

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

**AEP Energy Partners, Inc.**

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**Docket No. TX18-\_\_\_\_-000**

**APPLICATION OF AEP ENERGY PARTNERS, INC.  
FOR AN ORDER DIRECTING  
THE PROVISION OF TRANSMISSION SERVICES  
UNDER SECTION 211 OF THE FEDERAL POWER ACT  
AND REQUEST FOR EXPEDITED ACTION**

**I. INTRODUCTION**

Pursuant to section 211 of the Federal Power Act (“FPA”)<sup>1</sup> and Part 36 of the Federal Energy Regulatory Commission (“FERC” or “Commission”) Rules of Practice and Procedure,<sup>2</sup> AEP Energy Partners, Inc. (“Applicant”) hereby applies for an order under FPA section 211 directing Sharyland Utilities, L.P. (“Sharyland”), AEP Texas, Inc. (“AEP Texas”), and Electric Transmission Texas, LLC (“ETT”) to provide transmission services for power flows to, from, and over the Sharyland DC Tie, the Eagle Pass DC Tie, and the Laredo VFT Tie, respectively. These three ties are existing interconnections that link the Electric Reliability Council of Texas, Inc. (“ERCOT”) region to the transmission system of the Comisión Federal de Electricidad (“CFE”) in Mexico. The Sharyland DC Tie, the Eagle Pass DC Tie, and the Laredo VFT Tie collectively are referred to herein as the “ERCOT-CFE Ties,” and Sharyland, AEP Texas, and ETT collectively are referred to herein as the “ERCOT-CFE Tie Operators.”

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<sup>1</sup> 16 U.S.C. § 824j.

<sup>2</sup> 18 C.F.R. § 36.1 *et seq.*

Applicant also requests that the Commission confirm that the provision of transmission services by the ERCOT-CFE Tie Operators to, from, and over the ERCOT-CFE Ties in compliance with this order will not cause ERCOT or any entity that operates in the ERCOT region or participates in the ERCOT market and is not currently a “public utility” under section 201(e) of the FPA<sup>3</sup> to become a public utility subject to FERC’s plenary jurisdiction. As reflected in the attached Offer of Settlement, Applicant and the ERCOT-CFE Tie Operators have reached agreement on the primary issues concerning the transmission services requested herein. Applicant, with the concurrence of the ERCOT-CFE Tie Operators, also seeks approval of that Offer of Settlement.

## **II. EXECUTIVE SUMMARY**

The ERCOT-CFE Ties are existing high-voltage transmission facilities that link ERCOT with the national grid in Mexico, which is owned by CFE and operated by Centro Nacional de Control de Energía (“CENACE”). In three separate orders issued in 2007 and 2008, FERC held that ownership and operation of the ERCOT-CFE Ties by the ERCOT-CFE Tie Operators would not cause ERCOT or ERCOT market participants that were not already public utilities (hereinafter referred to individually as an “ERCOT Entity” and collectively as “ERCOT Entities”) to become subject to the Commission’s plenary jurisdiction as public utilities.<sup>4</sup> The jurisdictional determinations in those orders,

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<sup>3</sup> 16 U.S.C. § 824.

<sup>4</sup> *Sharyland Utils., L.P.*, 121 FERC ¶ 61,006 at PP 1, 24 (2007) (“*Sharyland*”); *Elec. Transmission Tex., LLC*, 121 FERC ¶ 61,007 at PP 9-10 (2007) (“*ETT*”); *TexMex Energy, L.L.C.*, 124 FERC ¶ 61,129 at P 12 (2008) (“*TexMex*”) (collectively, the “*Jurisdiction Disclaimer Orders*”).

however, were based on the configuration of the relevant transmission systems at the time the orders were issued.<sup>5</sup> In the *Jurisdiction Disclaimer Orders*, the Commission said that if the configuration or operation of ERCOT or CFE’s facilities were to change, its determination of lack of jurisdiction may no longer apply.<sup>6</sup>

Several proposed and potential projects—including a planned connection between the CFE national grid and the CFE Baja California system<sup>7</sup> and the proposed Nogales Interconnection Project linking Arizona with the CFE national grid—could result in changes to the configuration of CFE’s facilities. These proposed projects and other potential changes to the CFE transmission system (hereinafter referred to collectively as “Potential CFE Changes”) have prompted concerns about the future applicability of the Commission’s jurisdictional determinations in the *Jurisdiction Disclaimer Orders* and, more broadly, the preservation of ERCOT’s independence.<sup>8</sup>

ERCOT, the ERCOT-CFE Tie Operators, and other ERCOT market participants are obligated under the ERCOT Bylaws and the Standard Form Market Participant Agreement to avoid taking actions that would result in ERCOT or its market participants becoming public utilities as that term is defined in the FPA or become subject to FERC’s

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<sup>5</sup> *Sharyland*, 121 FERC ¶ 61,006 at P 25; *ETT*, 121 FERC ¶ 61,007 at P 11; *TexMex*, 124 FERC ¶ 61,129 at P 13.

<sup>6</sup> *Sharyland*, 121 FERC ¶ 61,006 at P 25; *ETT*, 121 FERC ¶ 61,007 at P 11; *TexMex*, 124 FERC ¶ 61,129 at P 13.

<sup>7</sup> The CFE Baja California system currently is interconnected with the California Independent System Operator Corporation (“CAISO”) controlled grid.

<sup>8</sup> By filing this Application and Offer of Settlement, neither the ERCOT-CFE Tie Operators nor Applicant concedes that the Potential CFE Changes would give rise to plenary FERC jurisdiction over any ERCOT Entities.

plenary jurisdiction.<sup>9</sup> At the PUCT's direction, ERCOT recently approved a revision to its Protocols to further clarify that "it can and will take all actions necessary to preserve the jurisdictional status quo and avoid causing any Entity that is not a public utility under the FPA to become such a public utility."<sup>10</sup> The ERCOT-CFE Tie Operators and ERCOT would be required to terminate use of the ERCOT-CFE Ties if such use would jeopardize the jurisdictional status quo in ERCOT. Applicant seeks issuance of the requested order under FPA section 211, consistent with the terms of the Offer of Settlement, so that, notwithstanding any Potential CFE Changes, Applicant and other eligible customers will be able to continue receiving transmission services from the ERCOT-CFE Tie Operators over the ERCOT-CFE Ties in the future. The issuance of a section 211 order would provide assurance to ERCOT Entities that Potential CFE Changes will not affect the jurisdictional status quo.

As explained herein, this application satisfies the requirements set forth in FPA sections 211 and 212. Accordingly, Applicant respectfully requests that the Commission issue an order under section 211 of the FPA approving the Offer of Settlement and directing the ERCOT-CFE Tie Operators to provide transmission services to, from, and

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<sup>9</sup> ERCOT, *Amended and Restated Bylaws of Electric Reliability Council of Texas, Inc.* § 9.3(i) (Aug. 17, 2015), [http://www.ercot.com/content/about/governance/legal/Amended\\_Restated\\_Bylaws\(eff08.17.2015\).pdf](http://www.ercot.com/content/about/governance/legal/Amended_Restated_Bylaws(eff08.17.2015).pdf); ERCOT, *ERCOT Nodal Protocols* § 22A (Mar. 1, 2018), [http://www.ercot.com/content/wcm/libraries/148953/March\\_1\\_\\_2018\\_Nodal\\_Protocols.pdf](http://www.ercot.com/content/wcm/libraries/148953/March_1__2018_Nodal_Protocols.pdf) (Standard Form Market Participant Agreement §§ 5.B, 6.B (Apr. 1, 2015)).

<sup>10</sup> ERCOT, *Board Report on NPRR No. 861: Clarification of ERCOT's Authority to Protect Its Jurisdictional Status* at 2 (Feb. 20, 2018), [http://www.ercot.com/content/wcm/key\\_documents\\_lists/144398/861NPRR-09\\_Board\\_Report\\_022018.doc](http://www.ercot.com/content/wcm/key_documents_lists/144398/861NPRR-09_Board_Report_022018.doc); ERCOT, *ERCOT Nodal Protocols* §§ 1.2(9), 4.4.4(5) (Mar. 1, 2018), [http://www.ercot.com/content/wcm/libraries/148953/March\\_1\\_\\_2018\\_Nodal\\_Protocols.pdf](http://www.ercot.com/content/wcm/libraries/148953/March_1__2018_Nodal_Protocols.pdf).

over the ERCOT-CFE Ties. Applicant also requests that the Commission confirm that providing transmission services to, from, and over the ERCOT-CFE Ties in compliance with this order will not cause any ERCOT Entity to become a public utility subject to FERC's plenary jurisdiction.

### **III. CORRESPONDENCE AND COMMUNICATIONS**

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#### **IV. DESCRIPTION OF THE PARTIES**

##### **A. Applicant**

The exact name of Applicant is AEP Energy Partners, Inc. Applicant is an indirect subsidiary of American Electric Power Company, Inc. (“AEP”) and is an affiliate of AEP Texas and ETT (which also are indirect subsidiaries of AEP). Applicant’s principal place of business is at 155 W. Nationwide Blvd., Suite 300, Columbus, OH 43215. Applicant is engaged in the wholesale sale of electric capacity, energy, and ancillary services in the ERCOT region in the state of Texas.<sup>11</sup> Applicant is authorized to operate in the state of Texas<sup>12</sup> and is authorized by the U.S. Department of Energy (“DOE”) to export electricity into Mexico.<sup>13</sup>

##### **B. Sharyland**

Sharyland is a Texas-based electric transmission utility regulated by the Public Utility Commission of Texas (“PUCT”). Sharyland is a “wires only” company that

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<sup>11</sup> Applicant is the successor in interest to CSW Power Marketing, Inc. See *AEP Energy Partners, LP*, Docket No. ER07-26-000 (Nov. 15, 2006) (unpublished delegated letter order accepting a notice of succession and revised tariff sheets to reflect a name change from CSW Power Marketing, Inc. to AEP Energy Partners, Inc.). CSW Power Marketing, Inc. was granted market-based rate authority in Docket No. ER97-1238. *CSW Power Mktg., Inc.*, 79 FERC ¶ 61,308 (1997).

<sup>12</sup> *Registration of Power Marketers, Exempt Wholesale Generators and Qualifying Facilities Pursuant to Subst. R. 25.105 (Formerly Subst. R. 23.19)*, Project No. 14406, Registration of AEP Energy Partners, LP as a Power Marketer (PUCT Oct. 19, 2006).

<sup>13</sup> See generally *CSW Power Mktg., Inc.*, DOE Order No. EA-318 (Feb. 22, 2007), *amended*, *AEP Energy Partners, Inc.*, DOE Order No. EA-318-A (June 27, 2007), *amended*, DOE Order No. EA-318-B (Feb. 22, 2012) (granting temporary emergency export authority), *amended*, DOE Order No. EA-318-B (clarifying the temporary emergency export authority) (Mar. 1, 2012), *amended*, DOE Order No. EA-318-C (Jan. 28, 2013).

operates transmission assets and substations and provides electric transmission services. Sharyland's transmission assets and substations are located primarily in the Texas Panhandle, the Permian Basin, and North Texas. Other than the Sharyland DC Tie, Sharyland has no direct interconnections with any utility outside of ERCOT and operates solely within the ERCOT-managed electricity grid. Sharyland leases these transmission assets, which are owned by Sharyland Distribution & Transmission Services, L.L.C. ("SDTS"), a subsidiary of InfraREIT, Inc. ("InfraREIT"). InfraREIT is a real estate investment trust managed by Hunt Utility Services, LLC.

Texas requires electric utilities in areas with retail competition to separate their business activities into distinct units for (1) power generation, (2) retail electric service, and (3) transmission and distribution service.<sup>14</sup> Sharyland is a transmission service provider. Under Texas law, transmission service providers like Sharyland are prohibited from selling electricity.<sup>15</sup>

Because it operates exclusively in ERCOT, Sharyland is not a public utility under the FPA and thus is not subject to the Commission's plenary jurisdiction. The transmission grid that the ERCOT independent system operator administers is located solely within the state of Texas and is not interconnected to the Western or Eastern Interconnections except through interconnections that were ordered by the Commission

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<sup>14</sup> Tex. Util. Code. Ann. § 39.051(b) (Vernon 2017).

<sup>15</sup> *Id.* § 39.105(a).

to be established pursuant to its authority under section 210 of the FPA.<sup>16</sup> Transmission service between ERCOT and facilities in the United States outside of Texas, and transmission within ERCOT of all interstate power imported into ERCOT, is provided pursuant to Commission orders issued under section 211 of the FPA.<sup>17</sup> Because the only transmission of interstate power into, through, or out of ERCOT is that which has been ordered by the Commission pursuant to section 211 (“Section 211 Interstate Power”), ERCOT and ERCOT Entities currently are not “public utilities” as that term is defined in section 201(e) of the FPA,<sup>18</sup> and are not subject to FERC’s plenary jurisdiction. Additionally, Sharyland in 2007 obtained a declaratory order from the Commission determining that its ownership and operation of the Sharyland DC Tie would not cause Sharyland, ERCOT, or ERCOT Entities to become subject to the Commission’s plenary jurisdiction as public utilities.<sup>19</sup>

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<sup>16</sup> See *City of College Station*, 137 FERC ¶ 61,230 (2011) (“*College Station*”); *Kiowa Power Partners, LLC*, 99 FERC ¶ 61,251 (2002) (“*Kiowa*”); *Cent. Power & Light Co.*, 40 FERC ¶ 61,077 (1987) (“*CP&L I*”); *Cent. Power & Light Co.*, 17 FERC ¶ 61,078 (1981) (“*CP&L I*”), *order on reh’g*, 18 FERC ¶ 61,100 (1982).

