

130 FERC 61,205  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
and John R. Norris.

Tres Amigas LLC

Docket No. EL10-22-000

ORDER ON PETITION FOR DISCLAIMER OF JURISDICTION

(Issued March 18, 2010)

1. On December 8, 2009, Tres Amigas LLC (Petitioner) filed a petition requesting that the Commission issue a declaratory order disclaiming jurisdiction over prospective transmission facilities that would interconnect the Electric Reliability Council of Texas (ERCOT) grid with the proposed Tres Amigas Superstation (Project). While the Commission finds that Petitioner has not proffered information warranting such a blanket disclaimer, as discussed below, the Commission notes that other procedural mechanisms are available to Petitioner to proceed with the Project without conferring Commission jurisdiction over ERCOT.

**I. Background**

2. Petitioner proposes to construct the Project, a three-way alternating current (AC)/direct current (DC) transmission interconnection station that would interconnect the Eastern Interconnection, ERCOT, and the Western Electricity Coordinating Council (WECC), in Clovis, New Mexico. As proposed, the Project will consist of three interconnection points, or terminals,<sup>1</sup> that will be connected by approximately two miles of underground DC transmission cable. Each terminal will consist of an AC/DC voltage source converter, which will convert AC electricity from the connected external grid, such as WECC, to DC electricity, which would then flow to another terminal, and then be converted back to AC electricity to flow onto another grid, such as the Eastern Interconnection. Petitioner states that this system will operate as an approved separate

---

<sup>1</sup> Each terminal will be equipped with a battery system, which will be used to supply energy in the form of ancillary services and provide firming energy services to others.

Balancing Authority Area and will be electrically equivalent to its own interconnection because the DC electricity within the Project will not be synchronized with any of the three existing AC interconnections.

3. Petitioner contends that construction and operation of the Project will advance the public interest, primarily by enhancing opportunities to sell renewable wind, solar, and geothermal power, which would in turn encourage development of these renewable resources and related transmission. Moreover, Petitioner asserts that the Project will improve electric system reliability in the area by connecting the three asynchronous grids and providing back-up power and voltage source converter technology that will provide reactive power.
4. Regarding the interconnection between ERCOT and the Project, Petitioner states that numerous parties have approached it to discuss interconnecting their transmission facilities and renewable generation facilities to the Project. Petitioner notes that the Public Utility Commission of Texas (Texas Commission) has identified Competitive Renewable Energy Zones (CREZs) that are considered optimal for wind generation and provided for construction of Extra High Voltage (EHV) transmission facilities between the CREZs and the ERCOT grid. Petitioner states that interconnection with the CREZ transmission system will enhance the value of the new transmission in ERCOT, including the connecting wind generation. Petitioner also states that transmission and renewable generation developers have expressed the necessity for a Commission order disclaiming jurisdiction over ERCOT, as well as any transactions and facilities operating in ERCOT and any AC transmission lines from ERCOT to the Project, if the prospective transmission lines are constructed.
5. Petitioner requests that the Commission issue an order finding that any transmission owner that constructs transmission facilities interconnecting ERCOT to the Project will not be subject to Commission jurisdiction as a public utility under the Federal Power Act (FPA) by virtue of such interconnection, that transmission services over the AC lines from ERCOT to the Project and synchronized with ERCOT will not be subject to Commission jurisdiction, and that establishing a new AC to DC interconnection between ERCOT and the Project will not change the jurisdictional status of any other ERCOT utilities or ERCOT transactions.<sup>2</sup> Petitioner contends that such relief was requested and granted in several petitions for disclaimer of jurisdiction filed by entities operating in ERCOT.<sup>3</sup> Petitioner states that its requested relief is essential for the Project

---

<sup>2</sup> Tres Amigas Petition at 1.

