

118 FERC ¶ 61, 199
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Brazos Electric Power Cooperative, Inc.

Docket No. TX07-1-000

ORDER DIRECTING INTERCONNECTION AND TRANSMISSION SERVICES
AND APPROVING SETTLEMENT AGREEMENT

(Issued March 15, 2007)

1. In this order, we grant Brazos Electric Power Cooperative, Inc.'s (Brazos') request under section 210 of the Federal Power Act (FPA)¹ and direct TXU Electric Delivery Company (TXU Electric Delivery) to provide interconnection with Brazos' proposed transmission line. We also grant Brazos' request under section 211 of the FPA² and direct TXU Electric Delivery 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) over Brazos' proposed transmission line. We also approve a settlement among the parties.

Background

2. The transmission grid administered by the ERCOT independent system operator is located solely within the state of Texas and is not synchronously interconnected to the Western or Eastern Interconnections. Currently, the ERCOT grid is asynchronously interconnected with the grid operated by Southwest Power Pool (SPP) in the Eastern Interconnection through two high-voltage DC interconnections, the North and East Interconnections (HVDC Interconnections), which were established as a result of Commission orders in Docket Nos. EL79-8 and EL79-8-002, pursuant to sections 210

¹ 16 U.S.C. § 824i (2000).

² 16 U.S.C. § 824j (2000).

and 211 of the FPA.³ Brazos' proposal in the instant application, as outlined below, would create the third such high voltage DC interconnection allowing electric power flow between the ERCOT grid and the Eastern Interconnection.

3. Two of the entities required to construct the East Interconnection and provide transmission service to, from, and over the North and East Interconnections were Texas Utilities Electric Company (TU) and Houston Lighting & Power Company (HL&P). The Commission in the HVDC Orders found that compliance with the orders would not cause any electric utility or other entity to be subject to the plenary jurisdiction of the Commission as a "public utility" under the FPA.⁴ Subsequently, TU changed its name to TXU Electric Company⁵ and HL&P changed its name to Reliant Energy HL&P.⁶

4. 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 Commission-jurisdictional facilities and its tariff for transmission service to, from, and over the North and East Interconnections (TFO Tariff)) were transferred to TXU Electric Delivery, a separate transmission and distribution company.⁷ Reliant Energy HL&P, now called CenterPoint,⁸ as the successor to the transmission and

³ See *Central Power and Light Co.*, 17 FERC ¶ 61,078 (1981), as corrected by the Errata Notice issued on November 5, 1981, *order on reh'g*, 18 FERC ¶ 61,100 (1982). See also *Central Power and Light Co.*, 40 FERC ¶ 61,077 (1987) (collectively, the HVDC Orders).

⁴ FPA section 201(b)(2), 16 U.S.C. § 824(b)(2) (2000), provides that compliance with an order under section 210 or 211 will not cause an electric utility to become subject to Commission jurisdiction for any other purpose. In other words, it will not, among other things, cause the entity to become a "public utility" subject to the Commission's authority under Parts II and III of the FPA.

⁵ See *TXU Electric Co.*, Docket No. ER99-3295-000, (Jul. 22, 1999) (unpublished letter order).

⁶ See *Reliant Energy HL&P*, Docket Nos. ER99-3046-000 and ER97-2524-000, (Jun. 22, 1999) (unpublished letter order).

⁷ See *TXU Electric Co.*, 97 FERC ¶ 62,146 (2001).

⁸ See *CenterPoint Energy Houston Electric, LLC*, Docket Nos. ER02-2555-000 and ER02-2255-001 (Nov. 14, 2002) (unpublished letter order).

distribution operations of what had been the integrated utility, owns the transmission and distribution facilities, including interests in the Commission-jurisdictional HVDC interconnection facilities and its TFO Tariff.

