

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

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)

**KANSAS CITY POWER & LIGHT COMPANY
AND KCP&L GREATER MISSOURI OPERATIONS COMPANY RESPONSE TO
ORDER DIRECTING FILING**

COME NOW, Kansas City Power & Light Company ("KCP&L") and KCP&L Greater Missouri Operations Company ("GMO") (collectively, the "Companies") and for their Response to the Commission's May 10, 2013 *Order Directing Filing*, hereby state as follows:

1. On March 21, 2013, Entergy Arkansas, Inc. ("EAI") filed its Notice of Intent ("Notice") to Change Functional Control of Missouri Electric Transmission Facilities to the Midwest Independent Transmission System Operator, Inc. ("MISO"). The Companies, along with other interested parties¹, filed an Application to Intervene on April 1, 2013.

2. On April 18, 2013, the Commission issued an Order Granting Interventions and Setting Procedural Schedule, wherein it set this case for hearing along with Case No. EO-2013-0396.

3. EAI filed a Motion for Reconsideration of the April 18, 2013 Order on April 29, 2013. Thereafter, on May 9, 2013, Staff responded as directed by the Commission, and KCP&L, GMO, the Empire District Electric Company, and the Missouri Joint Municipal Electric Utility Commission also filed responses. On May 10, 2013, the Commission issued an Order directing

¹ The Empire District Electric Company and the Missouri Joint Municipal Electric Utility Commission similarly filed for intervention on April 1, 2013. The Companies and these entities may collectively be referred to herein as the "intervening parties."

all intervenors to (i) state the legal authority the Commission has over EAI's desire to move to MISO; and (ii) the facts they assert are in dispute.

**The Commission's Jurisdiction over EAI's Transfer of Functional Control of its
Transmission Assets to MISO**

4. As noted by the Commission Staff in EAI's application for a certificate of convenience and necessity to own, operate, control and manage the same transmission assets at issue in this case, 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).² In discussing its recommendation in that case, the Staff detailed the prior ownership of the transmission assets now owned by EAI, 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.³ As specifically 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.⁴ 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 located, thereby serving the public interest, convenience, and necessity."⁵

5. 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

² See, *Staff Recommendation to Grant Certificate of Convenience and Necessity*, File No. EA-2012-0321, at pp. 5-6; 9.

³ See, Case Nos. EM-91-29 and EM-91-404.

⁴ *Staff Recommendation to Grant Certificate of Convenience and Necessity*, File No. EA-2012-0321 at pp. 11-12.

⁵ *Id.*

functional control of its transmission system to MISO pursuant to Mo.Rev.Stat. §393.190.1.⁶ “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.⁷ Generally, “not detrimental” should be 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.⁸ When evaluating Union Electric 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.⁹

6. 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.¹⁰

⁶ 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.

⁷ 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.

⁸ 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.

⁹ 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.

¹⁰ 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.)

7. The Commission has previously defined its role under Section 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.¹¹

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.¹²

8. EAI has sought a Commission determination pursuant to Section 393.190 that EAI's change in functional control of its Missouri transmission assets to MISO is not detrimental to the public interest, "as evidenced by its filing."¹³ The paucity of 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.

Identification of Factual Matters in Dispute

9. The issue of continued safety and reliability is a factual matter in dispute in this proceeding. Integration of EAI into MISO will create new flows across transmission systems in

¹¹ See, In re Union Elec. Co., Case No. EO-2004-0108, February 20, 2005 Report and Order on Rehearing at p. 49.

¹² *Id.*

¹³ See, EAI's March 21 Notice at para. 4.

Missouri. The Missouri transmission systems were not designed for those increased power flows; safety and reliability problems may result if they are not managed carefully. The Commission must comprehensively review this issue because the safety and reliability of transmission facilities in Missouri is a key component of its analysis as to whether the proposed transfer is detrimental to the public interest. 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.”¹⁴ A full analysis and review by the Commission will require the submission of information by EAI 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.¹⁵

10. The potential cost impacts on Missouri customers are another factual matter in dispute. The Companies anticipate that the placement of EAI’s transmission facilities under the MISO tariff will result in significant increases in transmission costs for Missouri utilities as a result of (1) power imports from designated resources located in the Entergy footprint (including both the Crossroads and Plum Point generating stations), and (2) power sales transactions to customers within or across the Entergy system. Specifically, once transmission that is currently under the Entergy Open Access Transmission Tariff is transferred to service under the MISO tariff, transmission rates will increase for transmission that sinks both within and external to the existing Entergy footprint. KCP&L currently has 238 MW of firm transmission service to Entergy and transacts on a wholesale basis with counterparties who then either sink energy within Entergy or transmit the energy through the Entergy system to sink outside the Entergy

¹⁴ See, In re Union Elec. Co., Case No. EO-2004-0108, February 20, 2005 Report and Order on Rehearing at p. 49.

¹⁵ EAI has not provided this information with its notification in this case.

footprint. For either counterparty scenario, there will be an increase in transmission rates, which will effectively lower the counterparty's offer price for KCP&L energy. This will decrease KCP&L's off-system sales, which has a direct impact on Missouri retail customers. Off-system sales are used to reduce power supply costs for Missouri retail customers. Ratemaking for KCP&L includes a credit for off-system sales, which is imbedded in the overall rates for KCP&L's retail customers and serves to reduce those overall rates. For GMO ratemaking the off-system sales credit serves to reduce retail customer rates through the fuel cost adjustment mechanism. Thus, both KCP&L and GMO retail electric customers receive a credit for off-system sales, and any reduction in sales will have a direct and negative effect on Missouri retail rates.

11. EAI has not provided information in this docket that will permit the Commission to determine the magnitude of the expected transmission rate increases for service across Entergy's system under the MISO OATT or evaluate the effect of those transmission rate increases on Missouri retail customers. While it is true that determination of the transmission rates is under FERC jurisdiction, information regarding the expected transmission rate changes resulting from the integration of EAI's transmission assets into MISO is necessary so the Commission and the parties can evaluate the potential impact of those rate increases on Missouri retail customers.

WHEREFORE, KCP&L and GMO respectfully request that the Commission consider this Response and deny EAI's Motion for Reconsideration.

Respectfully submitted,

/s/ Roger W. Steiner

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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 17th day of May, 2013.

/s/ Roger W. Steiner

Roger W. Steiner