<sup>3</sup> *Id.* at 1 n.1 (citing *Cottonwood Energy Co., LP*, 118 FERC ¶ 61,198 (2007) (*Cottonwood Energy*); *Sharyland Utilities, LP*, 121 FERC ¶ 61,006 (2007) (*Sharyland*); *Cross Texas Transmission, LLC*, 129 FERC ¶ 61,106 (2009) (*Cross Texas*)).

to move forward because, as noted above, the ERCOT parties with whom Petitioner has discussed interconnecting with the Project have made clear that they will not obtain approvals in Texas to build the interconnecting transmission lines to the Project without this jurisdictional disclaimer,<sup>4</sup> and that, without an ERCOT interconnection, the benefits of the Project will be lost. Petitioner requests that the Commission grant its requested relief on any one of three alternative grounds.

6. Petitioner contends that the Commission has historically recognized the jurisdictional separation between ERCOT and the interstate grid and should continue to do so.<sup>5</sup> Specifically, Petitioner requests that the Commission should rule that the jurisdictional status quo will be maintained as long as ERCOT operates asynchronously with the two interstate grids. In support, Petitioner notes that the Supreme Court found in *Federal Power Commission v. Florida Power & Light Co.* that the Commission had jurisdiction over an intrastate utility due to the “commingling” of interstate electricity in a bus.<sup>6</sup> Petitioner states that the Court based its holding on the factual question of whether electricity produced in one state “commingles” with electricity in interstate commerce. Petitioner distinguishes *FP&L* from the instant situation on the basis that here the voltage source converter technology prevents the electricity from commingling between the asynchronous grids.<sup>7</sup> Petitioner further cites the Commission’s decision in *Central Power & Light Company*<sup>8</sup> as supporting the proposition that the Commission has avoided the factual commingling question by issuing orders under sections 210 and 211,<sup>9</sup> and argues that, in fact, the Commission has specifically declined to decide whether Commission jurisdiction would necessarily attach in the absence of an order under

---

<sup>4</sup> Although Petitioner does not identify the parties with whom it has discussed interconnecting with the Project in the Petition, it does provide additional information in its companion filing related to negotiated rate authority. In the application, Petitioner provides a copy of a letter from Sharyland Utilities expressing interest in connecting to the Project, and it states that other ERCOT transmission developers and wind developers in Texas have also expressed interest in participating in the Project. See *Tres Amigas LLC*, Application, ER10-396-000, at 13-14 (filed December 8, 2009).

<sup>5</sup> Petition at 8-9.

<sup>6</sup> *Id.* at 9-11 (citing *Federal Power Comm’n v. Florida Power & Light Co.*, 404 U.S. 453 (1972) (*FP&L*)).

<sup>7</sup> *Id.* at 9-11 and citing Affidavit of Phillip G. Harris (Attachment B).

<sup>8</sup> *Id.* at 11-13 (citing *Central Power & Light Co.*, 17 FERC ¶ 61,078 (1981)).

<sup>9</sup> 16 USC § 824i; 16 USC § 824j (2006).

section 210 or 211.<sup>10</sup> According to Petitioner, the Commission has continued to disclaim jurisdiction over ERCOT by allowing interconnections through orders under sections 210 and 211, and thus avoided the question of whether the interconnection of non-synchronized grids via AC/DC conversion would result in “commingling” as discussed by the Supreme Court in *FP&L*, and would therefore put the ERCOT grid in interstate commerce.<sup>11</sup> Petitioner further cites recent decisions in which the Commission found that the use of “disconnect” switches that allowed a generator to connect to either ERCOT or the Eastern Interconnection, but that would not allow the commingling of energy between the two grids, did not confer jurisdiction.<sup>12</sup> Petitioner also cites *Sharyland* for the proposition that the Supreme Court’s “commingling” test relates to the nature of a scheduled transaction rather than physical electricity flows, noting that the Commission relied on the fact that energy flowing from Texas through Mexico to another state was unlikely and would be unplanned.<sup>13</sup>

7. Expanding on this background, Petitioner argues that the Commission has provided a “fairly straightforward route for parties proposing to interconnect ERCOT and the interstate grid via an AC/DC tie without affecting the jurisdictional status of ERCOT entities.” Specifically, parties may apply for an interconnection order under section 210 and a wheeling order under section 211.<sup>14</sup> However, Petitioner contends that this route is not available because, under section 210(a)(1)(A), only an “electric utility” can apply for the Commission to direct the interconnection of the transmission facilities of any “electric utility” with those of the applicant.<sup>15</sup> Petitioner states that “the entities located in Texas who propose to build transmission lines to interconnect the ERCOT grid with [the Project] apparently cannot be electric utilities, because Texas law expressly prohibits a

---

<sup>10</sup> Petition at 11-13 (citing *Central Power & Light Co.*, 40 FERC ¶ 61,077, at 61,223 (1987)).

