

142 FERC ¶ 61,031  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
Cheryl A. LaFleur, and Tony T. Clark.

Blue Summit Wind, LLC

Docket No. EL13-17-000

ORDER GRANTING PETITION FOR DECLARATORY ORDER

(Issued January 17, 2013)

1. On November 6, 2012, Blue Summit Wind, LLC (Blue Summit) filed a petition for a declaratory order (Petition) requesting that the Commission disclaim jurisdiction over: (1) interconnection facilities that deliver power from Blue Summit's wind energy generator from a site that Blue Summit describes as located within the Southwest Power Pool (SPP) region of Texas to an interconnection point within the Electric Reliability Council of Texas (ERCOT); and (2) transmission and sales of energy over these interconnection facilities. Blue Summit also requests that the Commission declare that the electric utilities in ERCOT that are not currently subject to the Commission's jurisdiction as "public utilities" under the Federal Power Act (FPA) will not become public utilities as a result of the interconnection with Blue Summit. As discussed below, we will grant the Petition.

**I. Background**

2. On October 6, 2008, the Public Utility Commission of Texas (Texas Commission) issued an order that: (1) designated five Competitive Renewable Energy Zones (CREZ) throughout Texas; (2) determined that transmission lines should be constructed to interconnect the CREZs with the transmission grid controlled by ERCOT; and (3) identified the major CREZ transmission improvements to be constructed.<sup>1</sup> The Texas Commission allowed generators in the Texas Panhandle to interconnect with regions outside ERCOT, such as SPP, as long as they are not simultaneously interconnected with ERCOT.<sup>2</sup>

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<sup>1</sup> *Petition for Designation of Competitive Renewable-Energy Zones*, Docket No. 33672 (Public Utility Commission of Texas, Oct. 6, 2008) (CREZ Order).

<sup>2</sup> *Id.* at 23.

3. To preserve the jurisdictional status quo, the Texas Commission required that either the generators themselves or the transmission service provider that interconnects the generators and the ERCOT grid obtain an order from the Commission disclaiming jurisdiction over: (1) the proposed transmission lines to ERCOT; (2) transmission service over the proposed transmission lines; and (3) the utilities in ERCOT that are not currently public utilities under the FPA. The Texas Commission required that such disclaimer be obtained as a condition precedent to approving a certificate of convenience and necessity to the transmission service provider for construction of the CREZ lines.<sup>3</sup>

4. After issuance of the CREZ Order, the Texas Commission issued another order determining which entities would be assigned as transmission service providers to construct, own, and operate the CREZ lines. In that order, the Texas Commission assigned the transmission service provider role to Electric Transmission Texas, LLC (ETT), an electric utility in Texas, for seven CREZ lines and related facilities, which will be located exclusively within the ERCOT region of Texas.<sup>4</sup>

## **II. Petition for Declaratory Order**

5. Blue Summit has developed and owns a 135.4 MW wind generating facility on a site in Wilbarger and Hardeman Counties, Texas (Blue Summit Facility), which Blue Summit describes as located within the SPP region and the Eastern Interconnection. However, the Blue Summit Facility can and will sell power only into ERCOT.<sup>5</sup> The Blue Summit Facility is comprised of 85 wind turbines and other associated equipment such as 34.5 kV collection lines, metering, communication facilities, and the Blue Summit substation. Blue Summit is party to an interconnection agreement with ETT, which in turn is the developer of the Tesla to Riley 345 kV transmission project (Tesla to Riley project), pursuant to Texas' CREZ program, which will interconnect to the Blue Summit

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<sup>3</sup> *Id.* at 24.

<sup>4</sup> *Petition for Selection of Entities Responsible for Transmission Improvements Necessary to Deliver Renewable Energy from Competitive Renewable-Energy Zones*, Docket No. 35665 (Pub. Util. Comm'n. of Texas, May 15, 2009); ETT November 6, 2012 Petition for Declaratory Order at 4 (Petition).

<sup>5</sup> Petition at 4.

Facility.<sup>6</sup> Blue Summit states that the Tesla to Riley project is expected to be in service by July 2014.<sup>7</sup>

6. To enable Blue Summit to interconnect and produce energy prior to completion of the Tesla to Riley project, the interconnection agreement provides for both a temporary and a permanent point of interconnection. Blue Summit states that the permanent interconnection will be realized through Blue Summit's 7.25-mile tie line connecting the Blue Summit substation to the Tesla to Riley project. Prior to completion of the permanent interconnection, the Blue Summit Facility will be interconnected to an existing 138 kV transmission line that is part of American Electric Power Company's transmission network in ERCOT. Blue Summit explains that the interconnection agreement with ETT specifies that jumper conductors that physically connect the existing transmission line to the temporary interconnection facilities will be owned and operated by ETT. Thus, Blue Summit avers that it will at all times be interconnected with ETT. Blue Summit notes that the temporary facilities will be removed once the permanent facilities are operational.<sup>8</sup>

