

137 FERC ¶ 61,206
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southern Cross Transmission LLC
Pattern Power Marketing LLC

Docket No. TX11-1-000

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

(Issued December 15, 2011)

1. In this proposed order, we grant Southern Cross Transmission LLC's (Southern Cross) and Pattern Power Marketing LLC's (Pattern Power) (collectively, Applicants) request under section 210 of the Federal Power Act (FPA)¹ and direct the City of Garland, Texas and Garland Power & Light (collectively, Garland) to interconnect with Southern Cross's proposed transmission line. We also grant Applicants' request under section 211 of the FPA² and direct Oncor Electric Delivery Company LLC (Oncor) and CenterPoint Energy Houston Electric, LLC (CenterPoint) to provide transmission services for power flows into and out of the Electric Reliability Council of Texas (ERCOT). We also order further proceedings to finalize the terms and conditions of the proposed interconnections, and conditionally approve a settlement among the parties, subject to modification, as discussed below.

I. Background

2. The ERCOT transmission grid is located solely within the state of Texas and is not synchronously interconnected to the Western or Eastern Interconnections. To date, the only interconnections between ERCOT and facilities in the United States outside of Texas, and the transmission of power over those interconnections, have been made

¹ 16 U.S.C. § 824i (2006).

² 16 U.S.C. § 824j (2006).

pursuant to Commission orders under section 210 and 211 of the FPA.³ Because these interconnections and the associated transmission service were ordered by the Commission pursuant to its authority under sections 210 and 211 of the FPA, the ERCOT entities providing the requested services did not become “public utilities” subject to the Commission’s plenary jurisdiction under Part II of the FPA, and ERCOT’s non-jurisdictional status was preserved.⁴ Applicants’ proposal in the instant filing, as outlined below, would create an additional interconnection allowing electric power flow between ERCOT and facilities located outside of Texas.

3. Texas Utilities Electric Company (TU) and Houston Lighting & Power Company (HL&P) were two of the entities required to construct the previous interconnections and provide transmission service to, from, and over those interconnections.⁵ Subsequently, TU changed its name to TXU Electric Company⁶ and HL&P changed its name to Reliant Energy HL&P.⁷ On January 1, 2002, as a result of a Texas-mandated unbundling statute, TXU Electric Company and Reliant Energy HL&P were required to separate their generation and transmission assets. All of TXU Electric Company’s transmission and distribution facilities (including its facilities subject to Commission jurisdiction under sections 210 and 211 of the FPA and its tariff for transmission service to, from, and over the previously-ordered interconnections) (TFO Tariff) were transferred to TXU Electric Delivery, now called Oncor,⁸ a separate

³ *Brazos Elec. Power Coop., Inc.*, 118 FERC ¶ 61,199 (2007) (*Brazos*); *Kiowa Power Partners, LLC*, 99 FERC ¶ 61,251 (2002) (*Kiowa*); *Central Power and Light Co.*, 40 FERC ¶ 61,077 (1987) (*Central Power and Light II*); *Central Power and Light Co.*, 17 FERC ¶ 61,078 (1981) (*Central Power and Light I*).

⁴ Section 201(b)(2) of the FPA states that compliance with Commission orders under sections 210 and 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).

⁵ *Central Power and Light II*, 40 FERC ¶ 61,077; *Central Power and Light I*, 17 FERC ¶ 61,078 (collectively, *Central Power and Light*).

⁶ See *TXU Electric Co.*, Docket No. ER99-3295-000 (Jul. 22, 1999) (unpublished letter order).

⁷ See *Reliant Energy HL&P*, Docket Nos. ER99-3046-000 and ER97-2524-000 (Jun. 22, 1999) (unpublished letter order).

⁸ See *Oncor Electric Delivery Company*, Docket Nos. ER07-870-000 and ER08-114-000, July 5, 2007 and December 18, 2007 (unpublished letter orders).

transmission and distribution company.⁹ CenterPoint¹⁰ is the successor to the transmission and distribution operations of what had been Reliant Energy HL&P prior to unbundling. Thus, CenterPoint now owns facilities, subject to Commission jurisdiction under sections 210 and 211 of the FPA, and provides transmission service pursuant to its TFO Tariff. Thus, Oncor and CenterPoint are successors to the rights and obligations created by the Commission in *Central Power and Light*. Because the interconnections and transmission service provided pursuant to *Central Power and Light* were ordered by the Commission under sections 210, 211, and 212, neither Oncor nor CenterPoint is a “public utility” within the meaning of section 201(e) of the FPA.¹¹

