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July 22, 2002

FILED²
JUL 22 2002
Missouri Public
Service Commission

Mr. Dale Hardy Roberts
Executive Secretary
Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

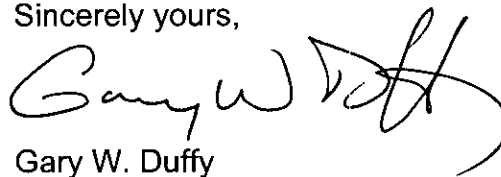
RE: Empire District / Application to Transfer Functional Control to MISO

Dear Mr. Roberts:

Enclosed for filing in the above-referenced proceeding please find an original and eight copies of an Application.

If you have any questions, please give me a call.

Sincerely yours,


Gary W. Duffy

Enclosures

cc w/encl:

Office of Public Counsel
Office of the General Counsel
Dave Gibson

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

FILED²
JUL 22 2002

Missouri Public
Service Commission

In the Matter of The Empire District Electric)
Company Transferring Functional Control)
Over Transmission Facilities to the Midwest)
Independent Transmission System Operator,)
Inc.)

Case No. _____

APPLICATION

COMES NOW The Empire District Electric Company ("Empire") by and through its counsel, and for its Application pursuant to 4 CSR 240-2.060 and § 393.190 RSMo, if applicable, respectfully states as follows:

Background

1. Empire is a Kansas corporation with its principal office and place of business at 602 Joplin Street, Joplin, Missouri 64801. Empire is engaged in the business of providing electric and water utility services in Missouri to customers in its service areas and has a certificate of service authority to provide certain telecommunications services. Empire is an "electrical corporation," a "water corporation," a "telecommunications company" and a "public utility" as those terms are defined in section 386.020 RSMo. 2000, and is subject to the jurisdiction and supervision of the Commission as provided by law. Empire has no pending or final judgments or decisions against it from any state or federal agency or court which involve findings of inferior service to customers within the three years immediately preceding the filing of this application. For that same time period, Empire has a pending electric and water rate case in Missouri, and a pending rate unbundling

proceeding in Arkansas. Empire has no overdue Commission annual reports or assessment fees. Empire's documents of incorporation were filed with the Commission in Case No. EF-94-39 and said documents are incorporated herein by reference in accordance with 4 CSR 240-2.060(1)(G). A Certificate of Authority from the Missouri Secretary of State to the effect that Empire, a foreign corporation as far as Missouri is concerned, is duly authorized to do business in the State of Missouri was filed with the Commission in Case No. EM-2000-369 and is incorporated herein by reference.

2. Empire has filed with the Federal Energy Regulatory Commission ("FERC") an application to transfer functional control over designated transmission facilities to a new company which will reflect the consolidation of the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and Southwest Power Pool Inc. ("SPP"). This filing was made on July 5, 2002, pursuant to section 203 of the Federal Power Act, 16 U.S.C. § 824b, and as required by FERC Order 2000. A copy of the application, minus certain voluminous exhibits, ("the FERC application") is attached as **Appendix A**. The FERC application asks the FERC to approve of the transfer of functional control for a large majority of Empire's transmission system to the company that will result from the consolidation of Midwest ISO and SPP. In the event that consolidation is not consummated, Empire will re-evaluate its plans as to RTO participation.

3. The purpose of this filing with the Missouri Public Service Commission ("Commission") is to obtain an order from the Commission approving the functional transfer.