<sup>11</sup> *Id.* at 13 (citing *Brazos Electric Power Coop., Inc.*, 118 FERC ¶ 61,199, at P 12 (2007) (*Brazos*); *Kiowa Power Partners, LLC*, 99 FERC ¶ 61,251, at P 9 (2002) (*Kiowa*)).

<sup>12</sup> *Id.* at 14 (citing *Cottonwood Energy*, 118 FERC ¶ 61,198; *Cross Texas*, 129 FERC ¶ 61,106).

<sup>13</sup> 121 FERC ¶ 61,006 at P 23.

<sup>14</sup> Petition at 15.

<sup>15</sup> An electric utility is defined by section 3(22) of the FPA as a “person ... that sells electric energy.” 16 USC § 796(22). Petitioner contends that it will be an electric utility because it intends to operate battery storage facilities at the Project, which will be used to supply energy in the form of ancillary services, as well as provide firming energy services to others.

transmission utility from selling electric energy.”<sup>16</sup> According to Petitioner, because Texas has chosen to unbundle its electric services, the “straightforward route” used by the Commission in the past to approve interconnections between ERCOT and the interstate grid will only be available in limited circumstances.<sup>17</sup>

8. For these reasons, Petitioner asserts that the Commission should issue an order preserving the jurisdictional status quo, consistent with the Supreme Court’s reasoning in *FP&L*, and “do away with the need to address this jurisdictional issue every time a new party wants to build an AC/DC interconnection” between ERCOT and interstate grids subject to the Commission’s jurisdiction.<sup>18</sup> Petitioner argues that such connections have become “a settled practice,” and so should be allowed without additional applications. In support of this argument, Petitioner contends that Congress has amended the FPA several times since ERCOT was established and has accepted that ERCOT is interconnected with other grids but not subject to the Commission’s jurisdiction. Moreover, Petitioner contends that the Commission could find that, even where there are interconnections among the grids, there is no “commingling” because the three grids operate asynchronously and electric energy must be subject to an AC/DC conversion process to flow between the interconnections; thus, electric energy flowing in interstate commerce would not commingle with energy sourced in ERCOT. Also, Petitioner argues that the FPA characterizes “interstate commerce” in terms of transactions, so it would be redundant for the Commission to continue to disclaim jurisdiction over transactions that take place wholly within ERCOT. Petitioner states that, by granting its requested relief, the Commission would not be altering its jurisdiction, but would affirm the existing jurisdictional status of ERCOT where a new AC/DC interconnection between ERCOT and the interstate grid is proposed. Petitioner further states that, by granting its requested relief, the Commission would uphold settled expectations and “overcome an unintended statutory problem created by changes in public utility law in Texas.”<sup>19</sup>

9. In an alternative, but related, argument, Petitioner contends that the Commission could preserve the jurisdictional status quo because of the Project’s unique design and operational features. Petitioner states that any transmission owner that interconnects with the Project from ERCOT will own facilities only on the AC side of the AC/DC terminal at the Project and that any electric energy that it transmits will be synchronized only with the ERCOT grid. Moreover, the Project will be a NERC-approved Balancing Authority Area and will not be a grid in the traditional sense. According to Petitioner, the Project’s

---

<sup>16</sup> Petition at 16 (citing Tex. Util. Code Ann. § 39.105 (Vernon 2007)).