4. Southern Cross is a limited liability company organized under Delaware law for the purpose of developing, constructing, owning, and operating the Southern Cross Project. Southern Cross states that it intends to engage in the purchase and re-sale of electric energy at wholesale from time to time as necessary. Pattern Power is a limited liability company organized under Delaware law for the purpose of purchasing and aggregating wind power supplies within ERCOT for sale to load servicing entities within the SERC Reliability Corporation (SERC) region and is expected to utilize the transmission capacity made available by the Southern Cross Project (the Project) to transact with load serving entities within the SERC.¹²

5. Southern Cross¹³ proposes to build the Project, an approximately 400 mile-long, high voltage direct current (HVDC) transmission line that it will develop, finance, construct, own, and operate to provide incremental bi-directional transmission capacity of up to 3,000 MW. Southern Cross plans for the Project to interconnect at one end with

⁹ See *TXU Electric Co.*, 97 FERC ¶ 62,146 (2001).

¹⁰ Reliant Energy HL&P is now called CenterPoint. See *CenterPoint Energy Houston Electric, LLC*, Docket Nos. ER02-2555-000 and ER02-2255-001 (Nov. 14, 2002) (unpublished letter order).

¹¹ 16 U.S.C. § 824(e) (2006).

¹² Southern Cross is an affiliate of, and Pattern Power will be an affiliate of, Pattern Energy Group LP, which is an independent energy company that develops, constructs, owns and operates renewable energy and transmission projects.

¹³ Southern Cross states that it owns no electric transmission facilities within the ERCOT or SERC regions and will undertake construction of the Project as a merchant transmission company, and will assume all regulatory risk. We address Southern Cross' request, in Docket No. EL11-61-000, for permission to sell transmission rights at negotiated rates, which we are issuing simultaneously with this order.

Garland at a point near the Texas/Louisiana border (the Western Point of Interconnection) and, at the other end, at one or more substations of load serving entities within SERC in Mississippi and/or Alabama (the Eastern Points of Interconnection).¹⁴ Interconnection of the Project to ERCOT will require the construction by Oncor of a switchyard near existing Oncor transmission lines in Rusk County, Texas. A yet-to-be built AC transmission line of approximately 30 miles, to be owned by Garland, will be constructed to interconnect with the Oncor switchyard and run eastward to the Western Point of Interconnection. The Project's western AC to DC converter station will be constructed in Louisiana adjacent to the Western Point of Interconnection in such a way that any interconnection with the Garland-owned AC transmission line will take place within ERCOT and be subject to the jurisdiction of the Texas Commission.

6. Southern Cross states that the Project will allow for the delivery of power between the ERCOT and SERC regions and will increase access to affordable Texas-generated renewable wind power to consumers outside of Texas. Southern Cross further states that the addition of transmission lines connecting these renewable resources would allow the owners of Texas wind generation to sell and transmit renewable energy supplies to new markets in the southeastern United States, which have few wind resources or other renewable resources, but have the need and demand for affordable renewable energy. In addition, Applicants assert that the planned bi-directional capability of the Project will facilitate the import of power from SERC to ERCOT and provide up to 3,000 MW of capacity available to serve loads in SERC and ERCOT when it is cost-effective to do so, thereby promoting efficiency and enhancing reliability in both regions. Applicants note that studies are currently underway to evaluate reliability benefits that the Project adds to both the ERCOT and SERC transmission grids. Applicants explain that, although the proposed interconnection and transmission service will permit the transfer of electric energy between two asynchronous markets, the ERCOT grid and the SERC grid will at no time be synchronously interconnected.

7. Applicants state that Garland, Oncor, and CenterPoint are unwilling to establish the interconnection and provide the requested transmission service in a manner that would cause Oncor, CenterPoint, ERCOT, or other entities within ERCOT to become "public utilities" under the FPA.¹⁵ Thus, Garland, Oncor, and CenterPoint will

¹⁴ Applicants state that the configuration of the Project is subject to change based on regulatory, commercial, technical or siting considerations. Application at n.21.

¹⁵ As a municipal utility, Garland is exempt from Commission jurisdiction as a "public utility" by virtue of FPA section 201(f) and, therefore, does not depend on the Commission's disclaimer of jurisdiction in this proceeding for that purpose. Nevertheless, under applicable ERCOT rules, Garland cannot enter into an interconnection agreement where the effect of such interconnection would result in a

interconnect and provide the requested transmission service only if Applicants obtain a Commission order under sections 210, 211, and 212 of the FPA. Also, consistent with *Brazos, Kiowa, and Central Power and Light*, and in accordance with section 201(b)(2) of the FPA, Applicants request that the Commission confirm that compliance with a Commission order issued pursuant to FPA sections 210, 211, and 212 will not make ERCOT, Oncor, CenterPoint, or any other ERCOT entity a “public utility” under the FPA.

