

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.

Cottonwood Energy Company, LP

Docket No. EL06-87-000

ORDER GRANTING PETITION FOR DECLARATORY ORDER

(Issued March 15, 2007)

1. On July 17, 2006, Cottonwood Energy Company, LP (Cottonwood) filed a petition for declaratory order requesting that the Commission disclaim jurisdiction over: (1) a proposed transmission line from Cottonwood's generating station, physically located in the Southeastern Electric Reliability Council, Inc. (SERC) region of Texas, to an interconnection point that is physically located within the Electric Reliability Council of Texas (ERCOT) region of Texas; (2) transmission service over the proposed transmission line; and (3) the electric utilities in ERCOT that are not currently public utilities under the Federal Power Act (FPA). As discussed below, we will grant the petition.

Background

2. Cottonwood states that its generating station is a 1,200 MW natural gas-fired combined cycle electric generating station (the Facility), located on a 264-acre site near Deweyville, Texas. Cottonwood states that the Facility is comprised of four units, each consisting of a combustion turbine-generator, a heat recovery steam generator, a steam turbine-generator and associated equipment arranged in a combined cycle configuration. Cottonwood explains that the power from each unit is directed to the Cottonwood switch yard, located on site, by two 500 kV transmission lines. Cottonwood further explains that two 500 kV busses in the Cottonwood switch yard each connect together two of the four units, and that the two busses can be connected together through a normally open switch. Cottonwood indicates that from the Cottonwood switch yard, two 500 kV transmission lines interconnect the Facility with the Entergy Gulf States, Inc. (Entergy) Hartsburg Substation, which is adjacent to the Facility site.

3. Cottonwood notes that the Facility is located in the Entergy sub-region of SERC (in the Eastern Interconnection) and is within the service territory of the Jasper Newton

Electric Cooperative, Inc. (Jasper Newton). Cottonwood states that it presently purchases from Jasper Newton all electric energy used on the Cottonwood site, including station power.

Cottonwood's Proposal

4. Cottonwood states that it proposes to build an approximately 100-mile, high-voltage electric transmission line from the Facility's switch yard to an interconnection point in or near Houston, Texas on CenterPoint Energy, Inc.'s (CenterPoint's) system in ERCOT.¹ Cottonwood states that the proposed transmission line is needed to optimize the use of its Facility by allowing it to deliver energy to customers in ERCOT, in addition to making sales in the Eastern Interconnection.

5. Cottonwood underscores that the proposed transmission line will be located entirely within the State of Texas, that power transmitted over the proposed transmission line will be produced and consumed wholly within the State of Texas and that the proposed transmission line will not be electrically connected to the transmission facilities of any non-ERCOT utility. Cottonwood explains that there will not be any commingling of electric energy between the Eastern Interconnection and ERCOT because the systems are not synchronous and the modifications to the switch yard and the auxiliary power system will not allow operation in a nonsynchronous mode.

6. Specifically, Cottonwood explains that the commingling of electric energy from the two regions will be prevented by a series of configured disconnect switches. As a result, Cottonwood maintains that it will be able to sell into both SERC and ERCOT, but that power from the SERC grid will not be able to flow into ERCOT and, similarly, power from the ERCOT grid will not be able to flow into SERC.

7. Due to Cottonwood's two independent interconnections to the Eastern Interconnection and ERCOT regions, and the configuration of disconnect switches, the Facility will be able to operate in any of three different modes, none of which would

¹ Cottonwood states that several design options for the proposed transmission line are currently being considered including a single or double circuit 500 kV transmission line from the Cottonwood switch yard west to a new 500 kV to 345 kV substation near the point of interconnection with CenterPoint's system or a single or double circuit 345-kV transmission line. Cottonwood further states that CenterPoint may also construct a short (less than one mile) single or double circuit 345 kV transmission line to complete the interconnection. In addition, Cottonwood asserts that it also intends to modify the existing Cottonwood switch yard by adding disconnecting switches so that independent interconnections can be provided to ERCOT and the Eastern Interconnection.

permit the commingling of energy: (i) all four units could deliver energy to the Eastern Interconnection; (ii) all four units could deliver energy to ERCOT, or; (iii) two units could deliver energy to the Eastern Interconnection while the other two units deliver energy to ERCOT. In addition, Cottonwood explains that the Facility's auxiliary power system will be interlocked with the switch yard to prevent any commingling within that system.

8. Cottonwood states that Jasper Newton will continue to supply all auxiliary power requirements, including station power, to the Facility. Cottonwood asserts that, to ensure that station power provided when the Facility is selling into ERCOT is not in interstate commerce, Jasper Newton, or an affiliate, will purchase wholesale electric energy in the ERCOT market for delivery to Cottonwood. Cottonwood further explains that such power will be delivered only during times when the Facility is delivering energy to the ERCOT region, and because the modified Cottonwood switch yard will not permit synchronous interconnection between the ERCOT and Eastern Interconnection regions, no facilities in interstate commerce will be used to transmit such power to Cottonwood.

9. Cottonwood submits that the utilities in ERCOT are not currently public utilities under the FPA and, as a result, expanding transmission interconnections between ERCOT and generators located in regions not currently served by ERCOT present jurisdictional issues. Cottonwood argues that, in order to maintain the jurisdictional *status quo* of utilities in ERCOT, Cottonwood must have assurances that the Commission will not assert authority over the proposed transmission line to ERCOT, transmission over that line, or utilities within ERCOT as a result of the proposed transmission line.

Notice of Filing and Responsive Pleadings

10. Notice of Cottonwood's filing was published in the *Federal Register*, 71 Fed. Reg. 43,140 (2006), with interventions and protests due on or before August 16, 2006. CenterPoint Energy Houston Electric, LLC² and Entergy Services, Inc., on behalf of Entergy Gulf States, Inc.,³ filed timely motions to intervene and comments. The Public Utility Commission of Texas (Texas Commission) filed a motion to intervene out-of-time.