5. TXU Electric Delivery and CenterPoint⁹ are successors to the rights and obligations created by the Commission in the HVDC Orders. They also are subject to the Commission's directives under sections 210 and 211 of the FPA in *Kiowa*¹⁰ to provide interconnection at TXU Electric Delivery's Valley Switching Station in ERCOT (Valley Interconnection) for a generator located approximately 80 miles away in Pittsburg County, Oklahoma, and transmission to, from, and over the Valley Interconnection.¹¹ Both TXU Electric Delivery and CenterPoint provide transmission service for transactions that involve the import of power into ERCOT or the export of power out of ERCOT over the HVDC Interconnections with SPP and the Valley Interconnection in accordance with their respective TFO Tariffs on file with the Commission. Neither TXU Electric Delivery nor CenterPoint is a "public utility" within the meaning of section 201(e) of the FPA.¹²

6. Brazos is a Texas generation and transmission cooperative and a borrower of loan funds from the Rural Utility Services whose 17 member cooperatives provide service to approximately 1,000,000 retail customers in Texas. Brazos serves the full electric energy requirements of its 17 member cooperatives in Texas. Brazos also sells electric energy to two municipal electric wholesale customers in Texas. Brazos, along with Western Farmers Electric Cooperative (Western Farmers), plans to construct and jointly own Hugo Unit 2, a 750 MW coal-fired electric-generating facility to be located near the City of Hugo, Oklahoma. In general, Brazos wants to use its 375 MW share of Hugo Unit 2 to serve its wholesale load obligations within the ERCOT grid, while Western Farmers wants to use its 375 MW share to serve load within the SPP grid in Oklahoma.

7. To accommodate deliveries from Hugo Unit 2 into ERCOT, Brazos plans to build a 70-mile double-circuit alternating current 345 kV transmission line (the AC Transmission Line) from Hugo Unit 2 across portions of Oklahoma and into Texas.

⁹ *See id.*

¹⁰ *See Kiowa Power Partners, LLC*, 99 FERC ¶ 61,251 (2002) (*Kiowa*).

¹¹ Unlike the interconnections directed in the HVDC Orders, the interconnection directed in *Kiowa* did not result in an additional interconnection between ERCOT and the Eastern Interconnection.

¹² 16 U.S.C. § 824(e) (2000).

Hugo Unit 2 will be synchronized through the AC Transmission Line with the ERCOT Interconnection. To accommodate deliveries from Hugo Unit 2 into Oklahoma, Brazos also proposes to build a high-voltage 375 MW capacity direct current tie (Brazos DC Tie) that will provide an asynchronous interconnection between Hugo Unit 2 and SPP in the Eastern Interconnection. When completed, the AC Transmission Line and the Brazos DC Tie will permit up to 1,125 MWs (750 MWs from Hugo Unit 2 and 375 MWs from SPP over the Brazos DC Tie) to flow into the ERCOT grid or up to 375 MWs to flow from the ERCOT grid over the Brazos DC Tie and into the SPP grid. Although the Brazos DC Tie and the AC Transmission Line will permit the dispatch of electric energy between two asynchronous markets, the ERCOT grid and SPP grid will at no time be synchronously interconnected.

8. Brazos and Western Farmers are also investigating the economic and operational feasibility of constructing a 345 kV alternating current bypass connection from Hugo Unit 2 to the SPP grid (the AC Bypass). This bypass would allow Hugo Unit 2 to be synchronously connected with the SPP grid in the event Hugo Unit 2 were electrically isolated from ERCOT, *i.e.*, if the AC Transmission Line went out of service. Further, Brazos and Western Farmers contemplate that the AC Bypass might be capable of being utilized to synchronously transmit energy from the SPP grid over the AC Transmission Line into a portion of the ERCOT grid that has been electrically isolated from the remainder of the ERCOT grid during the event of a major disturbance or outage.

9. TXU Electric Delivery advised Brazos that TXU Electric Delivery is willing to interconnect with the AC Transmission Line, and TXU Electric Delivery and CenterPoint expressed their willingness to provide transmission service for power flows into and out of the ERCOT grid over such interconnection in the manner requested by Brazos. However, they do not wish to change their status as transmission and distribution utilities that are not “public utilities” under the FPA. TXU Electric Delivery and CenterPoint have also indicated that they do not wish to subject ERCOT or any other entity in the ERCOT grid that is not otherwise a “public utility” under the FPA to potential Commission jurisdiction as a consequence of providing the interconnection and the transmission services requested by Brazos. Therefore, TXU Electric Delivery and CenterPoint are willing to provide the requested interconnection and transmission services only pursuant to a Commission order under sections 210 and 211 of the FPA.