II. Application and Offer of Settlement

8. On September 6, 2011, Applicants submitted an application to the Commission pursuant to sections 210, 211, and 212 of the FPA. Applicants request that the Commission issue an order requiring the physical interconnection of the Project with the transmission facilities of Garland at the Western Point of Interconnection. Applicants also request that the order direct Oncor and CenterPoint to provide the transmission services necessary for Pattern Power and other eligible customers, under Oncor or CenterPoint’s TFO Tariffs, to deliver energy over the interconnection into and out of ERCOT.¹⁶

9. In addition, Applicants request the Commission’s approval of an unexecuted Offer of Settlement among Applicants, Garland, Oncor, and CenterPoint. The unexecuted Offer of Settlement provides the terms and conditions for the interconnection and transmission service. Attached to the Offer of Settlement is an unexecuted interconnection agreement between Southern Cross and Garland. The interconnection agreement specifies the terms and conditions that will govern the interconnection of Garland’s transmission facilities with Southern Cross’s interconnecting facilities and the allocation of costs between the parties. In addition, although a Commission order under section 210 of the FPA with respect thereto is not requested by Applicants, the Offer of Settlement provides for the execution by Oncor and Garland of an interconnection agreement that will govern the interconnection of Oncor’s transmission facilities with Garland’s interconnecting facilities and the allocation of costs between Oncor and Garland. Both interconnection agreements will be governed by, and subject to, the rules and regulations of the Public Utility Commission of Texas (Texas Commission).

change to the jurisdictional *status quo* with respect to ERCOT and other ERCOT entities. Application at n.18.

¹⁶ Garland does not satisfy the definition of “transmitting utility” under the FPA and, as such, cannot be the subject of an order under section 211 of the FPA. Thus, Oncor and CenterPoint, as eligible transmitting utilities, must provide this service.

10. The Offer of Settlement also addresses the transmission services that will be provided by Oncor and CenterPoint pursuant to their respective TFO Tariffs. Pursuant to the Offer of Settlement, Oncor and CenterPoint agree to make the necessary revisions to their respective TFO Tariffs to provide transmission services pursuant to those tariffs for Pattern Power and any other entity that is an eligible customer under the TFO Tariffs at the same rates, terms, and conditions under which Oncor and CenterPoint currently provide transmission services under their respective TFO Tariffs. Southern Cross and Pattern Power agree that they will not oppose, or directly or indirectly support any opposition to, such an amendment to either Oncor's or CenterPoint's TFO Tariff.

11. The Offer of Settlement is conditioned upon, among other things, the Commission issuing an order consistent in all material respects with the proposed Final Order Directing Interconnection and Transmission Services and Approving Settlement attached to the Offer of Settlement. Consistent with the Commission's previous orders in *Brazos*, *Kiowa*, and *Central Power and Light*, the order would be issued pursuant to sections 210, 211 and 212 of the FPA and, therefore, would retain Oncor's and CenterPoint's status as transmission and distribution utilities that are not "public utilities" within the meaning of section 201(b)(2) of the FPA.

III. Interventions and Comments

12. Notice of the filing was published in the *Federal Register*, 76 Fed. Reg. 61,687 (2011), with interventions and protests due on or before October 6, 2011. The Texas Commission filed a notice of intervention. Timely motions to intervene were filed by Exelon Corporation, Sharyland Utilities, L.P., Calpine Corporation, Texas Industrial Energy Consumers (Texas Industrial Consumers), the American Wind Energy Association (AWEA), and ERCOT. CenterPoint and Oncor also filed timely motions to intervene and Garland filed an untimely motion to intervene. In support of its late filing, Garland explains that it did not think it was obligated to file a motion to intervene to be a party to this proceeding.

13. On September 27, 2011, the Texas Commission filed a request for an extension of time until October 21, 2011 to file comments. Notice of the extension of time was issued on September 28, 2011. On October 19, 2011, the Texas Commission filed a request for an additional extension of time until November 4, 2011 to file comments. Notice of the second extension of time was issued on October 19, 2011. Comments were filed by the Texas Commission, Texas Industrial Consumers, CenterPoint, Oncor, and AWEA. On November, 18, Applicants filed an answer to the comments.

