

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Joint Application of Entergy Arkansas, Inc.,)
Mid South TransCo LLC, Transmission Company Arkansas,) Case No. EO-2013-0396
LLC and ITC Midsouth LLC for Approval of Transfer of Assets)
and Certificate of Convenience and Necessity, and Merger and,)
in connection therewith, Certain Other Related Transactions.)

In the Matter of Entergy Arkansas, Inc.’s Notification of)
Intent to Change Functional Control of Its Missouri Electric)
Transmission Facilities to the Midwest Independent) Case No. EO-2013-0431
Transmission System Operator, Inc. Regional Transmission)
System Organization or Alternative Request to Change)
Functional Control and Motions for Waiver and Expedited)
Treatment.)

**POST-HEARING BRIEF OF KANSAS CITY POWER & LIGHT COMPANY AND
KCP&L GREATER MISSOURI OPERATIONS COMPANY**

COME NOW, Kansas City Power & Light Company (“KCP&L”) and KCP&L Greater Missouri Operations Company (“GMO”) (collectively, the “Companies”), and pursuant to the Missouri Public Service Commission’s (“Commission”) April 18, 2013 Order Granting Interventions and Setting Procedural Schedule, hereby files its initial post-hearing brief in the above-captioned matters.

Entergy Arkansas, Inc. (“EAI”) and the Joint Applicants¹ have not met their burden to demonstrate that either the transfer of functional control of EAI’s Missouri transmission assets to Midcontinent Independent System Operator, Inc. (“MISO”) or the acquisition by ITC Midsouth LLC (“ITC”) of EAI’s Missouri transmission assets is not detrimental to the public interest. Notably, under either application the end result is the same—*i.e.*, EAI’s Missouri transmission

¹ Entergy Arkansas, Inc. (“EAI”), Mid South TransCo LLC (“Mid South”), Transmission Company Arkansas, LLC (“TC Arkansas”) and ITC Midsouth LLC (“ITC”) are referred to collectively herein collectively as “Joint Applicants.”

assets will be under the functional control of MISO and rates and charges for transmission service over those assets will be under the MISO Transmission, Energy, and Operating Reserve Markets Tariff (“MISO Tariff”). Importantly, there has been no affirmative showing of “no net detriment” in either proceeding and instead the applicants have elected to rely on a nebulous “qualitative” benefit argument. Generally, “not detrimental” is determined by netting benefits and detriments, along with any conditions that may be imposed to mitigate detrimental impacts.² As explained in detail below, there can be no true netting of benefits and detriments without specific evidence from the applicants demonstrating substantive and documented analysis of all potential impacts of the proposed transactions, including all those that can be quantified. As demonstrated herein, applicants have failed to meet their burden to prove the requested transfers are not detrimental to the public interest. Accordingly, the Companies respectfully request that the Commission deny the applications in these matters, or impose conditions upon approval that require an affirmative showing by the applicants of no net detriment to the public resulting from these transactions.

I. Procedural Background

1. On February 14, 2013, Joint Applicants filed a Joint Application to transfer EAI’s Missouri transmission assets to a subsidiary of ITC Holdings Corp. (the “Transaction”). This filing was docketed as Case No. EO-2013-0396.

2. The Transaction contemplates that EAI will reorganize and will transfer its Missouri transmission assets to TC Arkansas, which will then become a subsidiary of Mid South TransCo, and which will then be spun off and merged with ITC Midsouth. TC Arkansas will change its name to ITC Arkansas and will hold EAI’s Missouri transmission assets upon the

² See *In re Union Elec. Co.*, 13 Mo.P.S.C. 3d 266, 293, Mo.P.S.C. Case No. EO-2004-0108, February 10, 2005.

close of the Transaction. These assets will be under MISO's functional control as a result of the Transaction. Joint Applicants also request that the Commission grant a Certificate of Convenience and Necessity to ITC Arkansas. The Joint Application notes that EAI will retain its limited Missouri distribution facilities in Missouri to use in serving its retail load in northern Arkansas.

3. The Commission permitted KCP&L, GMO, The Empire District Electric Company ("Empire") and the Missouri Joint Municipal Electric Utility Commission ("MJMEUC") to intervene.³

4. On March 21, 2013, EAI filed its Notification of Intent to Change Functional Control of its Missouri Electric Transmission Facilities to the Midwest Independent Transmission System Operator, Inc. Regional Transmission Organization or Alternative Request to Change Functional Control and Motions for Waiver and Expedited Treatment ("Notification"). This filing was docketed as Case No. EO-2013-0431. The Missouri transmission assets involved in this matter are the same assets that EAI seeks to transfer to ITC Arkansas.

5. On April 18, 2013, the Commission issued an Order: (i) granting intervention to KCP&L, GMO, Empire and MJMEUC; (ii) consolidating Case Nos. EO-2013-0396 and EO-2013-0431 for the purposes of hearing; and (iii) establishing a procedural schedule for both matters.

6. Subsequent to the filing of testimony on April 25, 2013, May 24, 2013, and June 5, 2013, an evidentiary hearing was held at the Commission on June 18, 2013.

