

138 FERC ¶ 61,208  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Golden Spread Electric Cooperative, Inc.	Docket Nos. ER11-3576-002
Golden Spread Panhandle Wind Ranch, LLC	ER11-3401-003
Denver City Energy Associates, L.P.	ER10-3138-002
GS Electric Generating Cooperative, Inc.	ER97-3583-006

ORDER ACCEPTING NOTICE OF CHANGE IN STATUS

(Issued March 22, 2012)

1. In this order, the Commission accepts a notice of change in status filed by Golden Spread Electric Cooperative, Inc. (Golden Spread), Golden Spread Panhandle Wind Ranch, LLC (Golden Spread Panhandle Wind), and Denver City Energy Associates, L.P. (Denver City) (collectively, Applicants) relating to Golden Spread's and Golden Spread Panhandle Wind's increases in generation capacity.<sup>1</sup> As discussed below, the Commission concludes that Applicants continue to satisfy the Commission's standards for market-based rate authority.

**I. Background**

2. On July 25, 2011, Applicants submitted a notice of change in status (July 25 Filing) pursuant to the reporting requirements of Order No. 652 and the requirement promulgated in section 35.42 of the Commission's regulations adopted in Order

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<sup>1</sup> We note that while GS Electric Generating Cooperative, Inc. initially filed the instant notice of change in status with Applicants, it subsequently cancelled its market-based rate authority. *See Akula Energy, LLC*, Docket No. ER11-4640-000 (Oct. 27, 2011) (delegated letter order). *See also* Applicants Amended Filing November 8, 2011 at n.1 (November 8 Filing).

No. 697.<sup>2</sup> Applicants explain that the primary purpose of the notice is to inform the Commission of Golden Spread's acquisition of the Antelope Station generating facility, a 168 MW natural gas-fired generating facility located near Abernathy, Texas. Applicants state that the Antelope Station will consist of 18 9.3 MW natural gas-fired generators. Applicants explain that the Antelope Station will be transferred to Antelope Electric Generating Cooperative, Inc., a wholly-owned subsidiary of Golden Spread, on or about the date on which all 18 generating units at the Antelope Station have achieved commercial operation.<sup>3</sup>

3. Applicants add that there have been two other increases in the generation capacity controlled by Golden Spread and Golden Spread Panhandle Wind, respectively, since Golden Spread's last updated market power analysis on March 1, 2010.<sup>4</sup> In particular, Applicants state that Golden Spread's purchases under its cost-based contract for partial requirements service with Southwestern Public Service Company (SPS) increased by 20 MW on June 1, 2010. Applicants also state that on July 6, 2011, Golden Spread Panhandle Wind, a 78.2 MW wind-powered generation facility consisting of 34 2.3 MW wind turbine generators, began generating test energy from a single 2.3 MW wind turbine generator.<sup>5</sup> Applicants explain that the remaining 33 wind turbine generators at Golden

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<sup>2</sup> See *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005) (Rehearing Order); *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff'd sub nom. Montana Consumer Counsel v. FERC*, 659 F.3d 910 (9<sup>th</sup> Cir. 2011); 18 C.F.R. § 35.42 (2011).

<sup>3</sup> July 25 Filing at 1.

<sup>4</sup> See *Golden Spread Electric Cooperative, Inc.*, Docket No. ER99-705-005 (Aug. 6, 2010) (delegated letter order). We note that Golden Spread Panhandle Wind received its market-based rate authority after Golden Spread submitted its most recent updated market power analysis. See *Golden Spread Panhandle Wind Ranch, LLC*, Docket No. ER11-3401-000 (Jun. 15, 2011) (delegated letter order).

<sup>5</sup> Applicants are reminded that they must submit required filings on a timely basis or face possible sanctions by the Commission. We remind Applicants that the change in status reporting requirement is triggered when test power is generated (subject to the 100 megawatt (MW) cumulative threshold). See Order No. 652, FERC Stats. & Regs.

(continued...)

Spread Panhandle Wind are in the process of being erected, tested, and placed in commercial operation.<sup>6</sup> For purposes of this notice of change in status, Applicants state that they have assumed that all of Golden Spread Panhandle Wind facility's 34 wind generators are in commercial operation.

