

142 FERC ¶ 61,032
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Electric Transmission Texas, LLC

Docket No. EL13-18-000

ORDER GRANTING PETITION FOR DECLARATORY ORDER

(Issued January 17, 2013)

1. On November 6, 2012, Electric Transmission Texas, LLC (ETT) filed a petition for a declaratory order (Petition) requesting that the Commission disclaim jurisdiction over: (1) transmission lines and facilities in the Electric Reliability Council of Texas (ERCOT) region that will be owned and operated by ETT, an electric utility in ERCOT; (2) transmission service over those transmission facilities; and (3) sales of electric energy over those transmission and interconnection facilities. ETT also requests that the Commission 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 an interconnection with ETT's transmission facilities. As discussed below, we will grant the Petition.

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 Texas Commission allowed generators in the Texas Panhandle to interconnect with regions outside ERCOT, such as the Southwest Power Pool, Inc. (SPP), as long as they are not simultaneously interconnected with ERCOT.²

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

² *Id.* at 23.

3. To preserve the jurisdictional status quo, the Texas Commission required that either the generators themselves or the transmission service provider that interconnects the generators and 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. 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.³

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 to ETT for seven CREZ lines and related facilities, which will be located exclusively within the ERCOT region of Texas.⁴

II. Petition for Declaratory Order

5. ETT requests that the Commission disclaim jurisdiction over four CREZ projects: (1) the Tesla to Riley project, which is a 65-mile, 345 kV transmission line and interconnection facilities with an expected in-service date of June 2013;⁵ (2) the Riley to Edith Clarke to Cottonwood project, which consists of two 345 kV lines, one spanning 42 to 53 miles, depending on the final route, with a projected in-service date of March 2013, and a second 89-mile line along with interconnection facilities with a projected in-service date of September 2013; (3) the Clear Crossing to Dermott project, which will be an 89-mile, 345 kV line with a projected in-service date of September 2013; and (4) the Tesla to Edith Clarke to Clear Crossing to West Shackelford project. This latter project consists of three, 345 kV lines and various interconnection and facilities and up-grades. The proposed routes for the Tesla to Edith Clarke line vary from 40 to 57 miles in length, with a projected in-service date of March 2013. The proposed routes for the Edith Clarke to Clear Crossing line vary from 76 to 94 miles, with a projected in-service date of

³ *Id.* at 24.

⁴ *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); *Petition* at 4.

⁵ ETT notes that Blue Summit Wind, LLC (Blue Summit) will be interconnecting a wind generation facility with the Tesla to Riley project to deliver wind energy within ERCOT. Concurrent with this order, the Commission is issuing an order in Docket No. EL13-17-000 disclaiming jurisdiction over the facilities related to Blue Summit's interconnection with the Tesla to Riley project.

September 2013. The proposed routes for the Clear Crossing to West Shackelford line vary from 30 to 37 miles, with a proposed in-service date of September 2013.⁶

6. ETT asserts that the circumstances here are similar to the situation in *Cross Texas Transmission, LLC*,⁷ where the Commission disclaimed jurisdiction over: (1) the proposed CREZ lines being developed in the Texas Panhandle portion of ERCOT; and (2) transmission service and sales of energy over those lines.⁸ ETT contends that, like the facilities discussed in *Cross Texas* and *Cottonwood Energy Co.*,⁹ each of ETT's CREZ projects is located entirely within the ERCOT portion of Texas, will not interconnect with transmission facilities of any non-ERCOT regions, and will not be used to provide transmission service in interstate commerce. Thus, ETT requests that the Commission find, as it did in *Cross Texas* and *Cottonwood*, that ETT's proposed transmission facilities do not disturb the jurisdictional *status quo* and, therefore, disclaim jurisdiction over those facilities and the transmission service and sales of electric energy over those lines. ETT also requests that the Commission declare that ERCOT utilities not currently subject to the Commission's jurisdiction as public utilities under the FPA will not become public utilities as a result of interconnecting with ETT's transmission facilities in ERCOT. ETT asserts that here, as in *Cross Texas* and *Cottonwood*, no aspect of the arrangement involves the crossing of any state boundaries; all of the relevant facilities will be located wholly in Texas and all power will be produced, transmitted, and consumed solely in Texas and within ERCOT. ETT also states that it has no plans or ability to sell power outside of Texas and ERCOT; thus no power will be commingled, thereby satisfying the Commission's requirements for granting a disclaimer of jurisdiction.