14. Oncor and CenterPoint take no position on the merits of the Project, but seek to ensure that, if the Commission approves the Project, the jurisdictional status of ERCOT and non-public utility ERCOT participants will not be jeopardized. Oncor and

CenterPoint also provide executed copies of the Offer of Settlement with their comments.¹⁷ AWEA does not comment on the Project itself, but instead submits comments to emphasize its position that the Commission should make efforts to facilitate the expansion of transmission service that would open up additional markets for the sale of the output of renewable energy projects.¹⁸

15. The Texas Commission does not oppose the Project and supports Applicants' request for a disclaimer of Commission jurisdiction over ERCOT. Specifically, the Texas Commission requests that the Commission clarify that Garland's participation in the Project will not subject ERCOT or any ERCOT entity to Commission jurisdiction, except as necessary to comply with the Commission's order in this proceeding, and that Garland will not become a "transmitting utility" under the FPA. Further, the Texas Commission requests that all of the facilities that will be owned, operated, and maintained by Southern Cross, Oncor, and Garland be specifically identified. Finally, the Texas Commission urges that the order in this proceeding acknowledge that Garland will not seek to recover from Texas ratepayers the construction costs of any facilities that it will own, operate, or maintain as part of the Project.¹⁹

16. Texas Industrial Consumers contend that Applicants' request differs in certain material respects from jurisdictional disclaimers the Commission has issued in the past. Texas Industrial Consumers note that, although Applicants state that the Project's Western Point of Interconnection will take place within ERCOT and be subject to Texas Commission jurisdiction, the diagram attached to the application depicts the point of interconnection as straddling the Texas/Louisiana border. Texas Industrial Consumers assert that serious practical and jurisdictional concerns will be raised if any ERCOT alternating current (AC) transmission facilities cross the Texas border to a point of interconnection in Louisiana. Specifically, Texas Industrial Consumers express concern about the potential jurisdictional impact of future interconnections with the AC facilities that extend beyond the Texas border. Texas Industrial Consumers assert that an AC line crossing into Louisiana creates the possibility that a regulator other than the Texas Commission would have control over the siting and interconnection to that line, thereby removing any claim that these ERCOT facilities are not in interstate commerce. Texas Industrial Consumers further state that such a situation is substantially different than previous ERCOT interconnection cases in which the Commission has disclaimed jurisdiction. Therefore, Texas Industrial Consumers contend that Southern Cross should

¹⁷ CenterPoint October 21, 2011 Motion to Intervene and Comments; Oncor November 4, 2011 Motion to Intervene and Comments.

¹⁸ AWEA November 4, 2011 Motion to Intervene and Comments.

¹⁹ Texas Commission November 4, 2011 Comments.

be required to locate the Western Point of Interconnection, all AC facilities, and the HVDC converter station exclusively within Texas.

17. In addition, Texas Industrial Consumers express concern that Applicants' claimed reliability benefits to ERCOT are entirely speculative because the application does not include evidence that the occasional import of power from SERC to ERCOT will enhance the reliability of the ERCOT grid. Texas Industrial Consumers claim that there is significant possibility that the Project will erode reliability in ERCOT. Thus, they assert that, to the extent Applicants' statements regarding reliability are material to the application, the Commission should require factual support. Texas Industrial Consumers also note that it is unclear from the application which facilities will be considered interconnection facilities under the Garland/Southern Cross interconnection agreement. Texas Industrial Consumers assert that all interconnection facilities should be clearly identified to ensure that ERCOT ratepayers do not bear the cost of any Garland facilities that will be used for the Project.²⁰

IV. Applicants' Answer

18. Applicants agree with the commenters that the Commission should clarify that Garland's participation in the Project will not cause Garland to become a "transmitting utility" under the FPA or affect the non-jurisdictional status of all ERCOT utilities and entities, including Garland.²¹

19. In response to the Texas Industrial Consumers' concerns regarding the location of the Western Point of Interconnection, Applicants clarify that the western converter station will not be located at the Garland/Southern Cross interconnection. Applicants explain that Southern Cross will own certain AC facilities that extend into the State of Louisiana a short distance beyond the point of interconnection. Accordingly, Applicants state that they will construct the western converter station in Louisiana adjacent to the Western Point of Interconnection so that any interconnection with the AC transmission line will take place within ERCOT and be subject to the jurisdiction of the Texas Commission. Applicants explain that they will site the HVDC converter station as close to the border as possible to ensure that any interconnection through the AC facilities will take place within the state of Texas and require the participation of the Texas Commission.²²

²⁰ Texas Industrial Consumers November 4, 2011 Comments.