³ *Order Granting Applications to Intervene and Denying Motions to Limit the Scope of the Proceeding*, Case No. EO-2013-0396, March 27, 2013.

II. Jurisdiction of the Missouri Public Service Commission

A. The Commission has Jurisdiction Over EAI's Transfer of Functional Control of its Transmission Assets to Midcontinent Independent System Operator, Inc. ("MISO")

7. As noted by the Commission Staff in both its Position Statement filed in these dockets and in EAI's application for a certificate of convenience and necessity to own, operate, control and manage the same transmission assets at issue in these dockets, EAI is an "electrical corporation" that owns and operates "electric plant," as those terms are defined in Mo.Rev.Stat. §386.020 (14) and (15).⁴ In discussing its recommendation in File No. EO-2013-0396, the Staff detailed the prior ownership of the transmission assets now owned by EAI, which is paraphrased as follows. In 1990 and 1991, EAI, then operating as AP&L, submitted two applications requesting authority from the Commission to cease serving its retail customers in Missouri and to transfer the facilities it was using to serve those customers to Union Electric Company and Sho-Me Power Corporation.⁵

8. As noted by Staff, the record in those cases shows that AP&L was specific about what facilities it would retain, and that it was retaining those facilities in order to continue to provide wholesale electric service in Missouri.⁶ Notably, Commission Staff previously recognized the impact of owning transmission assets in Missouri on retail customers. Specifically, in making its recommendation that the Commission grant a certificate of convenience and necessity to EAI, Staff stated, "[a]t that time and to this day, the EAI facilities *enhance reliability for retail facilities* if not retail customers in the counties in which they are

⁴ See Staff's Statement of Position and Request that the Commission Take Notice of Certain Facts, File Nos. EO-2013-0396 and EO-2013-0431 at pp. 4-5; Staff Recommendation to Grant Certificate of Convenience and Necessity, File No. EA-2012-0321, at pp. 5-6; 9.

⁵ See Case Nos. EM-91-29 and EM-91-404.

⁶ Staff Recommendation to Grant Certificate of Convenience and Necessity, File No. EA-2012-0321 at pp. 11-12.

located, thereby serving the public interest, convenience, and necessity.”⁷ [Emphasis added] Further, in testimony during the hearing, the Commission Staff demonstrated that Missouri citizens can be impacted by assets that do not directly serve them and which are owned by a utility headquartered out-of-state. In discussing the January 2009 ice storm that impacted utility service to numerous Missouri residents, Staff noted that, as a result of the ice storm, an EAI line fell across facilities of a sewer plant in Portageville, Missouri, blocking the entrance of the sewer plant. Staff further noted that in initial contacts to EAI, the company denied that it even had lines running in or through Missouri. Once effective communication with EAI was established, which took several days, EAI removed the line and restoration efforts continued. (Ex. Staff-22 at 6; Tr. at 99-100.) As Staff noted, even though the EAI transmission line does not directly serve Missouri customers, it did create some issues in restoring power. (Tr. at 103.)

9. Because EAI is an electrical corporation owning electric plant, as those terms are defined by Missouri law, EAI must obtain permission from the Commission to transfer functional control of its transmission system to MISO pursuant to Mo.Rev.Stat. §393.190.1.⁸ “Not detrimental to the public interest” is the standard by which the Commission must weigh EAI’s decision to transfer control of its transmission assets to MISO.⁹ Generally, “not detrimental” is determined by netting benefits and detriments, along with any conditions that may be imposed to mitigate detrimental impacts. This exercise is not purely mathematical, but rather may require a more subjective weighing of factors.¹⁰ When evaluating Union Electric

⁷ Id.

⁸ See *In re Union Elec. Co. for Authority to Continue the Transfer of Functional Control of its Transmission System to the Midwest Independent Transmission System Operator, Inc.*, File No. EO-2011-0128, April 19, 2012 Report and Order at pp. 19-20.

⁹ See *In re Aquila for Authority to Transfer Operational Control of Certain Transmission Assets to the Midwest Independent Transmission System Operator, Inc.*, File No. EO-2008-0046, October 9, 2008 Report and Order at pp. 16-17.

Company's request to continue the transfer of functional control of assets to MISO, this Commission observed that it

is not limited to a simple thumbs up or thumbs down ruling on the transfer as a whole. If it is to adequately protect the public interest, the Commission must be able to impose conditions designed to alleviate specific detriments that would otherwise result from the transfer, even if the transfer overall would not be detrimental to the public.¹¹

10. The public interest is a matter of policy to be determined by the Commission. Determining what is in the public interest is a balancing process, and in making such a determination, the total interests of the public served must be assessed. The public interest necessarily must include the interests of both the ratepaying public and the investing public; however, the rights of individual groups are subservient to the rights of the public in general.¹²

11. The Commission has previously defined its role under Mo.Rev.Stat. § 393.190 as follows:

In considering whether or not the proposed transaction is likely to be detrimental to the public interest, the Commission notes that its duty is to ensure that [the utility] provides safe and adequate service to its customers at just and reasonable rates. A detriment, then, is any direct or indirect effect of the transaction that tends to make the power supply less safe or less adequate, or which tends to make rates less just or less reasonable.¹³

12. EAI has sought a Commission determination pursuant to Mo.Rev.Stat. § 393.190 that the transfer of functional control of its Missouri transmission assets to MISO is not

¹⁰ See *In re Union Elec. Co.*, 13 Mo.P.S.C. 3d 266, 293, Mo.P.S.C. Case No. EO-2004-0108, February 10, 2005.