Brazos Application and Offer of Settlement

10. On October 13, 2006, as amended on November 21, 2006, Brazos submitted an application to the Commission pursuant to sections 210, 211, and 212 of the FPA. Brazos requests that the Commission issue an order requiring the physical interconnection of the AC Transmission Line with the transmission facilities of TXU Electric Delivery at TXU Electric Delivery’s proposed new Valley South Switching Station near TXU Electric Delivery’s existing Valley Switching Station (Valley South

Interconnection). Brazos also requests that the order direct TXU Electric Delivery and CenterPoint to provide the transmission services necessary for Brazos to deliver energy and ancillary services over the Valley South Interconnection into and out of ERCOT.

11. In addition, Brazos submitted an unexecuted Offer of Settlement among Brazos, TXU Electric Delivery, and CenterPoint, seeking the Commission's approval of same. The proposed Offer of Settlement would resolve all matters at issue in this proceeding. The Offer of Settlement provides for the execution by Brazos and TXU Electric Delivery of an unexecuted Interconnection Agreement attached to the Offer of Settlement. The Interconnection Agreement specifies the terms and conditions that would govern the interconnection of TXU Electric Delivery's transmission facilities with the AC Transmission Line. Pursuant to the proposed Offer of Settlement, TXU Electric Delivery and CenterPoint would modify their respective TFO Tariffs to apply to the import or export of power into or out of the ERCOT grid over the Valley South Interconnection at the same rates, terms, and conditions under which TXU Electric Delivery and CenterPoint currently provide transmission services to, from, and over the North and East Interconnections with SPP, and the Valley Interconnection, under their respective TFO Tariffs. Brazos would agree not to oppose, or directly or indirectly support any opposition to, such amendment to TXU Electric Delivery's or CenterPoint's TFO Tariffs.¹³

12. The Offer of Settlement is conditioned upon, among other things, the Commission issuing an order consistent in all material respects with the proposed Order Directing Interconnection and Transmission Services and Approving Settlement attached to the Offer of Settlement. Consistent with the Commission's previous orders in Docket Nos. EL79-8 and EL79-8-002, the proposed order would be issued pursuant to sections 210 and 211 of the FPA and, therefore, would retain TXU Electric Delivery'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.

13. In addition, although at this time there are no definitive plans to construct the AC Bypass, Brazos requests that the Commission's order provide that the construction of such a bypass will not affect the jurisdictional status of ERCOT, TXU Electric Delivery, CenterPoint, or any other electric utility or other entity within the ERCOT grid not currently subject to the Commission's jurisdiction and will not require any additional approval by the Commission under section 210 or 211 of the FPA.

¹³ The necessary amendments to CenterPoint's TFO Tariff have already been accepted for filing by the Commission. *See CenterPoint Energy Houston Electric, LLC*, Docket No. ER07-73-000 (Nov. 30, 2006) (unpublished letter order).

Interventions and Comments

14. Notice of the filing was published in the *Federal Register*, 71 Fed. Reg. 70,372 (2006), with interventions and protests due on or before December 11, 2006. East Texas Cooperatives,¹⁴ Western Farmers Electric Cooperative (Western Farmers), and Reliant Energy, Inc. filed timely motions to intervene. Public Utility Commission of Texas (Texas Commission) filed a notice of intervention. Texas Industrial Energy Consumers (Texas Industrial), SPP, Coral Power, L.L.C. (Coral), TXU Electric Delivery, and CenterPoint filed timely motions to intervene and comments. South Texas Electric Cooperative filed a motion to intervene out of time. On December 22, 2006, Brazos and Western Farmers filed answers to the comments. On January 8, 2007, SPP filed an answer to Brazos' answer.

15. TXU Electric Delivery and CenterPoint support Brazos' filing and the Offer of Settlement and each submitted executed signature pages to the Offer of Settlement as an attachment to their comments.

