

147 FERC ¶ 61,113
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southern Cross Transmission LLC
Pattern Power Marketing LLC

Docket No. TX11-1-001

FINAL ORDER DIRECTING INTERCONNECTION
AND TRANSMISSION SERVICE

(Issued May 15, 2014)

1. This final order under sections 210, 211, and 212 of the Federal Power Act (FPA)¹ directs the City of Garland, Texas (Garland) to interconnect with Southern Cross Transmission LLC's (Southern Cross) proposed transmission line. This final order also directs Oncor Electric Delivery Company LLC (Oncor) and CenterPoint Energy Houston Electric, LLC (CenterPoint) to provide transmission service for power flows into and out of the Electric Reliability Council of Texas (ERCOT).

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 pursuant to Commission orders under sections 210 and 211 of the FPA.² 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

¹ 16 U.S.C. §§ 824i, j, k (2012).

² *City of College Station, TX*, 137 FERC ¶ 61,230 (2011); *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*) (collectively, *Central Power and Light*).

Commission's plenary jurisdiction under Part II of the FPA, and ERCOT's non-jurisdictional status was preserved.³ The proposal at issue here, as outlined below, would create an additional interconnection allowing electric power flow between ERCOT and facilities located outside of Texas.

3. Oncor and CenterPoint are successors to the rights and obligations created by the Commission in a prior order issued pursuant to sections 210, 211, and 212 of the FPA.⁴ Thus, neither Oncor nor CenterPoint is a "public utility" within the meaning of section 201(e) of the FPA.⁵

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, a 400-mile high voltage direct current (HVDC) transmission line to provide incremental bi-directional transmission capacity of up to 3,000 MW of electric power into and out of ERCOT (Project).⁶ Pattern Power Marketing LLC (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 Project to transact with load serving entities within the SERC.

5. On September 6, 2011, Southern Cross and Pattern Power (collectively, Applicants) submitted an application to the Commission pursuant to sections 210, 211, and 212 of the FPA, which requested that the Commission issue an order requiring the physical interconnection of the Project with Garland's transmission facilities at a point near the Texas/Louisiana border (the Western Point of Interconnection). Applicants also requested that the order direct Oncor and CenterPoint to provide the transmission service necessary for Pattern Power and other eligible customers to deliver energy over the interconnection into and out of ERCOT. The application included, for Commission approval, an unexecuted Offer of Settlement that establishes the terms and conditions under which Garland would interconnect with the Project and Oncor and CenterPoint

³ 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) (2012).

⁴ *Central Power and Light I*, 17 FERC ¶ 61,078.

⁵ 16 U.S.C. § 824(e) (2012).

⁶ For additional details on the Project, see *Southern Cross Transmission LLC, et al.*, 137 FERC ¶ 61,206, at PP 5-6 (2011) (Proposed Order).

would provide the requested transmission service.⁷ Applicants also requested a declaration by the Commission that transactions over the Project would not result in any ERCOT utilities that are not already public utilities becoming public utilities under Part II of the FPA.⁸

6. On December 15, 2011, the Commission issued the Proposed Order, determining on a preliminary basis that an order requiring the requested interconnection and transmission service would meet the standards set forth in sections 210, 211, and 212 of the FPA. The Commission found that it had jurisdiction under those provisions to direct the requested interconnection and transmission service and confirmed that exercise of that jurisdiction would not cause any ERCOT utility that is not already a public utility to become a public utility under Part II of the FPA.⁹ Further, in response to concerns raised by Texas Industrial Consumers¹⁰ regarding the potential flow of electricity in interstate commerce as a result of the proposed interconnection, the Commission found that, given Applicants' descriptions of the Project and the proposed location of the HVDC converter station, Applicants' request poses no greater threat to ERCOT's jurisdictional status than the interconnections and transmission service ordered in *Brazos, Kiowa, and Central Power and Light*.¹¹ The Commission noted, however, that although not critical for the jurisdictional determination, it expected Applicants to provide precise information regarding the location of the Western Point of Interconnection in the revised application.

7. However, the Commission found that, without completed interconnection and reliability studies, and without final identification of the necessary interconnection facilities, the application contained insufficient detail to enable the Commission to issue a final order.¹² Thus, the Commission directed Applicants 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."¹³ To

⁷ *Id.* PP 9-11.