<sup>17</sup> See *College Station*, 137 FERC ¶ 61,230; *Kiowa*, 99 FERC ¶ 61,251; *CP&L II*, 40 FERC ¶ 61,077; *CP&L I*, 17 FERC ¶ 61,078; see also *S. Cross Transmission LLC*, 137 FERC ¶ 61,206 (2011) (“*Southern Cross*”), *final order*, 147 FERC ¶ 61,113 (2014); *Brazos Elec. Power Coop., Inc.*, 118 FERC ¶ 61,199 (“*Brazos*”), *order terminating obligations*, 119 FERC ¶ 61,252 (2007).

<sup>18</sup> 16 U.S.C. § 824(e).

<sup>19</sup> *Sharyland*, 121 FERC ¶ 61,006 at PP 1, 24.

### C. AEP Texas

AEP Texas is a wholly-owned subsidiary of AEP and is a transmission and distribution utility as defined in the Texas Public Utility Regulatory Act (“PURA”)<sup>20</sup> and the rules of the PUCT. AEP Texas is engaged in the transmission and distribution of electric power to over one million meters located in nearly 400 communities in all or parts of 93 counties in South and West Texas. AEP Texas was created from an internal corporate reorganization under which AEP Texas Central Company (“AEP TCC,” previously known as Central Power & Light Company, or “CP&L”) and AEP Texas North Company (“AEP TNC,” previously known as West Texas Utilities Company) merged into one another.<sup>21</sup>

AEP Texas owns and operates the Eagle Pass substation and the U.S. portion of the Eagle Pass DC Tie. AEP Texas is as a public utility under the FPA, with transmission service over its system provided pursuant to an open access transmission tariff (“OATT”) that was filed with and approved by the Commission.<sup>22</sup> AEP Texas’s transmission rates are subject to approval by the PUCT. These PUCT-approved rates are incorporated into AEP’s Texas OATT, which is subject to FERC approval and applies to transmission service in ERCOT. In an order issued in 2008, the Commission found that

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<sup>20</sup> Tex. Util. Code Ann. §§ 11.001 *et seq.*

<sup>21</sup> This internal corporate reorganization was approved by the Commission on September 22, 2016 in Docket No. EC16-135. *See AEP Tex. Cent. Co.*, 156 FERC ¶ 61,206 (2016).

<sup>22</sup> AEP Texas provides wholesale transmission service wholly within ERCOT at rates contained in Attachment K of the American Electric Power System OATT on file with FERC as AEP’s FERC Electric Tariff, Fourth Revised Volume No. 1. *See, e.g., Appalachian Power Co.*, Docket No. ER17-1500-000 (Aug. 23, 2017) (unpublished delegated letter order accepting a filing to amend the OATT to reflect the merger of AEP TCC and AEP TNC).

ERCOT and ERCOT Entities would not become public utilities subject to the Commission's plenary jurisdiction as a result of the operation and use of the Eagle Pass DC Tie.<sup>23</sup>

#### **D. ETT**

ETT is a joint venture between subsidiaries of AEP and Berkshire Hathaway Energy Company. ETT's business purpose is to acquire, construct, own, and operate transmission facilities located and operated solely within ERCOT. ETT was created for the purpose of becoming a transmission utility that is regulated by the PUCT and a transmission service provider under the terms of PURA, the PUCT's rules, and applicable ERCOT requirements. ETT owns and operates the Laredo VFT Tie.<sup>24</sup> In 2007, the Commission issued a declaratory order finding that ETT is not a public utility under the FPA as a result of owning and operating certain transmission facilities, including the Laredo VFT Tie.<sup>25</sup>

### **V. BACKGROUND**

#### **A. The Ties Between the ERCOT Region and Mexico**

Currently, there are three ties that connect ERCOT to the CFE transmission system in Mexico: (1) the Sharyland DC Tie; (2) the Eagle Pass DC Tie; and (3) the

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<sup>23</sup> *TexMex*, 124 FERC ¶ 61,129.

<sup>24</sup> *See Am. Elec. Power Serv. Corp.*, 119 FERC ¶ 62,063 (2007) (authorizing AEP TCC to transfer to ETT certain facilities, including the Laredo VFT Tie and phase-shifting transformers and related facilities that regulate power flow in the Laredo area from other sources in ERCOT).

<sup>25</sup> *ETT*, 121 FERC ¶ 61,007.

Laredo VFT Tie.<sup>26</sup> Descriptions of the three ERCOT-CFE Ties that are the subjects of this Application are set forth below.

### **1. The Sharyland DC Tie**

The Sharyland DC Tie is a transmission facility that provides a link between the asynchronous ERCOT and CFE systems, connecting at points near the cities of Mission, Texas, and Reynosa in the Mexican state of Tamaulipas. Facilities that Sharyland uses to provide transmission service to, from, and over the Sharyland DC Tie include (1) the Railroad substation, a 138-kV tap-station connected to the ERCOT grid, (2) a 300-MW back-to-back high-voltage direct current (“HVDC”) converter station, and (3) a roughly five-mile, 138-kV transmission line. SDTS owns the portion of the five-mile line that runs from the converter station to the U.S.-Mexico border, and CFE owns the portion of the line that connects to its Cumbres substation.

The HVDC converter station makes it possible to transfer electric energy between the asynchronous ERCOT and CFE systems.<sup>27</sup> The ERCOT side of the converter station

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<sup>26</sup> There are other cross-border facilities that can interconnect to allow emergency transfers between U.S. load and CFE when the U.S. load is not connected to the ERCOT system and, alternatively, between Mexican load and ERCOT when the Mexican load is not connected to the CFE system, but none of these ties result in the communication of energy between CFE and ERCOT. Additionally, the ERCOT system serves several small, distribution-level loads on the Mexican side of the international border pursuant to several DOE-issued presidential permits, but these loads—which are many miles away from CFE facilities—are not connected to CFE and could not feasibly be connected to CFE while being connected with ERCOT because the two systems do not operate synchronously. Applicant understands that should future ties permit the direct communication of electric energy between CFE and ERCOT, orders under sections 211 and/or 210 may be needed to preserve ERCOT’s jurisdictional status.

<sup>27</sup> The HVDC converter station is a 300-MW back-to-back (“AC-DC-AC”) station that converts 138-kV alternating current (“AC”) power operating synchronously with the grid from which power is being *(cont’d)*

is connected to the Railroad substation. Because transmission service into and out of ERCOT must pass through the converter station, such service cannot occur unless Sharyland schedules and operates the converter station to cause the transmission of power to occur.

The interconnection is authorized by the DOE under a Presidential Permit.<sup>28</sup> Sharyland also obtained a Certificate of Convenience and Necessity from the PUCT to construct and operate the facility.<sup>29</sup> Sharyland operates the interconnection pursuant to DOE and PUCT requirements<sup>30</sup> and in accordance with ERCOT's DC Tie Operating Procedure.<sup>31</sup>

## **2. The Eagle Pass DC Tie**

The Eagle Pass DC Tie consists of a five-mile, 138-kV HVDC transmission line between the ERCOT region and the CFE national grid. The U.S. terminus of the line is the Eagle Pass substation located near Eagle Pass, Texas, which is owned and operated

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exported to direct current ("DC") power, and then converts the DC power to 138-kV AC power operating synchronously with the grid to which power is being imported.

<sup>28</sup> Presidential Permit Order No. PP-285 (Sharyland Utilities, L.P.) (Jan. 21, 2005).

<sup>29</sup> See *Application of Sharyland Utils., L.P. for a Certificate of Convenience and Necessity (CCN) for a 138 kV Transmission Line in Hidalgo County, Tex., to Implement a High Voltage Direct Current Interconnection with Comisión Federal de Electricidad*, No. 28834, Order (PUCT Apr. 19, 2005) ("*PUCT Order*").

<sup>30</sup> See Presidential Permit Order No. PP-285; *PUCT Order*.

<sup>31</sup> ERCOT, *ERCOT Operating Procedure Manual: DC Tie Desk* (version 1.0, rev. 47, Feb. 28, 2018), [http://www.ercot.com/content/wcm/key\\_documents\\_lists/90055/DC\\_Tie\\_Desk\\_Operating\\_Procedure.docx](http://www.ercot.com/content/wcm/key_documents_lists/90055/DC_Tie_Desk_Operating_Procedure.docx).

by AEP Texas.<sup>32</sup> From the Eagle Pass substation, the line traverses approximately 1.3 miles to the U.S.-Mexico border, and then continues for another 3.7 miles to CFE's Piedras Negras substation in the Mexican state of Coahuila.

The Eagle Pass DC Tie initially was constructed, connected, operated, and maintained by CFE pursuant to authorization issued by the Federal Power Commission ("FPC") in 1971 under Order E-6192 (Presidential Permit Order No. PP-50).<sup>33</sup> Throughout most of its history, the tie has been operated as a radial connection providing reliability support using block-load-transfer procedures in emergency situations.<sup>34</sup> While these procedures enabled load to be transferred between ERCOT and CFE during emergency conditions, the asynchronous nature of the ERCOT and CFE systems largely prevented commercial transactions from occurring.

In April 2000, the presidential permit applicable to the ownership and operation of the U.S. portion of the Eagle Pass DC Tie was transferred from CFE to CP&L (which later became AEP TCC).<sup>35</sup> Following the transfer, back-to-back voltage source converter technology was installed at the Eagle Pass substation. This technology enables the interconnection between ERCOT and CFE to operate on a continuous asynchronous basis

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<sup>32</sup> Prior to December 31, 2016, the Eagle Pass DC Tie was owned by AEP TCC.

<sup>33</sup> Presidential Permit Order No. PP-50 (Comision Federal Electricidad) (Feb. 8, 1971).

<sup>34</sup> Under these procedures, load is transferred between ERCOT and CFE by isolating a portion of either the ERCOT or CFE system, depending on which is experiencing reliability problems, and transferring the isolated portion to the other grid for operation through the tie.

<sup>35</sup> See Presidential Permit Order No. PP-219 (Central Power & Light Co.) (Apr. 5, 2000).

and makes it possible to provide voltage support and 36-MW of real power transfers in either direction across the Eagle Pass DC Tie.

In 2017, the DOE rescinded Presidential Permit Order No. PP-219 and issued a new presidential permit for the Eagle Pass DC Tie to AEP Texas in connection with a proposed internal corporate reorganization of AEP TCC and AEP TNC.<sup>36</sup> AEP Texas operates the interconnection in accordance with ERCOT's DC Tie Operating Procedure.<sup>37</sup>

### **3. The Laredo VFT Tie**

The Laredo VFT Tie is a 100-MW variable frequency transformer ("VTF") operated by ETT. The VFT is located at the AEP Laredo VFT station and makes possible the operation of the 100-MW asynchronous tie between the ERCOT region and CFE in Mexico (connecting to the Ciudad Industrial substation). The VFT technology provides a controlled transmission path between ERCOT and the CFE transmission systems, allowing power exchange between the two asynchronous electric grids.<sup>38</sup>

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<sup>36</sup> Presidential Permit Order No. PP-424 (AEP Texas, Inc.) (Feb. 13, 2017).

<sup>37</sup> ERCOT, *ERCOT Operating Procedure Manual: DC Tie Desk* (version 1.0, rev. 47, Feb. 28, 2018), [http://www.ercot.com/content/wcm/key\\_documents\\_lists/90055/DC\\_Tie\\_Desk\\_Operating\\_Procedure.docx](http://www.ercot.com/content/wcm/key_documents_lists/90055/DC_Tie_Desk_Operating_Procedure.docx).

<sup>38</sup> The Laredo VFT Tie consists of a rotary transformer that provides a continuously controlled phase shift for any angle, and a drive system and control that adjusts the angle and speed of the rotary transformer to regulate power. The VFT serves as an alternative to a back-to-back HVDC converter, allowing power exchanges between ERCOT and CFE to take place in a controlled manner. The VFT thus allows the facility to function like a DC tie. See ERCOT, *ERCOT DC-Tie Operations: NERC Tagging, Interchange Scheduling, Normal and Emergency Operations, and Inadvertent Energy Accounting* § 1.3.5 (version 3.0, rev. 8, Mar. 4, 2014), <http://www.ercot.com/mktrules/guides/procedures/ERCOT%20DC%20Tie%20Operations%20V3Rev8.doc> ("[E]ven though [the Laredo] interface is not a back-to-back HVDC (cont'd)

The Laredo VFT Tie was originally established pursuant to Presidential Permit Order No. PP-57, authorized by the FPC in 1975 under Order E-8057.<sup>39</sup> This Presidential Permit authorized a 138-kV transmission line that extended 0.3 miles from the Laredo Power Plant to the U.S.-Mexico border. In 2007, the DOE issued Presidential Permit Order No. PP-317,<sup>40</sup> which rescinded Presidential Permit Order No. PP-57 and in its place authorized AEP TCC to build, operate, maintain, and connect electric transmission facilities at the international border of the United States and Mexico at the Laredo Power Plant. In 2017, the DOE rescinded Presidential Permit Order No. PP-317 and issued a new presidential permit for the Laredo VFT Tie to AEP Texas in connection with a proposed internal corporate reorganization of AEP TCC and AEP TNC.<sup>41</sup>

Historically, the Laredo VFT Tie has been used principally to support loads in the United States with power received from CFE. In 2007, ETT acquired the Laredo VFT Tie from AEP TCC.<sup>42</sup> ETT operates the interconnection in accordance with ERCOT's DC Tie Operating Procedure.<sup>43</sup>

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converter, it is used as a DC-Tie.”). As with DC ties, power flows over the Laredo VFT Tie can occur only when the operator allows transmission service to be scheduled over the tie.

<sup>39</sup> Presidential Permit Order No. PP-57 (Comision Federal de Electricidad) (Jan. 24, 1975).

<sup>40</sup> Presidential Permit Order No. PP-317 (AEP Texas Central Co.) (Jan. 22, 2007).

<sup>41</sup> Presidential Permit Order No. PP-423 (AEP Texas, Inc.) (Feb. 13, 2017).