<sup>17</sup> *Id.* at 17 (citing to *Brazos*, 118 FERC ¶ 61,199).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 22-23.

voltage source converters prevent commingling of AC power and in fact any commingling would be technically disruptive to the entire grid. Finally, Petitioner contends that the benefits of the project provide a sufficient basis to preserve the jurisdictional status quo.<sup>20</sup>

10. In another alternative argument, Petitioner states that “because an order under section 210 is not obtainable,” for the reasons discussed above, the Commission should disclaim jurisdiction if an entity obtains an order under section 211 directing an ERCOT interconnecting party to transmit power to the Project.<sup>21</sup> Petitioner argues that a section 211 order without a complementary section 210 order is enough to allow interconnection and trigger the jurisdictional bar under section 201(b)(2). First, Petitioner interprets section 201(b)(2) to mean that compliance with any order of the Commission under the provisions of either sections 210 or 211 will be sufficient to keep an entity outside of Commission jurisdiction, indicating that an entity does not need an order under both sections 210 and 211.<sup>22</sup> Moreover, Petitioner contends that, because no ERCOT party will interconnect with the transmission line interconnecting with the Project without an order under section 211 that triggers a disclaimer of jurisdiction, an order under section 210 would be superfluous.<sup>23</sup> Petitioner contends that this reasoning comports with that in earlier Commission decisions, in which entities voluntarily submitted applications for orders under sections 210 and 211, because they would not interconnect and wheel over the AC/DC interconnections without the jurisdictional protection afforded by section 201(b)(2) of the FPA.

11. Petitioner further states that, “in order for section 211 to apply, the Commission would have to find that the ERCOT interconnecting entity would be operating transmission facilities in interstate commerce after it interconnects with the [Project].”<sup>24</sup> Petitioner states that the Commission should find that the Project is eligible as an electric utility to apply for an order under section 211 that would require an ERCOT interconnecting party to wheel power over its interconnecting transmission line since that

---

<sup>20</sup> *Id.* at 29-31.

<sup>21</sup> *Id.* at 23.

<sup>22</sup> *Id.* at 24-25.

<sup>23</sup> *Id.* at 25.

<sup>24</sup> *Id.* at 24 (citing *Brazos*, 118 FERC ¶ 61,199 at P 30; *Sharyland*, 121 FERC ¶ 61,006 at P 20-22; *TexMex Energy, L.L.C.*, 124 FERC ¶ 61,129, at P 12-13 (2008)).

party would be a transmitting utility under the FPA.<sup>25</sup> Petitioner argues that any transmission interconnecting the Project to ERCOT will: (1) meet the section 211 requirement of being in the public interest; (2) not impair reliability (relying on certain assumptions); and (3) meet the rates requirements under section 212, assuming the Texas Commission has jurisdiction over the applicant.<sup>26</sup> Petitioner requests that the Commission find that, if Petitioner submits an application under section 211 that meets these criteria, Petitioner “would be entitled to receive a favorable section 211 order, thereby triggering a jurisdictional disclaimer under section 201(b)(2).”<sup>27</sup>

## II. Notice of Filing and Responsive Comments

12. Notice of Petitioner’s filing was published in the *Federal Register*, 74 Fed. Reg. 66,635 (2009), with interventions and protests due on or before December 29, 2009. On December 18, 2009, the Electric Power Supply Association (EPSA) filed a motion for leave to intervene and for a two-week extension of the comment date to January 12, 2009. On December 22, 2009, Petitioner filed an answer to EPSA’s Petition. On December 22, 2009, the Commission granted the extension for comments to January 12, 2009.

13. The following parties filed timely motions to intervene: Bonneville Power Administration; Shell Energy North America (U.S.), L.P.; Texas-New Mexico Power Company; ERCOT; Texas Industrial Energy Consumers (Industrial Consumers); Occidental Chemical Corporation, Occidental Permian Ltd., Occidental Power Marketing L.P. (Occidental); Oncor Electric Delivery Company (Oncor); South Texas Electric Cooperative; Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc.; Southern California Edison Company; New Mexico Cooperatives; Iberdrola Renewables, Inc.; Pattern Transmission LP; National Rural Electric Cooperative Association; PSEG Energy Resources & Trade LLC, PSEG Power LLC, Public Service Electric and Gas Company; Arkansas Electric Cooperative Corporation; Public Service Company of New Mexico; Scandia Wind Southwest, LLC; Xcel Energy

---

<sup>25</sup> We note that, in the Commission’s order on Tres Amigas’ Application for Authorization to Sell Transmission Services at Negotiated Rates, in Docket No. ER10-396-000, issued concurrently with this order, we find that, to sell power, Tres Amigas must make an additional section 205 filing seeking authorization and explaining its proposed rates, terms, and conditions for doing so. *Tres Amigas LLC*, 130 FERC ¶ 61,207, at P 46 (2010). Thus, Petitioner will not be considered an “electric utility” until it receives approval of that subsequent section 205 filing.

