

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.