<sup>42</sup> See *Am. Elec. Power Serv. Corp.*, 119 FERC ¶ 62,063 (authorizing AEP TCC to transfer the VFT and other facilities to ETT).

<sup>43</sup> ERCOT, *ERCOT Operating Procedure Manual: DC Tie Desk* (version 1.0, rev. 47, Feb. 28, 2018), [http://www.ercot.com/content/wcm/key\\_documents\\_lists/90055/DC\\_Tie\\_Desk\\_Operating\\_Procedure.docx](http://www.ercot.com/content/wcm/key_documents_lists/90055/DC_Tie_Desk_Operating_Procedure.docx).

## B. Jurisdictional Uncertainty

In the *Jurisdiction Disclaimer Orders*, the Commission held that the ERCOT-CFE Tie Operators' ownership and operation of the ERCOT-CFE Ties would not cause ERCOT, or ERCOT market participants that are not already public utilities to become subject to the Commission's plenary jurisdiction as public utilities.<sup>44</sup> However, the jurisdictional determination in the *Jurisdiction Disclaimer Orders* was based on the configuration of the transmission system at the time the orders were issued.<sup>45</sup> The Commission found that there was "no physical possibility of electric energy flowing from a state other than Texas into CFE and then flowing across the [ERCOT-CFE Ties] into Texas."<sup>46</sup> It also found that "the only situation in which electric energy could flow across the [ERCOT-CFE Ties] from ERCOT to CFE and then from CFE to a state other than Texas is when El Paso [Electric Company] imports electric energy from CFE over the Diablo Interconnection," which would occur only on an "unplanned and infrequent basis."<sup>47</sup> In the *Jurisdiction Disclaimer Orders*, FERC said that if the "configuration or operation" of the ERCOT-CFE Tie Operators' or CFE's facilities were to change, its "determination of lack of jurisdiction may no longer apply."<sup>48</sup>

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<sup>44</sup> *Sharyland*, 121 FERC ¶ 61,006 at PP 1, 24; *ETT*, 121 FERC ¶ 61,007; *TexMex*, 124 FERC ¶ 61,129.

<sup>45</sup> *Sharyland*, 121 FERC ¶ 61,006 at P 25; *ETT*, 121 FERC ¶ 61,007 at P 11; *TexMex*, 124 FERC ¶ 61,129 at P 13.

<sup>46</sup> *See Sharyland*, 121 FERC ¶ 61,006 at P 21; *see also TexMex*, 124 FERC ¶ 61,129 at PP 8, 12.

<sup>47</sup> *Sharyland*, 121 FERC ¶ 61,006 at PP 20, 23; *see also ETT*, 121 FERC ¶ 61,007 at P 9 n.13; *TexMex*, 124 FERC ¶ 61,129 at P 8.

<sup>48</sup> *Sharyland*, 121 FERC ¶ 61,006 at P 25; *ETT*, 121 FERC ¶ 61,007 at P 11; *TexMex*, 124 FERC ¶ 61,129 at P 13.

Several proposed and potential projects could result in changes to the configuration of CFE's facilities. CFE's national grid currently is not interconnected to the CFE Baja California system. The Baja California system instead is synchronously interconnected with the Western Electricity Coordinating Council. Mexico has announced plans, however, to interconnect CFE's national grid and the Baja California system.<sup>49</sup> The Baja California system currently is connected to the CAISO's grid through two 230-kV interconnections.<sup>50</sup> Connecting CFE's national grid with the Baja California system could allow electric energy to flow between California and the CFE national grid, and even between California and ERCOT over the planned Mexican interconnected grid. Additionally, the proposed Nogales Interconnection Project would provide an HVDC link between Arizona and the CFE national grid.<sup>51</sup> The Arizona Corporation Commission has authorized the construction of the Nogales Interconnection Project, finding that it will "aid[] the state and the southwest region in meeting the need for an adequate, economical, and reliable supply of electric power" and will "aid[] the state in preserving a safe and

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<sup>49</sup> *Tex. Pub. Util. Comm'n Open Meeting of December 14, 2017 – Agenda Item No. 20*, PUCT Control No. 46665, Memorandum of Chairman DeAnn T. Walker on Electric Ties Between the Electric Reliability Council of Texas and the Comisión Federal de Electricidad or Other Electric Systems in Mexico at 1 (Dec. 13, 2017).

<sup>50</sup> See Presidential Permit Order No. PP 68-2 (San Diego Gas & Electric Co. ) (Sept. 26, 2001); Presidential Permit Order No. PP-79 (San Diego Gas & Electric Co.) (Dec. 20, 1983).

<sup>51</sup> See *Nogales Transmission, L.L.C.*, 161 FERC ¶ 61,009 (2017); *In the Matter of the Joint Application of Nogales Transmission, L.L.C. and UNS Elec., Inc.*, Case No. 176, D.76469, Order Approving Certificate of Environmental Compatibility for Nogales Transmission, L.L.C. (Ariz. Corp. Comm'n Nov. 17, 2017) ("*Nogales CEC*"); *In the Matter of the Joint Application of Nogales Transmission, L.L.C. and UNS Elec., Inc.*, Case No. 176, D.76468, Order Approving Certificate of Environmental Compatibility for UNS Electric, Inc. (Ariz. Corp. Comm'n Nov. 17, 2017) ("*UNSE CEC*"); *Nogales Transmission, L.L.C.*, DOE Docket No. PP-420, Application of Nogales Transmission, L.L.C. for Presidential Permit (filed Apr. 8, 2017).

reliable electric transmission system.”<sup>52</sup> This interconnection will allow electric energy to flow between Arizona and CFE, and potentially between Arizona and ERCOT over the CFE national grid. Other transmission projects under consideration also may create connections between the CFE national grid and U.S. states other than Texas.<sup>53</sup> Although it is not clear that any commingling of power from the U.S. would actually occur as a result of these changes, because these projects could change the configuration of the CFE transmission system, they have prompted questions about the future applicability of the jurisdictional disclaimer in the *Jurisdiction Disclaimer Orders*.

In *Sharyland*, the Commission found that there was “no clear precedent concerning whether electric energy generated in ERCOT and transmitted to CFE, or flowing in the other direction, gives rise to Commission jurisdiction solely because of the potential commingling of electric energy from one state in the United States with electric energy on the CFE system and CFE’s subsequent transmission of electric energy into another state in the United States.”<sup>54</sup> In a subsequent order, the Commission found that it had jurisdiction over wholesale sales to the Northern Maine Independent System Administrator, Inc. “by virtue of its connection with the rest of the United States through

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<sup>52</sup> *UNSE CEC* at Finding of Fact and Conclusion of Law Nos. 1-2; *see also Nogales CEC* at Finding of Fact and Conclusion of Law Nos. 1-2.

<sup>53</sup> *Tex. Pub. Util. Comm’n Open Meeting of November 17, 2017 – Agenda Item No. 23*, PUCT Control No. 46665, Memorandum of Chairman DeAnn T. Walker on Electric Ties Between the Electric Reliability Council of Texas and the Comisión Federal de Electricidad or Other Electric Systems in Mexico at 4 (Nov. 16, 2017) (“*November 2017 PUCT Memorandum*”).

<sup>54</sup> *Sharyland*, 121 FERC ¶ 61,006 at P 17; *see also ETT*, 121 FERC ¶ 61,007 at P 9 n.13.

the transmission facilities” of New Brunswick, Canada.<sup>55</sup> Based on these rulings, there is uncertainty about whether the Potential CFE Changes could lead the Commission to assert jurisdiction over ERCOT Entities.<sup>56</sup>

## **VI. SECTION 211 REQUEST FOR TRANSMISSION SERVICES**

### **A. Assurance Regarding ERCOT’s Independence Is Necessary**

In light of the questions regarding the jurisdictional issues discussed above, the PUCT, ERCOT, and other interested parties are concerned that Potential CFE Changes could alter the non-jurisdictional status of ERCOT and ERCOT Entities. The PUCT has emphasized the importance of maintaining ERCOT’s independence.<sup>57</sup> This principle is reflected in ERCOT’s bylaws, which prohibit any member (including each of the ERCOT-CFE Tie Operators) from taking actions that would result in ERCOT or its members becoming public utilities under the FPA or become subject to FERC’s plenary jurisdiction.<sup>58</sup> Also, ERCOT’s Standard Form Market Participant Agreement imposes a

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<sup>55</sup> *Integrus Energy Servs., Inc. v. New Brunswick Power Generation Corp.*, 127 FERC ¶ 61,232 at P 27 (2009), *reh’g denied*, 134 FERC ¶ 61,243 at P 76 (2011) (“*Integrus*”).

<sup>56</sup> The Commission’s decision in *Integrus* was based on the specific factual situation at issue, which involved “lines linking northern Maine with New Brunswick [which were] regularly used to transmit power between northern Maine and ISO New England by way of New Brunswick.” *Integrus*, 134 FERC ¶ 61,243 at P 77. The jurisdictional analysis in *Integrus* thus may not apply to flows between ERCOT and CFE. Nothing in this application should be read to concede that the Potential CFE Changes would give rise to plenary FERC jurisdiction over any ERCOT Entities. Applicant, however, acknowledges that there is continuing uncertainty regarding the possible jurisdictional implications of the Potential CFE Changes and therefore is requesting a section 211 order to resolve these potential jurisdictional concerns.

<sup>57</sup> See, e.g., *November 2017 PUCT Memorandum*.

<sup>58</sup> ERCOT, *Amended and Restated Bylaws of Electric Reliability Council of Texas, Inc.* § 9.3(i) (Aug. 17, 2015), [http://www.ercot.com/content/about/governance/legal/Amended\\_Restated\\_Bylaws\(eff08.17.2015\).pdf](http://www.ercot.com/content/about/governance/legal/Amended_Restated_Bylaws(eff08.17.2015).pdf).

similar prohibition on all market participants in the ERCOT region, including the ERCOT-CFE Tie Operators.<sup>59</sup> At the PUCT's direction, ERCOT recently approved a revision to its Protocols to further clarify that "it can and will take all actions necessary to preserve the jurisdictional status quo and avoid causing any Entity that is not a public utility under the FPA to become such a public utility."<sup>60</sup> Potential actions discussed in the Nodal Protocol Revision Request include "ordering the disconnection of Transmission Facilities and denial or curtailment of an Electronic Tag (e-Tag)."<sup>61</sup> Additionally, the developer of the Nogales Interconnection Project<sup>62</sup> has requested that the DOE refrain from issuing a Presidential Permit for the proposed facility until the jurisdictional concerns related to the project have been resolved.<sup>63</sup> The DOE granted this request and has stayed its review of the proposed project.<sup>64</sup>

The ERCOT-CFE Tie Operators have indicated that they will discontinue providing transmission services over the ERCOT-CFE Ties if providing such services

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<sup>59</sup> ERCOT, *ERCOT Nodal Protocols* § 22A (Mar. 1, 2018), [http://www.ercot.com/content/wcm/libraries/148953/March\\_1\\_\\_2018\\_Nodal\\_Protocols.pdf](http://www.ercot.com/content/wcm/libraries/148953/March_1__2018_Nodal_Protocols.pdf) (Standard Form Market Participant Agreement §§ 5.B, 6.B (Apr. 1, 2015)).

<sup>60</sup> ERCOT, *Board Report on NPRR No. 861: Clarification of ERCOT's Authority to Protect Its Jurisdictional Status* at 2 (Feb. 20, 2018), [http://www.ercot.com/content/wcm/key\\_documents\\_lists/144398/861NPRR-09\\_Board\\_Report\\_022018.doc](http://www.ercot.com/content/wcm/key_documents_lists/144398/861NPRR-09_Board_Report_022018.doc); ERCOT, *ERCOT Nodal Protocols* §§ 1.2(9), 4.4.4(5) (Mar. 1, 2018), [http://www.ercot.com/content/wcm/libraries/148953/March\\_1\\_\\_2018\\_Nodal\\_Protocols.pdf](http://www.ercot.com/content/wcm/libraries/148953/March_1__2018_Nodal_Protocols.pdf).

<sup>61</sup> *Id.*

<sup>62</sup> Sharyland is affiliated with the developer of the Nogales Interconnection Project.

<sup>63</sup> *Nogales Transmission, L.L.C.*, DOE Docket No. PP-420, Letter from Nogales Transmission to the DOE (filed Nov. 8, 2017).

<sup>64</sup> *Nogales Transmission, L.L.C.*, DOE Docket No. PP-420, Letter from the DOE to Nogales Transmission (dated Nov. 15, 2017).

will jeopardize the non-jurisdictional status of any ERCOT Entity, in accordance with their obligations as ERCOT members and market participants. Similarly, ERCOT has indicated that it will take all necessary actions, including denying or curtailing transactions or ordering disconnection of the ERCOT-CFE Ties, to preserve the jurisdictional status quo. Applicant therefore seeks issuance of the requested order under FPA section 211, consistent with the terms of the Offer of Settlement, so that, notwithstanding any Potential CFE Changes, Applicant and other eligible customers will be able to receive transmission services from the ERCOT-CFE Tie Operators for use of the ERCOT-CFE Ties in the future. Protection of the jurisdictional status quo also is necessary to ensure that ERCOT will not order the disconnection of the ERCOT-CFE Ties, deny or curtail e-Tags for service over the ERCOT-CFE Ties, or be required to take other actions to protect ERCOT's non-jurisdictional status. Concerns regarding the preservation of ERCOT independence also may impede the development of the Nogales Interconnection Project and other potentially beneficial transmission projects interconnecting Mexico with the United States, through either ERCOT or elsewhere. Therefore, Applicant seeks a Commission order under section 211 of the FPA directing the ERCOT-CFE Tie Operators to provide transmission services to Applicant and other entities eligible to take service under the ERCOT-CFE Tie Operators' open-access tariffs<sup>65</sup> for power flows to, from, and over the ERCOT-CFE Ties. Applicant requests

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<sup>65</sup> Applicant requests that the ERCOT-CFE Tie Operators be directed to provide transmission services to Applicant and other entities eligible to take service for power flows over the ERCOT-CFE Ties in accordance their respective tariffs for wholesale transmission service (*i.e.*, Sharyland's Tariffs for *cont'd*)

that the Commission approve the attached Offer of Settlement, pursuant to which the ERCOT-DC Tie Operators would commit to provide transmission services on a non-discriminatory basis over the full capacity of each of the ERCOT-CFE Ties.