²¹ Applicants November 18, 2011 Answer at 6-9 (Answer).

²² *Id.* at 11-12.

20. With regard to reliability concerns, Applicants state that they have been working with the ERCOT Regional Planning Group transmission planning process, and Oncor is currently evaluating the impact of the Project on the ERCOT transmission system, to ensure that the interconnection of the Project does not jeopardize the reliability of the ERCOT system. Applicants contend that the Texas Industrial Consumers' allegations regarding reliability risks do not provide a basis for the Commission to deny or delay review of the application or Offer of Settlement.²³

21. In response to concerns related to the recovery of costs associated with Garland-owned facilities, Applicants state that the existing contractual arrangements under which Garland is participating in the development of the Project prohibit Garland from recovering from ERCOT ratepayers the original costs of constructing any of the facilities with which Garland is involved. Applicants further state that they are willing to submit a detailed list of the facilities to be owned, operated, and maintained by Southern Cross, Garland, and Oncor, once it is available.²⁴

V. Discussion

A. Procedural Matters

22. 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 the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Garland is correct that, as the subject of the request for a section 210 order and as a party to the Offer of Settlement, it is already a party to the proceeding. Similarly, Oncor and CenterPoint are also parties to the proceeding given that they are the subjects of the section 211 requests and are parties to the Offer of Settlement. Therefore, we dismiss their motions to intervene as moot, and consider their 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 or to an answer unless otherwise ordered by the decisional authority. We will accept Applicant's answer because it has provided information that assisted us in our decision-making process.

B. Statutory Requirements

23. In this proposed order, we make a preliminary determination that an order requiring Garland to provide interconnection service and Oncor and CenterPoint to provide transmission service to Applicants would meet the standards of FPA sections

²³ *Id.* at 12-13.

²⁴ *Id.* at 5.

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

1. Jurisdiction

24. 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.”²⁵ A “transmitting utility” is defined in section 3(23) of the FPA, as modified by the Energy Policy Act of 2005,²⁶ 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.”

25. Applicants state that they intend to engage in the sale of electric energy when the Project enters service. Thus, we find that Applicants qualify as “electric utilities” eligible to request an order requiring interconnection and transmission services pursuant to sections 210 and 211 of the FPA. Garland currently owns and operates two gas-fired generating facilities, has an ownership interest with Texas Municipal Power Agency in a coal-fired generating station, and serves nearly 68,000 electric customers within its municipal boundaries. Therefore, we find that Garland is an “electric utility” that can be the subject of a Commission order under FPA Section 210.

26. Oncor and CenterPoint are prohibited by state law from buying or selling electric energy (except for purchasing electric energy to satisfy their own retail consumption requirements). However, they own and operate transmission facilities that are used for the sale of electric energy at wholesale and, as a result of Commission directives in *Central Power and Light*, they own and operate ERCOT facilities that are used for the transmission of electric energy in interstate commerce. Thus, we find that each is a “transmitting utility” as that term is defined in FPA section 3(23) and used in FPA section 211(a). Further, Oncor and CenterPoint acknowledge that, as the transmission and distribution successors of TU and HL&P, they are subject to the jurisdiction of the Commission with respect to orders previously issued, and for purposes of new interconnection and transmission orders (such as the order being sought by the Applicants), under sections 210 and 211 of the FPA. Accordingly, we find that the

²⁵ 16 U.S.C. § 796, as amended by the Energy Policy Act of 2005, Pub. L. No. 109-58, § 1291, 119 Stat. 594, 984 (2005).

²⁶ *Id.*

Commission has jurisdiction under sections 201(b)(2), 210, and 211 of the FPA to issue an order requiring Garland to interconnect with Southern Cross and requiring Oncor and CenterPoint to provide transmission services to, from, and over the interconnection for flows of energy between ERCOT and SERC. Exercise of this jurisdiction, however, will not cause any ERCOT utility that is not already a public utility to become a public utility under Part II of the FPA. Further, because the transmission service ordered here will be provided by Oncor and CenterPoint, and not Garland, Garland will not become a “transmitting utility” under the FPA.