<sup>26</sup> *Id.* at 27-29.

<sup>27</sup> *Id.* at 27.

Services Inc.; Golden Spread Electric Cooperative, Inc.; and CenterPoint Energy Houston Electric, LLC (CenterPoint). The Texas Commission filed a notice of intervention.

14. On January 20, 2010, Southwest Power Pool, Inc. (SPP) filed an untimely motion to intervene. On February 3, the Texas Office of the Public Utility Counsel (Texas Counsel) filed an untimely motion to intervene.

15. The following parties filed general comments, outlining the benefits of the Project: U.S. Representative Randy Neugebauer; New Mexico Governor Bill Richardson; New Mexico State Senator Clinton Harden; New Mexico State Representative Anna Crook; Tubin International, Inc.; Greater Sedan Area Energy Resources, LLC; Blackline Energy; Hereford Economic Development Corp. and City of Hereford, TX; Fort Sumner Community Development Corporation; Yeso Renewable Energy Association LLC; Coalition of Renewable Energy Landowner Associations, Inc.; Wave Wind LLC; Wilson & Company, Inc., Engineers & Architects; Class 4 Winds, Inc.; Tri Global Energy, LLC; Eastern Plains Council of Governments; Forrest/Ragland Energy Association, LLC; Curry County, Manager Lance A. Pyle; Greater Tucumari Economic Development Corporation; City of Tucumari, New Mexico; Eastern New Mexico Economic Development Alliance; Mr. Tom M. Phelps; New Mexico Rural Alliance, Mr. Gene Hendrick; New Mexico Rural Alliance, Curry County Commissioner Caleb Chandler; Clovis Industrial Development Corporation, Charles Lee Malloy; Frio Ridge Energy Development Association, LLC, Paul Stout; Ima Wind Energy Association; Dr. John Neibling; New Mexico Renewable Energy Transmission Authority; Lakeview Wind Farms, LLC; Cottonwood Farms, LLC; Crosby County Wind Farm, LLC; Big Five Renewable Energy Project, LLC; Farwell Wind Farm, LLC; Eastern New Mexico Energy, LLC; and Field Community Wind Farm, LLC. Additional parties filed comments or protests on the specifics of the Petition for disclaimer of jurisdiction, as discussed below.

### **Texas Commission**

16. The Texas Commission states that application of sections 210 and 211 of the FPA will require more information about the transmission lines from ERCOT that would connect to the Project and that the Petition does not clearly explain how such interconnections would avoid impairing the Texas Commission's jurisdiction over ERCOT transmission. The Texas Commission states that ERCOT, subject only to regulation by the Texas Commission, has served as a laboratory for energy policy, resulting in a competitive wholesale and retail market. The Texas Commission believes that the Commission may need more legal and factual information to issue the declaration of disclaimer requested by Petitioner, and notes that as Texas transitioned from regulated to competitive wholesale and retail sales inside ERCOT, many electric companies restructured. As a result, separate retail electric providers, power-generation companies, and transmission-and-distribution companies were created. The Texas Commission further states that:



In some cases, companies may continue to own transmission-and-distribution utilities, a retail electric provider, and a power-generation company. But municipally owned utilities and electric cooperatives were merely allowed to unbundle, and to date, none have chosen to do so. Companies that operate as transmission-and-distribution utilities in ERCOT appear not to be electric utilities under the FPA. ... A number of entities in ERCOT qualify as electric utilities under the FPA, however.<sup>28</sup>

17. The Texas Commission also cites *Brazos* and *Kiowa*, stating that those decisions suggest that entities exist or may be created in ERCOT that would allow use of sections 210 and 211 under certain factual situations to build interconnections with the Project that will not remove the Texas Commission's jurisdiction over wholesale transmission and sales within ERCOT. However, the Texas Commission reiterates that additional information must be provided about "what or where those connections [with the Project] will be or who will construct them," especially because the Commission will need such information to consider how sections 210 and 211 apply to interconnection between the Project and ERCOT.<sup>29</sup>