4. Communications in regard to this Application should be addressed to:

Gary W. Duffy, Attorney at Law
Brydon, Swearingen & England P.C.
312 East Capitol Avenue
P.O. Box 456
Jefferson City, Missouri 65102
Telephone: (573) 635-7166
Facsimile: (573) 635-3847
Email: Duffy@Brydonlaw.com

David W. Gibson
The Empire District Electric Company
602 Joplin Street
P.O. Box 127
Joplin, Missouri 64802
Tel: 417 625-5111
Fax: 417 625-5153
Email: dgibson@empiredistrict.com

5. The Commission has subject matter jurisdiction in situations where an electrical corporation seeks to "sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public" See § 393.190 RSMo 2000. In this situation, Empire is not selling or mortgaging any part of its transmission system. There is no transfer of legal or equitable title from Empire for any of the transmission facilities subject to the FERC application, as there would be in a sale, assignment or mortgage. Empire retains the same ownership rights of all of the transmission facilities that it possesses immediately prior to the transfer of functional control. No adverse changes in rates or quality of service to Empire's Missouri ratepayers are anticipated as a result of this transfer of functional control. Therefore, it does not appear to Empire that this situation qualifies as an event which would trigger either the letter or the spirit of § 393.190 RSMo, and by this application, Empire does not attempt to consent to or confer subject matter jurisdiction on the Commission where

no jurisdiction may exist. Nevertheless, Empire realizes that the Commission has an interest in the subject matter and is presenting this in the form of an application for the Commission's approval even though the Commission has no procedural rules which address this specific situation.

6. As to the material required by 4 CSR 240-2.060(1), Empire incorporates by reference the material contained in paragraphs 1, 2, 3 and 4 hereof.

7. As to the material required by 4 CSR 240-2.060(7)(A), Empire states that the property involved in the transaction is most of its electric transmission system. A detailed listing of the property affected, comprising some 226 pages of text, is not being filed herewith due to its voluminous nature but will be made available upon request.

8. As to the material required by 4 CSR 240-2.060(7)(B), Empire states that there is no agreement to "sell." The agreement that is a subject of the transaction is referred to in **Appendix A**.

9. As to the material required by 4 CSR 240-2.060(7)(D), Empire states that there is no proposed sale. The transfer of functional control is in the public interest because it furthers the public interest in regional transmission organizations in accordance with the FERC's expressed desire to establish RTOs. An explanation in greater detail of the public interest aspects is contained in **Appendix A**, Application, Part II.

10. As to the material required by 4 CSR 240-2.060(7)(E), Empire states that there is no "purchaser" because there is no sale. Empire believes that the transferee will not be subject to the jurisdiction of the Commission.

11. As to the material required by 4 CSR 240-2.060(7)(F), Empire states that

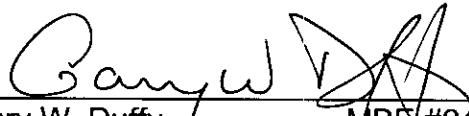
there is no expected impact on the tax revenues of any political subdivisions because there will be no transfer of title to any Empire facilities. Empire will continue to be the owner of the facilities and will continue to be responsible for taxes levied thereon.

WHEREFORE, Empire respectfully requests that the Commission:

(A) authorize Empire to execute and perform in accordance with the terms described in the FERC application, and to take any and all other actions which may be reasonably necessary and incidental to Empire's performance thereunder; and,

(B) grant such other relief as may be deemed necessary and appropriate which is not inconsistent with this pleading.

Respectfully submitted,



Gary W. Duffy MBE #24905
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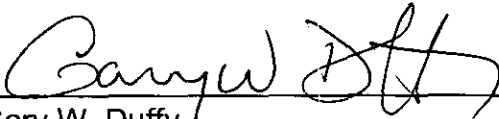
ATTORNEYS FOR
THE EMPIRE DISTRICT ELECTRIC
COMPANY

AFFIDAVIT

State of Missouri)
) ss
County of Cole)

I, Gary W. Duffy, having been duly sworn upon my oath, state that I am an attorney for The Empire District Electric Company, that I am duly authorized to make this affidavit on behalf of The Empire District Electric Company, and that the matters

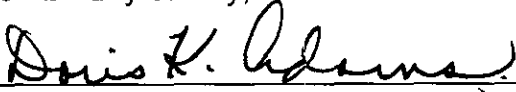
and things stated in the foregoing pleading are true and correct to the best of my information, knowledge and belief.