16. Texas Industrial opposes the Offer of Settlement, claiming that Brazos' application does not address how Brazos intends to operate the AC Transmission Line and the Brazos DC Tie. For example, it states, the proposed Offer of Settlement does not address how losses in the non-ERCOT portion of the proposed AC Transmission Line and the Brazos DC Tie will be recovered. It states that it would be inappropriate for ERCOT ratepayers to absorb the costs of losses that occur on the non-ERCOT portion of the transmission facilities.

17. SPP states that it has no interest in delaying or obstructing the completion of Hugo Unit 2; however, it emphasizes that Western Farmers must submit an interconnection request to SPP for the Brazos DC Tie, which will provide SPP an opportunity to review the interconnection for potential effects to the SPP transmission system.

18. Coral alleges that the proposed interconnection of the new Hugo Unit 2 and the proposed Brazos DC Tie will exacerbate existing congestion on parts of the SPP and ERCOT transmission systems. Coral calls on the Commission to ensure that Brazos bears its share of the costs of any impacts to the ERCOT or SPP transmission systems that result from the construction of the Brazos DC Tie and the interconnection of Hugo Unit 2. In particular, Coral asks the Commission to direct Brazos to make the transmission upgrades that are necessary to prevent further congestion of the ERCOT and/or SPP transmission grids.

¹⁴ East Texas Electric Cooperative, Inc., Sam Rayburn G&T Electric Cooperative, Inc. and Tex-La Electric Cooperative of Texas, Inc. (collectively, East Texas Cooperatives).

19. The Texas Commission seeks to preserve the existing regulatory regime with respect to the wholesale operations of market participants and utilities in ERCOT. It believes that, if entities within ERCOT that are not currently public utilities were to become public utilities under the FPA, the transfer of regulatory authority to the Commission could be disruptive to the Texas wholesale market and the companies that operate in it. It does not oppose the granting of an order in this case, so long as the order is issued under FPA section 210 and 211 of the FPA and the interconnection of the transmission line does not result in utilities and other market participants in ERCOT becoming public utilities. The Texas Commission also believes that the Commission's order in the instant proceeding should recognize that the transmission line proposed by Brazos is subject to the Texas Commission's licensing requirements and that it must approve the line before any interconnection is required.

Answers

20. In response to Texas Industrial's concerns about the cost of losses and the impact on rates for ERCOT ratepayers, Brazos and Western Farmers note that rates paid by ERCOT ratepayers, including Texas Industrial's members, will be addressed by the Texas Commission, which has exclusive jurisdiction over the rates charged to retail ratepayers in Texas. In addition, Brazos recognizes that energy scheduled into or out of the ERCOT grid must comply with applicable ERCOT protocols and applicable transmission tariffs and appropriate procedures will be implemented to assure the losses are properly identified and allocated under the terms of these protocols and tariffs. Brazos specifically acknowledges and agrees that provision must be made to separate the losses attributable to the 13-mile segment of the AC Transmission Line to be located outside of the ERCOT grid from the remainder of the line that will be in the ERCOT grid. It states that this can be accomplished through loss adjustments made to metered values taken at a point other than the ERCOT border, such as Hugo Unit 2.

21. In response to SPP's concerns, Brazos states that SPP has confirmed that there is currently no form or procedure existing in SPP for SPP to review the effects of the Brazos DC Tie on SPP's transmission system; rather, SPP simply desires to be a party to the interconnection agreement between Western Farmers and Brazos. Brazos states that the fact that SPP has not yet developed specific rules and procedures relating to new DC ties should not serve as a basis to delay approval of the instant application. Brazos maintains that specific rules and procedures relating to the new Brazos DC Tie are among the many technical issues that will be addressed in the normal course of business. It stresses that no interconnection with SPP will exist without compliance with SPP rules and procedures or without SPP's consent and approval. Further, Brazos states that SPP has clarified that it is not necessary for Western Farmers to file an interconnection request with SPP prior to the issuance of the Commission's order in this case. In a response to Brazos' answer, SPP submitted an answer "merely to confirm the representations made by Brazos in its answer, and to state that Brazos' commitment to subject the

interconnection to SPP's consent and approval alleviates SPP's concerns in this proceeding."