¹¹ See *In re Union Elec. Co. for Authority to Continue the Transfer of Functional Control of its Transmission System to the Midwest Independent Transmission System Operator, Inc.*, File No. EO-2011-0128, April 19, 2012 Report and Order at p. 20.

¹² See *In re Great Plains Energy Inc., et al. for Approval of the Merger of Aquila, Inc. With a Subsidiary of Great Plains Energy, Inc.*, Case No. EM-2007-0374, July 1, 2008 Report and Order at pp. 233-34. (internal citations omitted.)

¹³ See *In re Union Elec. Co.*, Case No. EO-2004-0108, February 20, 2005 Report and Order on Rehearing at p. 49.

detrimental to the public interest, “as evidenced by its filing.”¹⁴ The minimal evidence provided in EAI’s filing is inadequate to meet EAI’s burden to prove that the proposed transfer is not detrimental to the public interest. The Companies assert that Missouri law and Commission precedent regarding the transfer of functional control of an entity’s assets to a Regional Transmission Organization/Independent System Operator clearly support the Commission’s jurisdiction over this matter, and respectfully request that the Commission require EAI to make a positive showing that its transfer is not detrimental to the public interest.

13. When considering a proposed asset transfer, the Missouri Supreme Court has stated, and the Commission itself has restated, that the “not detrimental to the public interest” standard requires a cost-benefit analysis in which all of the benefits and detriments in evidence are considered.¹⁵ Approval should be based upon a finding of “no net detriment.”¹⁶

14. As the applicant, EAI bears the burden to prove that the transfer of functional control of its Missouri transmission assets to MISO is not detrimental to the public interest, pursuant to 4 CSR 240-3.110(1)(D). This burden does not shift, and a failure of proof requires a finding against the applicant.¹⁷

B. The Commission Has Jurisdiction Over the Transfer of EAI’s Missouri Transmission Assets to ITC

15. The Commission’s jurisdiction over Joint Applicants’ proposed transfer of EAI’s Missouri transmission assets to a subsidiary of ITC Midsouth is subject to the same legal standard as the transfer of these same assets to MISO’s functional control: the transfer must be found to be not detrimental to the public interest and the applicant bears the burden of proof, as

¹⁴ See EAI’s March 21 Notification at para. 4.

¹⁵ *In re Union Elec. Co.*, Case No. EO-2004-0108, Report and Order on Rehearing at pp. 48-49 (Feb. 20, 2005); *AG Processing, Inv. v. Public Service Commission*, 120 S.W. 3d 732 (Mo. banc 2003);

¹⁶ *In re Union Elec. Co.* at 49.

¹⁷ *Id.*

discussed in greater detail above. Joint Applicants further request that the Commission either authorize the transfer to TC Arkansas of the portion of the Certificate of Convenience and Necessity granted to EAI in File No. EA-2012-0321 with respect to the transmission assets being transferred to TC Arkansas, or, in the alternative, grant to TC Arkansas a new certificate commensurate with the authority granted to EAI with respect to its transmission assets in Missouri.¹⁸ This Commission has recently evaluated a case in which it was asked to approve a transfer of assets and grant a certificate of convenience and necessity.¹⁹ Applicants in the *Valley Woods* proceeding similarly cited to both Mo.Rev.Stat. § 393.190 and Mo.Rev.Stat. § 393.170 in making their application to the Commission. In its Order, the Commission stated that the factors it considers for approving a transfer of assets and granting a CCN are nearly identical.²⁰

III. EAI Has Not Met its Burden to Show that the Transfer of Functional Control of its Missouri Transmission Assets to MISO Is Not Detrimental to the Public Interest

A. The Transfer Creates a Quantifiable Detriment to Transmission Service Rates and Off-System Sales

16. GMO currently has four firm point-to-point transmission service reservations on Entergy's Open Access Same-time Information System ("OASIS"). These reservations are for 75 MW each, for a total of 300 MW, sourcing at the Crossroads generating station located in Clarksdale, Mississippi, within the Entergy footprint, and sinking at the American Electric Power Central and Southwest Balancing Area ("CSWS"), where it is picked up on Southwest Power Pool Inc.'s ("SPP") transmission service and sinks at GMO. This transmission service uses, among other facilities, the Entergy to SPP interconnections at the Omaha switching station to

¹⁸ See Joint Applicants' Application at p. 10, Case No. EO-2013-0396.

¹⁹ Order Approving Transfer of Assets and Granting Certificate of Convenience and Necessity, May 9, 2012, File No. WM-2012-0288; *In re Joint Application of Valley Woods Water Company, Inc., et al.*, 2012 Mo.PSC LEXIS 470 (2012).