**B. A Section 211 Order Would Preserve the Jurisdictional Status Quo**

Applicant also requests that the Commission confirm that providing transmission services to, from, and over the ERCOT-CFE Ties in compliance with FERC's order will not cause ERCOT or any ERCOT Entity to become a public utility subject to FERC's plenary jurisdiction.

FERC has plenary jurisdiction over public utilities.<sup>66</sup> The FPA defines the term "public utility" as "any person who owns or operates facilities subject to the jurisdiction of the Commission" under Part II of the FPA, other than facilities subject to such jurisdiction solely by reason of certain sections of the FPA, including section 210 *or* section 211.<sup>67</sup> Under Part II of the FPA, FERC has jurisdiction over "the transmission of electric energy in interstate commerce," "the sale of electric energy at wholesale in

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*(cont'd from previous page)*

Wholesale Transmission Service, ETT's Tariff for Wholesale Transmission Service, and AEP Texas's Tariff for ERCOT Regional Service, as set forth in Part IV and Attachment K to AEP's OATT).

<sup>66</sup> See, e.g., 16 U.S.C. § 824d(a) ("All rates and charges made, demanded, or received *by any public utility* for or in connection with the transmission or sale of electric energy subject to the jurisdiction of the Commission . . . ." (emphasis added)).

<sup>67</sup> *Id.* § 824(e) ("The term 'public utility' when used in this subchapter and subchapter III of this chapter 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 section 824e(e), 824e(f), 824i, 824j, 824j-1, 824k, 824o, 824o-1, 824p, 824q, 824r, 824s, 824t, 824u, or 824v of this title)." (footnote omitted)).

interstate commerce,” and “facilities for such transmission or sale of electric energy.”<sup>68</sup> Under section 201(b)(2) of the FPA, however, compliance with a FERC order under the provisions of section 210 *or* section 211 “shall not make an electric utility or other entity subject to” FERC’s plenary jurisdiction.<sup>69</sup>

The ERCOT-CFE Tie Operators currently operate and provide transmission services to, from, and over the ERCOT-CFE Ties. Under the current configuration of the ERCOT and CFE systems, the ERCOT-CFE Ties are, like all facilities in ERCOT, “facilities used for the transmission of electric energy in interstate commerce or for the sale of electric energy at wholesale in interstate commerce” only to the extent that they (like all ERCOT facilities) are used for the transmission of Section 211 Interstate Power.<sup>70</sup> Thus the ERCOT-CFE Ties, under the current configuration of the system, are not facilities subject to FERC’s plenary jurisdiction. Accordingly, as the Commission confirmed in the *Jurisdiction Disclaimer Orders*, operation of the ERCOT-CFE Ties

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<sup>68</sup> *Id.* § 824(b)(1).

<sup>69</sup> *Id.* § 824(b)(2) (“Notwithstanding subsection (f) of this section, the provisions of sections 824b(a)(2), 824e(e), 824i, 824j, 824j–1, 824k, 824o, 824o–1, 824p, 824q, 824r, 824s, 824t, 824u, and 824v of this title shall apply to the entities described in such provisions, and such entities shall be subject to the jurisdiction of the Commission for purposes of carrying out such provisions and for purposes of applying the enforcement authorities of this chapter with respect to such provisions. Compliance with any order or rule of the Commission under the provisions of section 824b(a)(2), 824e(e), 824i, 824j, 824j–1, 824k, 824o, 824o–1, 824p, 824q, 824r, 824s, 824t, 824u, or 824v of this title, shall not make an electric utility or other entity subject to the jurisdiction of the Commission for any purposes other than the purposes specified in the preceding sentence.”).

<sup>70</sup> *Sharyland*, 121 FERC ¶ 61,006 at PP 16, 24; *TexMex*, 124 FERC ¶ 61,129 at PP 11-12.

under current system conditions does not cause any entity that is not already a public utility to become a public utility under the FPA.<sup>71</sup>

In the absence of the requested section 211 order, if Potential CFE Changes create a situation in which continued operation of the ERCOT-CFE Ties could alter the non-jurisdictional status of any ERCOT Entity, the ERCOT-CFE Tie Operators would stop providing transmission service over the ties immediately before the Potential CFE Changes occur. Because each of the ERCOT-CFE Ties includes either a back-to-back HVDC converter or a VFT, no electric energy will flow over the ERCOT-CFE Ties unless the ERCOT-CFE Tie Operators schedule the service and operate the facilities to allow transmission to occur. Thus, if the ERCOT-CFE Tie Operators stop providing transmission service, there is no potential for the ERCOT-CFE Ties to become facilities used for transmission or wholesale sales of electric energy interstate commerce. Accordingly, if the ERCOT-CFE Tie Operators stop providing transmission service over the ERCOT-CFE Ties, the continuing existence of the inert interconnection facilities will not cause ERCOT or any ERCOT Entity to become a public utility.

Significant here is that the jurisdictional threat to ERCOT Entities does not arise from the mere existence of the ERCOT-CFE Ties, but rather from the potential for transmission of electric energy in interstate commerce over the ties. Under section 201(b)(1), FERC has jurisdiction over “the transmission of electric energy in interstate

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<sup>71</sup> *Id.* at PP 1, 24.

commerce” and “the sale of electric energy at wholesale in interstate commerce.”<sup>72</sup> A facility is not jurisdictional unless it is used “for such transmission or sale of electric energy.”<sup>73</sup> As the U.S. Supreme Court held in *Jersey Central Power & Light Co. v. FPC*, the Commission’s “power does not extend over all connecting transmitting facilities but only over those which transmit energy actually moving in interstate commerce. Mere connection determines nothing.”<sup>74</sup> If there is no transmission between ERCOT and CFE over the tie, then regardless of any Potential CFE Changes, there could be no jurisdictional consequences for ERCOT Entities. Conversely, if transmission of interstate power were to occur over one of the ERCOT-CFE Ties (absent an order under section 211 directing such service), it would be the act of transmitting such power over the ERCOT-CFE Tie, not the existence of the interconnection facilities, that would potentially give rise to plenary FERC jurisdiction. The requested section 211 order therefore would be sufficient to resolve the concerns arising from the Potential CFE Changes.

The Potential CFE Changes could create a situation in which the power flows over the ERCOT-CFE Ties could be construed to be transmission of “electric energy in

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<sup>72</sup> 16 U.S.C. § 824(b)(1)

<sup>73</sup> *Id.* (emphasis added).

<sup>74</sup> 319 U.S. 61, 72 (1943); *see also People’s Elec. Coop.*, 84 FERC ¶ 61,229 at 62,114 (1998) (“The Court made the distinction that a utility’s being connected to transmission facilities in interstate commerce does not confer federal jurisdiction. Rather, it is the flow of out-of-state electric energy over the interconnected lines (as here), or the flow of electric energy over those lines that is consumed out of state, that constitutes interstate commerce.” (discussing *Jersey Central*, 319 U.S. 61)), *denying reh’g*, 93 FERC ¶ 61,218 (2000).

interstate commerce.”<sup>75</sup> The ERCOT-CFE Tie Operators have authorized Applicant to represent that if the Commission grants this application, transmission of such electric energy in interstate commerce over the ERCOT-CFE Ties would be provided only in compliance with and to the extent mandated by the requested section 211 order. Under FPA section 201(b)(2), “[c]ompliance with any order or rule of the Commission under the provisions of [section 211] shall not make an electric utility or other entity subject to the jurisdiction of the Commission” except for certain limited, specified purposes.<sup>76</sup> Thus to the extent that Potential CFE Changes might jeopardize the non-jurisdictional status of ERCOT Entities, the requested section 211 order will ensure that the continued operation of the ERCOT-CFE Ties will not disrupt the jurisdictional status quo.

Likewise, if the requested section 211 order is granted, the ERCOT-CFE Ties would be used as facilities for transmission of electric energy in interstate commerce solely by virtue of the ERCOT-CFE Tie Operators’ compliance with the section 211 order. As noted above, because the ERCOT-CFE Ties each include either an HVDC converter station or a VFT, there is no potential for inadvertent, unscheduled flows of electric energy in interstate commerce over the facilities. Instead, the transmission of

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<sup>75</sup> As that term is defined in FPA section 201(c). 16 U.S.C. § 824(c). As the Commission noted in *Sharyland*, “[t]here is no clear precedent concerning whether electric energy generated in ERCOT and transmitted to CFE, or flowing in the other direction, gives rise to Commission jurisdiction solely because of the potential commingling of electric energy from one state in the United States with electric energy on the CFE system and CFE’s subsequent transmission of electric energy into another state in the United States.” *Sharyland*, 121 FERC ¶ 61,006 at P 17. The Commission need not resolve this question in order to grant the instant application and Applicant is not asking the Commission to address this issue. No statements in this application should be read as supporting the claim that such flows could give rise to plenary FERC jurisdiction.

<sup>76</sup> *Id.* § 824(b)(2).

electric energy in interstate commerce over the ERCOT-CFE Ties would occur only as a result of the ERCOT-CFE Tie Operators providing transmission service pursuant to the section 211 order. Thus, the ERCOT-CFE Ties would become facilities for transmission and wholesale sales of electric energy in interstate commerce “solely by reason of” a Commission order issued under section 211. Therefore, regardless of Potential CFE Changes, Sharyland and ETT’s continuing operation of their ERCOT-CFE Ties in compliance with the requested section 211 order would not cause them to become “public utilities” as that term is defined in FPA section 201(e).

Providing transmission service over the ERCOT-CFE Ties involves the use of various component parts of those facilities. Consistent with long-standing Commission precedent, all of the equipment and components associated with the ERCOT-CFE Ties are properly classified as “transmission” facilities. While certain of the ERCOT-CFE Ties facilities could be described as “interconnection” facilities, Commission precedent is clear that “[i]nterconnection is an element of transmission service”<sup>77</sup> and that

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<sup>77</sup> *Tenn. Power Co.*, 90 FERC ¶ 61,238 at 61,761 (2000); *see also Pac. Gas & Elec. Co.*, 115 FERC ¶ 61,193 at P 36 (2006) (“Interconnection service, the Commission has previously found, is an element of transmission service; that is, interconnection is part and parcel of transmission of electric energy in interstate commerce, and thus interconnection service is part and parcel of jurisdictional transmission service.” (footnote omitted)); *Standardization of Small Generator Interconnection Agreements and Procedures*, Order No. 2006, FERC Stats. & Regs. ¶ 31,180 at P 465 (“[I]nterconnection is an element of transmission service that must be provided under the OATT . . .”), *order on reh’g*, Order No. 2006-A, FERC Stats. & Regs. ¶ 31,196 (2005), *order granting clarification*, Order No. 2006-B, FERC Stats. & Regs. ¶ 31,221 (2006) (codified at 18 C.F.R. pt. 35); *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 12 (2003) (“Interconnection is a critical component of open access transmission service . . .”), *order on reh’g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 (2004), *order on reh’g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171, *order on reh’g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff’d sub nom. Nat’l Ass’n of Regulatory Util. Comm’rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007) (codified at 18 C.F.R. pt. 35); *id.* at P 20 (“The Commission has identified interconnection as an element of transmission service that is required to be provided under the OATT.”).

interconnection facilities are merely one type of transmission facilities.<sup>78</sup> Accordingly, outside of the context of section 210, FERC’s authority to regulate interconnections is based on its jurisdiction over the transmission of electric energy in interstate commerce.<sup>79</sup> As explained above, if the requested section 211 order is granted, any facilities—whether described as “interconnection” facilities or “transmission” facilities—that are used to provide transmission services to, from, and over the ERCOT-CFE Ties will be used for transmission of electric energy in interstate commerce “solely by reason of” a

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<sup>78</sup> See, e.g., *Open Access and Priority Rights on Interconnection Customer’s Interconnection Facilities*, Order No. 807, FERC Stats. & Regs. ¶ 31,367 at P 17 (noting the Commission’s policy that because an interconnection customer’s interconnection facilities “are facilities used for the transmission of electric energy in interstate commerce, those who own, control, or operate” such facilities are subject to the Commission’s open access requirements), *order on reh’g and clarification*, Order No. 807-A, 153 FERC ¶ 61,047 (2015) (codified at 18 C.F.R. § 35.28(d)); *Eagle Point Power Gen. LLC*, 151 FERC ¶ 61,153 at PP 4, 19 (2015) (determining that bus and circuit breaker that were part of an “interconnection” facility were “transmission facilities subject to the Commission’s OASIS, OATT and Standards of Conduct requirements”); *Milford Wind Corridor, LLC*, 129 FERC ¶ 61,149 at P 24 (2009) (“We note that, although Milford characterizes its [facility] as a ‘generator lead line,’ such a designation does not render the Milford Line exempt from Commission regulation of transmission facilities. The Commission has not found that the fact that the facilities tie a generator to the grid, that is, are so-called generator lead lines, eliminates the requirement to file an Open Access Transmission Tariff (OATT) and to provide open access transmission service.”); *Jersey Cent. Power & Light Co.*, 87 FERC ¶ 61,014 at 61,042 (1999) (characterizing “generator step-up transformers and generator leads” as “limited transmission facilities”); *Entergy Servs., Inc.*, 51 FERC ¶ 61,376 at 62,283 n.11 (1990) (referring to “switching stations, substations, or other transmission facilities”). The Commission’s Uniform System of Accounts also treats interconnection facilities as part of the transmission system. See, e.g., 18 C.F.R. Pt. 101 Electric Plant Instruction 14(A) (defining “[t]ransmission system” as including “[a]ll lines and equipment whose primary purpose is to augment, integrate or tie together the sources of power supply”); *id.* Account 562 (including the category of “Transmission Expenses” the cost “incurred in operating transmission substations and switching stations” and noting that “[i]f transmission station equipment is located in or adjacent to a generating station the expenses applicable to transmission station operations shall nevertheless be charged to this account.”).

