinance existing debt, to meet working capital needs, and for other general corporate purposes.[4] Golden Spread states that the debt will be in the form of secured or unsecured bonds, notes, debentures, or other debt instruments, and may or may not be rated, depending on the nature of the issuance and the requirements of the source.[5]

A. Short-Term Debt Issuance

5. Golden Spread states that the amount of short-term debt outstanding at any one time will not exceed $600 million and that these debt securities will have maturity dates of up to one year.[6] It further states that the interest rate of these debt securities will not exceed the 10-year U.S. Treasury rate as published in the Wall Street Journal at the time of issuance, plus up to 600 basis points.[7]

B. Long-Term Debt Issuance

6. Golden Spread states that the amount of long-term debt outstanding at one time will not exceed $2 billion. Golden Spread further states that the interest rate for these long-term debt securities will not exceed the 30-year U.S. Treasury rate as published in the Wall Street Journal at the time of issuance, plus up to 600 basis points.[8]

C. Waiver Request

7. Consistent with its current authorization, Golden Spread seeks continued exemption from the four restrictions on public utility issuances of debt set forth in *Westar Energy, Inc.*[9] with respect to any securities it issues pursuant to the authorization requested here. To support this request, it points to *Kandiyohi Power Cooperative*,[10]

---

[4] *Id.* at 8.

[5] *Id.* at 7.

[6] *Id.* at 6.

[7] *Id.* at 7.

[8] *Id.*

[9] 102 FERC ¶ 61,186 (2003) (*Westar*).

[10] 106 FERC ¶ 61,010 (2004) (*Kandiyohi*).

where, according to Golden Spread, the Commission found that the *Westar* restrictions were not necessary because Kandiyohi, a cooperatively owned entity, is not subject to the same potential conflicts between owner and customer interests as an investor-owned entity.

8. With regard to long-term debt, Golden Spread requests waiver from the Commission's competitive bidding and negotiated placement requirements in 18 C.F.R. § 34.2 (2014).[11] Golden Spread states that it has received these waivers in the past. Additionally, it asserts that:

> (i) the debt will be issued in underwritten public offerings registered with the SEC or will be issued to CFC, CoBank, Members of Golden Spread, commercial and investment banks, insurance companies, other financial institutions or sophisticated investors; (ii) all securities will bear interest at rates subject to the maximum rates described above; (iii) as a cooperatively owned, not-for-profit corporation, Golden Spread has an incentive to seek the best possible rates, terms and conditions for its debt issuances; and (iv) no cost advantage would be achieved by the imposition of the formal competitive bidding and negotiated placement requirements.[12]

Additionally, Golden Spread states that, when considering long-term debt issuances, it continuously monitors the capital markets and the prevailing fees and charges of potential counterparties to secure lending rates below the maximum authorized interest rate requested here.[13] For these reasons, Golden Spread asks the Commission to grant renewed waivers of these requirements.

---

[11] Section 34.2 sets forth the Commission's method of issuance requirements. It states, in part, that the utilities may issue securities by either a competitive bid or negotiated placement, provided that competitive bids are obtained from at least two prospective dealers, purchasers or underwriters or negotiated offers are obtained from at least three prospective dealers, purchasers or underwriters. *See* 18 C.F.R. § 34.2(a) (2014). These requirements do not apply to securities having a maturity of one year or less.

[12] Application at 14.

[13] Golden Spread July 2, 2015 Amendment at 6 (Amendment).

III. Notice of Filing

9. Notice of Golden Spread's filing was published in the *Federal Register*, 80 Fed. Reg. 36,982 (2015), with protests or interventions due on or before July 10, 2015. None was filed. Notice of Golden Spread's amendment was published in the *Federal Register*, 80 Fed. Reg. 39,768 (2015), with protests or interventions due on or before July 16, 2015. None was filed.