⁸ *Id.* P 7.

⁹ The Commission also noted that Garland would not become a "transmitting utility" under the FPA. *Id.* P 26.

¹⁰ Texas Industrial Consumers consists of: Exelon Corporation, Sharyland Utilities, L.P., Calpine Corporation, and Texas Industrial Energy Consumers.

¹¹ *Id.* P 27.

¹² *Id.* PP 29, 32, 35.

¹³ *Id.* P 39.

provide the necessary information, the Commission directed 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.”¹⁴

8. On February 20, 2014, in accordance with the Commission’s directive in the Proposed Order, Applicants submitted their revised application, which includes a revised Offer of Settlement and the finalized, unexecuted interconnection agreements between Oncor and Garland, and Garland and Southern Cross.¹⁵

II. Revised Application

9. Applicants state that the Offer of Settlement remains substantively unchanged from the one filed in 2011. Applicants also state that the interconnection agreements have been modified by revising Exhibit A to each agreement such that all of the interconnection facilities to be owned, operated, and maintained by Oncor, Garland, and Southern Cross are identified, as required by the Proposed Order.¹⁶ With respect to cost allocation, Applicants aver that the costs of constructing all facilities identified in the two interconnection agreements that are to be owned and operated either by Garland or Southern Cross will be the responsibility of the Project and neither Garland nor Southern Cross will seek to recover any such construction costs from ERCOT ratepayers. Applicants state that recovery of the costs of the facilities that are to be owned and operated by Oncor will be subject to the established cost allocation rules within ERCOT and the jurisdiction of the Public Utility Commission of Texas (Texas Commission).¹⁷

10. In response to the Commission’s directive to provide precise information regarding the location of the Western Point of Interconnection, Applicants provide a revised schematic diagram as Attachment B to the Revised Application. Applicants explain that Southern Cross has entered into options to purchase land at the Texas/Louisiana border that, if ultimately purchased, would allow the construction of both the Garland switching station and the Southern Cross HVDC converter station in close proximity at the border, as shown in the attached schematic. Applicants note their intent to utilize this land, but commit to design and construct the facilities, irrespective of

¹⁴ *Id.*

¹⁵ Applicants February 20, 2014 Application (Revised Application).

¹⁶ Applicants request privileged treatment of the revised Exhibit A to the Oncor/Garland interconnection agreement, in accordance with section 388.112 of the Commission’s regulations, due to the commercially sensitive information contained therein. *Id.* at 5.

¹⁷ *Id.* at 3-4.

what parcels of land are acquired, in such close proximity to the Texas/Louisiana border that the only reasonable interconnection to the alternating current facilities between the switching station and the HVDC converter station will occur within the state of Texas. Thus, Applicants state that any interconnecting party will be subject to the jurisdiction of the Texas Commission.¹⁸

III. Notice and Responsive Pleadings

11. Notice of Applicants' filing was published in the *Federal Register*, 79 Fed. Reg. 11,097 (2014), with protests and interventions due on or before March 24, 2014. None was filed.

IV. Discussion

A. Jurisdiction

12. As noted above, in the Proposed Order, the Commission found that the precise location of the Western Point of Interconnection is immaterial with respect to jurisdictional concerns and that, therefore, Texas Industrial Consumers' concerns regarding the jurisdictional impact of future interconnections with the Project were without merit. However, the Commission directed Applicants to provide precise information regarding the location of the Western Point of Interconnection in their revised application.¹⁹ We find that the Revised Application supports the finding in the Proposed Order by clarifying the relationship of the planned facilities to the Texas/Louisiana border. We further find that the specific parcels of land that are ultimately acquired are immaterial to this finding, provided that the facilities are designed and constructed in the manner described by Applicants such that the only reasonable interconnection to the facilities between the switching station and the HVDC converter station will take place within the state of Texas. We again confirm that compliance with this Final Order will not cause any ERCOT utility that is not already a public utility to become a public utility under Part II of the FPA.