Gary W. Duffy

Subscribed and sworn before me this 22nd day of July, 2002.

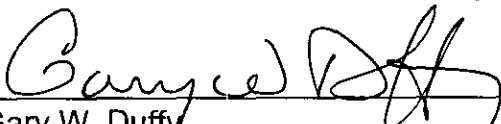
DORIS K. ADAMS
NOTARY PUBLIC - NOTARY SEAL
STATE OF MISSOURI
COUNTY OF COLE
My Commission Expires May 20, 2006



Notary Public

Certificate of Service

The undersigned certifies that a true and correct copy of the foregoing pleading was hand delivered this 22nd day of July, 2002, to the Office of the Public Counsel and the Office of the General Counsel.



Gary W. Duffy

EDMISOapp/gdmydocs/wp8

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

FILED
OFFICE OF THE SECRETARY
02 JUL -5 PM 4:13
FEDERAL ENERGY
REGULATORY COMMISSION

The Empire District Electric Company) Docket No. EC02-_____

**APPLICATION OF THE EMPIRE DISTRICT ELECTRIC COMPANY
TO TRANSFER FUNCTIONAL CONTROL OVER TRANSMISSION
FACILITIES TO THE MIDWEST INDEPENDENT TRANSMISSION
SYSTEM OPERATOR, INC.**

Pursuant to Section 203 of the Federal Power Act ("FPA"), 16 U.S.C. § 824b, and part 33 of the Federal Energy Regulatory Commission's ("Commission" or "FERC") regulations thereunder, and as required by Order No. 2000,¹ The Empire District Electric Company ("Empire") seeks approval of the transfer of functional control over the transmission facilities designated herein to the new company which will reflect the consolidation of the Midwest Independent Transmission System Operator, Inc. ("Midwest ISO") and Southwest Power Pool, Inc. ("SPP") (together "Resulting Company"). FERC has found that this new entity will be a regional transmission organization ("RTO") once this consolidation occurs. In support thereof, Empire states as follows:

**I.
INTRODUCTION AND BACKGROUND**

Empire is an investor-owned electric utility company that provides electric generation, transmission and distribution services to retail customers located in a 10,000

¹ Reg'l Transmission Org., Order No. 2000, 1996-2000 FERC Stats. & Regs., Regs. Preambles ¶ 31,089 (1999), order on reh'g, Order No. 2000-A, 1996-2000 FERC Stats. & Regs., Regs. Preambles ¶ 31,092 (2000).

APPENDIX A

square-mile area covering parts of Southwest Missouri, Southeast Kansas, Northwest Arkansas and Northeast Oklahoma, and to wholesale customers located in these areas and elsewhere.

Empire is currently a transmission-owning member of SPP. SPP administers the provision of open access transmission service across the SPP region under the rates, terms and conditions of SPP's open access transmission tariff ("SPP Tariff"). The transmission facilities used to provide service under the SPP Tariff are comprised of the transmission facilities owned by a number of public utility (including Empire) and non-public utility SPP members.

In Order No. 2000, the Commission indicated that while it was not mandating participation in RTOs, it strongly encouraged and supported participation in RTOs by jurisdictional transmission-owning entities.² On May 25, 2001, Empire filed in Docket No. EC01-109 an application pursuant to FPA Section 203 to transfer operational control of its transmission facilities to an RTO to be formed by SPP and its members. However, by order issued on July 12, 2001, the Commission rejected the proposed SPP RTO, and also rejected a number of related Section 203 filings, including Empire's application in Docket No. EC01-109.³

The Midwest ISO is a not-for-profit organization that was recognized as an RTO on December 19, 2001,⁴ and which commenced operations as an RTO on February 1, 2002. The Midwest ISO is responsible for evaluating and coordinating requests for

² Order No. 2000 at 31,633-34.

³ Southwest Power Pool, Inc., 96 FERC ¶ 61,062 at 61,251 and n. 17 (2001).