### **Industrial Consumers**

18. Industrial Consumers state that the Commission should carefully consider the Petition to avoid issuance of an order that could disrupt the current regulatory scheme. Industrial Consumers also request that the Commission confirm that any transmission line in ERCOT that connects to the Project is subject to the Texas Commission's licensing requirements. Industrial Consumers state that Petitioner has failed to present sufficient facts to support the disclaimer of Commission jurisdiction, and that the Commission should establish procedures to develop facts and evidence necessary to determine whether Petitioner's project would upset the jurisdictional relationship between the Commission and ERCOT.<sup>30</sup> Industrial Customers note that Petitioner states that its commingling argument is fact-based, but Petitioner does not identify the type and nature of the interconnecting AC line that would cross from Texas to New Mexico. Industrial Consumers point out that, "to the extent this ERCOT line would cross out of Texas and into New Mexico, it would raise additional interstate commerce issues."<sup>31</sup>

---

<sup>28</sup> Texas Commission Comments at 8.

<sup>29</sup> *Id.* at 9.

<sup>30</sup> Industrial Consumers Protest at 2.

<sup>31</sup> *Id.* at 4.

Industrial Consumers further state that Petitioner's arguments regarding section 211 rely on many assumptions, and it would be difficult to analyze whether an application under section 211 would be in the public interest in the absence of more facts. Further, Industrial Customers assert that Petitioner's claim that "unique facts" warrant its requested relief should be closely examined, and the witnesses supporting those "unique facts" should be subject to discovery and cross-examination. Industrial Customers note that their member companies have made substantial investments in Texas based on the current regulatory and market framework, and that the Commission should carefully consider the Petition and set it for hearing.<sup>32</sup>

### **CenterPoint**

19. CenterPoint states that it does not oppose Petitioner's proposed project, but argues that the Petition does not provide adequate support for a finding that Petitioner's proposed interconnection with ERCOT will not have any impact on the jurisdictional status of ERCOT or CenterPoint.<sup>33</sup> CenterPoint states that Petitioner's argument that Commission jurisdiction will attach to power transactions sourced from ERCOT but not to interconnecting utilities and facilities transmitting that power to the Project appear to conflict with the FPA and is not one that has been recognized by the Commission in previous cases.<sup>34</sup> CenterPoint notes that section 201(b)(1) provides that Commission jurisdiction attaches to facilities used for transmission in interstate commerce, and states that Petitioner does not explain how the conversion process will avoid "commingling" or how transmitting the power to another state does not result in ERCOT power reaching a state other than Texas.<sup>35</sup>

20. CenterPoint notes that the Commission has granted petitions for disclaimer of jurisdiction over transmitting utilities within ERCOT that transmit power that is either sourced or sunk in a state outside ERCOT, but only after directing interconnection under section 210 or transmission under section 211, and that Petitioner does not seek to rely on such an order.<sup>36</sup> CenterPoint further questions whether Petitioner's argument that an order under section 211 would be sufficient to disclaim jurisdiction in the absence of an order under section 210. Such a decision would be a departure from precedent, which CenterPoint argues should not be made in the absence of sound legal reasoning. Finally,

---

<sup>32</sup> *Id.* at 7.

<sup>33</sup> CenterPoint Comments at 1.

<sup>34</sup> *Id.* at 6.

<sup>35</sup> *Id.* at 7.

<sup>36</sup> *Id.* at 8.