²⁰ *Id.* at 7.

Ozark Beach. These Missouri facilities are part of the assets EAI is planning to transfer to ITC. (Carlson Rebuttal at pp. 3-4; Ex. KCPL-1 NP at pp. 3-4.)

17. Transmission service charges to GMO will drastically change when moving from Entergy's Open Access Transmission Tariff ("OATT") to the MISO Tariff. Based upon multiple conversations with MISO representatives, Schedules 1, 2, 7, 10, and 26 from the MISO Tariff will be applicable to the GMO transmission service sourcing at Crossroads and sinking at CSWS. The estimated annual financial impact to GMO for the increases in transmission service as a result of the application of the MISO Tariff is \$6,095,917. (Carlson Rebuttal at pp. 5-6; Ex. KCPL-1 NP at pp. 5-6.) Although the Entergy transmission service charges for the Crossroads generating facility have not been allowed in GMO's electric rates to date, GMO continues to believe that these costs should be included in retail rates and currently is pursuing legal remedies.

18. GMO is not the only party in Missouri that will experience significant increases in transmission service rates. As noted by Empire witness Bary Warren, Empire is a co-owner of the Plum Point Energy Station, a 670 MW coal-fired generating facility near Osceola, Arkansas. Empire owns approximately a 7.52% interest in Plum Point, or approximately 50 MW, and also has a 30-year purchase power agreement for an additional 7.5% of Plum Point capacity. (Warren Rebuttal at 8; Ex. Empire 20 at 8.) Because Plum Point is physically located on EAI's transmission system, Empire has long-term point to point transmission service under Schedule 7 of Entergy's OATT. Once EAI's transmission assets are transferred to MISO, Empire will be forced to convert its Plum Point transmission service to service under the MISO tariff. Empire estimates that its Missouri customers will see an annual increase in rates of approximately \$1 million as a result of this conversion. (Id. at 10.) In a nutshell, both GMO and Empire will see a dramatic increase in the price of their point to point transmission service for energy located in

Entergy's footprint (Crossroads and Plum Point respectively) once Entergy joins MISO, either through the ITC merger or by transferring its transmission assets to MISO. This will impact Missouri consumers.

19. ITC Midsouth witness Cameron Bready estimates that in 2014 wholesale transmission rates will increase by approximately 8.1% over projected wholesale transmission rates for the Arkansas pricing zone, which includes Missouri facilities. (Bready Surrebuttal at pp. 8-9; ITC Ex. 17 at pp. 8-9.) KCP&L and GMO witness John Carlson suggests, however, that this 8.1% figure quoted by Mr. Bready is merely the incremental percentage increase in ITC Arkansas zonal transmission service rates after Entergy is under the MISO Tariff and the facilities are transferred to ITC. (Tr. at 184.) Mr. Carlson suggests that the Commission must look instead at the overall cost increases of Entergy moving to the MISO Tariff, which in the Companies' case is over a 100% price increase. In other words, for certain transmission paths, the Companies' transmission rates are expected to more than double. (Tr. at 184.) However, this estimate of a rate increase in excess of 100% is not based on data provided by the Joint Applicants. The fact that a rate increase of this magnitude was not identified by the Joint Applicants highlights the lack of quantitative information supplied in these proceedings.

20. Further, EAI's voluntary choice to place its facilities under the functional control of MISO will have direct, substantial, and quantifiable impacts on the Companies' dependence on the facilities at issue and on the Companies' cost of power delivery to its retail customers. The integration of EAI's transmission facilities into MISO will have significant, demonstrable impacts on the seam between MISO and the Southwest Power Pool ("SPP"), which runs through the heart of Missouri. The Companies assert that EAI has provided minimal information, and certainly very little quantifiable information, that will assist the Commission in assessing

whether the transfer of functional control of its Missouri transmission assets to MISO is not detrimental to the public interest. Indeed, due to the lack of information provided by the applicant, the Companies received much of its information concerning transmission service charges directly from discussions with MISO.

21. As noted by Commissioner Jarrett during the evidentiary hearing on June 18, 2013, there is no requirement under law that a utility join an RTO. Commissioner Jarrett questioned Staff counsel regarding the relevance of looking at the price issues involved with joining an RTO versus prices if the utility was not in an RTO. Commissioner Jarrett suggested that if it is more benefit for the utility not to be in an RTO, the Commission could tell such utility that the Commission may not approve it. (Tr. at pp. 58-59.) The Companies submit that the analysis suggested by Commissioner Jarrett is precisely the cost-benefit analysis required by Missouri law when evaluating an asset transfer, and is also the analysis that is demonstrably absent from the materials filed in this proceeding by EAI.

22. Further, the transfer of EAI's Missouri transmission assets to MISO will have a significant and quantifiable impact upon the Companies' off-system sales margin. Decreases in off-system sales have a direct impact upon Missouri retail customers, as off-system sales are used to reduce power supply costs for Missouri retail customers. The increases in transmission service rates when transmission service is moved to the MISO Tariff will result in counterparties offering lower prices for the same energy, in order to recover their increased transaction costs. (Carlson Rebuttal at pp. 9-10; Ex. KCPL-1 NP at pp. 9-10.)