4. Applicants represent that these acquisitions and increases in uncommitted capacity do not affect the conditions the Commission relied upon when granting them market-based rate authority. In particular, Applicants revise the market share and pivotal supplier screens contained in Golden Spread's 2010 updated market power analysis to reflect these acquisitions and maintain that they continue to pass the market power screens. In revising the market power screens, first Applicants assigned a value of 2.3 MW to the Golden Spread Panhandle Wind facility, which Applicants state is three percent of the facility's nameplate capacity. Second, Applicants added the following increases in capacity together, for a total increase of 190.3 MW: (1) 168 MW for the Antelope Station facility; (2) 2.3 MW for the Golden Spread Panhandle Wind facility; and (3) 20 MW for the increase in purchases from SPS. Third, Applicants added 190.3 MW to Golden Spread's capacity in Golden Spread's 2010 updated market power analysis and assumed that all of this additional capacity was uncommitted. Applicants state that they also added 576.2 MW of uncommitted non-affiliate capacity to Golden Spread's 2010 updated market power analysis.<sup>7</sup> In addition, Applicants claim that these changes have no effect on their vertical market power analysis. Further, they state that Golden Spread and its affiliates have not erected barriers to entry into the relevant market and will not erect barriers to entry into the relevant market.<sup>8</sup>

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¶ 31,175; Rehearing Order, 111 FERC ¶ 61,413 at P 12. Applicants state that on June 7, 2011, the Antelope Station initiated the operation of nine units, achieving a maximum output of 83.7 MW. This output combined with the 20 MW purchase from SPS exceeds the 100 MW threshold for reporting a notice of change in status.

<sup>6</sup> July 25 Filing at 1-2.

<sup>7</sup> *Id.* 2-3. Applicants explain that the addition of non-affiliate capacity is based on the change in status filed by SPS on July 19, 2011 in Docket No. ER10-1817-001, which indicates that SPS's capacity has increased by a total of 576.2 MW since SPS submitted its July 2009 updated market power analysis. Applicants represent that this additional capacity was not included in Golden Spread's 2010 updated market power analysis, and therefore, should be included here. SPS's change in status filing was accepted on August 31, 2011. *See Sw. Pub. Serv. Co.*, Docket No. ER10-1817-001 (Aug. 31, 2011) (delegated letter order).

<sup>8</sup> July 25 Filing at 3.

5. On September 14, 2011, Applicants amended their notice of change in status (September 14 Filing) with information related to the capacity increase at the Golden Spread Panhandle Wind facility. They explain that after they submitted their notice of change in status, Golden Spread received an analysis from a private engineering consulting firm retained by Golden Spread Panhandle Wind of the net capability rating for the Golden Spread Panhandle Wind facility.<sup>9</sup> Applicants state that the analysis was prepared in accordance with Southwest Power Pool (SPP) criteria using simulated output data provided by Cielo Wind Power, the original developer of the Golden Spread Panhandle Wind facility. Applicants state that the results of this analysis show a net capability rating of five MW for summer capacity and 16 MW for winter capacity, which represent approximately 6.4 percent and 20.5 percent of the facility's nameplate capacity, respectively. Applicants state that, using these figures, they continue to pass both the market share and the pivotal supplier screens. According to Applicants, Golden Spread would pass both of the screens using a capacity value as high as 62 percent of the facility's nameplate capacity.<sup>10</sup>

6. On November 8, 2011, Applicants submitted an amendment to further revise their market power screens. First, Applicants revise the output of the Golden Spread Panhandle Wind facility to include outages for installed capacity. Second, Applicants state that their revised market power screens assign a value of 25 MW to the Golden Spread Panhandle Wind facility. They assert that this 25 MW value is based on historical data for installed wind capacity in the SPP region, where the Golden Spread Panhandle Wind facility is located, published by the United States Energy Information Agency (EIA) in its Annual Energy Outlook 2011.<sup>11</sup>

7. In particular, Applicants include the most recent five years of EIA data for SPP installed wind capacity and annual wind energy generation, together with the calculated annual capacity factor for each of the five years.<sup>12</sup> Using the calculated annual capacity factor for each of those five years, Applicants determined that the most recent five-year

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<sup>9</sup> September 14 Filing at 1.

<sup>10</sup> *Id.* 1-3.

<sup>11</sup> Applicants state that the installed wind generation and energy output were obtained from EIA Table 58.18, which may be found at: [http://www.eia.gov/forecasts/aeo/source\\_renewable.cfm](http://www.eia.gov/forecasts/aeo/source_renewable.cfm).

<sup>12</sup> Applicants note that the EIA 2011 Energy Outlook was released in April 2011, and therefore includes some EIA forecasted values. Applicants request that the Commission accept these EIA-developed values as reasonable proxies for purposes of meeting Order No. 697 requirements.

average wind capacity factor for the SPP region is approximately 32 percent. Thus, with a capacity factor of approximately 32 percent, Applicants assign the 78.2 MW Golden Spread Panhandle Wind facility a value of 25 MW.

