

121 FERC ¶ 61,007  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Electric Transmission Texas, LLC

Docket Nos. EL07-83-000  
ER07-1241-000  
ES07-54-000  
ES07-54-001  
ES07-54-002

ORDER GRANTING PETITION FOR DECLARATORY ORDER DISCLAIMING  
JURISDICTION

(Issued October 1, 2007)

1. In this order, the Commission grants a request by Electric Transmission Texas, LLC (ETT) to determine that ETT is not a public utility under the Federal Power Act, as a result of owning and operating certain transmission facilities identified in its application. It also dismisses certain dockets as moot.

**Background**

2. ETT is a transmission-owning and operating utility, which does not own or control any power generating facilities, and does and will not engage in sales of electric energy.<sup>1</sup> ETT plans to acquire from AEP Texas Central Company (TCC) facilities located in the vicinity of Laredo, Texas, consisting of: (a) the Laredo variable frequency transformer (VFT), which makes possible the operation of a 100 MW asynchronous tie with Commission Federal de Electricidad (CFE), the national utility of Mexico (the Laredo Tie); (b) the dynamic reactive compensation system project at TCC's Hamilton Road substation; (c) the dynamic reactive compensation system, ring bus and capacitor bank

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<sup>1</sup> Upon the completion of certain transactions, ETT will be equally owned by subsidiaries of American Electric Power Company, Inc. (AEP) and MidAmerican Energy Holdings, Inc.

project at TCC's Zapata substation; and (d) the dynamic reactive compensation system and capacitor bank at TCC's Falfurrias substation (together, Initial Facilities).<sup>2</sup>

3. On July 19, 2007, as amended on September 4, 2007, ETT filed a petition for a declaratory order, requesting that the Commission find that it lacks jurisdiction over ETT.<sup>3</sup> ETT argues that it is not subject to the Commission's jurisdiction as a public utility because the transmission facilities that it will own are located exclusively within the Electric Reliability Council of Texas (ERCOT),<sup>4</sup> and it will be regulated by the Public Utility Commission of Texas (PUCT). Additionally, ETT states that, historically, the Laredo Tie has been used only for emergency, local voltage support purposes, and then principally to support loads in the United States with power received from CFE, and "ETT has no present expectation that the Laredo Tie and the VFT will be used for other than emergency transactions."<sup>5</sup>

4. ETT argues that the Commission has consistently recognized that it does not have jurisdiction over facilities used to make sales of electric energy solely within ERCOT. ETT states that its facilities will be located entirely within the ERCOT system and that ETT will have no direct or indirect interconnections with transmission facilities located outside of ERCOT, with the exception of indirect, asynchronous interties with the Eastern Interconnection and an indirect intertie with CFE.<sup>6</sup> ETT maintains that, because the only function of the VFT is to facilitate TCC's interconnection with CFE, the Department of Energy (DOE), and not this Commission, has jurisdiction.<sup>7</sup>

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<sup>2</sup> On April 20, 2007, pursuant to delegated authority, the Commission authorized the transfer of the Initial Facilities from TCC to ETT. *American Electric Power Service Corp.*, 119 FERC ¶ 62,063 (2007). The Commission did not rule on the applicants' alternative request for a disclaimer of jurisdiction.

<sup>3</sup> In Docket Nos. ES07-54-000, ES07-54-001, and ES07-54-002, ETT requests authorization to issue securities, and, in Docket No. ER07-1241-000, ETT filed an open access transmission tariff. This order, finding that ETT is not subject to FERC jurisdiction as a public utility, renders these applications moot.

<sup>4</sup> TCC is interconnected with CFE at the international border and owns and operates the transmission lines by which such interconnection is effected.

<sup>5</sup> Amendment at 2.

<sup>6</sup> Petition at 9.

<sup>7</sup> Petition at 10, citing *Enron Power Marketing, Inc. v. El Paso Electric Company*, 77 FERC ¶ 61,013 at 61,048-49 (1996), *order on reh'g*, 83 FERC ¶ 61,213 (1998), for  
(continued...)