23. Ratemaking for KCP&L includes a credit for off-system sales, which is embedded in the overall rates for KCP&L's retail customers and serves to reduce those overall costs. Because KCP&L retail electric customers receive a credit for off-system sales, any reduction in

off-system sales will have a direct and negative effect on Missouri retail rates. (Carlson Rebuttal at pp. 9-10; Ex. KCPL-1 NP at pp. 9-10.) Mr. Carlson was asked at the hearing to provide a “ballpark” estimate of the likely annual impact on off-system sales. Mr. Carlson provided an estimate of the potential impact as being greater than \$2 million, though he noted that this was merely a rough estimate to avoid delving into details regarding highly confidential data in his testimony. (Tr. at 186-187.) Subsequent to the evidentiary hearing, Mr. Carlson had the opportunity to perform the requested calculations. Mr. Carlson has quantified the impact on KCP&L’s off-system sales as approximately \$5.5 million per year.

24. EAI witness Richard Riley testified that MISO has conducted an analysis of the impact that the integration of EAI and the other Entergy Operating Companies into MISO would have on existing MISO members and that MISO estimated that Entergy’s integration into MISO would benefit existing MISO members by more than \$100 million annually. (Riley Surrebuttal at pp. 25-26; Ex. Entergy- 4 at pp. 25-26). Mr. Riley further states that approximately 9 percent of load in the existing MISO footprint is located within Missouri, and suggests that, assuming that the benefits MISO identified are distributed proportionally to load, retail customers of MISO load serving entities in Missouri could benefit by more than \$9 million annually due to the Entergy Operating Companies’ integration into MISO. (Id.)

25. The Companies submit that the simple assumption that such presumed benefits are distributed proportionally to load should give the Commission an insufficient level of comfort that the estimated benefits will actually materialize. Notably, EAI did not provide any quantification of the potential detrimental impact upon non-MISO load in Missouri. In addition, any claimed benefits are speculative in nature, and EAI has not affirmatively demonstrated that

the estimated benefits of the transaction outweigh the associated negative impacts upon Missouri. Accordingly, they have failed to meet their burden.

26. The Companies maintain that EAI has not provided information in this docket that will permit the Commission to evaluate the effects of the transmission cost increases and off-system sales reductions on Missouri retail customers. While it is true that determination of the transmission rates is under FERC jurisdiction, information regarding the retail rate impacts associated with the integration of EAI's transmission assets into MISO is necessary so the Commission and the parties can evaluate the potential impact of those cost increases on Missouri retail customers that result from EAI's voluntary choice.

B. EAI Has Not Adequately Addressed the Issues of Safety and Reliability

27. Placement of EAI's transmission facilities under the MISO Tariff will result in new and altered power flows between the existing MISO system and the present Entergy system and will create large new flows across transmission systems in Missouri. Not only will MISO network transmission service be provided to the loads and generation resources connected to Entergy's transmission facilities, but the intent is for these loads to be fully integrated into the MISO power markets. The new power flows resulting from this integration will utilize transmission facilities located between the present MISO system and the Entergy system. The impacted facilities in Missouri include not only those presently owned by Entergy, but also those owned by KCP&L, GMO, Empire, Ameren, and members of Associated Electric Cooperative, Inc. ("AECI") (Locke Rebuttal at pp. 6-7; Ex. KCPL-2 at pp. 6-7.) With the exception of Ameren, all of these utilities are outside the MISO footprint, and thus on another side of the transmission operations and power market seam from EAI after its integration into MISO. (Id.)

28. Once the Entergy facilities are integrated into MISO, MISO will be providing network service for Entergy, which means that power flows could be substantially altered. MISO will then dispatch all of the Entergy generators to meet the loads all across the new MISO footprint, which would include also the Entergy system at that point, and which will result in new flows across Missouri facilities. (Tr. at 196-197.) The Companies expect the transmission flows north and south across Missouri to be significantly altered as a result of the optimization of dispatch by MISO of the Entergy generators and load with the generators and load in the remainder of the MISO system. Estimates have been made of these altered flows in proceedings before the FERC²¹, which suggest that flows could reach as high as 4,000 megawatts of additional north to south flow. (Id. at 197.)

29. To preserve the safety and reliability of these facilities, the Companies assert that these new and altered power flows must be carefully managed and coordinated by Southwest Power Pool, MISO, and AECI. Such issues must be addressed in revisions to the Joint Operating Agreement²² between MISO and Southwest Power Pool to provide for more effective coordination, and these issues are currently under discussion between MISO and Southwest Power Pool. (Tr. at 198.) Importantly, Southwest Power Pool has a specific Missouri obligation to appropriately manage the joint operating agreements that address the seams issues in the state. In the development of five separate Stipulation and Agreements²³ filed with the Missouri Commission, it was specifically recognized that inter-RTO coordination of transmission system operations is important for operation of the integrated transmission grid.