22. Brazos contends that Coral's claims regarding the possible negative effects of the interconnection of the proposed Brazos DC Tie and Hugo Unit 2 and the possible effect on existing congestion are speculative, and notes that Coral provides no affidavit or other factual support for its statements. Moreover, Western Farmers joins Brazos in noting that procedures in both SPP and ERCOT will determine what upgrades, if any, are needed to accommodate interconnection and transmission service requests, and how the costs of any such necessary upgrades should be allocated. Brazos further notes that, in ERCOT, those procedures are actually and effectively subject to the determinations of the Texas Commission. Brazos denies Coral's speculations regarding congestion and states that the extension of the AC Transmission Line through portions of Texas will enhance potential expansions in the northern portion of the ERCOT grid and will likely increase the robustness of the ERCOT grid, thereby reducing existing or potential congestion. In addition, as Brazos does not serve any load in SPP, it argues that Coral's comments that it should be responsible for the SPP-related transmission costs are inapplicable.

23. In response to the Texas Commission, Brazos states that it recognizes that the Texas portion of the AC Transmission Line is subject to the Texas Commission's licensing requirements and explains that it has applied to the Texas Commission for a Certificate of Convenience and Necessity. However, Brazos explains that, given the long lead-time for projects of this magnitude, where many regulatory approvals are required, it is unavoidable that certain approval processes may proceed concurrently, rather than sequentially. It claims that, as a technical matter, state regulatory approval is not a condition for the Commission's issuance of an order pursuant to sections 210 and 211 of the FPA and argues that the issuance of the proposed order should depend solely on Brazos' demonstration of compliance with FPA requirements. Brazos also notes that the denial of the instant requested order will cause the termination of the project and result in Brazos' termination of other pending regulatory efforts.

24. As for the Texas Commission's concern about the jurisdictional status of ERCOT entities, Brazos states that the fundamental purpose of its application is to preserve, not undermine, existing jurisdictional relationships. It states that it has agreed to any Texas Commission approval of the Certificate of Convenience and Necessity being conditioned upon the Commission's approval of the instant application preserving existing jurisdictional relationships.

Discussion

A. Procedural Matters

25. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the timely, unopposed motions to intervene serve to make

the entities that filed them parties to this proceeding. We will grant South Texas Electric Cooperative's motion to intervene out of time, given its interest in this proceeding, the early stage of this proceeding, and the absence of any undue prejudice or delay.

26. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority. We will accept the answers of Brazos, Western Farmers, and SPP because they provide information that assisted us in our decision-making process.

B. Statutory Requirements

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

1. Jurisdiction

28. 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."¹⁵ A "transmitting utility" is defined in section 3(23) of the FPA, as modified by the Energy Policy Act of 2005,¹⁶ 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."¹⁷

¹⁵ 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).

¹⁶ *Id.*

¹⁷ Prior to the passage of the Energy Policy Act of 2005 (EPAAct 2005), the Commission had authority under FPA section 211 to require any transmitting utility, upon the application of any electric utility, federal power marketing agency, or any other person generating electric energy for sale for resale, to provide transmission services to the applicant. "Transmitting utility" was defined as any electric utility, qualifying facility, or federal power marketing agency which owns or operates electric power transmission facilities used for the sale of electric energy at wholesale. Thus, it was not limited to entities engaged in transmission in interstate commerce. However, EPAAct 2005 amended the definition of the term "transmitting utility" so that it applies now only
(continued...)

29. Brazos sells electric energy to its member cooperatives and two municipals in Texas. Thus, we find that Brazos is an “electric utility” eligible to request an order requiring interconnection and transmission services pursuant to sections 210 and 211 of the FPA.

