

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

Before Commissioners: Jon Wellinohoff, 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.