5. Additionally, ETT points out that the Laredo Tie was constructed in 1975, before the Commission authorized the construction of the North and East high voltage direct current (HVDC) Interconnections, involving TCC's predecessor, Central Power and Light Company (CP&L), which was an operating company of the Central and South West Corporation (CSW) holding company system before CSW merged with AEP.<sup>8</sup> ETT maintains that the HVDC Orders were broadly written "to assure that all ERCOT utilities would continue to be exempt from the Commission's plenary jurisdiction while making it possible for the Central and South West Corporation holding company system to operate in a coordinated fashion in compliance with the requirements of the Public Utility Holding Company Act of 1935."<sup>9</sup> Specifically, ETT points out that Ordering Paragraph C of the Order establishing the East HVDC Interconnection, in part directed CP&L and other utilities to:

interconnect with each other and *with any other adjacent utility* at (i) the East Interconnection, (ii) *at locations which are presently in place* and (iii) at such locations which may be mutually agreed upon by the CSW Operating Companies, HL&P or TU Electric and any utility in order to permit or to

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the proposition that DOE, and not the Commission, has jurisdiction over transmission facilities used solely in connection with the transmission of electric energy across an international border.

<sup>8</sup> See *Central Power and Light Co.*, 17 FERC ¶ 61,078 (1981), *order on rehearing*, 18 FERC ¶ 61,100 (1982) (North Interconnection Order); *Central Power and Light Co.*, 40 FERC ¶ 61,077 (1987) (East Interconnection Order) (collectively, HVDC Orders) (directing the North and East HVDC Interconnections, which interconnect ERCOT with the grid that the Southwest Power Pool, Inc. (SPP) operates, and transmission service to, from, and over these interconnections, pursuant to sections 210 and 211 of the FPA). FPA section 201(b)(2), 16 U.S.C. § 824(b)(2) (2000), *amended by* the Energy Policy Act of 2005, Pub. L. No. 109-58, § 1295(a)(1), 119 Stat. 594 (2005), provides that compliance with an order under section 210 or 211 will not cause an entity to become subject to Commission jurisdiction for any other purpose. In other words, compliance with the Commission's order will not, among other things, cause the entity to become a "public utility" subject to the Commission's plenary authority under Parts II and III of the FPA. Therefore, because the owners of the North and East HVDC Interconnections established them as a result of Commission orders issued under sections 210 and 211 of the FPA, these interconnections did not cause electric utilities or other entities operating exclusively within ERCOT to become subject to Commission jurisdiction as public utilities.

<sup>9</sup> Amendment at 2.

facilitate the transmission, purchase, sale, exchange, wheeling, coordination or commingling of electric power in interstate commerce, to, from or over such interconnections (including the North Interconnection and the East Interconnection, being referred to herein jointly as the “HVDC Interconnections”) *or within ERCOT*, by or for the CSW Operating Companies, HL&P or TU Electric, *or any other electric utility*.<sup>10]</sup>

6. ETT further notes that, subsequently, the Commission has issued two other orders under sections 210 and 211 of the Federal Power Act (FPA) involving new interconnections between ERCOT utilities that were exempt from federal jurisdiction by reason of the HVDC Orders and a utility system located outside ERCOT.<sup>11</sup> ETT points out that neither of these approvals concerned interconnections that were in place at the time the HVDC Orders were issued. In contrast, ETT notes, CP&L was already interconnected with CFE, an adjacent utility, at Laredo when the HVDC Orders were issued, *i.e.*, ETT is not proposing to establish a new interconnection with a non-ERCOT utility, but only to interconnect to TCC within ERCOT. Accordingly, ETT argues that use of the Laredo Tie for any purpose, emergency or otherwise, should not disturb the jurisdictional status of ERCOT utilities or make ETT a public utility.

7. Notice of ETT’s supplemental filing was published in the *Federal Register*, 73 Fed. Reg. 43,264 (2007), with interventions and protests due on or before September 18, 2007. CenterPoint Energy Houston Electric, LLC (CenterPoint) and Sharyland Utilities, L.P. (Sharyland) filed timely motions to intervene.