IV. Discussion

10. FPA section 204(a) provides that requests for authorization to issue securities or to assume any obligation or liability as guarantor, indorser, surety, or otherwise in respect of any security of another person shall be granted if the Commission finds that the issuance or assumption: (1) is for some lawful object, within the corporate purposes of the applicant and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a public utility and which will not impair its ability to perform that service; and (2) is reasonably necessary or appropriate for such purposes.[14]

11. In reviewing an application under FPA section 204, the Commission utilizes an interest coverage ratio calculation to determine whether the issuances for which authorization are sought "will not impair [a public utility's] ability to perform" service as a public utility.[15] The Commission typically bases its finding that proposed issuances of securities will not impair an applicant's ability to perform service as a public utility in part upon the applicant's demonstration that it will have an interest coverage ratio that is 2.0 or higher.[16] In making this finding, the Commission reviews the financial statements submitted with an application filed under FPA section 204 and applicant's calculation of the interest coverage ratio, which is the sum of income before interest and income taxes divided by total interest expense.[17] The interest coverage ratio is a screen test used

---

[14] 16 U.S.C. § 824c(a) (2012).

[15] *See, e.g., Old Dominion Electric Cooperative*, 145 FERC ¶ 61,132, at P 12 (2013); *Startrans IO, L.L.C.*, 122 FERC ¶ 61,253, at P 18 (2008) (*Startrans*).

[16] *Startrans*, 122 FERC ¶ 61,253 at P 18 (stating that "this screen is a mid-way number in a range that has been used by lenders and borrowers and provides a buffer against unforeseen, adverse financial events that might impair Startrans IO's ability to perform as a public utility").

[17] *Westar*, 102 FERC ¶ 61,186 at P 15, n.15.

primarily to provide the Commission with comfort that the financing authorized will not impair an applicant's ability to perform public utility service.[18] The Commission has stated, however, that whether or not an applicant meets the 2.0 interest coverage ratio screen does not by itself determine whether the Commission will authorize or deny the application.[19] The Commission has approved FPA section 204 applications that have not met the 2.0 interest coverage ratio threshold.[20]

12. Golden Spread has filed, as Exhibits C, D, and E to the Application, actual and *pro forma* financial statements for the 12-month period ending March 31, 2015. In this case, Golden Spread's actual and *pro forma* interest coverage ratios are below the Commission's traditional 2.0 interest coverage guideline. Golden Spread argues, however, that a number of other factors should persuade the Commission that the proposed debt securities issuances will not impair its ability to provide service. First, Golden Spread asserts that, unlike investor-owned utilities, cooperatives, such as Golden Spread, are owned by their members, which are also Golden Spread's principal wholesale customers. Golden Spread contends that, because of this arrangement, Golden Spread's 16 member distribution cooperatives are responsible for Golden Spread's expenses.

13. Additionally, Golden Spread asserts that cooperatives, including Golden Spread, often have a tariff on file with the Commission that provides a conservative methodology for calculating cost-of-service rates for power sales to its members, which "specifically ensure" that the cooperative has the ability to collect rates that will recover debt costs, as well as sufficient margins to maintain sufficient target business financial objectives.[21] Additionally, Golden Spread states that, for many years, it has used a formula rate, which includes an equity stabilization charge to meet its target business financial objectives. As evidence of this assertion, Golden Spread points to numerous provisions in its wholesale power contracts with its members to demonstrate that even if Golden Spread's debt costs

---

[18] *Montana Alberta Tie Ltd. and MATL LLP*, 128 FERC ¶ 61,217, at P 16 (2009) (citing *Startrans*, 122 FERC ¶ 61,253, at P 18). The Commission has also described the interest coverage ratio as a measure of a utility's ability to meet future debt and interest payments. *Westar*, 102 FERC ¶ 61,186 at P 15.

[19] *See, e.g.*, *Startrans*, 122 FERC ¶ 61,253 at n.7.

[20] *See, e.g.*, *NorthWestern Corp.*, 151 FERC ¶ 61,120 (2015); *ITC Great Plains, LLC*, 147 FERC ¶ 61,005 (2014); *Mississippi Power Co.*, 145 FERC ¶ 61,218 (2013); *Westar*, 102 FERC ¶ 61,186.