B. Section 212 (c) – Final Order

13. In the Proposed Order, the Commission noted that, normally, when the affected parties have agreed to the terms and conditions under which the requested interconnection and/or transmission services will be provided, the Commission would not need to issue a separate proposed order and could instead issue a combined proposed and final order. In this case, however, because the interconnection and reliability studies for

¹⁸ *Id.* at 4-5.

¹⁹ Proposed Order, 137 FERC ¶ 61,206 at P 27, n.27.

the Project had not been completed at the time of the Commission's evaluation of the application, the Commission concluded that it had insufficient information to issue a final order. Thus, the Commission directed the parties to revise, based on the outcome of the interconnection and reliability studies, the Offer of Settlement and interconnection agreements to include details regarding the facilities that will be owned, operated, and maintained by respective parties.²⁰

14. We find that the Revised Application includes the details required by the Proposed Order. Accordingly, we order Garland and Oncor and CenterPoint to provide the requested interconnection and transmission services to Applicants pursuant to the terms and conditions reflected in the Offer of Settlement included in the Revised Application.

C. Other Statutory Requirements

15. 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. The issuance of an order requiring transmission service 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.

16. In the Proposed Order, the Commission made a preliminary determination that an order requiring Garland to provide interconnection service and Oncor and CenterPoint to provide transmission service to Applicants would satisfy the standards of sections 210, 211, and 212 of the FPA.²¹ We adopt that finding on a final basis, as discussed below.

1. Efficiency and Reliability

17. In the Proposed Order, the Commission made a preliminary finding that nothing in the application indicated that ordering the requested interconnection and transmission service would impair the continued reliability of the affected electric systems. However, the Commission noted that it could not issue a final order until the relevant reliability studies had been completed and any necessary system upgrades had been identified.²²

²⁰ *Id.* P 29.

²¹ *Id.* P 23.

²² *Id.* P 32.

The Revised Application avers that the reliability studies have been completed and identifies the facilities that will be constructed in order to safely and reliably interconnect the Project to the ERCOT grid.²³ Thus, we adopt the Commission's preliminary finding on a final basis.

2. Rates, Charges, Terms, and Conditions

18. 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."²⁴

19. In the Proposed Order, the Commission found that, with respect to the transmission service to be provided by Oncor and CenterPoint, the terms and conditions in the Offer of Settlement satisfy the requirements of sections 212(a) and 212(k) of the FPA because, under the Offer of Settlement, the transmission service would be provided under Oncor's and CenterPoint's existing tariffs, which have both adopted the ERCOT protocols that the Commission has previously found to meet the requirements of section 212.²⁵ The revised Offer of Settlement retains this arrangement. Accordingly, we will direct Oncor and CenterPoint to provide the requested transmission service under the rates, terms, and conditions provided for in the revised Offer of Settlement.

20. With regard to the interconnection to be provided by Garland, the Proposed Order explained that the Offer of Settlement referred to the unexecuted interconnection agreements for specifics regarding the interconnection facilities that will be required and how costs for those facilities will be allocated. The Commission found that, because neither of the attached interconnection agreements provided any information about interconnection facilities to be constructed, it could not issue a final order until the Offer

²³ Revised Application at 2.

²⁴ 16 U.S.C. § 824k(k) (2012).

²⁵ Proposed Order, 137 FERC ¶ 61,206 at P 34.

of Settlement and attached interconnection agreements were complete.²⁶ As noted above, the Revised Application includes the complete list of facilities that will be constructed. Further, the Revised Application affirms that costs for the facilities identified in the Garland/Southern Cross interconnection agreement are the responsibility of the Project and will not be recovered from ERCOT ratepayers, and that the facilities identified in the Oncor/Garland interconnection agreement will be subject to the jurisdiction of the Texas Commission and allocated pursuant to established ERCOT rules.²⁷ Thus, we find that, with respect to the proposed interconnection, the revised Offer of Settlement meets the requirements of sections 212(a) and 212(k) and will direct Garland to provide the requested interconnection service under the rates, terms, and conditions provided for in the revised Offer of Settlement.

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 service 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 approved, and its terms incorporated by reference, as discussed in the body of this order.

(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.

²⁶ *Id.* P 35.

²⁷ Revised Application at 4.

(E) This order is a final order, effective upon the date of issuance.

By the Commission.

Kimberly D. Bose,
Secretary.