



Control Number: 46665



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OPEN MEETING COVER SHEET

MEETING DATE: November 17, 2017

DATE DELIVERED: November 16, 2017

AGENDA ITEM NO.: 23

CAPTION: *Discussion and possible action regarding electric ties between the Electric Reliability Council of Texas and the Comisión Federal de Electricidad or any other electric systems in Mexico*

ACTION REQUESTED: Discussion and possible action

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Public Utility Commission of Texas

TO: Chairman DeAnn T. Walker
Commissioner Brandy Marty Marquez
Commissioner Arthur C. D'Andrea

All Parties of Record (*via electronic transmission*)

FROM: David Hrcir 
Commission Advising

RE: Electric Ties between the Electric Reliability Council of Texas and the Comisión Federal de Electricidad or Other Electric Systems in Mexico, Docket No. 46665, November 17, 2017 Open Meeting, Item No. 23.

DATE: November 16, 2017

Please find enclosed a memorandum by Chairman Walker in the above-referenced docket. No other commissioner will file a memorandum in this docket related to Agenda Item No. 23.

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Public Utility Commission of Texas

Memorandum

TO: Commissioner Brandy Marty Marquez
Commissioner Arthur C. D'Andrea

FROM: Chairman DeAnn T. Walker 

DATE: November 16, 2017

RE: Open Meeting of November 17, 2017 – Agenda Item No. 23
Electric Ties between the Electric Reliability Council of Texas and the Comisión
Federal de Electricidad or Other Electric Systems in Mexico

I asked that this item be added to the open meeting agenda in order to provide information to both of you related to recent concerns raised with the electric ties between Texas and Mexico and potential impacts to the jurisdictional issues between the State of Texas and the Federal Energy Regulatory Commission (FERC). I first became aware of potential issues in early October, but I did not focus much attention on the issue at that time due to my recent appointment. However, as I have learned more information my level of concern has increased; therefore, I wanted to inform you of the situation and the actions that I have taken.

For the past several weeks, I have been working with the Commission Staff on the very complex issues. Margaret Pemberton and Stephen Journey have taken a lead on the issue, and I greatly appreciate the many hours that they and their staff have spent on the issue. In addition, they have worked closely with Chad Seely and Nathan Bigbee at the Electric Reliability Council of Texas (ERCOT) as well as several individuals representing AEP Texas, CenterPoint Energy Houston Electric, Oncor Electric Delivery Company, and Sharyland Utilities, and have had discussions with staff of the Department of Energy (DOE) and FERC. I have personally spoken with representatives from each of the utilities.

It is my intention to provide the background information on the issue in this memorandum. The specific legal recommendations on how to address the situation will not be made in this forum, but will be addressed. I have made it clear to all of the utilities that I believe this issue must be addressed as soon as practicable, so that future projects will not impact the jurisdictional issues between the State of Texas and FERC.

As you are aware, because ERCOT is located solely within Texas and is not synchronously interconnected to the electric system of the rest of the United States, the transmission of electric energy occurring wholly within ERCOT is generally not subject to the jurisdiction of FERC. The guiding principal under which FERC jurisdiction over the ERCOT region *could* be established is through the Commerce Clause of the United States Constitution if the commingling of power between ERCOT and the rest of the United States occurs.¹ Two provisions of the Federal Power Act (FPA) are of particular note: (1) Under FPA 201(c),

¹ See generally, *Federal Power Commission v. Florida Power & Light Co.*, 404 U.S. 453 (1972).

electric energy enters interstate commerce if it is transmitted from one state and consumed within a different state; and (2) under FPA 202(f), federal jurisdiction is not created (a) if wholesale electric energy is generated within one state and then transmitted across an international boundary and not thereafter transmitted into a different state, or (b) if wholesale electric energy is generated in a foreign country and transmitted into one state and not thereafter transmitted into any other state.

To avoid creating FERC jurisdiction over the ERCOT region, a market participant seeking to construct a connection between ERCOT and a non-ERCOT region may seek a declaratory order from FERC confirming that the connection will not change the jurisdictional status of ERCOT and ERCOT market participants.² Additionally, FERC has the authority to order interconnections and transmission service under sections 210, 211, and 212 of the FPA.³ The FPA provides that if an entity interconnects with another entity or provides transmission service to another entity solely for the purposes of complying with an order issued under FPA 210 or 211, interconnection or transmission service will not cause either entity to become a public utility under the FPA if it was not already a public utility.⁴ An entity that is not a public utility is not subject to FERC's general jurisdiction.⁵ Separate from any proceedings at FERC, an entity seeking to construct or operate facilities that will transmit power across international borders must obtain a Presidential Permit from the DOE authorizing the construction and operation of the facilities.⁶ Also, an entity seeking to export electric energy must obtain an order of export authority that is also from the DOE.⁷

Mexico has a national electric transmission system (the "national Mexico grid") and a few smaller transmission systems that are not interconnected to the national system. Texas has several interconnections with the national Mexico grid, both synchronous (AC) and asynchronous (DC). The majority of these interconnections are located in ERCOT: two interconnections are owned by AEP Texas and another interconnection is owned by Sharyland Utilities.