CenterPoint questions whether the proposed conversion process at the Project will prevent commingling under the Supreme Court standard set forth in *FP&L*, and allow the Commission to disclaim jurisdiction.<sup>37</sup>

### EPSA

21. EPSA states that it does not oppose the Project but is concerned that the Petition does not provide a sound legal basis for the requested disclaimer of jurisdiction. EPSA urges the Commission to focus on the legal merits of the Petition. EPSA notes Petitioner's arguments regarding commingling and contends that whether ERCOT is connected asynchronously is not dispositive as to whether commingling can occur. EPSA asserts that, notwithstanding any required conversion process, the Project will facilitate the import and export of power into and out of ERCOT, which could lead to commingling, and that the Petition does not include sufficient technical and operation information to support its arguments. EPSA characterizes prior Commission decisions under sections 210 and 211 as approving localized projects in which a generator located near ERCOT sought to interconnect with ERCOT or a wholesale customer was interconnecting remotely located resources to serve its load; EPSA states that those decisions did not involve a project like the Project, whose "very purpose" is to break down the barriers between ERCOT and the grid subject to Commission jurisdiction.<sup>38</sup>

22. EPSA further questions whether the Project would qualify as an "electric utility" able to request wheeling under section 211 of the FPA, because it is unclear whether the Project would sell electric energy. EPSA also contends that section 211 was designed and intended to provide limited relief for certain entities, such as stranded generators or electrically isolated municipalities, and not to facilitate wide-scale economic transactions between ERCOT, WECC, and the Eastern Interconnection. EPSA states that the Commission's jurisdiction is a matter of statute, not discretion, and that the Commission can only legally disclaim jurisdiction if it finds that this project does not result in ERCOT utilities or transactions associated with the Project being deemed to occur in interstate commerce.<sup>39</sup> EPSA notes that, absent exemption, transmission lines interconnecting ERCOT and the Project would be operating in interstate commerce by moving electricity between Texas and New Mexico, regardless of whether a synchronous and asynchronous interconnection was created between ERCOT and one or both of the other interconnections. More broadly, EPSA expresses concern that Petitioner has stated that the "very purpose of [the Project] is to eliminate the barrier created by the current

---

<sup>37</sup> *Id.* at 10.

<sup>38</sup> EPSA Comments at 12.

<sup>39</sup> *Id.* at 15.

separation of the U.S. transmission system into three asynchronous grids,” while at the same time attempting to preserve the jurisdictional status quo.<sup>40</sup> EPSA contends that the Project should not be allowed to trigger any dramatic changes to the Commission’s jurisdiction over ERCOT.

### **Golden Spread**

23. Golden Spread supports preservation of the current jurisdictional status of ERCOT and also supports the objective of establishing interconnections to increase energy transfers among the three grids. But Golden Spread notes that such interconnections with ERCOT have only been made pursuant to orders under sections 210 and 211 of the FPA and that the Commission has never granted the type of blanket exemption sought by Petitioner. Golden Spread states that the jurisdictional arguments advanced by Petitioner seeking a blanket disclaimer of jurisdiction are wrong as a matter of law, and that the Commission’s disclaimer of jurisdiction over ERCOT is based on orders issued under sections 210 and 211, not upon a lack of synchronicity. Golden Spread further states that the Commission has exercised jurisdiction over some utilities, whose activities occur both inside and outside ERCOT, even with regard to activities within ERCOT.<sup>41</sup> Golden Spread expresses the concern that granting the blanket exemption requested by Petitioner would diminish the Commission’s current authority to issue interconnection and wheeling orders pursuant to sections 210 and 211, and to require compliance by ERCOT utilities with mandatory reliability standards pursuant to section 215. Golden Spread also contends that Petitioner’s theory, that electrical separation between the grids demonstrates that Petitioner is entitled to a disclaimer of jurisdiction, cannot avoid the fact that the Project will permit electricity transmitted from other states to be consumed in ERCOT and vice versa. Golden Spread recommends that the Commission continue to rely on sections 210 and 211 to preserve the ERCOT jurisdictional status quo while also considering issues ranging from reliability to market power.

### **Oncor**

24. Oncor states that it does not support or oppose construction of the Project but is concerned with the possible effect on the Commission’s jurisdiction over ERCOT and

---

<sup>40</sup> *Id.* at 16 (quoting Tres Amigas Application for Negotiated Transmission Rates at 2). EPSA also argues that the Commission should consider how the Project will impact system impact studies performed by affected markets under Order No. 890.

<sup>41</sup> Golden Spread Comments at 7-8 (citing *American Electric Power Service Corp.*, 98 FERC ¶ 61,030 (2002); *American Electric Power Service Corp.*, 130 FERC ¶ 61,013 (2010)).