²¹ See Docket No. EC12-145 *et al*, Motion to Intervene and Comments of Southwest Power Pool, filed January 22, 2013 at pp. 2, 8, and 11.

²² A joint operating agreement between RTOs is commonly referred to as a “seams” agreement. (Tr. at 203.)

²³ See February 24, 2006 Stipulation and Agreement, Case No. EO-2006-0142; February 24, 2006 Stipulation and Agreement, Case No. EO-2006-0141; February 27, 2009 Stipulation and Agreement, Case No. EO-2009-0179; May 16, 2013 Stipulation and Agreement, Case No. EO-2012-0135; May 16, 2013 Stipulation and Agreement, Case No. EO-2012-0136.

30. In light of the importance of reliability, the Signatories believed that reliability issues needed to be addressed as part of the Stipulation and Agreement. For example, Southwest Power Pool, as part of the Stipulation and Agreement in Case No. EO-2006-0142, agreed to use its best efforts to maintain joint operating agreements with the transmission providers at SPP's Missouri seams.²⁴ SPP has been focused and working on this matter in view of the potential for thousands of megawatts of new or altered flow across Missouri as a result of Entergy's proposed integration into MISO, but a number of key issues remain unresolved with MISO. The Companies submit that until a revised Joint Operating Agreement is negotiated that appropriately addresses these seams issues, the full impact on Missouri customers of the transactions at issue in these proceedings cannot be fully known.

31. The correct operating arrangement must be set up so that the flows are managed and that there is proper relief of congested flowgates. New flowgates that would be created as a result of the integration of Entergy into MISO must be identified, and then allocation of the rights to those flowgates needs to be addressed. This is a necessary and essential part of proper transmission system congestion management. (Tr. at 200.)

32. Once any revisions to the Joint Operating Agreement are finalized, it would be filed with the FERC. (Tr. at 199-200.) The Companies submit that it would be helpful for this Commission to have information concerning the resolution of these issues prior to rendering a final decision regarding EAI's request to transfer functional control of its assets into MISO. This could be accomplished by the issuance of an Order that is conditional upon the final resolution of these issues at FERC. (Tr. at 204.)

33. The Companies and the Commission have not been provided sufficient information in these dockets in order to quantify the potential detriment of safety and reliability

²⁴ See February 24, 2006 Stipulation and Agreement, Case No. EO-2006-0142, at Section II. A (2)(f).

concerns. The Companies assert that the applicants should be required to provide such information in order to assess the impacts related to safety and reliability, power flows, and transmission rate impacts. (Tr. at 193.) Applicants have set forth no information in the record before the Commission that quantifies any offsetting benefits against such potential detriments. (Tr. at 194.)

34. As noted in the FERC websites referenced by Commissioner Jarrett during the evidentiary hearing, the Missouri Commission has jurisdiction over the proposed transactions from a safety and reliability standpoint. (Tr. at 178-179.) To ensure proper transmission system congestion management, the new and altered power flows across Missouri that are expected to result from the dispatch by MISO of the Entergy generators and the supply of Entergy load by generators throughout the MISO region must be clearly identified and addressed in the Joint Operating Agreement. Appropriate congestion management is essential to ensure that the lines stay reliable and that there are no safety or reliability incidents. (Tr. at 197; 200-201.)

35. The Commission must comprehensively review this issue because the safety and reliability of transmission facilities in Missouri are under its jurisdiction²⁵, and are a key component of its analysis as to whether the proposed transfer is detrimental to the public interest. (Tr. at 202.) As noted above, this Commission has previously found that a “detriment” is “any direct or indirect effect of [the]transaction that tends to make the power supply less safe or less adequate, or which tends to make rates less just or less reasonable.”²⁶ A full analysis and review by the Commission will require the submission of information regarding the management of the new power flows and how they will be coordinated by all affected transmission providers and Regional Transmission Organizations with responsibility for Missouri transmission facilities.

²⁵ See, e.g., Mo.Rev.Stat. §§ 386.310.1, 393.130.1, 4 CSR 240-23.010.

²⁶ See *In re Union Elec. Co.*, Case No. EO-2004-0108, February 20, 2005 Report and Order on Rehearing at p. 49.

IV. Joint Applicants Have Not Met Their Burden to Show that the Transfer of EAI's Transmission Assets to ITC Is Not Detrimental to the Public Interest

36. The Companies assert that Joint Applicants have not proven that the transfer of EAI's transmission is not detrimental to the public interest. In lieu of providing affirmative, concrete, quantitative evidence of any benefits of the proposed Transaction, Joint Applicants instead have elected to rely on vague assertions of illusory "qualitative" benefits. This brings into question whether and to what extent there exist any net benefits accruing from the Transaction. As noted in opening statements at the evidentiary hearing, "if dollars supported this transaction is in the public interest, we would have seen quantitative analysis from both EAI as well as ITC. We didn't see that analysis." (Tr. at 55.) In other words, perhaps the qualitative points have been oversold and quantitative analysis has been undersold. (Id.)