One of Mexico's smaller transmission systems is located in Baja California, Mexico. Currently, the Baja California transmission system is connected to Southern California, but is not interconnected with Mexico's national system. Because Baja California is connected to Southern California, the Baja California system is part of the Western Electricity Coordinating Council (WECC).⁸ Generation from Baja California is sold to San Diego Gas & Electric. A subsidiary of Sempra Energy has a Presidential Permit that allowed it to build transmission lines across the California and Mexico border.⁹

² *Sharyland Utilities, L.L.C.*, 121 FERC ¶ 61,006 at ¶¶ 1-2 and 24-25 (Oct. 1, 2007) (Order Granting Petition for Declaratory Order Disclaiming Jurisdiction).

³ 16 U.S.C. §§ 824i, 824j, 824j.

⁴ 121 FERC ¶ 61,006 at P 18.

⁵ *See generally* 16 USC §§ 824, 824d-824f.

⁶ Exec. Order No. 10,485, 18 F.R. 5397 (Sept. 8, 1953), as amended by Exec. Order No. 12,038, 43 F.R. 4957 (Feb. 3, 1978).

⁷ 16 U.S.C. § 824a(e).

⁸ 121 FERC ¶ 61,006 at p 9.

⁹ *Termoeléctric U.S., LLC*, Presidential Permit No. PP-235-1, Dept. of Energy (Nov. 12, 2002).

Currently, there are no situations in which, for regulatory purposes, power commingles between ERCOT and the rest of the United States by way of the national Mexico grid. Furthermore, because the Baja California interconnection is electrically separated from the rest of Mexico, the power flowing between Texas and Mexico cannot commingle with the power flowing between California and Mexico.

However, there are two recent developments that may place the electrical separation between ERCOT and the rest of the United States in jeopardy by allowing electricity to flow between ERCOT and the rest of the United States by way of the national Mexico grid. The first situation is a proposed transmission line to be built by Nogales Transmission, LLC, an indirect subsidiary of Hunt Power, LP. (“Nogales Transmission”) that will interconnect the electric grid between Arizona and Mexico. The second is Mexico’s plan to interconnect its systems, including connecting the national Mexico grid with the Baja California grid.

Nogales Transmission and Nogales Frontier Operations, LLC, a subsidiary of Shary Holdings, LLC (Nogales Frontier), have filed a request for a Presidential Permit to deliver power from Nogales, Arizona, to the national Mexico grid at Nogales, Sonora, Mexico.¹⁰ To date, Nogales Transmission has not filed a request for a FERC disclaimer of jurisdiction. FERC staff contacted the Commission Staff last month to convey FERC staff’s concern that the Nogales interconnection into Mexico could affect FERC jurisdiction over ERCOT. Specifically, FERC issued an order in 2007 disclaiming jurisdiction over the Sharyland Utilities¹¹ tie in a very narrow manner, noting that the electric energy generated within ERCOT and transmitted across the Sharyland DC Tie **could not** flow into the WECC interconnection, because the Baja California system is not interconnected with the national Mexico grid. The FERC Order also noted that the other DC ties from Texas into Mexico were exempted from jurisdiction for various reasons. The order stated that “[t]here is, therefore, no physical possibility of electric energy flowing from a state other than Texas into [the national Mexico grid] and then flowing across the Sharyland DC Tie into Texas.”¹² The FERC order further stated:

[s]hould the configuration or operation change, or should Sharyland own or operate additional facilities that interconnect with [the national Mexico grid] or with another State, our determination of lack of jurisdiction may no longer apply. Accordingly, should Sharyland, ERCOT, or other utilities and Market Participants who are not currently public utilities seek assurance that they will retain their non-public utility status under the FPA, they may obtain a jurisdictional determination from the Commission.¹³

Because the Nogales Transmission line will be transmitting electricity from Arizona to the Mexico national transmission system to which Sharyland is already connected, the change of circumstances suggests that Sharyland, ERCOT, and other market participants should seek an order from FERC that they will retain their non-public utility status under the FPA, prior to

¹⁰ Application of Nogales Transmission, L.L.C. for Presidential Permit, United States of America Before the Department of Energy Office of Electric Delivery and Energy Reliability, OE Docket No. PP-420.

¹¹ 121 FERC ¶ 61,006 at PP 23, 24.

¹² Id. at P 21.

¹³ Id. at P 25.

Nogales Transmission obtaining a Presidential Permit. Nogales Transmission recently requested that the DOE delay processing its pending application for a Presidential Permit until it can obtain the necessary FERC disclaimers.

The second issue relates to the fact that Mexico has announced plans to interconnect its national grid with the Baja California transmission system, thereby creating the possibility of electricity flowing from California into Texas through Mexico. The plans are still in the development stage and are expected to be completed in the next few years. These plans, when completed, will affect the current status of the DC ties between ERCOT and Mexico.

The DOE staff has stated that there are no other applications for Presidential Permits currently on file for ties between the United States and Mexico, but DOE staff has heard that other projects are being considered between the United States and Mexico, which pose the same issue as the Nogales project. ERCOT and Commission Staff are continuing to evaluate the status of the Nogales project, the Mexico interconnection, and future unknown projects into Mexico on ERCOT's other interconnections with Mexico.

Therefore, even if the Commission and utilities obtain a specific order related to the Nogales interconnection to Mexico, there continues to be issues related to the current interconnections between ERCOT and Mexico due to potential interconnections between other states and Mexico. However, my greater concern is connections between Baja California and the remainder of Mexico, because those are issues that will occur outside of the United States for which the Commission will likely have no notice or participation opportunities. Therefore, I believe that the Commission and the affected utilities must find a solution that addresses the current and future connections between ERCOT and Mexico in order to ensure the continued separation of jurisdiction between the State of Texas and FERC.

I look forward to having a discussion on this issue at the open meeting.