

In the Matter of the Joint Application
of Entergy Arkansas, Inc., Mid South
TransCo LLC, Transmission Company
Arkansas, 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

**ENTERGY ARKANSAS, INC., MID SOUTH TRANSCO LLC,
TRANSMISSION COMPANY ARKANSAS, LLC, AND
ITC MIDSOUTH LLC’S MOTION FOR RECONSIDERATION AND DISPOSITIVE
TREATMENT AND RESPONSE TO APRIL 2 ORDER**

I. MOTION FOR RECONSIDERATION AND DISPOSITIVE TREATMENT

¹ Joint Applicants reserved and did not waive any assertion that the Commission lacks jurisdiction over the transfer of limited transmission facilities under Section 393.190.1 RSMo. given the unique facts of this case. EAI does not hold itself out as providing electric service to the general public in Missouri and has no tariffs or retail customers in Missouri.

2. The matters in the Joint Application pertain only to EAI's limited facilities located in Missouri, which are described in Appendix 4 to the Joint Application. EAI's limited transmission and distribution facilities are used to furnish wholesale electric service in Missouri to various cities and electric cooperatives subject to the rate jurisdiction of the Federal Energy Regulatory Commission ("FERC"),² and electric service to EAI's retail customers in north Arkansas subject to the retail jurisdiction of the Arkansas Public Service Commission ("Arkansas Commission" or "APSC").³ EAI does not hold itself out as providing electric service to the general public in Missouri, does not maintain tariffs on file in Missouri, and has no retail customers in Missouri.⁴

3. On February 26, 2013, The Empire District Electric Company ("Empire") and Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company (collectively, "KCP&L") filed petitions to intervene in this matter. Joint Applicants separately responded to the petitions on March 7, 2013, and explained that the petitions far exceeded the four corners of the Joint Application in raising issues relating to EAI's separate choice of regional transmission organization ("RTO") as well as connection issues that are outside of Missouri.

² FERC is an independent federal agency that regulates the interstate transmission of natural gas, oil, and electricity. FERC also regulates natural gas and hydropower projects.

³ The APSC regulates public utilities which provide electric, gas, telecommunications, water, and sewer services to Arkansas consumers.

⁴ EAI asks the Commission to take official notice of the affidavit of Steven K. Strickland filed as Exhibit B to the notice in File No. EO-2013-0431.

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 (“EAI’s MISO Notice”) in separate File No. EO-2013-0431 (“EAI’s MISO Notice Case”). As explained in EAI’s MISO Notice, paragraph 6, EAI’s “integration into MISO will continue regardless of the outcome of the ITC transaction.”

5. On March 27, 2013, the Commission issued its Order Granting Applications to Intervene and Denying Motions to Limit the Scope of the Proceedings (“Intervention Order”). The Commission noted concern that certain intervening parties were attempting to interject issues relating to EAI’s integration into MISO but found that the Commission is capable of determining what information is relevant to its decision in this matter.⁵ Consequently, the Commission determined that it need not “artificially limit the scope of these proceedings.”⁶

6. Subsequent to the Intervention Order in this proceeding, on April 1, 2013, all of the intervening parties in this proceeding filed petitions to intervene in EAI’s MISO Notice Case. Thus, these parties have now availed themselves of the proper forum in which to raise issues with respect to EAI’s choice of RTOs.⁷ Accordingly, Joint Applicants respectfully request that, pursuant to 4 CSR 240-160 and the Commission’s

⁵ Intervention Order at 2-3.

⁶ *Id.* at 3.

⁷ EAI does not agree that such issues are properly jurisdictional to Missouri or otherwise that they have any merit. EAI merely notes that EAI’s MISO Notice Case is the proper forum in which the intervenors may raise issues relating to EAI’s prior independent decision to join MISO.

April 2 Order, the Commission reconsider the finding in its Intervention Order and clarify that issues pertaining to EAI's separate decision to join MISO are irrelevant to and not properly considered in this proceeding. Joint Applicants request further that the Commission dismiss all such issues from this proceeding.

II. RESPONSE TO APRIL 2 ORDER

7. Joint Applicants incorporate Paragraphs 1 through 6 above as if fully set forth herein.

8. The Commission issued its April 2 Order asking the parties to state how they would like to proceed and instructing that the "parties may do so by filing a joint proposed procedural schedule, competing proposed procedural schedules, dispositive motions, any combination thereof, or any other pleadings or motions the parties find appropriate."

9. The matters set forth in the Joint Application are limited, and the interventions raise issues as to EAI's choice of RTOs, which are not properly taken up in this proceeding as set forth in Section I above. Commission review of the Joint Application pursuant to Section 393.190, RSMo, does not implicate any private rights of the intervenors, and they are not entitled to a hearing.⁸ Based on the foregoing, Joint Applicants support Staff's Status Report filed on March 18, 2013, noting the interventions and otherwise that "Staff has not identified any issue in this case that it

⁸ See, *Benton-Hecht Moving and Storage, Inc. v. Call*, 782 S.W.2d 668, 670-671 (Mo. App. W.D. 1989); *State ex rel. Public Counsel v. Public Service Commission*, 210 S.W.3d 344, 349-355 (Mo. App. W.D. 2006); Mo. Practice, Volume 20, Administrative Practice and Procedure, NEELY, pp. 420-429.

believes would require a procedural schedule.” Joint Applicants request that parties be permitted to file responses to Staff’s recommendation within ten days of the issuance of the recommendation, which is scheduled to be submitted on May 15, 2013.

10. In the alternative and only to the extent that the Commission believes it is necessary, Joint Applicants submit that any procedural schedule established in this matter should reflect the limited matters at issue and the FERC-jurisdictional nature of the limited transmission facilities subject to the transfer. To the extent the Commission believes it is necessary to establish such a procedural schedule, the following should be adopted:

- Joint Applicant Direct Testimony April 22, 2013
- Staff / OPC / Intervenor Rebuttal May 22, 2013
- Joint Applicant Surrebuttal June 5, 2013
- Hearing at the earliest available date in June 2013

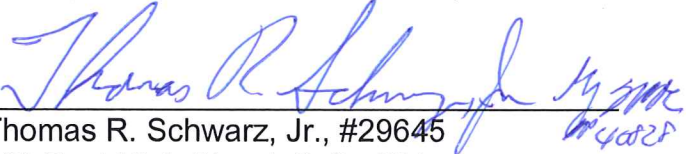
11. Again, Joint Applicants do not believe that such an extensive schedule is necessary or appropriate and as a matter of course continue to support Staff’s Status Report that no procedural schedule is needed.

WHEREFORE, Joint Applicants respectfully request the Commission (1) reconsider and clarify its Intervention Order consistent with the requests herein; (2) dismiss all issues pertaining to EAI’s choice of RTOs from this proceeding; (3) adopt, consistent with Section II above, Staff’s status report establishing no procedural schedule or alternatively establish the schedule identified herein; and (4) grant all other appropriate relief to which the Joint Applicants are entitled.

Respectfully submitted,

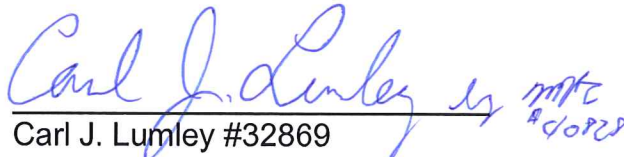
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By:

Handwritten signature of Thomas R. Schwarz, Jr. in blue ink, with a date stamp "11/2/08" and initials "TS" to the right.

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the foregoing has been served upon all counsel of record by forwarding the same by electronic mail and/or first class mail, postage prepaid this 8th day of April 2013 to the following:

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