⁴ Midwest Indep. Transmission Sys. Operator, Inc., 97 FERC ¶ 61,326 (2001).

access to the regional power grid on a non-discriminatory basis and for ensuring the reliable operation of the wholesale electric transmission system. The Midwest ISO serves as an agent for its transmission-owning members, and, as currently configured, exercises functional control over an interconnected transmission grid in parts or all of fifteen states and Canada.

On October 19, 2001, the Midwest ISO and SPP announced that their Boards of Directors had reached agreement for the consolidation of the two organizations and had directed their respective managements to complete the necessary definitive agreements to effectuate this consolidation. On February 21, 2002, the Midwest ISO and SPP announced that their Boards of Directors had overwhelmingly authorized their respective managements to execute definitive agreements for the consolidation of the two organizations. On March 29, 2002, the Midwest ISO filed with the Commission in Docket No. ER02-1420 certain documents in order to effectuate its consolidation with SPP. Included with this filing were revised versions of the Midwest ISO Agreement⁵ and Midwest ISO's open access transmission tariff ("Midwest ISO OATT"), along with certain other documents, intended to incorporate SPP's members into the Midwest ISO Agreement and consolidate the SPP and Midwest ISO OATTs into a single tariff ("Resulting Company OATT"). This filing was accepted by the Commission, subject to conditions, in an order issued on May 31, 2002.⁶

⁵ The full name of this agreement is the Agreement Of Transmission Facilities Owners To Organize The Midwest Transmission System Operator, Inc., a Delaware Non-Stock Corporation. The revised version of this agreement is referred to as the Resulting Company Agreement.

⁶ Midwest Indep. Transmission Sys. Operator, Inc., 99 FERC ¶ 61,250 (2002) ("May 31 Order").

The consolidation between the Midwest ISO and SPP will be consummated when SPP members who constitute at least 174,000 Gwh of annual billing determinants (two-third of SPP's total 2001 billing determinants) execute a Conditional Withdrawal Agreement or have their SPP membership terminated, and also execute the revised Midwest ISO Agreement. Empire has done that and is providing the appropriate documents as Exhibit I to this filing.

Finally, Empire states that its intent is to join the Resulting Company once the consolidation occurs. In the event this consolidation is not consummated, Empire will re-evaluate its plans as to RTO participation.

II. PUBLIC INTEREST OF THE PROPOSED TRANSFER

The proposal to vest the Resulting Company with functional control over the subject transmission facilities owned by Empire is clearly consistent with the public interest, and with Order No. 2000.⁷ The Commission recognized as much in the May 31 Order.⁸ This application is also consistent with Order No. 2000's requirement that jurisdictional entities obtain approval under FPA Section 203 to transfer control of their facilities to an RTO.⁹

The proposed transfer will have no adverse effect on competition, but rather will benefit competition. As currently configured, the Midwest ISO offers the benefits of a

⁷ The use of the functional control model, rather than the actual transfer of ownership, is appropriate for RTOs provided the RTO meets Order No. 2000's minimum functions and characteristics. Order No. 2000 at 31,091.

⁸ May 31 Order, slip op. at 7.

⁹ Order No. 2000 at 31,045; see also May 31 Order, slip op. at 9.

large RTO, such as improved reliability and the transmission of electricity at non-pancaked rates throughout a large region. These benefits will be increased once the Resulting Company is formed, and the transfer of functional control of Empire's facilities will help the merged entity to develop its regional scope. This will benefit sellers and buyers of power alike by reducing the costs of delivering power to market. Reliability will be improved by incorporating more transmission systems under the Resulting Company's umbrella. It also will permit the Resulting Company to address issues such as congestion management, management of parallel flows, and transmission system planning and expansion over a larger region. This Section 203 application, therefore, promotes competition by helping to form the Resulting Company, expanding the area over which transmission is provided at non-pancaked rates, and improving reliability. In addition, the proposed transfer will further the Commission's goals of establishing large and workable RTOs, further benefiting competition and consumers.