[21] Amendment at 3.

or interest expense increase, it could automatically recover such increased expenses from its members.[22]

14. Moreover, Golden Spread states that its general corporate credit and debt ratings are reflections of its financial stability. It states that it maintains an A3 (unsecured) stable outlook general credit rating from Moody's Investor Service and an A stable outlook general credit rating from Standard & Poor's. Additionally, it states that "[w]ithin the last few days, Fitch Ratings affirmed the A stable outlook rating on Golden Spread's $36.38 million 5.75% senior secured notes, series 2005."[23] Finally, Golden Spread states that the authorization it seeks here contains the same conditions as the authorization under which it has successfully operated since 2013 and that it received its prior authorization despite a *pro forma* interest coverage ratio calculation that was also below 2.0. Golden Spread states that it has incurred more debt as a result of its capital program and the construction of new generating facilities, but that it has demonstrated that it can issue debt consistent with the authorization in a manner that does not impair its ability to serve its customers.[24]

15. We find, based on the facts set forth in the Application, as amended, that Golden Spread has demonstrated that Commission approval of the proposed issuance of securities and assumptions of obligations or liabilities sought in the Application: (1) is for a lawful object, within Golden Spread's corporate purposes, necessary or appropriate for Golden Spread's providing service as a public utility, and will not impair Golden Spread's ability to perform such services; and (2) is reasonably necessary or appropriate for such purposes.

16. Accordingly, we authorize the following:

a. Golden Spread is authorized to issue short-term debt in an amount not to exceed $600 million outstanding at any one time.

b. The interest rate on the short-term debt shall be no greater than the 10-year U.S. Treasury rate as published in the Wall Street Journal at the time of issuance, plus up to 600 basis points.

---

[22] *Id.* at 3-4.

[23] *Id*. at 4.

[24] *Id.* at 5.

c. Golden Spread is authorized to issue long-term debt in an amount not to exceed $2 billion.

d. The interest rate that Golden Spread will pay on its long-term debt shall be no greater than the 30-year U.S. Treasury rate as published in the Wall Street Journal at the time of issuance, plus up to 600 basis points.

e. Golden Spread's request for authorization of notes issued or assumed in connection with Rider A Transactions that, at the time of issuance or assumption, exceeded the term or interest rate under its then effective section 204 authorizations is granted prospectively, effective as of the date of this order.

17. We grant the requested waiver for long-term debt from the Commission's competitive bidding and negotiated placement requirements.

18. With regard to the *Westar* requirements, the Commission has previously noted that these restrictions were "designed to prevent investor-owned utilities' shareholders and management, whose interests may be different than the interests of utility customers, from taking actions which might jeopardize the utility's ability to perform its utility function and adversely affect its customers."[25] Golden Spread is not susceptible to the same potential conflicts between owner and customer interests as investor-owned utilities. Therefore, we find that the *Westar* restrictions are not necessary to protect Golden Spread's utility customers, and we will not impose them in this instance.

<u>The Commission orders</u>:

(A) Golden Spread is hereby authorized to issue short-term debt in an amount not to exceed $600 million outstanding at any one time, at the interest rates stated in the body of this order.

(B) Golden Spread is hereby authorized to issue long-term debt in an amount not to exceed $2 billion, at the interest rates stated in the body of this order.

(C) Golden Spread is hereby authorized to issue or assume notes in connection with the Rider A Transactions, as described in the body of this order.

(D) The authorizations granted in this order are effective August 1, 2015 and terminate on July 31, 2017.

---

[25] *Kandiyohi*, 106 FERC ¶ 61,010 at P 15.

(E) The requested waiver for long-term debt from the Commission's competitive bidding and negotiated placement requirements at 18 C.F.R. § 34.2(a) (2014) is hereby granted.

(F) The requested waiver of the restrictions imposed in *Westar* is hereby granted.

(G) Golden Spread must file a Report of Securities Issued, under 18 C.F.R. §§ 34.9, 131.43 and 131.50 (2014), no later than 30 days after the sale or placement of long-term debt securities or the entry into guarantees or assumption of liabilities.

(H) The authorizations granted in Ordering Paragraphs (A), (B), and (C) above are without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determination of cost or any other matter whatsoever now pending or which may come before this Commission.

(I) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States with respect to any security to which this order relates.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.