### **Discussion**

8. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the timely unopposed motions to intervene serve to make CenterPoint and Sharyland parties to this proceeding.

9. We will grant ETT’s request for a declaratory order. ETT is acquiring part of TCC’s facilities. TCC’s predecessor is CP&L, which is one of the utilities to which the HVDC Orders refer. Indeed, CP&L was interconnected with CFE at Laredo when the Commission issued the Eastern Connection Order. We agree with ETT that its acquisition of the VFT facility and the other facilities supporting the Laredo Tie falls

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<sup>10</sup> *Id.* at 3, *citing* 40 FERC ¶ 61,077 at 61,221 (emphasis by ETT).

<sup>11</sup> *See Brazos Electric Power Cooperative, Inc.*, 118 FERC ¶ 61,199 (2007); *Kiowa Power Partners, LLC*, 99 FERC ¶ 61,251 (2002).

within the provisions of the HVDC Orders.<sup>12</sup> Pursuant to FPA section 201(b)(2), ETT's acquisition of those facilities will not, therefore, result in ETT's becoming a public utility under the FPA.<sup>13</sup>

10. We find that, based on the facts and circumstances represented in ETT's petition, as amended, ETT's acquisition of the VFT and the other facilities supporting the 100 MW asynchronous tie with CFE will not result ETT's becoming a public utility under the FPA. Accordingly, with the exception of our jurisdiction under 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 ETT and/or its facilities, the Commission disclaims jurisdiction over ETT.

11. Our determination is based on all of the circumstances before us here, including the current configuration and operation of ETT's, TCC's, and CFE's facilities.<sup>14</sup> Should such configuration or operation change, or should ETT own or operate additional

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<sup>12</sup> See *East Interconnection Order*, 40 FERC ¶ 61,077, Ordering Paragraph C. Substantially the same language was included in the settlement approved by the Commission in its orders directing the North HVDC Interconnection, which language was incorporated in the Commission orders by reference. See *North Interconnection Order*, 18 FERC ¶ 61,100 at 61,190, and Ordering Paragraph (3) of the draft order attached to the Second Supplemental Offer of Settlement filed June 22, 1981 in Docket No. EL79-8, FERC E-Library document Accession No. 19840815-0124.

<sup>13</sup> In another order that we are issuing concurrently with this order, *Sharyland Utilities, L.P.*, 121 FERC ¶ 61,006 (2007), we note that in certain circumstances electric energy generated in ERCOT and transmitted to CFE could flow into that portion of New Mexico where El Paso's load being served by CFE is located. We there note that this would occur solely as a result of the commingling of electric energy generated in the United States with electric energy on the CFE transmission grid; there will be no contractual arrangements between utilities in more than one state in the United States involving the use of the interconnections. We further observe that the nature of the commingled flows between Texas and another state will be limited, and will not occur on a planned or frequent basis. Based on these facts, we find that the possibility of an occasional transmission of electric energy from ERCOT to CFE and then from CFE to El Paso's load in New Mexico would not result in an entity becoming a public utility under the FPA.

<sup>14</sup> While ETT will not be a public utility for purposes of Part II of the FPA, ETT and its facilities are subject to the Commission's jurisdiction for certain purposes under various provisions of the FPA, including the Commission's reliability jurisdiction under section 215 of the FPA. 16 U.S.C. § 824o (West Supp. 2006).

facilities that interconnect with CFE or with another state, our determination of lack of jurisdiction may no longer apply. Accordingly, should ETT seek assurance that it will retain its non-public utility status under the FPA in the event of changed circumstances, it may obtain a jurisdictional determination from the Commission.

The Commission orders:

(A) The petition for declaratory order is hereby granted.

(B) Docket Nos. ER07-1241-000, ES07-54-000, ES07-54-001, and ES07-54-002 are hereby dismissed as moot for the reasons given in this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Acting Deputy Secretary.