Similarly, this transfer of functional control should not adversely impact the rates paid by any of Empire's customers or potential customers of the Resulting Company. In fact, in some instances, the transfer will result in lower transmission costs. Once this transfer is consummated and Empire's transmission system is placed under the Resulting Company OATT, customers using the Empire transmission system will have the option of transmitting power across the entire Midwest ISO region at a lower cost than at present, although the details remain to be worked out. Whatever rates Empire charges will be pursuant to the Resulting Company OATT.

In addition, the proposed transfer will not have any adverse effect on the ability of the FERC or any other authority to regulate Empire or its operations. No new holding company will be created as a result of this transfer. The Commission will regulate the

bulk of Empire's transmission activities throughout its regulation of the Resulting Company, Empire will remain subject to the FERC's jurisdiction for wholesale sales and jurisdictional transmission activities to the extent not provided under the Resulting Company OATT, and subject to the jurisdiction of the applicable state agencies for retail sales. On June 20, 2002, Empire filed an application with the Kansas Corporation Commission ("KCC") seeking KCC approval of transfer of functional control of the subject facilities to the Resulting Company, and will provide this Commission with all relevant orders, as required by section 33.2(i) of this Commission's regulations.

III. DESCRIPTION OF FACILITIES

The transmission facilities that Empire is transferring to the Resulting Company's functional control are shown on the system schematics attached as Exhibit K to this filing and also are listed in Exhibit H. These facilities consist of virtually all network facilities above 100 kV and network transformers whose two highest voltages are above 100 kV. The Midwest ISO's guidelines for the facilities to be transferred to its functional control are set forth at Article I, Section L of the Midwest ISO Agreement and in Appendix H to the Midwest ISO Agreement, as well as in the same sections of the Resulting Company Agreement. Empire also will execute an agency agreement with the Resulting Company that will allow lower voltage transmission facilities to be treated as transmission facilities under the Resulting Company OATT.

IV. INFORMATION REQUIRED BY PART 33

In large part the information required by Part 33 is not relevant to this filing. Therefore, Empire requests waiver of the requirements of Part 33 not specifically addressed herein. The Commission has not required detailed compliance with Part 33 in

other applications to transfer functional control to an RTO, and this application contains sufficient information for the Commission to determine whether the proposed transfer is consistent with the public interest.¹⁰

In any event, Empire states the following:

A. Section 33.2:

33.2(a) The exact name of the applicant and its principal business address is:

The Empire District Electric Company
602 Joplin Street
P.O. Box 127
Joplin, MO 64802

33.2(b) Empire respectfully requests that all notices, correspondence, and other communications concerning this Application be directed to the following persons:

David W. Gibson
The Empire District Electric Company
602 Joplin, P. O. Box 127
Joplin, Missouri 64802
(417) 625-5100
(417) 625-5153 (fax)
dgibson@empiredistrict.com

¹⁰ See Order No. 642 at 31,877 (recognizing that not all Section 203 applications will require the same degree of information in order for the Commission to determine whether the transaction is consistent with the public interest). The Commission appears to have allowed these types of waivers in a number of RTO filings, where the applicants were similarly seeking authorization to transfer ownership or control of their transmission facilities to an independent entity. See GridFlorida LLC, Order No. 2000 Joint Compliance Filing, Docket No. RT01-67, Transmittal Letter, at 109 (filed Oct. 16, 2000), provisionally approved, GridFlorida LLC, 94 FERC ¶ 61,363, order on reh'g, 95 FERC ¶ 61,473 (2001); Carolina Power & Light Co., RTO Compliance Filing, Docket No. RT01-74, Transmittal Letter, at 76-79 (filed Oct. 16, 2000), provisionally approved, Carolina Power & Light Co., 94 FERC ¶ 61,273, order on reh'g, 95 FERC ¶ 61,282 (2001).