37. Joint Applicants have not provided any documentation regarding the increase in transmission rates that is likely to occur as a result of the merger Transaction. (Locke Rebuttal at pp. 4; Ex. KCPL-2 at pp. 4.) ITC witness Joseph Welch states in his direct testimony that "any rate impacts of the Transaction are modest." (Welch Direct at p. 52; Ex. ITC-7 at 52.) The characterization of the rate impacts as being modest is not helpful absent the provision of actual quantitative information. ITC witness Cameron Bready also states, "[t]his is an unusual transaction in that it is driven primarily by qualitative benefits." (Bready Surrebuttal at 2; Ex. ITC-17 at 2.) The Companies submit that if the alleged benefits are not quantified in any fashion for the affected ratepayers in the state, Joint Applicants cannot meet their burden to prove that there is no net detriment arising as a result of the Transaction.

38. ITC admits that it has not analyzed the specific rate effects of the Transaction on customers in Missouri. (Bready Surrebuttal at 8; Ex. ITC-17 at 8.) However, it is undisputed that transmission rates will increase as a result of the transfer of EAI's Missouri transmission

assets to ITC, such as through the increase in return on equity and the debt/equity capital structure that will be in place at the close of the Transaction. (Locke Rebuttal at p. 5; Ex. KCPL-2 at p. 5.)

39. ITC is seeking the standard MISO regional ROE of 12.38%, which contrasts with the 11.0 % ROE presently utilized in the transmission formula rates of the Entergy Operating Companies. (Id.) Further, ITC is seeking approval for ITC Arkansas to shift its capitalization ratio from approximately 50% debt and 50% equity to 60% equity and 40% debt. The Companies submit that, even assuming all other factors are held constant, both the requested ROE increase and the expected change in capital structure will result in significant increases in FERC-approved transmission rates for EAI's present transmission facilities if the ITC requests are approved. (Locke Rebuttal at pp. 5-6; Ex. KCPL-2 at pp. 5-6.)

40. Based upon the lack of information submitted by Joint Applicants in this proceeding, it is unclear if there are other changes in the rate calculation that would either add to or offset the effects of the ROE and capital structure shifts. (Locke Rebuttal at pp. 5-6; Ex. KCPL-2 at pp. 5-6.)

41. ITC witness Cameron Bready acknowledges that wholesale transmission rates are estimated to increase by approximately 8.1% over projected wholesale rates in 2014 for the Arkansas pricing zone under EAI ownership in MISO. (Bready Surrebuttal at 9; Ex. ITC-17 at 9.) However, as noted by Company witness John Carlson, this 8.1% greatly understates the rate impact on transmission customers taking service exiting the current Entergy system who would be forced to take service on the MISO drive-out and drive-through rate as currently structured. This rate structure, as described in the MISO Tariff, is based on the MISO system-wide average

of all pricing zones. (MISO Tariff Schedule 7, Sec. 2; MISO Tariff Attachment O; and MISO Transmission Settlements Business Practices Manual, BPM-012-r8, Sec. 3.1.6.4.)

42. Based on price estimates provided by MISO to Mr. Carlson²⁷, this system-wide average rate would be substantially higher than the existing rate for the same service now being provided under Entergy's OATT. Although KCP&L, Empire, and other existing Entergy transmission customers would use only transmission facilities now owned by Entergy for this service, the MISO Tariff would require the payment of a rate based on all MISO pricing zones, which results in a rate far higher than justified by the cost of the facilities actually utilized. In fact, KCP&L's calculations using the data provided by MISO indicate that the rate for this service is estimated to increase by more than 100%, primarily as a result of the MISO rate structure.

43. ITC and EAI have proposed a rate mitigation plan if EAI's transmission assets are transferred to ITC Arkansas, which is intended to mitigate the rate impact on customers from certain effects of the transaction. For the first five years following closing of the transaction, ITC and EAI have proposed \$85 million in bill credits for wholesale customers in the Arkansas pricing zone. (Bready Surrebuttal at 11 Ex. ITC-17 at 11.) This zone includes Missouri transmission facilities owned by EAI but not Missouri transmission customers of EAI who would be shifted to the MISO drive-out and drive-through rate.

44. It appears that the credits would be of very little benefit to Missouri customers on the MISO drive-out and drive-through rate. This is because of two factors. First, it is not clear that the portion of these credits now being offered by EAI to Arkansas customers would be available to wholesale transmission customers. It is likely that only the ITC portion would be available for that purpose. Also very significantly, the MISO region-wide rate structure as

²⁷ See Carlson Rebuttal at pp. 5-6; Ex. KCPL-1 NP at pp. 5-6.

discussed above would dilute the effect of those credits through the process of averaging across all MISO pricing zones. As a result of these factors, it appears that the credit offer to EAI's Arkansas customers is of very little benefit to transmission customers in another state. This offer does not serve to mitigate in any meaningful fashion the rate increase of more than 100% that results from EAI's and ITC's voluntary decision to place the transmission facilities owned by EAI under the MISO Tariff.