<sup>79</sup> See Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at PP 4, 18 (finding legal authority to require standard interconnection procedures and agreements based on the Commission’s responsibility under FPA sections 205 and 206 to “ensure that the rates, contracts, and practices affecting jurisdictional transmission do not reflect an undue preference or advantage for non-independent Transmission Providers and are just and reasonable”); *id.* at P 804 (noting that the rule only applies to public utilities whose facilities “may be used either to transmit electric energy in interstate commerce or to sell electric energy at wholesale in interstate commerce pursuant to Commission-filed OATT”); *Nat’l Ass’n of Regulatory Util. Comm’rs v. FERC*, 475 F.3d at 1280 (rejecting a jurisdictional challenge to Order No. 2003 where “petitioners identif[ied] no specific aspect of the regulations that they claim is untethered to the Commission’s authority over interstate transmissions and wholesale sales.”).

Commission order under section 211. Thus, the continued operation of the facilities used to provide transmission service to, from, and over their ERCOT-CFE Ties in compliance with the requested section 211 order would not jeopardize their status as non-public utilities, regardless of whether those facilities are classified as “interconnection” or “transmission” facilities.

### **C. An Accompanying Section 210 Order Is Not Needed**

In prior cases, the Commission has issued orders under section 210 to require the construction of new or expanded interconnection facilities linking ERCOT with another region and companion orders under section 211 to require the transmission of interstate power “to, from and over” such facilities.<sup>80</sup> FERC’s pattern in ERCOT cases of issuing section 210 interconnection orders alongside section 211 transmission service orders may create the impression that orders under both section 210 *and* section 211 are necessary to preserve ERCOT’s jurisdictional status quo. However, these prior orders all involved proposals for the construction of new or expanded transmission facilities which, but for the requested section 210 and 211 orders, the relevant parties would not agree to construct due to jurisdictional concerns. By contrast, the ERCOT-CFE Ties already exist. Here, Applicant is not requesting that the ERCOT-CFE Tie Operators create new interconnections or even expand or improve the existing interconnections. Consequently, there is no need to obtain a section 210 order ordering “the physical connection of . . .

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<sup>80</sup> See *Brazos*, 118 FERC ¶ 61,199; *Kiowa*, 99 FERC ¶ 61,251; *CP&L II*, 40 FERC ¶ 61,077; *CP&L I*, 17 FERC ¶ 61,078; see also *Southern Cross*, 137 FERC ¶ 61,206; *College Station*, 137 FERC ¶ 61,230.

transmission facilities” because the interconnections already have been established and approved by the relevant federal and state agencies.<sup>81</sup>

As part of this application, Applicant asks the Commission to confirm that the requested section 211 order will be sufficient to ensure that, regardless of Potential CFE Changes, the ERCOT-CFE Tie Operators’ continued operation of the ERCOT-CFE Ties will not cause ERCOT Entities to become public utilities subject to FERC’s plenary jurisdiction. As discussed above, the jurisdictional threat to ERCOT Entities is based on the *use* of the ERCOT-CFE Ties for transmission of electric energy in interstate commerce, not their mere existence. If the Commission grants this application, the ERCOT-CFE Ties would be used for the transmission of electric energy in interstate commerce only to the extent required to comply with the requested section 211 order. Since section 201(b)(2) provides that compliance with section 211 will not cause electric utilities or other entities to become subject to the Commission’s plenary jurisdiction, the requested section 211 order would fully protect the non-public utility status of ERCOT and ERCOT Entities.

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<sup>81</sup> 16 U.S.C. § 824i(a)(1). Commission precedent provides that section 210 does not apply when new, expanded, or improved interconnection facilities are not at issue. *See, e.g., Watson Cogeneration Co.*, 144 FERC ¶ 61,202 at P 19 (2013) (dismissing a section 210 application as moot because the applicant and the target of the section 210 application were “already physically interconnected and will continue to be”); *Mirant Las Vegas, LLC*, 109 FERC ¶ 61,045 at P 19 (2004) (denying a section 210 application because the applicants were “not requesting the physical interconnection of facilities”); *id.* at P 19 n.12 (“The Commission’s section 210 orders have all involved the physical interconnection of facilities.”); *N. Hartland, LLC*, 105 FERC ¶ 61,192 at P 21 & n.18 (rejecting a request to treat a filing as a section 210 application because “[s]ection 210 of the FPA refers to the Commission ordering a physical interconnection, which . . . is not at issue in this proceeding” and noting that the would-be applicant “acknowledge[d] that its proposed interconnection agreement ‘memorializes the existing physical interconnection’”), *order granting clarification and denying reh’g*, 105 FERC ¶ 61,392 (2003).

The relevant statutory language supports the conclusion that an order under section 211 by itself is sufficient to preserve ERCOT Entities’ non-jurisdictional status. FPA section 201(b)(2)’s jurisdictional exemption applies equally to activities that are in compliance with an order under section 210 directing interconnection *or* to activities that are in compliance with an order under section 211 requiring transmission service.<sup>82</sup> Likewise, the definition of “public utility” in section 201(e) excludes the owners of facilities that are “subject to [FERC’s] jurisdiction solely by reason of” section 210 *or* section 211.<sup>83</sup>

Finally, the requested section 211 order would not undermine FERC’s authority under section 210 of the FPA. Nor would it read section 210—or the mention of that provision in section 201(b)(2)—out of the statute. The Commission clearly has authority

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<sup>82</sup> *Id.* § 824(b)(2).

<sup>83</sup> *Id.* § 824(e). The legislative history of the relevant provisions and Commission precedent confirm that a section 211 order directing the ERCOT-CFE Tie Operators to provide transmission services to, from, and over the ERCOT-CFE Ties would be sufficient to preserve the jurisdictional status quo even without an accompanying section 210 order. *See, e.g.*, H.R. Rep. No. 95-1750, at 95 (1978) (Conf. Rep.) (repeatedly stating that the jurisdictional protections of section 201(b)(2) apply when a utility “is ordered to interconnect *or* wheel” and noting that utilities that are not subject to FERC’s plenary jurisdiction “would remain free from the Commission’s jurisdiction as long as the required interconnection *or* wheeling is not used in a manner unauthorized by the order” (emphasis added)); S. Rep. No. 95-1292, at 95 (1978) (Conf. Rep.) (same); *Tex-La Elec. Coop. of Tex., Inc.*, 69 FERC ¶ 61,269 at 62,029 n.22 (1994) (“Under section 201(b)(2) of the FPA, our ordering transmission service pursuant to section 211 will not affect the non-public utility status of TU.”). Certain language in *Tres Amigas LLC* could create the impression that a section 210 order is required to constrain FERC’s jurisdiction. *Tres Amigas LLC*, 130 FERC ¶ 61,205 at P 43, *reh’g denied*, 132 FERC ¶ 61,232 (2010). However, the request in *Tres Amigas* involved a proposed new interconnection and interstate transmission facilities. By contrast, the ERCOT-CFE Ties are existing interconnections whose international cross-border interconnection facilities were thoroughly reviewed and authorized by the DOE. Additionally, FERC’s order on rehearing noted that its *Tres Amigas* decision includes “no findings . . . under either section 210 or 211 of the FPA because no application under section 210 or 211 of the FPA was before it.” *Tres Amigas LLC*, 132 FERC ¶ 61,232 at P 11. Thus the discussion of this issue in *Tres Amigas* is dicta and does not constrain the Commission’s interpretation of sections 210 and 211 in future orders.

under section 210 to order an electric utility to interconnect with an appropriate applicant. Applicant is not asking the Commission to order the establishment of interconnections for the simple reason that the interconnections already exist. Applicant merely seeks confirmation that, based on the specific circumstances presented in this application, a section 211 order on its own will be sufficient to allow the continued operation of the ERCOT-CFE Ties without jeopardizing the jurisdictional status quo.<sup>84</sup> Nothing in the requested order would prevent section 210 from continuing to serve its intended purpose, *i.e.*, allowing the Commission to order interconnections when they cannot be established voluntarily. Additionally, the requested order would not offend the rule against superfluities by rendering inoperative the mention of section 210 in the list of provisions subject to section 201(b)(2)'s jurisdictional carve out. Even though a section 210 order is not necessary to provide the desired jurisdictional protections in this specific situation, section 201(b)(2)'s mention of section 210 retains residual viability. For instance, the physical interconnection of AC facilities without a section 210 order could have jurisdictional consequences even if no transmission service is being provided due to the potential for unscheduled flows of electric energy in interstate commerce over the interconnection. In such a situation, parties seeking to preserve their non-public utility status could apply for an order directing interconnection under section 210 in order to invoke the protections of section 201(b)(2).

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<sup>84</sup> Applicant notes, for instance, that FERC need not reach the question of whether a section 210 order would be required if the ERCOT-CFE Ties were proposed facilities rather than existing facilities.

## VII. SATISFACTION OF STATUTORY REQUIREMENTS

As discussed below, this application meets the requirements set forth in sections 211 and 212 of the FPA.

### A. Jurisdiction

Pursuant to FPA section 211(a), an application for transmission services may be filed by an “electric utility, Federal power marketing agency, or any other person generating electric energy for sale for resale.”<sup>85</sup> An “electric utility” is defined under FPA section 3(22) as, in relevant part “a person or Federal or State agency . . . that sells electric energy.”<sup>86</sup> As discussed above, Applicant sells electric energy. As a result, Applicant is eligible to request an order under FPA section 211.

Section 211(a) of the FPA grants the Commission authority to issue an order “requiring a transmitting utility to provide transmission services” to an appropriate applicant.<sup>87</sup> A “transmitting utility” is defined under FPA section 3(23) as “an entity. . . that owns, operates, or controls facilities used for the transmission of electric energy— (A) in interstate commerce; (B) for the sale of electric energy at wholesale.”<sup>88</sup>

The ERCOT-CFE Tie Operators operate facilities used to transmit electric energy for sale at wholesale in ERCOT. The Commission has found that the existing ties

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<sup>85</sup> 16 U.S.C. § 824j(a).

<sup>86</sup> *Id.* § 796(22)(A).

<sup>87</sup> *Id.* § 824j(a).

<sup>88</sup> *Id.* § 796(23).

between ERCOT and SPP are “used for the transmission of electric energy in interstate commerce.”<sup>89</sup> The interstate electric energy that is imported into the ERCOT system is transmitted over the facilities that make up the ERCOT interconnected transmission system, but that interstate electric energy does not cause those ERCOT facilities to become subject to FERC’s plenary jurisdiction because such transmission occurs pursuant to orders issued under section 211.<sup>90</sup> Consequently, the ERCOT-CFE Tie Operators’ transmission facilities, like all transmission facilities in ERCOT, are used for transmission of electric energy sold at wholesale in interstate commerce. Each of the ERCOT-CFE Tie Operators thus qualifies as a “transmitting utility.” Accordingly, the Commission has jurisdiction pursuant to FPA section 211 to order the ERCOT-CFE Tie Operators to provide transmission services to, from, and over the ERCOT-CFE Ties.

## **B. Good Faith Request**

Section 211(a) of the FPA requires the applicant make a request to the transmitting utility for transmission services at least 60 days prior to filing the application for a section 211 order with the Commission.<sup>91</sup> Section 213(a) contains procedures for an

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<sup>89</sup> *Brazos*, 118 FERC ¶ 61,199 at P 30.

<sup>90</sup> Transmission of electric energy within ERCOT qualifies as transmission of electric energy in interstate commerce *solely* pursuant to compliance with prior FERC orders under sections 210, 211, and 212. As such, under the terms of section 201(e), the ownership or operation of transmission facilities in ERCOT does not cause an entity to become a public utility. FERC’s prior orders have recognized that it is possible for ERCOT transmission owners and operators to be transmitting utilities but not public utilities. *See, e.g., id.* at PP 5, 30.

<sup>91</sup> 16 U.S.C. § 824j(a).

applicant to request transmission services and for the transmitting utility to respond to that request.<sup>92</sup>

The ERCOT-CFE Tie Operators have authorized Applicant to represent that they have waived their rights under sections 211(a) and 213(a) of the FPA to a request for transmission services. The ERCOT-CFE Tie Operators are willing to provide the transmission services that Applicant seeks if, and only if, the Commission issues a section 211 order consistent in all material respects with the order requested in this application. In addition, Applicant and the ERCOT-CFE Tie Operators have agreed upon the terms and conditions under which the requested transmission services would be provided, as reflected in the Offer of Settlement filed as part of this application. Accordingly, compliance with this requirement is not necessary here.<sup>93</sup>

### **C. Public Interest**

Section 211(a) of the FPA provides that the Commission may issue an order directing transmission services if the order meets the requirements of section 212 of the FPA “and would otherwise be in the public interest.”<sup>94</sup> In *Florida Municipal Power Agency v. Florida Power & Light Co.*, the Commission determined that “[a]s a general matter, the availability of transmission service (or increased flexibility to use transmission) will enhance competition in the market for power supplies over the long

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<sup>92</sup> *Id.* § 824l(a).

<sup>93</sup> See, e.g., *Vista Energy Storage, LLC*, 160 FERC ¶ 61,041 at P 10 (2017); *College Station*, 137 FERC ¶ 61,230 at P 19; *Kiowa*, 99 FERC ¶ 61,251 at P 32.