Michael E. Small
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1200 G Street, N.W.
Suite 600
Washington, D.C. 20005
(202) 393-1200
(202) 393-1240 (fax)
small@wrightlaw.com

33.2(c) A general description of Empire is stated in Part I. With regard to the requirement to describe Empire's plans with respect to RTO participation, Empire states that this application is intended to allow Empire to transfer functional control of its facilities to the Resulting Company, which will be a FERC-approved RTO.¹¹ There will be no change in Empire's corporate structure, and Empire requests any waiver deemed necessary of the requirement to provide a list of all business activities, energy subsidiaries, detailed organization charts, lists of power sales customers, etc. Waiver is also justified given the burdensome nature of this requirement and the total lack of any detrimental effect on competition, rates or regulation arising from this transaction.

33.2(d) The jurisdictional facilities to be transferred are described above.

33.2(e) A description of the proposed transaction, including the names of all parties thereto, and the effect of the transaction on the affected jurisdictional facilities, is provided above. There is no monetary consideration involved. A listing of all jurisdictional facilities associated

¹¹ In the May 31 Order (slip op. at 10), the Commission required SPP's jurisdictional members to notify it within 30 days of their plans for RTO participation. Empire has submitted this compliance filing.

with or affected by this transaction is included as Exhibit H, subject to being updated as necessary.

33.2(f) Empire has executed the Resulting Company Agreement, and a copy of the executed signature page to this agreement is included as Exhibit I hereto.¹² Empire has also executed the Conditional Withdrawal Agreement to terminate its membership in SPP, which is also included as part of Exhibit I.

33.2(g) The facts relied upon to show that the transaction is in the public interest are detailed herein.

33.2(h) The required map is provided as Exhibit K hereto. The jurisdictional facilities to be transferred are described above.

33.2(i) Empire District will seek the requisite state approvals, and will provide the FERC with copies of all relevant state commission orders, as required by this regulation.

B. Sections 33.3 and 33.4:

Consistent with Order No. 642 and the Commission's regulations issued thereunder, Empire does not need to provide the analyses required by section 33.3 and 33.4. These provisions establish the requirements for horizontal and vertical mergers, and are not required for applications filed in response to Order No. 2000 or which only involve the transfer of transmission facilities. Order No. 642 at 31,903; 18 C.F.R. § 33.3(a)(1); 18 C.F.R. § 33.4(a)(1).

¹² Because this Agreement was previously filed with the Commission, and because of the length of this document, only the executed signature page is being provided.

C. Section 33.5

To the extent deemed necessary, Empire requests waiver of the requirement to provide the proposed accounting entries required by section 33.5. Empire will provide this information at a later date if and as required by the Commission, though its ownership is not changing. Empire does not expect that the accounting for the transmission facilities will change.

**V.
STATUTORY NOTICE**

To fulfill the requirement of Section 203 that the Commission provide reasonable notice to certain identified officials and agencies, Empire has delivered a copy of this filing to the governor's office and utility regulatory commission for each state in which Empire owns transmission facilities.

**VI.
CONCLUSION**

WHEREFORE, Empire respectfully requests that the Commission issue an order pursuant to FPA Section 203 finding that the proposed transfer of functional control over

the subject transmission facilities to the Resulting Company is consistent with the public interest.

Respectfully submitted,



Michael E. Small
David S. Berman
Wright & Talisman, P.C.
1200 G Street, N.W.
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Washington, DC 20005-3802

David W. Gibson
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602 Joplin Street
P.O. Box 127
Joplin, MO 64802

Attorneys for
The Empire District Electric Company


July 5, 2002

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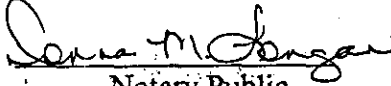
VERIFICATION

STATE OF Missouri)
)
COUNTY OF Jasper)

David W. Gibson, being duly sworn, deposes and says that he is Vice President – Regulatory and General Services, and that he has read the foregoing application, knows the contents thereof, and that the matters set forth therein are true and correct to the best of his knowledge and belief.


David W. Gibson

Subscribed and sworn to before me this 2nd day of July, 2002.


Notary Public