² CenterPoint Energy Houston Electric, LLC is a subsidiary of CenterPoint Energy, Inc. In this order, we refer to them both as CenterPoint.

³ Entergy Services, Inc. is an affiliate of Entergy Gulf States, Inc. In this order, we refer to them both as Entergy.

11. CenterPoint states that it does not object to the interconnection of Cottonwood's proposed transmission line to CenterPoint's transmission system so long as the Commission agrees that the interconnection will not affect the jurisdictional status of CenterPoint or any of the utilities in ERCOT that are not presently public utilities within the meaning of the FPA. CenterPoint states that if the Commission does not agree with Cottonwood that the proposed interconnection does not affect the jurisdictional status of ERCOT utilities, then CenterPoint will not agree to the interconnection of the proposed transmission line with its system unless ordered by the Commission under sections 210, 211 and 212 of the FPA.⁴

12. Entergy does not address the jurisdictional issues raised by Cottonwood's proposal, but notes that the Facility is currently interconnected to the Entergy system and is subject to a currently-effective Interconnection and Operating Agreement, which will need to be amended for the Facility to operate as proposed in the petition. As Cottonwood's filing is limited solely to the jurisdictional issues described above, Entergy states that it will not raise issues at this time.

Discussion

Procedural Matters

13. 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 the Texas Commission's unopposed, untimely motion to intervene given its interest in this proceeding, the early stage of this proceeding and the absence of any undue prejudice or delay.

Commission Determination

14. Section 201 of the FPA defines a public utility as any person who owns or operates facilities used for the transmission of electric energy in interstate commerce or for the sale of electric energy at wholesale in interstate commerce, other than facilities subject to the jurisdiction of the Commission solely by reason of certain enumerated sections of the FPA including sections 210, 211 and 212.⁵ CenterPoint would not be a

⁴ 16 U.S.C. §§ 824i, 824j, and 824k (2000).

⁵ 16 U.S.C.A. § 824(b)(1), (e) (West Supp. 2006); *see Jersey Central Power & Light Company*, 319 U.S. 61 (1943); *Connecticut Light & Power Company v. FPC*, 324 U.S. 515 (1945); *FPC v. Florida Power & Light Company*, 404 U.S. 453 (1972).

public utility as a result of the proposed transmission line because, with the exception of facilities which are subject to Commission jurisdiction by virtue of orders issued under sections 210, 211 and 212 of the FPA,⁶ CenterPoint would not own or operate facilities used for transmission in interstate commerce or for sales at wholesale in interstate commerce.⁷ The Commission finds that the proposed transmission line, as described in the instant filing, does not disturb this jurisdictional *status quo* because electric energy will not flow over that transmission line between ERCOT and the rest of the continental United States.

15. Cottonwood's proposed series of configured disconnect switches, other facility design modifications and the independent operation of its two interconnections will prevent electricity from moving between ERCOT and the Eastern Interconnection. An open disconnect switch on the main bus bar will prevent such intermingling by creating two independent busses, so that one bus will act for ERCOT and the other bus will act for SERC. In addition, Cottonwood will modify the Facility by adding disconnect switches to the proposed transmission line to ERCOT. This modification allows the units to act as separate generators in both regions, and the facilities will be operated in a manner that ensures that intermingling does not take place.⁸

16. The Commission recognizes that the facility design modifications described in the instant petition may necessitate changes in a currently effective interconnection

⁶ See *Central Power and Light Co.*, 17 FERC ¶ 61,078 (1981), *order on reh'g*, 18 FERC ¶ 61,100 (1982); *Kiowa Power Partners, LLC*, 99 FERC ¶ 61,251 (2002).

⁷ Although CenterPoint would not be a public utility for purposes of Part II of the FPA, CenterPoint and/or its facilities are subject to the Commission's jurisdiction for limited purposes under certain provisions of the FPA, including the Commission's reliability jurisdiction under section 215 of the FPA. 16 U.S.C.A. § 824o(West Supp. 2006).

⁸ Modifications to the auxiliary power system described by Cottonwood, as well as its arrangements with Jasper Newton regarding auxiliary power, including station power, will ensure that no intermingling occurs in the Facility's auxiliary power systems and that, when electric energy is being delivered to ERCOT from the entire Facility or from just two units, the respective units' station power needs will come from ERCOT.

By virtue of FPA section 201(b)(2), operation of the facilities in compliance with this order will not cause an electric utility to become subject to Commission jurisdiction as a public utility under the FPA.

agreement between Cottonwood and Entergy. Addressing any such changes would be premature at this point, however.

17. Based on Cottonwood's description of the proposed interconnection and transmission facilities and its representation that the facilities will be operated in a manner that does not result in the transmission or sale for resale of electric energy in interstate commerce (including any commingling of electric energy between the Eastern Interconnection and the ERCOT Interconnection), the Commission grants Cottonwood's petition for a declaratory order as follows. With the exception of our jurisdiction pursuant to sections 210, 211 and 212 of the FPA, our reliability jurisdiction under section 215 of the FPA, and our authority under any other FPA provisions that provide for limited jurisdiction over CenterPoint and/or its facilities, the Commission disclaims jurisdiction over: (1) the proposed transmission line to ERCOT; (2) transmission service over the proposed transmission line; and (3) the utilities in ERCOT that are not currently public utilities under the FPA.

The Commission orders:

Cottonwood's petition for a declaratory order disclaiming jurisdiction over the proposed transmission line to ERCOT; transmission service over the proposed transmission line; and the utilities in ERCOT that are not currently public utilities under the FPA, is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Philis J. Posey,
Acting Secretary.