27. Further, with regard to Texas Industrial Consumers’ concerns about the proposed AC transmission facilities and the flow of electric energy in interstate commerce, we first note that the transmission service to be provided by Garland over the AC transmission line will not cause Garland or any ERCOT utility that is not already a public utility to become a public utility under Part II of the FPA because any flow of electricity into and out of ERCOT will be provided pursuant to a Commission order under FPA section 211. Thus, the precise location of the Western Point of Interconnection is immaterial with respect to jurisdictional concerns, and we find that Texas Industrial Consumers’ concerns regarding the jurisdictional impact of future interconnections are without merit.²⁷ As Applicants emphasize in their answer, the HVDC converter station will be close to the Texas/Louisiana border to ensure that any interconnection with the AC transmission line within Louisiana will not be practical and, as a result, all AC interconnections will take place within ERCOT and be subject to the jurisdiction of the Texas Commission.²⁸ Accordingly, given Applicants’ descriptions of the Project and the location of the converter station, we find that Applicants’ request poses no greater threat to ERCOT’s jurisdictional status than the interconnections and transmission services ordered in *Brazos, Kiowa, and Central Power and Light*.

2. Section 212 (c) - Proposed Order

28. 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 terms and conditions for carrying out the order, including the apportionment of and 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.

²⁷ We note, however, that we expect Applicants to provide precise information regarding the location of the Western Point of Interconnection in the revised application and Offer of Settlement, as directed in this order.

²⁸ Answer at 11-12.

29. In the instant application and as reflected in the Offer of Settlement, Garland and Southern Cross were able to agree upon the terms and conditions under which the Southern Cross/Garland interconnection will be provided, and Oncor and Garland were able to agree upon the terms and conditions under which the Oncor/Garland interconnection will be provided. Additionally, Pattern Power, Oncor and CenterPoint were able to agree upon the terms and conditions under which the associated transmission services will be provided, as reflected in the Offer of Settlement filed concurrently with the instant application, and subsequently executed by Oncor and CenterPoint. Normally, under these circumstances, a separate proposed order would not be necessary and the Commission could issue a joint proposed and final order pursuant to the FPA.²⁹ In this case, however, the interconnection and reliability studies for the Project have not been completed and final identification of the necessary interconnection facilities will not be possible prior to completion of those studies.³⁰ Accordingly, the Commission finds that there is insufficient specificity to enable the Commission to issue a final order pursuant to sections 210 and 211 at this time. Therefore, the Commission will direct the parties to revise, based on the outcome of the interconnection and reliability studies, the Offer of Settlement and unexecuted interconnection agreements to include details regarding the facilities that will be respectively owned, operated and maintained by Southern Cross, Garland, and Oncor to facilitate the requested interconnection. We anticipate that this Proposed Order will serve to reassure the parties and their financiers that the Project can proceed, as we have determined that it does not raise jurisdictional concerns.³¹

3. Other Statutory Requirements

30. 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 efficient use of facilities and resources; or (3) improve the reliability of any electric utility system or Federal power marketing agency to which the order applies. The order must also meet the requirements of section 212 of the FPA.

²⁹ Section 212(c)(2) provides that, before issuing an order under section 210 or 211, “the Commission shall issue a proposed order and set a reasonable time for parties to the proposed interconnection or transmission order to agree to terms and conditions under which such order is to be carried out.”

³⁰ The reliability and interconnection studies are expected to be completed by the end of 2011.

³¹ *Suffolk County Elec. Agency*, 106 FERC ¶ 61,157, at 61,522 (2004) (finding that, because the applicant had not finalized the details of its request under section 211 for transmission service, the Commission could not issue a Final Order at that time).

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. In addition, section 211(b) precludes a transmission order that would unreasonably impair the continued reliability of affected electric systems. These requirements are discussed below.

a. Public Interest

31. We find that the interconnection requested of Garland and transmission service requested of Oncor and CenterPoint will be in the public interest. New interconnections and transmission service generally meet the public interest by increasing power supply options and improving competition. In *Florida Municipal Power Agency*,³² the Commission determined that, as a general matter, the availability of transmission service enhances competition in power markets by increasing power supply options of buyers and sales options of sellers, and that this should result in lower costs to consumers. Accordingly, we find that the public interest will be served by directing Garland to provide Southern Cross with the requested interconnection and by directing Oncor and CenterPoint to provide the requested transmission services in accordance with this order.

b. Efficiency and Reliability

32. With regard to efficiency and reliability, our preliminary evaluation of the application does not indicate that ordering the requested interconnection and transmission services will unreasonably impair the continued reliability of the affected electric systems. In addition, as discussed above, new interconnections and transmission generally promote efficiency.³³ However, we note that the regional planners in both SERC and ERCOT are currently studying the impacts of the Project on both affected electric systems and will identify any needed system upgrades to ensure that the