30. TXU Electric Delivery 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 the HVDC Orders and *Kiowa*, they own and operate ERCOT facilities that are used for the transmission of electric energy in interstate commerce. Thus, we find that they each are a “transmitting utility” as that term is defined in FPA section 3(23) and used in FPA section 211(a). Further, TXU Electric Delivery 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 Brazos), under sections 210 and 211 of the FPA. Accordingly, the Commission has jurisdiction under sections 201(b)(2), 210, and 211 of the FPA to issue an order requiring TXU Electric Delivery to interconnect with Brazos and requiring TXU Electric Delivery and CenterPoint to provide transmission services to, from, and over the Valley South Interconnection. 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.

2. Section 212 (c) - Proposed Order

31. 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.

32. In the instant application, Brazos and TXU Electric Delivery were able to agree upon the terms and conditions under which the interconnection will be provided, and Brazos, TXU Electric Delivery, and CenterPoint were able to agree upon the terms and conditions under which the associated transmission services will be provided, as reflected

to entities that own, operate, or control facilities used for the transmission of electricity in interstate commerce.

in the Offer of Settlement filed concurrently with Brazos' application, and subsequently executed by TXU Electric Delivery and CenterPoint. As the parties have come to an agreement regarding the rates, terms, and conditions for carrying out the requested services, we find it unnecessary to issue a proposed order as provided in section 212(c) (1) and now issue this final order incorporating by reference the terms and conditions agreed upon by the parties in the Offer of Settlement, except as otherwise provided herein.¹⁸

3. Other Statutory Requirements

33. 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 efficiency of 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. 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 of the FPA. 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

34. The interconnection service requested of TXU Electric Delivery and transmission service requested of TXU Electric Delivery 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*,¹⁹ 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 TXU

¹⁸ See, e.g., *Otay Mesa Generating Company, LLC*, 94 FERC ¶ 61,384 (2001); *Kiowa*, 99 FERC ¶ 61,251.

¹⁹ 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 Company*, 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).

Electric Delivery to provide Brazos with the requested interconnection and by directing TXU Electric Delivery and CenterPoint to provide the requested transmission services in accordance with this order.

b. Efficiency and Reliability

35. We find that ordering the requested interconnection and transmission service will optimize the efficiency of the use of facilities and resources because it will allow Brazos and Western Farmers to use Hugo Unit 2 to sell energy and ancillary services into both ERCOT and SPP and will allow the sale of energy and ancillary services from other generators between the ERCOT and SPP regions when economic to do so.²⁰ We note that Brazos also maintains that utilization of the existing Hugo Plant site together with the proposed joint development and ownership of Hugo Unit 2 by Brazos and Western Farmers reduces incremental costs by making use of existing common facilities and achieves economies that neither Brazos nor Western Farmers might achieve independently.

36. With regard to reliability, we find that ordering the requested transmission services will not unreasonably impair the continued reliability of the affected electric systems. The regional planners in SPP and ERCOT are able to incorporate the Hugo Unit 2 into their long-term estimates of available capacity. The AC Transmission Line will provide ERCOT access to 375 MWs of additional capacity (Brazos' share of Hugo Unit 2) under normal conditions, and has the potential to provide access to 1,125 MWs of additional capacity (the total 750 MWs from Hugo Unit 2 plus 375 MWs from the SPP grid over the DC Tie) in special cases. Likewise, SPP will have access to an additional 375 MWs of capacity over the DC Tie to serve Western Farmers' load on the SPP grid.

c. Rates, Charges, Terms and Conditions

37. 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

²⁰ We note that Brazos states that it is considering new technologies for the tie, including variable frequency transformers. Consistent with EPACT 2005 § 1223, 119 Stat. 953, *to be codified at* 42 U.S.C. § 16422 and our authority under FPA section 210(c), the Commission encourages Brazos to deploy advanced transmission technologies that will increase the efficiency or reliability of the new transmission facilities.

transmission and generation of electricity and shall be just and reasonable, and not unduly discriminatory or preferential.”

38. 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.”²¹

39. Pursuant to the Offer of Settlement, Brazos and TXU Electric Delivery have agreed to the terms and conditions under which the physical interconnection of their facilities will be established, so as to permit the delivery to, and from the interconnection over, the ERCOT grid. The terms and conditions of the interconnection are specified in the unexecuted Interconnection Agreement that is attached to the Offer of Settlement.