7. Blue Summit states that, under both the temporary and permanent interconnection agreements, the Blue Summit Facility is interconnected into ERCOT and can sell power only into ERCOT. The Blue Summit Facility will also normally receive station power service from a retail provider in ERCOT. However, Blue Summit explains that, in the event that station power from ERCOT is unavailable due to reasons such as outages or equipment failures, the Blue Summit Facility will need to procure backup station service from the applicable retail provider in SPP. Blue Summit states that the backup configuration includes an automatic transfer switch that is normally open on the SPP side, but will disconnect from ERCOT and connect to SPP if backup station service is needed. Blue Summit states that the automatic transfer switch is not capable of cross connecting the primary retail source of station service in ERCOT to the backup retail source in SPP. Thus, Blue Summit asserts that no commingling of electric energy between the Eastern Interconnection and ERCOT can occur.<sup>9</sup>

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<sup>6</sup> We note that the Commission is issuing concurrently, in Docket No. EL13-18-000, an order that disclaims jurisdiction over several ETT transmission projects in ERCOT, including the Tesla to Riley project.

<sup>7</sup> Blue Summit states the expected in-service date of the Tesla to Riley project is July 2014, Petition at 3, but does not explain why its estimate differs from the in-service date of June 2013 stated by ETT in Docket No. EL13-18-000. Petition at 5.

<sup>8</sup> *Id.* at 3-4.

<sup>9</sup> *Id.* at 4-5.

8. Further, Blue Summit explains that the temporary interconnection facilities are powered by a battery bank that is charged with power from an SPP retail provider. Blue Summit notes that, because the battery bank is not connected to the grid, power cannot flow from SPP into ERCOT at this location.<sup>10</sup>

9. Blue Summit states that the Blue Summit Facility has started operations. Thus, to address jurisdictional concerns prior to issuance of a Commission order disclaiming jurisdiction, Blue Summit states that it has implemented an alternative arrangement for backup station service. Under this arrangement, the Blue Summit Facility was disconnected from the distribution line in SPP and has been connected to two portable generators that Blue Summit installed and is operating. Blue Summit notes that, while it can and does generate power under this arrangement, the situation is not an optimal long-term solution. Blue Summit states that it intends to reconnect to the SPP power sources after the Commission issues an order disclaiming jurisdiction.<sup>11</sup>

10. Blue Summit asserts that the circumstances here are similar to the situation in *Cross Texas Transmission, LLC*,<sup>12</sup> where the Commission disclaimed jurisdiction over: (1) the proposed CREZ lines being developed in the Texas Panhandle portion of ERCOT; and (2) transmission service and sales of energy over those lines.<sup>13</sup> Furthermore, Blue Summit contends that the Commission should grant its Petition, consistent with prior Commission disclaimers of jurisdiction in *Cross Texas* and *Cottonwood Energy Co., LP*.<sup>14</sup> According to Blue Summit, *Cross Texas* and *Cottonwood* stand for the proposition that the Commission will disclaim jurisdiction over a project when the overall interconnection and station power arrangements do not create a risk of commingling energy between ERCOT and a Commission-jurisdictional transmission grid. Blue Summit also points out that the Commission's decision in both *Cross Texas* and *Cottonwood* relied to some extent on the fact that each scenario involved transactions that took place entirely within Texas. Blue Summit asserts that here, like in *Cross Texas* and *Cottonwood*, no aspect of the arrangement involves the crossing of any state boundaries; all of the relevant facilities will be located wholly in Texas and all power will be produced, transmitted, and consumed solely within Texas. Blue Summit emphasizes that it has no plans or ability to sell power in SPP, and will only receive retail distribution service from SPP as backup station power under a configuration that will not cause power

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<sup>10</sup> *Id.* at 5.

<sup>11</sup> *Id.* at 5-6.

<sup>12</sup> 129 FERC ¶ 61,106 (2009) (*Cross Texas*).

<sup>13</sup> *Id.* P 22.

<sup>14</sup> 118 FERC ¶ 61,198 (2007) (*Cottonwood*).

to be commingled between ERCOT and SPP. Thus, Blue Summit argues that the Blue Summit project satisfies the Commission's requirements for granting a disclaimer of jurisdiction.

11. Blue Summit requests that the Commission issue an order disclaiming jurisdiction before the end of 2012.<sup>15</sup>

### **III. Notice of Filing and Responsive Pleadings**

12. Notice of Blue Summit's Petition was published in the *Federal Register*, 77 Fed. Reg. 68,117 (2012), with interventions and protests due on or before November 27, 2012. Western Farmers Electric Cooperative (Western Farmers) filed a motion to intervene out of time. The Public Utility Commission of Texas (Texas Commission) filed an out-of-time motion to intervene and comments. On December 21, 2012, Blue Summit filed an answer.