7. ETT requests that the Commission issue the order disclaiming jurisdiction before the end of 2012.¹⁰

III. Notice and Responsive Pleadings

8. Notice of ETT's Petition was published in the *Federal Register*, 77 Fed. Reg. 68,117 (2012), with interventions and protests due on or before November 27, 2012. The Public Utility Commission of Texas (Texas Commission) filed an out-of-time motion to intervene and comments.

⁶ Petition at 5-7.

⁷ 129 FERC ¶ 61,106 (2009) (*Cross Texas*).

⁸ *Id.* P 22.

⁹ 118 FERC ¶ 61,198 (2007) (*Cottonwood*).

¹⁰ Petition at 1.

9. The Texas Commission states that it supports ETT's requested disclaimer of jurisdiction. The Texas Commission notes, however, that it has concerns regarding the request for a disclaimer of jurisdiction filed by Blue Summit in Docket No. EL13-17-000 with regard to Blue Summit's proposed interconnection with ETT's transmission facilities. Thus, the Texas Commission requests that the Commission delay action in this case until Blue Summit provides additional details regarding its petition in the Docket No. EL13-17-000 proceeding.¹¹ On December 21, 2012, Blue Summit filed an answer in Docket No. EL13-17-000 stating that it provided the details requested by the Texas Commission and asserting that the Texas Commission was satisfied by the additional details provided.¹²

IV. Discussion

A. Procedural Matters

10. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2012), the Commission will grant the Texas Commission's late-filed motion to intervene given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

11. Section 201(b)(1)¹³ 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. . . .

12. 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 212.¹⁴

13. We find that ETT would not be a "public utility" under section 201 of the FPA as a result of the proposed transmission lines because, except as a result of Commission orders issued under sections 210, 211, or 212 of the FPA, it would not own or operate

¹¹ Texas Commission December 14, 2012 Comments.

¹² Blue Summit December 21, 2012 Answer at 3.

¹³ 16 U.S.C. § 824b(1) (2006).

¹⁴ *Id.* § 824(e).

facilities used for transmission or wholesale sale of electric energy in interstate commerce. The Commission finds that the four proposed transmission projects, as described in the instant filing, do not disturb the jurisdictional *status quo*. All of the facilities at issue will be located entirely within the state of Texas and will not interconnect to any non-ERCOT transmission facilities. Moreover, no energy transmitted over the ETT's proposed CREZ lines 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.

14. We find that this situation is thus analogous to that present in *Cross Texas*. In that case, the Commission examined the jurisdictional implications of a proposal to construct CREZ lines to connect points within the ERCOT grid, in order to transmit electric energy generated and consumed solely within the state of Texas. The Commission disclaimed jurisdiction based on the petition's description of the proposed transmission lines and its representation that the lines would be operated in a manner that does not result in the transmission or sale for resale of electric energy in interstate commerce, including the commingling of electric energy between ERCOT and SPP.¹⁵

15. Based on ETT's description of the proposed CREZ projects and its representation that the facilities will not be used in a manner which results in transmission or sales for resale of electric energy in interstate commerce, including the commingling of electric energy between ERCOT and non-ERCOT regions, we will grant ETT's 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 ETT and/or its facilities, the Commission disclaims jurisdiction over: (1) transmission lines and facilities in the ERCOT region that will be owned and operated by ETT; (2) transmission service over those transmission facilities; and (3) sales of electric energy over the lines. Moreover, the utilities in ERCOT that are not currently public utilities under the FPA will not become public utilities as a result of interconnection with ETT's transmission facilities in ERCOT.

The Commission orders:

ETT's petition for a declaratory order disclaiming jurisdiction over the ETT's proposed CREZ projects, 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

¹⁵ *Cross Texas*, 129 FERC ¶ 61,106 at P 24.

ERCOT that are not currently public utilities under the FPA will not become public utilities as a result of interconnection with ETT's transmission facilities in ERCOT, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.