40. The terms and conditions in the Interconnection Agreement are in accordance with the terms and conditions that apply to the interconnection of facilities in the ERCOT grid. The Interconnection Agreement provides for: (1) the interconnection facilities that will be constructed, owned, operated and maintained by TXU Electric Delivery; and (2) the interconnection facilities that will be constructed, owned, operated, and maintained by Brazos.

41. In the Offer of Settlement, TXU Electric Delivery and CenterPoint agree that they will make a compliance filing to modify their respective TFO Tariffs to apply to the import or export of power over the Valley South Interconnection into or out of the ERCOT grid at the same rates, terms, and conditions under which TXU Electric Delivery and CenterPoint currently provide transmission services to, from, and over the HVDC Interconnections under their respective TFO Tariffs. Initially, the parties expect that such transmission services will be provided primarily in connection with the delivery of power and ancillary services by Brazos into and out of ERCOT over the Valley South Interconnection. However, because the parties recognize that other entities may wish to use the interconnection to arrange for the delivery of power and energy in the future, TXU Electric Delivery and CenterPoint have agreed to provide transmission service for power flows into and out of ERCOT over the interconnection pursuant to TXU Electric Delivery’s and CenterPoint’s TFO Tariffs for Brazos and any other eligible customer under the TFO Tariffs. Brazos agrees that it will not oppose, or directly or indirectly support any opposition to, such amendment to TXU Electric Delivery’s or CenterPoint’s TFO Tariffs.

²¹ 16 U.S.C. § 824k(k) (2000).

42. 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 the TFO Tariffs.²² Here, under the Offer of Settlement, the parties have agreed to amend the TFO Tariffs to apply those existing rates, terms, and conditions to the proposed transmission service.²³ Therefore, we find that the Offer of Settlement meets the requirements of sections 212(a) and 212(k).

43. Coral raises concerns about the rates, terms, and conditions related to the need for, and the cost of, transmission upgrades that may be needed in ERCOT and SPP as a result of the proposed interconnection and transmission service. As discussed above, the rates, terms, and conditions of interconnection to, and transmission service over, the ERCOT grid are made pursuant to ERCOT protocols and procedures, which the Commission has found to meet the requirements of section 212. Coral provides no reason why those ERCOT procedures would no longer meet the section 212 standards. In addition, any concerns about the rates, terms, and conditions of interconnection to, and transmission service over, the SPP system are outside the scope of this proceeding; SPP is not part of the instant request for interconnection and transmission service.

44. We also find that Brazos has sufficiently addressed the concerns raised by Texas Industrial about paying rates that include recovery of losses on the non-ERCOT portion of AC Transmission Line. Brazos notes that as retail ratepayers in Texas, the rates paid by Texas Industrial's members are subject to the Texas Commission's jurisdiction. In addition, Brazos' answer states that it fully recognizes that energy scheduled into or out of the ERCOT grid must comply with applicable ERCOT protocols and with the TXU Electric Delivery and CenterPoint TFO Tariffs, and that under the terms of these protocols and tariffs, appropriate procedures will be implemented to assure that losses are properly identified and allocated. Brazos also explains that it fully understands and agrees that provisions must be made to separate the losses attributable to the 13-mile segment of the AC Transmission Line that will be located outside of the ERCOT grid from the remainder of the line that will be in the ERCOT grid. Accordingly, consistent with Brazos' explanation, this order will be conditioned on Brazos making a compliance

²² 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.

²³ The necessary amendments to CenterPoint's TFO Tariff have already been accepted for filing by the Commission. See *CenterPoint Energy Houston Electric, LLC*, Docket No. ER07-73-000 (Nov. 30, 2006) (unpublished letter order).

filing within 60 days of the date of this order demonstrating that provisions have been made to appropriately identify and allocate losses on the AC Transmission Line.²⁴

d. Effect on Contracts or Rate Schedules

45. 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. Brazos does not purchase electric energy from either TXU Electric Delivery 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

46. In addition, we note that Condition (D) of the Settlement provides:

Ownership or use of the Interconnection, including the rights and obligations established herein, may be transferred at any time without further order of the Commission. In the event of a change of ownership or control of the Transmission Facility, 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, TXU Electric Delivery, [CenterPoint] and certain other ERCOT utilities or entities set forth in Ordering Paragraph (G).