13. The Texas Commission states that it supports Blue Summit's requested disclaimer of jurisdiction, but requests that the Commission require Blue Summit to update or clarify the Petition to reflect additional details regarding its proposed interconnection. The Texas Commission asserts that, through discussions with the relevant entities, it understands that Blue Summit's arrangements for station service and backup station service at the Blue Summit Facility will be as follows: (1) for station power, Western Farmers is registered with ERCOT as the load serving entity to provide power to the Blue Summit Facility and AEP Service Company is registered with ERCOT as the entity that will schedule this power in ERCOT; (2) the Southwest Rural Electric Association (SWRE) will provide the backup station service through its distribution grid, which is interconnected in SPP, and will obtain the power for this service pursuant to a contract with Western Farmers. The Texas Commission notes its understanding that Blue Summit has installed a series of disconnect switches that prevent the commingling of electricity between ERCOT and SPP. The Texas Commission contends that the Commission should base its ruling on the Petition on a complete understanding of Blue Summit's station service arrangements and, therefore, requests that the Commission not act on the Petition until Blue Summit provides an update or clarification.<sup>16</sup>

14. In its answer, Blue Summit confirms that it agrees with the Texas Commission's description of the arrangements for station service at the Blue Summit Facility. Blue Summit also clarifies that there is only one transfer switch, and not a series of switches, that prevent the commingling of electricity between ERCOT and SPP. Blue Summit asserts that, based on communications with the Texas Commission staff, its confirmation

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<sup>15</sup> Petition at 2.

<sup>16</sup> Texas Commission December 14, 2012 Comments.

and clarification should satisfy the Texas Commission's request for additional details. Thus, Blue Summit contends that the Commission now has sufficient information on which to act on the Petition.<sup>17</sup>

#### IV. Discussion

##### A. Procedural Matters

15. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2012), the Commission will grant the Texas Commission's and Western Farmers' late-filed motions to intervene given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

16. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Blue Summit's answer because it has provided information that assisted us in our decision-making process.

##### B. Blue Summit's Petition

17. Section 201(b)(1)<sup>18</sup> of the FPA states that:

The provisions of this Part shall apply to the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce . . . . The Commission shall have jurisdiction over all facilities used for such transmission or sale of electric energy. . . .

18. Section 201(e) states that "[t]he term 'public utility' . . . means any person who owns or operates facilities subject to the jurisdiction of the Commission under this subchapter," other than facilities subject to such jurisdiction solely by reason of certain enumerated sections of the FPA, including sections 210, 211, and 212.<sup>19</sup>

19. We find that Blue Summit would not be a "public utility" under section 201 of the FPA as a result of the proposed interconnection facilities that deliver power from the Blue Summit Facility to the ERCOT grid because, except as a result of Commission orders issued under sections 210, 211, or 212 of the FPA, it would not own or operate facilities used for transmission or wholesale sale of electric energy in interstate

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<sup>17</sup> Blue Summit December 21, 2012 Answer.

<sup>18</sup> 16 U.S.C. § 824b(1) (2006).

<sup>19</sup> *Id.* § 824(e).

commerce. The Commission finds that the interconnection proposed here does not disturb the jurisdictional *status quo*. All of the facilities at issue will be located entirely within the State of Texas and all electric energy will be produced, transmitted, and consumed solely within the state. Moreover, no energy produced at the Blue Summit Facility will be commingled with energy transmitted in interstate commerce except as a result of Commission orders issued under sections 210, 211, or 212 of the FPA.

20. In addition, based on Blue Summit's representations regarding its arrangements for charging the battery bank that powers temporary interconnection facilities, and the configuration of the Blue Summit substation for the purpose of receiving backup station service from an SPP retail provider, we find that these facilities will be operated in a manner that does not result in the transmission or sale for resale of electric energy involving any commingling of electric energy between ERCOT and SPP, except as a result of Commission orders issued under sections 210, 211, or 212 of the FPA.

21. We find that this situation is thus analogous to that present in *Cross Texas* and *Cottonwood*. In those cases, the Commission disclaimed jurisdiction over transmission lines connecting generators located in non-ERCOT portions of Texas to the ERCOT grid, where the interconnections at issue were configured and operated in such a manner that electric energy would not be commingled between the two regions. The Commission also confirmed that the jurisdictional *status quo* would not be disturbed by the purchase of station power from non-ERCOT utilities if the overall interconnection and station power arrangement did not create a risk of commingling.<sup>20</sup>

22. Thus, we will grant Blue Summit's Petition 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 Blue Summit and/or its facilities, the Commission disclaims jurisdiction over: (1) the interconnection facilities that deliver power from the Blue Summit's Facility from a site in the SPP region of Texas to an interconnection point within ERCOT; and (2) transmission and sales of energy over these interconnection facilities. Moreover, the utilities in ERCOT that are not currently public utilities under the FPA will not become public utilities as a result of the interconnection of the Blue Summit facility with the ERCOT grid.

The Commission orders:

Blue Summit's Petition for a declaratory order disclaiming jurisdiction over the interconnection between the Blue Summit Facility and the ERCOT grid, as well as the transmission and sales of electric energy over those interconnection facilities is hereby

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<sup>20</sup> *Cross Texas*, 129 FERC ¶ 61,106 at PP 22-24; *Cottonwood*, 118 FERC ¶ 61,198 at P 17.

granted, as discussed in the body of this order. The utilities in ERCOT that are not currently public utilities under the FPA will not become public utilities as a result of the interconnection of the Blue Summit facility with the ERCOT grid, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.