<sup>94</sup> 16 U.S.C. § 824j(a).

run because it will increase both the power supply options available to transmission customers (thereby benefitting their customers) and the sales options available to sellers.”<sup>95</sup> The Commission has also said that “so long as the transmitting utility receives full and fair compensation for the transmission services it provides, and there is no unreasonable impairment of reliability, requiring transmission service is in the public interest.”<sup>96</sup>

As discussed above, issuing the requested order will allow the ERCOT-CFE Tie Operators to continue providing transmission service over the ERCOT-CFE Ties, notwithstanding any Potential CFE Changes. It also will allow development of the Nogales Interconnection Project and other beneficial transmission projects to proceed. Additionally, failure to address the threat to ERCOT’s independence could result in significant harm to the public interest by causing the existing interconnections between ERCOT and CFE to cease operating, which would restrain international commerce, increase costs for both ERCOT and Mexico, and eliminate the reliability benefits of enhanced interconnection for both countries. Failure to address concerns regarding the preservation of ERCOT’s non-jurisdictional status also would thwart the development of new interconnections between ERCOT and Mexico, hindering international commerce.

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<sup>95</sup> 65 FERC ¶ 61,125 at 61,615, *reh’g dismissed*, 65 FERC ¶ 61,372 (1993), *final order*, 67 FERC ¶ 61,167 (1994), *order on reh’g*, 74 FERC ¶ 61,006 (1996), *order on reh’g*, 96 FERC ¶ 61,130 (2001), *aff’d*, 315 F.3d 362 (D.C. Cir. 2003); *see also Brazos*, 118 FERC ¶ 61,199 at P 34 & n.19; *Kiowa*, 99 FERC ¶ 61,251 at P 36; *Southern Cross*, 37 FERC ¶ 61,206 at P 31 & n.32.

<sup>96</sup> *Aero Energy, LLC*, 115 FERC ¶ 61,128 at P 37 (proposed order), *granting modification*, 116 FERC ¶ 61,149 (2006), *final order*, 118 FERC ¶ 61,204, *denying reh’g*, 120 FERC ¶ 61,188 at P 18 (2007); *see also Duquesne Light Co.*, 71 FERC ¶ 61,155 at 61,505-06 (1995).

Accordingly, the public interest will be served by directing the ERCOT-CFE Tie Operators to provide the requested transmission services.

#### **D. Reliability**

Section 211(b) of the FPA precludes a transmission order that “would unreasonably impair the continued reliability of electric systems affected by the order.”<sup>97</sup> Before Sharyland began providing transmission service over the Sharyland DC Tie, the DOE found that the operation of the Sharyland DC Tie, in accordance with the operating procedures established by ERCOT, would not adversely affect the reliability of the U.S. electric power supply system.<sup>98</sup> Additionally, the PUCT found that the project would “enhance the reliability and adequacy of the ERCOT interconnected transmission system.”<sup>99</sup> Since 2007, Sharyland has provided transmission services to, from, and over the Sharyland DC Tie without adversely impacting the reliability of the ERCOT or CFE transmission systems. Similarly, the DOE found that the operation of the Eagle Pass DC Tie and Laredo VFT Tie would not adversely affect the reliability of the U.S. electric power supply system.<sup>100</sup> Since 2007 and 2008, respectively, AEP Texas and ETT have been providing transmission services over the Eagle Pass DC Tie and the Laredo VFT Tie without adversely affecting the reliability of the ERCOT or CFE transmission systems. Accordingly, ordering the requested transmission services will ensure that the

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<sup>97</sup> 16 U.S.C. § 824j(b).

<sup>98</sup> Presidential Permit Order No. PP-285 at 2-3.

<sup>99</sup> *PUCT Order* at 8 (FOF 47).

<sup>100</sup> Presidential Permit Order No. PP-423 at 4; Presidential Permit Order No. PP-424 at 4.

current reliability benefits of the ERCOT-CFE Ties are preserved and will not impair the reliability of the affected electric systems.

#### **E. Effect on Contracts or Rate Schedules**

Section 211(c) of the FPA provides that no order may be issued under section 211 that requires the transmitting utility subject to the order to transmit, during any period, an amount of energy that replaces any amount of electric energy that is required to be provided to the applicant pursuant to a contract during such period or that the utility subject to the order currently provides to the applicant pursuant to a rate schedule on file with the Commission.<sup>101</sup> The Commission previously has found that because transmitting utilities in Texas are prohibited by state law from selling electric energy, section 211 orders directed at ERCOT utilities do not compel any transactions prohibited by this provision.<sup>102</sup>

As noted above, the ERCOT-CFE Tie Operators are “wires only” companies that are prohibited from selling electric energy under state law. As such, there are no contracts that require the ERCOT-CFE Tie Operators to provide electric energy to Applicant or any other entity. Additionally, Sharyland and ETT do not have any rate schedules on file with the Commission. AEP Texas does have a transmission rate schedule on file with the Commission, but in accordance with Texas law, it does not sell

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<sup>101</sup> 16 U.S.C. § 824j(c).

<sup>102</sup> *Southern Cross*, 137 FERC ¶ 61,206 at P 36; *Brazos*, 118 FERC ¶ 61,199 at P 45; *Kiowa*, 99 FERC ¶ 61,251 at P 41; *see also Nev. Power Co.*, 110 FERC ¶ 61,029 at PP 11-13 (2005) (“*Nevada Power*”) (accepting the argument “that section 211(c) does not prohibit the issuance of an order when *transmission* service, as opposed to the *sale of energy*, is already being provided”).

electricity. Thus, AEP Texas does not provide electric energy to Applicant or any other entity pursuant to any rate schedule on file with the Commission.<sup>103</sup> Therefore, section 211(c) of the FPA does not preclude an order for transmission services in this case.

#### **F. Rates, Charges, Terms, and Conditions**

Section 212(a) of the FPA requires that the transmitting utility subject to an order under section 211 “provide wholesale transmission services at rates, charges, terms, and conditions which permit the recovery by such utility of all the costs incurred in connection with the transmission services and necessary associated services . . . .”<sup>104</sup> Furthermore, “[s]uch rates, charges, terms, and conditions shall promote the economically efficient transmission and generation of electricity and shall be just and reasonable, and not unduly discriminatory or preferential.”<sup>105</sup> Section 212(k) provides that any order under section 211 “requiring provision of transmission services in whole or in part within ERCOT shall provide that any ERCOT utility which is not a public utility and the transmission facilities of which are actually used for such transmission service is entitled to receive compensation based, insofar as practicable and consistent with

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<sup>103</sup> See *Nevada Power*, 110 FERC ¶ 61,029 at P 13 (finding that this provision does not bar the Commission from issuing a section 211 order to a transmitting utility that is not “selling [electric] energy to [its] customers but rather is merely providing them with transmission service” even if such transmission service is provided “pursuant to a rate schedule on file with the Commission”).

<sup>104</sup> 16 U.S.C. § 824k(a). This section also says, “Rates, charges, terms, and conditions for transmission services provided pursuant to an order under section [211 of the FPA] shall ensure that, to the extent practicable, costs incurred in providing the wholesale transmission services, and properly allocable to the provision of such services, are recovered from the applicant for such order and not from a transmitting utility’s existing wholesale, retail, and transmission customers.” *Id.*

<sup>105</sup> *Id.*

subsection (a), on the transmission ratemaking methodology used by the Public Utility Commission of Texas.”<sup>106</sup>

Directing the provision of transmission services without subjecting ERCOT Entities to the Commission’s plenary jurisdiction would be entirely consistent with the wording and intent of section 201(b)(2) of the FPA.<sup>107</sup> The ERCOT-CFE Tie Operators will be compensated for transmission services that may be requested and scheduled to, from, and over the ERCOT-CFE Ties in accordance with the rules and ratemaking methodology of the PUCT.<sup>108</sup> As such, as discussed in the Offer of Settlement, transmission services to, from, and over the ERCOT-CFE Ties will be provided on an open-access and non-discriminatory basis and the rates charged will allow the ERCOT-CFE Tie Operators to recover the costs incurred in connection with the transmission services and necessary associated services. Thus, the application satisfies the requirements of section 212 regarding rates, charges, terms, and conditions.<sup>109</sup>

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<sup>106</sup> *Id.* § 824k(k)(1).

<sup>107</sup> *Id.* § 824(b)(2); *see also supra* Part VI.

<sup>108</sup> Even though the Commission has ultimate approval over the rates set forth in AEP Texas’s OATT for transmission service in ERCOT, those rates are established in accordance with the rules and ratemaking methodology of the PUCT. *See, e.g., Appalachian Power, supra* note 22 (noting the PUCT’s approval of AEP Texas’s application for an update of wholesale transmission rates for transmission service in ERCOT).

<sup>109</sup> *See, e.g., College Station*, 137 FERC ¶ 61,230 at P 27 (“[U]nder the Offer of Settlement, Entergy Texas and College Station have agreed to utilize the Texas Commission rules and ratemaking methodology for the proposed interconnection and any transmission services provided by College Station. . . . Therefore, we find that the Offer of Settlement meets the requirements of sections 212(a) and 212(k).”). Sharyland has a Tariff for Wholesale Transmission Service on file with and approved by the PUCT that authorizes Sharyland to charge for transmission services and recover the costs of the Sharyland DC Tie. No “To, From or Over Tariff” (“TFO Tariff”) is required to be prepared or filed with the Commission to provide for such cost recovery or to govern service on the Sharyland DC Tie. The facilities and services are located solely within the state of Texas, and are subject to the transmission ratemaking methodology of the PUCT. (*cont’d*)

**G. Section 212(g) and Section 212(h)**

Section 212(g) of the FPA prohibits the issuance of an order which is inconsistent with any state law governing the retail marketing areas of electric utilities.<sup>110</sup> Also, section 212(h) provides that no order under the FPA may require transmission of electric energy: (1) directly to an ultimate consumer; or (2) to or for the benefit of an entity which would otherwise sell electric energy directly to an ultimate consumer unless (A) such entity is a “Federal power marketing agency; . . . a State or any political subdivision of a State; . . . a corporation or association that has ever received a loan for the purposes of providing electric service from the Administrator of the Rural Electrification Administration under the Rural Electrification Act of 1936; a person having an obligation arising under State or local law (exclusive of an obligation arising solely from a contract entered into by such person) to provide electric service to the public; or any corporation or association which is wholly owned, directly or indirectly, by any one or more of the foregoing; and (B) such entity was providing electric service to such ultimate consumer on October 24, 1992, or would utilize transmission or distribution facilities that it owns or controls to deliver all such electric energy to such electric consumer.”<sup>111</sup>

The requested transmission services are not inconsistent with any state law governing retail marketing areas of electric utilities. Additionally, the requested

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Similarly, ETT has a Tariff for Wholesale Transmission Service on file with and approved by the PUCT that authorizes ETT to charge for transmission services and recover the costs of the Laredo VFT Tie.

<sup>110</sup> 16 U.S.C. § 824k(g).

<sup>111</sup> *Id.* § 824k(h).

transmission services do not involve the transmission of electric energy directly to an ultimate consumer. As such, the requested order does not compel any transaction prohibited by either section 212(g) or section 212(h) of the FPA.

#### **H. Proposed Order and Effective Date**

FPA section 212(c)(1) provides that, before issuing a final order under section 211, the Commission must issue a proposed order setting a reasonable time for the parties to agree to the terms and conditions for carrying out the order.<sup>112</sup> Section 212(c)(2) provides that, if the parties are able to agree within the allotted time, the Commission will issue a final order reflecting the agreed-upon terms and conditions, if the Commission finds them acceptable. When the parties to a section 211 proceeding are able to reach an agreement on the terms and conditions for carrying out the requested order for transmission services before a proposed order is issued, the Commission may find it unnecessary to issue a proposed order.<sup>113</sup>

Applicant and the ERCOT-CFE Tie Operators were able to agree upon the terms and conditions under which the requested transmission services would be provided, as reflected in the Offer of Settlement filed as part of this application. Additionally, the ERCOT-CFE Tie Operators have authorized Applicant to represent that they have waived their right to the issuance of a proposed order under section 212(c)(1). Applicant

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<sup>112</sup> *Id.* § 824k(c)(1).

<sup>113</sup> *See, e.g., College Station*, 137 FERC ¶ 61,230 at P 21; *Brazos*, 118 FERC ¶ 61,199 at P 32.

therefore respectfully requests that the Commission issue a final order granting this request effective on the date of issuance of the order.

### **VIII. OFFER OF SETTLEMENT**

If the configuration of the CFE system changes, the ERCOT-CFE Tie Operators will not continue providing transmission services over the ERCOT-CFE Ties if doing so will jeopardize the jurisdictional status quo. Consequently, the ERCOT-CFE Tie Operators require assurance that, notwithstanding any Potential CFE Changes, providing transmission services to, from, and over the ERCOT-CFE Ties will not subject any ERCOT Entity to plenary FERC jurisdiction. Accordingly, to ensure the continued availability of transmission services over the ERCOT-CFE Ties, Applicant seeks a Commission order under section 211 of the FPA directing the ERCOT-CFE Tie Operators to provide transmission services to, from, and over the ERCOT-CFE Ties.

Applicant and the ERCOT-CFE Tie Operators have negotiated the terms and conditions under which the ERCOT-CFE Tie Operators would provide the requested transmission services in accordance with a Commission order issued under sections 211 and 212 of the FPA. The parties have agreed to an Offer of Settlement that conforms to the Commission's previous orders concerning transmission service over the ERCOT grid as issued in Docket Nos. TX02-2 (Kiowa), TX07-1 (Brazos), TX11-1 (Southern Cross), and TX11-2 (College Station). In particular, the Offer of Settlement provides that the settlement is subject to the Commission issuing a final order consistent in all material respects with the order requested in this application. Such an order would maintain the jurisdictional status quo for ERCOT Entities by unequivocally confirming that providing

the requested transmission services will not result in the Commission asserting plenary jurisdiction over any ERCOT Entities that are not otherwise public utilities under the FPA.