³² 65 FERC ¶ 61,125, at 61,615, *reh'g dismissed*, 65 FERC ¶ 61,372 (1993), *final order*, 67 FERC ¶ 61,167 (1994), *order on reh'g*, 74 FERC ¶ 61,006 (1996); *aff'd*, 315 F.3d 362 (D.C. Cir. 2003). *See also Duquesne Light Co.*, 71 FERC ¶ 61,155, at 61,505-06 (1995) (stating that public interest is satisfied if the transmitting utility is fairly compensated and reliability is not unreasonably impaired).

³³ We note that section 210(c)(2) requires only a Commission finding that one of the three specified benefits will be achieved by the proposed interconnection: (1) encouraging conservation of energy or capital; (2) optimizing efficiency of use of facilities or resources; or (3) improving reliability. Thus, because the Commission has already determined that the requested interconnection will promote efficiency, Applicants need not demonstrate reliability benefits, but must show that the requested interconnection and transmission service will not unreasonably impair reliability.

operation of the Project will not result in any violations of the applicable reliability criteria. We agree with Texas Industrial Consumers that this information is necessary before issuing a final order. Therefore, as discussed above, we will direct Applicants to revise the Offer of Settlement and unexecuted interconnection agreements to incorporate this information and to include final details regarding the facilities that will be respectively owned, operated and maintained by Southern Cross, Garland and Oncor to facilitate the requested interconnection.

c. Rates, Charges, Terms, and Conditions

33. Section 212(a) requires that the transmitting utility subject to an order under section 211 “provide wholesale transmission services at rates, charges, 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 discriminatory or preferential.” 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.”³⁴

34. 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, and accordingly, has adopted them for use in TFO tariffs.³⁵ Here, under the Offer of Settlement, the parties have agreed to amend their TFO tariffs to apply those existing rates, terms, and conditions to the proposed transmission service. Therefore, we find that, with respect to the transmission services to be provided by Oncor and CenterPoint, the Offer of Settlement meets the requirements of sections 212(a) and 212(k).

³⁴ 16 U.S.C. § 824k(k) (2006).

³⁵ See, e.g., *Houston Lighting & Power Co.*, 77 FERC ¶ 61,113, at 61,438 (1996), *TXU Electric Company*, 91 FERC ¶ 61,257, at 61,901 (2000), and *Kiowa*, 99 FERC ¶ 61,251 at P 43-46.

35. Regarding the proposed interconnection, Southern Cross and Garland have agreed, in the Offer of Settlement, to the terms and conditions that will govern the physical interconnection of their facilities and the allocation of cost responsibility between them. Pursuant to the Offer of Settlement, Garland agrees that it will not seek to recover from wholesale or retail customers in Texas the costs incurred in constructing the interconnection facilities identified in the Garland/Southern Cross interconnection agreement. The Offer of Settlement refers to the unexecuted interconnection agreements for specifics regarding the interconnection facilities that will be required and how costs for those facilities will be allocated. However, neither of the unexecuted interconnection agreements that are attached to the Offer of Settlement provides any information regarding the interconnection facilities that will be constructed. We agree with Texas Industrial Consumers and the Texas Commission on the need for greater specificity regarding these facilities and the related cost allocation. We cannot issue a final order directing the requested interconnection service until the Offer of Settlement and attached interconnection agreements are complete. Therefore, as discussed above, we direct the parties to continue to work together to finalize the Offer of Settlement and unexecuted interconnection agreements once the results of the technical studies become available.

d. Effect on Contracts or Rate Schedules

36. 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. It also provides that no order may be issued by the Commission under section 211(a) that requires the transmitting utility subject to the order to transmit, during any period, an amount of electric energy that replaces any amount of electric energy that is required to be provided to the applicant pursuant to a contract during such period or that the utility subject to the order currently provides to the applicant pursuant to a rate schedule on file with the Commission. Neither Southern Cross nor Pattern Power currently purchases electric energy from either Oncor or CenterPoint because each is a transmission and distribution utility that is prohibited by state law from selling electric energy. Accordingly, this order does not compel any transaction prohibited by section 211(c)(2).

e. Transfer Rights

37. We note that Condition (E) of the Offer of Settlement provides:

Ownership or use of the Garland-[Southern Cross] Interconnection, including the rights and obligations established under this Offer of Settlement and under the Garland/[Southern Cross] Interconnection Agreement, may be transferred at any time without further order of the Commission. In the event of a change of ownership or control of the Garland Transmission Facilities, or any part

thereof, whether by sale, transfer, assignment or otherwise, the terms and conditions of this Order shall continue to apply, without prejudice to the non-jurisdictional status of ERCOT, Oncor, [CenterPoint] and certain other ERCOT utilities or entities set forth in Ordering Paragraph (L).