We interpret this provision to mean that the jurisdictional status of ERCOT, TXU Electric Delivery, or CenterPoint will not be affected, *by virtue of the transfer* of ownership or use rights. Of course, a transfer to a jurisdictional public utility or to an entity covered by FPA section 203(a)(2) may require those entities to seek approval or make filings under

²⁴ Any changes that may be made the TFO Tariffs to address the issue of losses must be submitted to the Commission for filing by TXU Electric Delivery and CenterPoint.

section 203 of the FPA.²⁵ Similarly, a change in the status of any of the currently non-public utility owners, such that it becomes a public utility, may require further order of the Commission.

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

47. 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.”²⁶ We find that the instant order does not compel any transaction prohibited by either section 212(g) or 212(h).

C. The Texas Commission

48. The Texas Commission states that it does not oppose the granting of the order in this case so long as the order is issued under sections 210 and 211 of the FPA and the interconnection of the AC Transmission Line does not result in utilities and other market participants in ERCOT becoming public utilities. We have addressed these concerns previously in this order. In addition, Brazos notes that, because of jurisdictional concerns, it has agreed to the Texas Commission conditioning its Certificate of

²⁵ 16 U.S.C. § 824b (2000). 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).

²⁶ 16 U.S.C. § 824k(h) (2000).

Convenience and Necessity approval on the approval of the instant request under sections 210 and 211 of the FPA, with no undermining of existing, jurisdictional relationships.

49. The Texas Commission also believes this order should reflect the fact that the AC Transmission Line is subject to its licensing requirements, and interconnection is required only if the line is approved by the Texas Commission. We recognize that the AC line is subject to the Texas Commission's licensing requirements and clarify that this order does not affect state siting requirements.²⁷ Brazos addressed the Texas Commission's concerns in its answer, specifically recognizing that the Texas portion of the AC Transmission Line is subject to the Texas Commission's licensing requirements and stating that it has applied to the Texas Commission for a Certificate of Convenience and Necessity.

D. AC Bypass

50. As stated previously, Brazos and Western Farmers are investigating the economic and operational feasibility of constructing a 345 kV AC Bypass from Hugo Unit 2 to the SPP grid. As there are no definitive plans to construct such a bypass, we will not address jurisdictional status issues regarding such a bypass at this time.

E. Conclusion

51. For the reasons discussed in this order, we find that Brazos' application satisfies the requirements of sections 210, 211, and 212 of the FPA. We will direct TXU Electric Delivery to establish the requested interconnection and we also will direct TXU Electric Delivery and CenterPoint to provide the requested transmission services to, from, and over the interconnection in accordance with the terms of the settlement between Brazos, TXU Electric Delivery, and CenterPoint. Finally, we will approve the Offer of Settlement.

²⁷ If the Texas Commission establishes rate treatment or terms and conditions for service over the AC Transmission Line or interconnection as a condition of its siting approval, this Commission's approval is required before such rates, terms, or conditions are adopted for service that is subject to the Commission's jurisdiction (*e.g.*, service provided under sections 210 and 211 or service provided under section 205 should TXU Electric Delivery, CenterPoint or Brazos become public utilities or if the subject facilities are transferred to a public utility.)

The Commission orders:

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

(B) TXU Electric Delivery and CenterPoint are hereby directed to provide transmission services to Brazos 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 make ERCOT, TXU Electric Delivery, 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) This order is a final order, effective upon the date of issuance.

(F) Losses on the AC Transmission Line must be properly identified and allocated, as discussed in the body of this order.

(G) TXU Electric Delivery is directed to file an executed Interconnection Agreement, as discussed in the body of this order, within 30 days of the date of this order.

By the Commission.

(S E A L)

Philis J. Posey,
Acting Secretary.