The Offer of Settlement has been executed by Applicant and the ERCOT-CFE Tie Operators and is attached to this application. Pursuant to the Offer of Settlement, the ERCOT-CFE Tie Operators would be required to provide the requested transmission services from the date a final order consistent in all material respects with the order requested in this application becomes final and is no longer subject to judicial review.

Applicant respectfully requests that the Commission approve the Offer of Settlement by issuing an order directing the ERCOT-CFE Tie Operators to provide transmission services under section 211 of the FPA. Applicant also requests that the Commission confirm that providing transmission services to, from, and over the ERCOT-CFE Ties in compliance with this order will not cause any ERCOT Entity to become a public utility subject to FERC's plenary jurisdiction.

## **IX. REQUEST FOR EXPEDITED ACTION**

Development of the Nogales Interconnection Project and other beneficial transmission projects cannot proceed without assurance that changes in the configuration of the CFE transmission system will not jeopardize the jurisdictional status quo. Therefore, Applicant believes that good cause exists in the instant case for prompt action by FERC to approve this application without delay. Accordingly, Applicant respectfully requests that the Commission act on this application and issue an order by 60 days from

filing directing the DC Tie Operators to provide the requested transmission services under FPA section 211.

**X. SERVICE AND FORM OF NOTICE**

In accordance with 18 C.F.R. §§ 36.1 and 385.2010, Applicant is serving notice of this application on the ERCOT-CFE Tie Operators, ERCOT, and the PUCT. A sworn statement that actual notice has been served on each affected party and a form of notice are included as attachments.

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## **XI. CONCLUSION**

For the foregoing reasons, Applicant respectfully requests that the Commission issue an order under section 211 of the FPA directing the ERCOT-CFE Tie Operators to provide transmission services as requested herein and approving the attached Offer of Settlement. Applicant also requests that the Commission confirm that providing transmission services to, from, and over the ERCOT-CFE Ties, in compliance with this order, will not cause any ERCOT Entity to become a public utility subject to FERC's plenary jurisdiction.

Respectfully submitted,

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Dated: March 28, 2018

**ATTACHMENT A**  
**OFFER OF SETTLEMENT**

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

**AEP Energy Partners, Inc.**

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**Docket No. TX18-\_\_\_\_-000**

**OFFER OF SETTLEMENT**

AEP Energy Partners, Inc. (“Applicant”), Sharyland Utilities, L.P. (“Sharyland”), AEP Texas, Inc. (“AEP Texas”), and Electric Transmission of Texas, LLC (“ETT”)<sup>1</sup> hereby submit this Offer of Settlement for approval by the Federal Energy Regulatory Commission (“FERC” or the “Commission”), filed as part of Applicant’s Application for an Order Directing the Provision of Transmission Services Under Section 211 of the Federal Power Act and Request for Expedited Action (“Application”), which requests from FERC an order under section 211 of the Federal Power Act (“FPA”) directing the ERCOT-CFE Tie Operators to provide transmission services for power flows to, from, and over the Sharyland DC Tie, the Eagle Pass DC Tie, and the Laredo VFT Tie (collectively, the “ERCOT-CFE Ties”).

**BACKGROUND**

Applicant is an indirect subsidiary of American Electric Power Company, Inc. (“AEP”) and is an affiliate of AEP Texas and ETT (which also are indirect subsidiaries of AEP). Applicant’s principal place of business is at 155 W. Nationwide Blvd., Suite 300, Columbus, OH 43215. Applicant is engaged in the wholesale sale of electric capacity,

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<sup>1</sup> Hereinafter referred to individually as a “Party” and collectively as the “Parties.” Sharyland, AEP Texas, and ETT collectively are referred to herein as the “ERCOT-CFE Tie Operators.”

energy, and ancillary services in the ERCOT region in the state of Texas.<sup>2</sup> Applicant is authorized to operate in the state of Texas<sup>3</sup> and is authorized by the U.S. Department of Energy (“DOE”) to export electricity into Mexico.<sup>4</sup>

Sharyland is a Texas-based electric transmission utility that operates transmission assets and substations and provides electric transmission services in ERCOT. Sharyland operates the Sharyland DC Tie, a high-voltage direct current (“HVDC”) transmission facility that provides an asynchronous link between the ERCOT region and the national grid in Mexico, which is owned by the Comisión Federal de Electricidad (“CFE”) and operated by Centro Nacional de Control de Energía (“CENACE”), connecting at points near the cities of Mission, Texas, and Reynosa in the Mexican state of Tamaulipas.

AEP Texas is a transmission and distribution utility engaged in the transmission and distribution of electric power customers located primarily in South and West Texas. AEP Texas operates the Eagle Pass DC Tie, an HVDC transmission line between the Eagle Pass substation in ERCOT and the CFE’s Piedras Negras substation in the Mexican state of Coahuila.

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<sup>2</sup> Applicant is the successor in interest to CSW Power Marketing, Inc. *See AEP Energy Partners, LP*, Docket No. ER07-26-000 (Nov. 15, 2006) (unpublished delegated letter order accepting a notice of succession and revised tariff sheets to reflect a name change from CSW Power Marketing, Inc. to AEP Energy Partners, Inc.). CSW Power Marketing, Inc. was granted market-based rate authority from FERC in Docket No. ER97-1238. *CSW Power Mktg., Inc.*, 79 FERC ¶ 61,308 (1997).

<sup>3</sup> *Registration of Power Marketers, Exempt Wholesale Generators and Qualifying Facilities Pursuant to Subst. R. 25.105 (Formerly Subst. R. 23.19)*, Project No. 14406, Registration of AEP Energy Partners, LP as a Power Marketer (PUCT Oct. 19, 2006).

<sup>4</sup> *See generally CSW Power Mktg., Inc.*, DOE Order No. EA-318 (Feb. 22, 2007), *amended*, *AEP Energy Partners, Inc.*, DOE Order No. EA-318-A (June 27, 2007), *amended*, DOE Order No. EA-318-B (Feb. 22, 2012) (granting temporary emergency export authority), *amended*, DOE Order No. EA-318-B (clarifying the temporary emergency export authority) (Mar. 1, 2012), *amended*, DOE Order No. EA-318-C (Jan. 28, 2013).

ETT is a joint venture between subsidiaries of AEP and Berkshire Hathaway Energy Company that was formed to acquire, construct, own, and operate transmission facilities located and operated solely within ERCOT. ETT operates the Laredo VFT Tie, a variable frequency transformer (“VFT”) that makes possible the operation of an asynchronous tie between the ERCOT region and the CFE national grid near Laredo, Texas.

The ERCOT-CFE Ties are operated on an open-access basis, pursuant to U.S. Department of Energy (“DOE”) and the Public Utility Commission of Texas (“PUCT”) or FERC’s requirements, as applicable,<sup>5</sup> and in accordance with ERCOT’s DC Tie Operating Procedure.

Because they operate exclusively in ERCOT, Sharyland and ETT are not “public utilities” under the FPA and thus are not subject to the Commission’s plenary jurisdiction. The transmission grid that the ERCOT independent system operator administers is located solely within the state of Texas and is not interconnected to the Western or Eastern Interconnections except through interconnections that were ordered by the Commission to be established pursuant to its authority under section 210 of the

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<sup>5</sup> See Presidential Permit Order No. PP-285 at 3 (Sharyland Utilities, L.P.) (Jan. 21, 2005); *Application of Sharyland Utils., L.P. for a Certificate of Convenience and Necessity (CCN) for a 138 kV Transmission Line in Hidalgo County, Tex., to Implement a High Voltage Direct Current Interconnection with Comisión Federal de Electricidad*, No. 28834, Order at 10-11 (FOF 61-65) (PUCT Apr. 19, 2005); see also 16 Tex. Admin. Code §§ 25.191 to 25.203 (2017); Presidential Permit Order No. PP-423 at 3 (AEP Texas, Inc.) (Feb. 13, 2017); *Application of Elec. Transmission Tex., LLC for a Certificate of Convenience and Necessity, For Regulatory Approvals, and Initial Rates*, Docket No. 33734, Order at 16 (FOF 47) (PUCT Oct. 31, 2007); Presidential Permit Order No. PP-424 at 3 (AEP Texas, Inc.) (Feb. 13, 2017); *Appalachian Power Co.*, Docket No. ER17-1500-000 (Aug. 23, 2017) (unpublished delegated letter order accepting a filing to amend the open access transmission tariff to reflect the merger of AEP Texas Central Company and AEP Texas North Company).

FPA.<sup>6</sup> Transmission service between ERCOT and facilities in the United States outside of ERCOT, and transmission within ERCOT of all interstate power imported into ERCOT, is provided pursuant to Commission orders issued pursuant to section 211 of the FPA.<sup>7</sup> Because the only transmission of interstate power into, through, or out of ERCOT is that which has been ordered by the Commission pursuant to section 211, ERCOT and many ERCOT market participants are not “public utilities” as that term is defined in section 201(e) of the FPA,<sup>8</sup> and are not subject to FERC’s plenary jurisdiction.

In three separate orders issued in 2007 and 2008, FERC held that ownership and operation of the ERCOT-CFE Ties by the ERCOT-CFE Tie Operators would not cause ERCOT or ERCOT market participants that were not already public utilities to become subject to the Commission’s plenary jurisdiction as public utilities.<sup>9</sup> The jurisdictional determinations in the *Jurisdiction Disclaimer Orders*, however, were based on the configuration of the relevant transmission systems at the time those orders were issued. In the *Jurisdictional Disclaimer Orders*, the Commission explained that if the

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<sup>6</sup> See *City of College Station*, 137 FERC ¶ 61,230 (2011) (“*College Station*”); *Kiowa Power Partners, LLC*, 99 FERC ¶ 61,251 (2002) (“*Kiowa*”); *Cent. Power & Light Co.*, 40 FERC ¶ 61,077 (1987) (“*CP&L I*”); *Cent. Power & Light Co.*, 17 FERC ¶ 61,078 (1981) (“*CP&L I*”), order on reh’g, 18 FERC ¶ 61,100 (1982).

<sup>7</sup> See *College Station*, 137 FERC ¶ 61,230; *Kiowa*, 99 FERC ¶ 61,251; *CP&L II*, 40 FERC ¶ 61,077; *CP&L I*, 17 FERC ¶ 61,078; see also *S. Cross Transmission LLC*, 137 FERC ¶ 61,206 (2011) (“*Southern Cross*”), final order, 147 FERC ¶ 61,113 (2014); *Brazos Elec. Power Coop., Inc.*, 118 FERC ¶ 61,199 (2007) (“*Brazos*”), order terminating obligations, 119 FERC ¶ 61,252 (2007).

<sup>8</sup> 16 U.S.C. § 824(e).

<sup>9</sup> *Sharyland Utils., L.P.*, 121 FERC ¶ 61,006 at PP 1, 24 (2007) (“*Sharyland*”); *Elec. Transmission Tex., LLC*, 121 FERC ¶ 61,007 at PP 9-10 (2007) (“*ETT*”); *TexMex Energy, LLC*, 124 FERC ¶ 61,129 at P 12 (2008) (“*TexMex*”) (collectively, the “*Jurisdiction Disclaimer Orders*”).

configuration or operation of the relevant facilities were to change, its jurisdictional determinations may no longer apply.<sup>10</sup>

ERCOT, the ERCOT-CFE Tie Operators, and other ERCOT market participants are obligated under the ERCOT Bylaws and the Standard Form Market Participant Agreement to avoid taking actions that would result in ERCOT or its market participants becoming public utilities as that term is defined in the FPA or become subject to FERC's plenary jurisdiction.<sup>11</sup> The ERCOT-CFE Tie Operators and ERCOT would be required to terminate use of the ERCOT-CFE Ties if such use would jeopardize the jurisdictional status quo in ERCOT. Accordingly, if the configuration of the CFE system changes, the ERCOT-CFE Tie Operator will discontinue providing transmission services over the ERCOT-CFE Ties if providing such services will jeopardize the non-jurisdictional status of ERCOT or any ERCOT market participant that is not currently a "public utility" as that term is defined in the FPA (hereinafter referred to individually as an "ERCOT Entity" and collectively as "ERCOT Entities"). Applicant, on behalf of itself and other entities that are eligible customers under the ERCOT-CFE Tie Operators' respective tariffs for wholesale transmission service,<sup>12</sup> seeks a Commission order directing the

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<sup>10</sup> *Sharyland*, 121 FERC ¶ 61,006 at P 25; *ETT*, 121 FERC ¶ 61,007 at P 11; *TexMex*, 124 FERC ¶ 61,129 at P 13.

<sup>11</sup> ERCOT, *Amended and Restated Bylaws of Electric Reliability Council of Texas, Inc.* § 9.3(i) (Aug. 17, 2015), [http://www.ercot.com/content/about/governance/legal/Amended\\_Restated\\_Bylaws\(eff08.17.2015\).pdf](http://www.ercot.com/content/about/governance/legal/Amended_Restated_Bylaws(eff08.17.2015).pdf); ERCOT, *ERCOT Nodal Protocols* § 22A (Feb. 8, 2018), [http://www.ercot.com/content/wcm/libraries/147874/February\\_8\\_\\_2018\\_Nodal\\_Protocols.pdf](http://www.ercot.com/content/wcm/libraries/147874/February_8__2018_Nodal_Protocols.pdf) (Standard Form Market Participant Agreement §§ 5.B, 6.B (Apr. 1, 2015)).

<sup>12</sup> *See Compliance Filing of Sharyland Utils., L.P. for Transition Costs Resulting from Docket No. 47469*, Docket No. 47469-9, Revised Tariff for Electric Service, Wholesale Transmission Service (WTS) Rate (Rev. 15) (PUCT filed Feb. 27, 2018); *Application of Elec. Transmission Tex., LLC for Interim Update of Wholesale Transmission Rates*, Docket No. 47735-11, Tariff for (cont'd)

ERCOT-CFE Tie Operators to provide transmission services to, from, and over the ERCOT-CFE Ties to facilitate the movement of electricity between the ERCOT and CFE regions.