We have concerns with this condition as currently written. The jurisdictional status of ERCOT, Oncor, and CenterPoint will not be affected, *by virtue of the transfer* of ownership or use rights. However, a sale, lease, or other disposition of these facilities by Southern Cross or another public utility, or a transfer by any non-public utility to a jurisdictional public utility or to an entity covered by FPA section 203(a)(2) may require Commission approval under section 203 of the FPA.³⁶ Thus, we accept Condition (E) subject to any such approval required by Section 203 of the FPA.

f. Section 212(g) - Prohibition on Orders Inconsistent with Retail Wheeling Marketing Areas and Section 212(h) - Prohibition on Mandatory Retail Wheeling and Sham Wholesale Transactions

38. Section 212(g) prohibits the issuance of an order which is inconsistent with any state law which governs the retail marketing areas 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, unless (A) such entity is a “Federal power marketing agency;...a State or any political subdivision of a State;...a corporation or association that has ever received a loan for the purposes of providing electric service from the Administrator of the Rural Electrification Administration under the Rural Electrification Act of 1936; a person having an obligation arising under State or local law (exclusive of an obligation arising solely from a contract entered into by such person) to provide electric service to the public; or any corporation or association which is wholly owned, directly or indirectly, by any one or more of the foregoing; and (B) such entity was providing electric service to such ultimate consumer on the date of enactment of this subsection or would utilize transmission or distribution facilities that it owns for controls to deliver all such electric energy to such electric consumer.”³⁷ We find that the instant order does not compel any transaction prohibited by either section 212(g) or 212(h).

³⁶ 16 U.S.C. § 824b (2006). *See Duke Power Co.*, 36 FPC 399, at 402 (1966), *rev'd on other grounds, Duke Power Co. v. Federal Power Comm'n*, 401 F.2d 930 (D.C. Cir. 1968).

³⁷ 16 U.S.C. § 824k(h) (2006).

C. Further Procedures

39. Section 212(c)(1) of the FPA provides that, before issuing a final order under section 210 or 211, the Commission shall issue a proposed order setting a reasonable time for the parties to the proposed interconnection or transmission order to agree to the terms and conditions under which such order is to be carried out, including the apportionment of costs between them and the compensation or reimbursement reasonably due to any of them. If the parties are able to agree, the Commission will issue an order reflecting the agreed-upon terms and conditions, if the Commission approves them. In accordance with these procedures, the Commission will allow the parties additional time to finalize the Offer of Settlement and unexecuted interconnection agreements based on the results of the ongoing interconnection and reliability studies. We expect the parties to make every reasonable effort to identify all of the facilities that will be required in relation to the Project and to specify how costs for those facilities will be apportioned among the parties. We will direct Applicants to file the revised application, Offer of Settlement, and unexecuted interconnection agreements within 30 days after the results of the necessary technical studies become available.

40. Pursuant to section 212(c)(1) of the FPA, this Proposed Order shall not be reviewable in any court, since all determinations made in this order are preliminary. In addition, consistent with 18 C.F.R. § 385.713 (2011), this is an interlocutory order not subject to request for rehearing.³⁸

The Commission orders:

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

(B) Oncor and CenterPoint are hereby directed to provide transmission services 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 conditionally approved, subject to modification, as discussed in the body of this order.

³⁸ The Secretary is authorized to reject any such requests for rehearing. *See* Order Authorizing Delegation to the Secretary in Proceedings Under Section 210 or Section 211 of the Federal Power Act, FERC Stats. & Regs., Regulations Preambles, January 1991-June 1996 ¶ 31,003 (1994).

(D) Compliance with this order and the Offer of Settlement shall not cause ERCOT, Oncor, CenterPoint, 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 purpose other than for the purpose of carrying out the provisions of sections 210 and 211 of the FPA.

(E) Southern Cross, Pattern Power, Garland, Oncor, and CenterPoint are hereby directed to finalize and file with the Commission the unexecuted interconnection agreements within 30 days after the results of the applicable reliability and interconnection studies become available, and to revise the Offer of Settlement accordingly, as directed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.