45. Further, the applicants have not been transparent regarding this issue as they did not file information with the Commission to quantify this very large rate impact on Missouri entities. Finally, ITC admits that it did not attempt to quantify the alleged benefits for the intervenors in this proceeding, so there is no basis on which find that these transmission costs are offset in a manner that would equitably result in no detriment to the public interest. (Tr. at 168.)

V. The Proposed Transactions Are Part of An Integrated, Multi-State Proposal and Should Be Viewed As Such

46. The Commission must realize that the integration of EAI's assets into MISO cannot be viewed in piecemeal fashion by looking at specific Missouri facilities and kept separate from what is occurring with regard to other Missouri facilities and facilities in other states. This is an integrated proposal; the movement of Entergy into MISO involves facilities not only across the entire Entergy system, but also across facilities controlled by SPP, MISO, and AECL. When the Missouri Commission reviews this proposed transaction, even though the transfer request applies specifically to EAI's transmission facilities in Missouri, the impacts on Missouri customers result from the interrelated and interconnected system. (Tr. at 205.)

47. Company witness Charles Locke noted that the move of EAI's assets into MISO as an interdependent proposal is illustrated by a review of what other state commissions are facing as they make their own decisions regarding these transactions. (Tr. at 205.) Notably,

recently Texas administrative law judges recommended that the state commission reject the proposed transmission merger between Entergy and ITC, alleging that the transaction is not in the public interest. In its July 8, 2013 Proposal for Decision, Texas administrative law judges noted that it is not clear whether Texas customers will gain any benefits from the proposed transaction. Specifically, it was stated that:

only one effect on transmission customers is known: their transmission costs will immediately increase. Applicants content that these increased costs will be offset by a decrease in other components of their electricity costs (for instance, through access to cheaper generation), or through qualitative improvements in their transmission service. But these purported benefits to customers rest on shaky factual foundations and on projections from hypothetical future projects that ITC does not contend should actually be built.²⁸

48. Similarly, June 20, 2013 testimony from the Mississippi Public Utilities Staff recommended that the Mississippi Public Service Commission reject the proposed transaction, raising significant concerns over potential impacts to ratepayers and stating that the proposal is not in the public interest.²⁹

49. The Arkansas Public Service Commission Staff also has submitted recent testimony stating its continued belief that the transfer of EAI's Arkansas transmission facilities to a subsidiary of ITC is not in the public interest and should be denied.³⁰ The Arkansas Staff stated

Staff continues to believe that the Transaction is not in the public interest and the Application should be denied. The Applicants' Rebuttal Testimonies do not offer material evidence to assure concrete, meaningful or quantified net benefits to offset the costs that ratepayers would incur if the Transaction were to proceed and, further, those testimonies demonstrate the benefits asserted by the Applicants are overstated due to significant flaws in the determination of those benefits. The rate

²⁸ See July 8, 2013 *Proposal for Decision*, Texas PUC Docket No. 41223, SOAH Docket No. 473-13-2879 at p. 3.

²⁹ See June 20, 2013, *Direct Testimony of Scott Hempling*, Mississippi PSC Docket No. 2012-UA-358.

³⁰ See June 7, 2013 Surrebuttal Testimony of Daniel E. Peaco on Behalf of the General Staff of the Arkansas Public Service Commission, Docket No. 12-069-U.

concession and conditions offered by the Applicants are limited and the benefits are substantially overstated. When compared to the known and largely undisputed transmission rate increases, the Transaction is not beneficial to ratepayers and is not in the public interest.³¹

VI. Conclusion

For the foregoing reasons, the Companies respectfully request that that the Commission deny the applications in these matters. Alternatively, the Commission should impose conditions upon approval that require an affirmative showing by the applicants of no net detriment to the public interest. Any Order issued by the Commission approving EAI's integration of its facilities into MISO or approval of EAI's transfer of its Missouri transmission assets to ITC should be conditioned upon the following:

- (a) The negotiation of an approved Joint Operating Agreement between SPP and MISO addressing, at a minimum, the loop flow issues and other altered flows related to the Missouri seam between SPP and MISO; and
- (b) A requirement that EAI and/or ITC "hold harmless" non-MISO Missouri retail consumers from all increased costs due to Entergy's potential transfer of functional control of its transmission assets to MISO.

Respectfully submitted,

/s/ Roger W. Steiner

Roger W. Steiner, MBN 39586
Corporate Counsel
Kansas City Power & Light Company
1200 Main Street, 16th Floor
Kansas City, Missouri 64105
Phone: (816) 556-2314
Fax: (816) 556-2787
E-mail: roger.steiner@kcpl.com

³¹ Id. at 4.

Anne E. Callenbach, MBN 56028
Polsinelli PC
6201 College Blvd, Ste. 500
Overland Park, Kansas 66211
Phone: (913) 234-7449
Fax: (913) 451-6205
E-mail: acallenbach@polsinelli.com

Attorneys for Kansas City Power & Light Company
and KCP&L Greater Missouri Operations Company

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand-delivered, emailed or mailed, postage prepaid, to all counsel of record in this case this 12th day of July, 2013.

/s/ Roger W. Steiner

Roger W. Steiner