The ERCOT-CFE Tie Operators have indicated that they are willing to provide the requested transmission services notwithstanding changes to the CFE system if Applicant obtains an order from the Commission that (1) directs the ERCOT-CFE Tie Operators to provide the requested transmission services pursuant to FPA sections 211 and 212 and (2) confirms that providing the requested transmission services will not cause ERCOT or any ERCOT Entities to become public utilities subject to the Commission's plenary jurisdiction.

The Parties have reached agreement on the primary issues concerning the transmission services requested by Applicant. The Parties have agreed that the ERCOT-CFE Tie Operators will provide transmission services to, from, and over the ERCOT-CFE Ties on an open-access and non-discriminatory basis and pursuant to the terms and conditions of the PUCT. This Offer of Settlement reflects this agreement.

### **THE SETTLEMENT PROPOSAL**

The Application requests that the Commission issue an order under section 211 of the FPA directing the ERCOT-CFE Tie Operators to provide transmission services to Applicant and other entities eligible to take service under the ERCOT-CFE Tie

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Electric Service, Wholesale Transmission (WTS) Rate (Rev. 16) (PUCT filed Dec. 15, 2017); AEP Texas's tariff for ERCOT Regional Service, Attachment K to the Open Access Transmission Tariff of the American Electric Power System on file with FERC as AEP's FERC Electric Tariff Fourth Revised Volume No. 1; *Appalachian Power Co.*, Docket No. ER17-1500-000 (Aug. 23, 2017).

Operators' respective tariffs for wholesale transmission service for power flows to, from, and over the ERCOT-CFE Ties. The Application also requests that the Commission confirm that providing such transmission services in compliance with FERC's order will not cause any ERCOT Entity to become a "public utility" subject to FERC's plenary jurisdiction.

The Parties agree that, subject to the Commission's approval of this Offer of Settlement and issuance of an order consistent in all material respects with the order requested in the Application, notwithstanding any changes to the CFE system, the ERCOT-CFE Tie Operators will provide transmission services for power flows to, from, and over the ERCOT-CFE Ties for Applicant and any other entity that is an eligible customer under the ERCOT-CFE Tie Operators' respective tariffs for wholesale transmission service. In accordance with DOE and PUCT requirements, the requested transmission services will be provided on an open-access and non-discriminatory basis.<sup>13</sup> The ERCOT-CFE Tie Operators will provide transmission services over the full capacity of their respective ties. Pursuant to section 212(k) of the FPA, the ERCOT-CFE Tie Operators will be compensated in accordance with the rules and ratemaking methodology of the PUCT.<sup>14</sup> The rates charged will allow the ERCOT-CFE Tie Operators to recover

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<sup>13</sup> See *supra* note 5.

<sup>14</sup> See 16 U.S.C. § 824k(k); see also *College Station*, 137 FERC ¶ 61,230 at P 27 ("[U]nder the Offer of Settlement, Entergy Texas and College Station have agreed to utilize the Texas Commission rules and ratemaking methodology for the proposed interconnection and any transmission services provided by College Station. . . . Therefore, we find that the Offer of Settlement meets the requirements of sections 212(a) and 212(k)."). Sharyland and ETT have tariffs for wholesale transmission service on file with and approved by the PUCT that authorize each of them to charge for transmission services and recover the costs of the Sharyland DC Tie and Laredo DC Tie. No "To, From or Over Tariff" ("TFO Tariff") is required to be prepared or filed with the Commission to provide for such cost recovery or to govern service on the (cont'd)

the costs incurred in connection with the requested transmission services and necessary associated services.

### **CONDITION ON THE OFFER OF SETTLEMENT**

The Offer of Settlement is submitted by the undersigned on the express condition that, in the event that the Commission does not accept the Offer of Settlement by the issuance of an order that is consistent in all material respects with the order requested in the Application, without hearing or material investigation, then each of the Parties will have the right, on written notice to the other Parties, to terminate its participation in the Offer of Settlement, in which case Applicant agrees to withdraw this Offer of Settlement and the Application. This condition is not intended to foreclose full consideration and evaluation by the Commission, but is part of the Offer of Settlement because the Commission's refusal to accept the Offer of Settlement by the issuance of an order consistent in all material respects with the order requested in the Application could have the effect of changing the agreement of the Parties. In particular, the Parties acknowledge that an essential element of the agreement among the Parties memorialized in this Offer of Settlement is the issuance of a Commission order in this proceeding which contains the following ordering paragraphs or incorporates them by reference,

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(cont'd from previous page)

Sharyland DC Tie or the Laredo VFT Tie. The facilities and services are located solely within the state of Texas, and are subject to the transmission ratemaking methodology of the PUCT. AEP Texas provides wholesale transmission service wholly within ERCOT at rates contained in Attachment K of the Open Access Transmission Tariff ("OATT") of the American Electric Power System on file with FERC as AEP's FERC Electric Tariff, Fourth Revised Volume No. 1. The rates set forth in Attachment K are approved by the PUCT.

consistent with the Commission's prior orders in Docket Nos. TX02-2 (Kiowa), TX07-1 (Brazos), TX11-1 (Southern Cross), and TX11-2 (College Station).

- (A) Each of the parties listed in Appendix A hereto is granted leave to intervene in this proceeding [or other appropriate language addressing interventions].
- (B) The ERCOT-CFE Tie Operators shall maintain and use their respective ERCOT-CFE Ties for any purpose, except in and during emergencies as determined by the respective ERCOT-CFE Tie Operator or ERCOT, or except when otherwise ordered by ERCOT or a governmental entity with putative authority, regardless of the source of the electric power in interstate commerce.
- (C) Ownership or use of the ERCOT-CFE Ties, including the rights and obligations established herein, may be transferred at any time without further order of the Commission unless approval of the transfer of such facilities is otherwise required by section 203 of the FPA, 16 U.S.C. § 824b. In the event of a change of ownership or control of the ERCOT-CFE Ties, or any part thereof, whether by sale, transfer, assignment or otherwise, the terms and conditions of this Order shall continue to apply, and the jurisdictional status of Applicant, the ERCOT-CFE Tie Operators, ERCOT, and other ERCOT utilities or entities, as set forth in Paragraphs (F), (G), and (H), will not be affected by virtue of the transfer of ownership or use rights.
- (D) The ERCOT-CFE Tie Operators shall operate the ERCOT-CFE Ties for any purpose, including the purchase, sale, exchange, transmission, coordination, commingling, or transfer of electric energy in interstate commerce in compliance with all applicable ERCOT and PUCT requirements.
- (E) The ERCOT-CFE Tie Operators shall provide transmission services to Applicant and other entities eligible to take service under their respective tariffs for wholesale transmission service for power flows to, from, and over the ERCOT-CFE Ties. In accordance with DOE and PUCT requirements, the requested transmission services will be provided on an open-access and non-discriminatory basis. Pursuant to section 212(k) of the FPA, each of the ERCOT-CFE Tie Operators will be compensated in accordance with the rules and ratemaking methodology of the PUCT.
- (F) Compliance with this Order and the Offer of Settlement shall not cause any ERCOT Entity to become a "public utility" as that term is defined by section 201(e) of the FPA. Compliance with this Order and the Offer of Settlement shall not affect the jurisdictional status of any ERCOT Entity.

- (G) As a result of this Order, each of the ERCOT-CFE Tie Operators may or will be operating in interstate commerce by virtue of the transmission, purchase, sale, exchange, coordination or commingling of electric power to, from or within the ERCOT grid, including the ownership or use of facilities therefore, or by virtue of the synchronous or asynchronous operation of electromagnetic unity of response of interconnected electric facilities; this, however, will not cause any ERCOT Entity to become subject to FERC's jurisdiction under section 201 of the FPA by virtue of section 201(b)(2) of the FPA.
- (H) In the event any entity outside of ERCOT is determined to be subject to jurisdiction as a public utility under the FPA as a direct or indirect result of the flow of electric energy through the ERCOT-CFE Ties, such jurisdiction shall not cause any ERCOT Entity to become a public utility subject to FERC's jurisdiction.
- (I) Since the Parties have already agreed on the terms and conditions upon which this Order is to be carried out, including determination of the associated cost responsibility between them and the compensation or reimbursement reasonably due to them, no proposed order pursuant to section 212(c) of the FPA is necessary. The Commission approves the Offer of Settlement and, pursuant to section 212(c)(2)(A) of the FPA, the terms and conditions of the Offer of Settlement are hereby incorporated in this Order.
- (J) This Order is a final order, effective upon the date of issuance.

The Offer of Settlement shall not become effective until an order of the Commission approving the Offer of Settlement and consistent in all material respects with the order requested in the Application becomes final and is no longer subject to judicial review.

The Parties have agreed on the rates, cost allocation, terms, and conditions upon which the requested transmission services are to be carried out, including the apportionment of costs between them and the compensation or reimbursement reasonably due to each of them.

Approval of this Offer of Settlement will constitute a waiver of any and all Commission rules and regulations that may be necessary to affect this Offer of Settlement in accordance with its terms.

This Offer of Settlement may be executed in multiple counterparts, each of which shall be deemed an original, but all shall constitute one and the same instrument.

[Remainder of page intentionally left blank]

**CONCLUSION**

WHEREFORE, for the foregoing reasons, the undersigned Parties request that the Commission approve the Offer of Settlement and adopt an order consistent in all material respects with the order requested in the Application.

Respectfully submitted,

**AEP Energy Partners, Inc.**

By: 

Name: Thomas Meyers

Title: vice President

**Sharyland Utilities, L.P.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**AEP Texas, Inc.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Electric Transmission Texas, LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: March 28, 2018

**CONCLUSION**

WHEREFORE, for the foregoing reasons, the undersigned Parties request that the Commission approve the Offer of Settlement and adopt an order consistent in all material respects with the order requested in the Application.

Respectfully submitted,

**AEP Energy Partners, Inc.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Sharyland Utilities, L.P.**

By: David A Campbell

Name: DAVID A CAMPBELL

Title: PRESIDENT & CEO

**AEP Texas, Inc.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Electric Transmission Texas, LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: March 28, 2018

**CONCLUSION**

WHEREFORE, for the foregoing reasons, the undersigned Parties request that the Commission approve the Offer of Settlement and adopt an order consistent in all material respects with the order requested in the Application.

Respectfully submitted,

**AEP Energy Partners, Inc.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Sharyland Utilities, L.P.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**AEP Texas, Inc.**

By: Judith E. Talavera

Name: Judith E. Talavera

Title: President and COO

**Electric Transmission Texas, LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: March 28, 2018

**CONCLUSION**

WHEREFORE, for the foregoing reasons, the undersigned Parties request that the Commission approve the Offer of Settlement and adopt an order consistent in all material respects with the order requested in the Application.

Respectfully submitted,

**AEP Energy Partners, Inc.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Sharyland Utilities, L.P.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**AEP Texas, Inc.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Electric Transmission Texas, LLC**

By: Kim J. Casey

Name: KIM J. CASEY

Title: TREASURER

Dated: March 28, 2018

**ATTACHMENT B**

**CERTIFICATE OF SERVICE**

## **CERTIFICATE OF SERVICE**

In accordance with 18 C.F.R. §§ 36.1(b)(2) and 385.2010, I hereby certify that I have this day served the foregoing document upon each of the following affected parties.

### **Sharyland Utilities, L.P.**

Sharyland Utilities, L.P.  
Attn: General Counsel  
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### **AEP Texas, Inc.**

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**Electric Transmission Texas, LLC**

Electric Transmission Texas, LLC  
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**Electric Reliability Council of Texas, Inc.**

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Nathan Bigbee  
Assistant General Counsel  
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Telephone: 512-225-7093  
Fax: 512-225-7079  
nathan.bigbee@ercot.com

**Public Utility Commission of Texas**

Public Utility Commission of Texas  
Attn: Executive Director  
1701 North Congress Avenue  
P.O. Box 13326  
Austin, Texas 78711-3326  
512-936-7000

Dated at this 28 of March, 2018.

/s/\_\_\_\_\_  
Amanda Riggs Conner  
801 Pennsylvania Avenue, N.W., Suite 320  
Washington, DC 20004-2684  
(202) 383-3436  
arconner@aep.com

*Counsel for AEP Energy Partners, Inc.*

**ATTACHMENT C**  
**FORM OF SERVICE**

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

AEP Energy Partners, Inc.

Docket No. TX18-\_\_\_\_\_

NOTICE OF APPLICATION FOR TRANSMISSION SERVICES

(            )

Take notice that on March 28, 2018, AEP Energy Partners, Inc. of 155 W. Nationwide Blvd., Suite 300, Columbus, OH 43215 (“Applicant”) filed with the Federal Energy Regulatory Commission an application requesting that the Commission order Sharyland Utilities, L.P. (“Sharyland”), AEP Texas, Inc. (“AEP Texas”), and Electric Transmission of Texas, LLC (“ETT”) (collectively, the “ERCOT-CFE Tie Operators”) to provide transmission services pursuant to section 211 of the Federal Power Act.

Applicant requests that the Commission direct Sharyland, AEP Texas, and ETT to provide transmission services to Applicant and other entities eligible to take service under their respective tariffs for wholesale transmission service for power flows to, from, and over the Sharyland DC Tie, the Eagle Pass DC Tie, and the Laredo VFT Tie (collectively, the “ERCOT-CFE Ties”). Pursuant to the Offer of Settlement submitted with the application, the ERCOT-CFE Tie Operators would be required to provide such transmission services from the date a final order consistent in all material respects with the order requested in the application becomes final and is no longer subject to judicial review. Pursuant to the Offer of Settlement, the ERCOT-CFE Tie Operators would provide transmission services on a non-discriminatory basis over the ERCOT-CFE Ties.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission’s Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the “eFiling” link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the “eLibrary” link

and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5:00 pm Eastern Time on (insert date).

Kimberly D. Bose,  
Secretary.