8. Applicants state that when this capacity factor is applied to the Golden Spread Panhandle Wind facility, the total increase in capacity is 213 MW. Applicants explain that their market power analysis treats this additional capacity as uncommitted, with the exception of calculated outages for installed capacity.<sup>13</sup> Applicants calculated planned outages for installed capacity by multiplying the ratio of SPS outages for each season as reported in their 2010 updated market power analysis by the 193 MW increase in installed capacity. The results were subtracted from their market power screen as planned outages for each season.<sup>14</sup> Applicants similarly calculated and included revised outages figures for the 556 MW of non-affiliate installed capacity.<sup>15</sup>

## **II. Notice of Filings**

9. Notice of Applicants' July 25 Filing was published in the *Federal Register*, 76 Fed. Reg. 46,284 (2011), with motions to intervene and comments due on or before August 15, 2011. None was filed.

10. Notice of Applicants' September 14 Filing was published in the *Federal Register*, 76 Fed. Reg. 59,675 (2011), with motions to intervene and comments due on or before October 5, 2011. None was filed.

11. Notice of Applicants' November 8 Filing was published in the *Federal Register*, 76 Fed. Reg. 72,192 (2011), with motions to intervene and comments due on or before November 29, 2011. None was filed.

## **III. Discussion**

12. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, horizontal, and vertical market power.<sup>16</sup> As discussed below, the Commission concludes that Applicants continue to satisfy the Commission's standards for market-based rate authority.

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<sup>13</sup> November 8 Filing at 2.

<sup>14</sup> *Id.* at 4.

<sup>15</sup> *Id.*

<sup>16</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 62, 399, 408, 440.

## 1. Horizontal Market Power

13. The Commission adopted two indicative screens for assessing horizontal market power, the pivotal supplier screen and the wholesale market share screen.<sup>17</sup> The Commission has stated that passage of both screens establishes a rebuttable presumption that the applicant does not possess horizontal market power, while failure of either screen creates a rebuttable presumption that the applicant has horizontal market power.<sup>18</sup>

14. As noted above, Applicants have prepared several market power analyses for the SPS balancing authority area using a variety of assumptions regarding the output of the Golden Spread Panhandle Wind facility.

15. In Order No. 697, the Commission stated that energy-limited resources, such as hydroelectric and wind capacity, may provide an analysis based on historical capacity factors, reflecting the use of a five-year average capacity factor, instead of using nameplate or seasonal capacity in their submissions.<sup>19</sup> In this case, the Golden Spread Panhandle facility only began generating test energy on July 6, 2011, and, as a result, it does not have adequate information to calculate a five-year average capacity factor for its own facility. In these circumstances, however, we will allow Golden Spread to use regional data to calculate and estimate a five-year average wind capacity factor.

16. Accordingly, we find that the analysis in the November 8 Filing, which de-rates the capacity of the Golden Spread Panhandle Wind facility by a five-year average wind capacity factor for the SPP region derived from EIA data, represents an appropriate analysis. We note, however, that planned outages should only be applied to capacity that has not already been de-rated. Therefore, Applicants should not have further adjusted the capacity of the Golden Spread Panhandle Wind facility to account for planned outages.

17. Nevertheless, after reviewing Applicants' pivotal supplier and wholesale market share screens, we find that they pass the screens in the SPS balancing authority area when Golden Spread's proposed adjustment for planned outages is not applied to the Golden Spread Panhandle Wind facility. Applicants are not pivotal suppliers in the SPS balancing authority area, and their market shares are below 20 percent in all seasons in the SPS balancing authority area.

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<sup>17</sup> *Id.* P 62.

<sup>18</sup> *Id.* P 33, 62-63.

<sup>19</sup> *Id.* P 344.

18. Therefore, we find that Applicants continue to satisfy the Commission's requirements for market-based rate authority regarding horizontal market power in the SPS balancing authority area, the relevant market in which the increases in generation capacity occurred.

**2. Vertical Market Power and Barriers to Entry**

19. As noted above, Applicants represent that the changes reported in the instant notification do not raise any vertical market power concerns or change any of the characteristics the Commission relied upon in granting Applicants market-based rate authority. Applicants, as noted above, also state that they and their affiliates have not erected barriers to entry in the relevant market and will not erect barriers to entry into the relevant market. Based on these representations, we find that Applicants' instant notification raises no vertical market power issues.

The Commission orders:

Applicants' notice of change in status is hereby accepted for filing, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.