

**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.)

**JOINT RESPONSE OF KANSAS CITY POWER & LIGHT COMPANY, KCP&L
GREATER MISSOURI OPERATIONS COMPANY, AND THE EMPIRE DISTRICT
ELECTRIC COMPANY
TO ENTERGY ARKANSAS INC.’S MOTION FOR RECONSIDERATION**

COME NOW, Kansas City Power & Light Company (“KCP&L”), KCP&L Greater Missouri Operations Company (“GMO”) (collectively, the “Companies”), and The Empire District Electric Company (“Empire”) and for their Joint Response¹ to *Entergy Arkansas, Inc.’s Motion for Reconsideration* (“EAI Motion”) filed on April 29, 2013, hereby state as follows:

1. On February 14, 2013, Entergy Arkansas, Inc. (“EAI”), Mid South TransCo LLC (“Mid South”), Transmission Company Arkansas, LLC (“TC Arkansas”) and ITC Midsouth LLC (“ITC Midsouth”) (collectively, “Joint Applicants”) filed a Joint Application to transfer EAI’s Missouri transmission assets to a subsidiary of ITC Holdings Corp.² The Commission has

¹ When referred to collectively, KCP&L, GMO, and Empire will be referred to as “Joint Respondents.”

² The Joint Application to transfer EAI’s Missouri transmission assets shall be referred throughout this Response as the “Joint Application” or the “Joint Application docket.”

permitted KCP&L, GMO, Empire, and the Missouri Joint Municipal Electric Utility Commission (“MJMEUC”) to intervene.³

2. On March 21, 2013, 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”).⁴ The Companies, along with Empire and MJMEUC, filed Applications to Intervene on April 1, 2013.

3. On April 18, 2013, the Commission issued an Order⁵: (i) granting intervention to KCP&L, GMO, Empire and MJMEUC; (ii) consolidating Case Nos. EO-2013-0396 and EO-2013-0431; and (iii) establishing a procedural schedule for the consolidated cases.

4. On April 29, 2013, EAI filed its Motion for Reconsideration (“EAI Motion”) of the Commission’s April 18 Order.

5. EAI alleges that the April 18 Order is unlawful and unreasonable in that it consolidated the Joint Application docket and the MISO docket.⁶ EAI further states that there is no basis in the record for consolidating these two matters for the purposes of hearing or for any other purpose.

6. Commission rule 4 CSR 240-2.110(3) states that “[w]hen pending actions involve related questions of law or fact, the Commission may order a joint hearing of any or all of the matters at issue, and may make other orders concerning cases before it to avoid unnecessary costs or delay.” Joint Respondents submit that the two pending actions do involve related questions of law and fact and were appropriately consolidated by the Commission.

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

⁴ EAI’s notice of intent to change functional control to MISO shall be referred to throughout this Response as the “MISO docket.”

⁵ The Commission’s April 18, 2013 Order will be referred to hereafter as the “April 18 Order.”

⁶ EAI Motion at para. 6.

7. From a factual standpoint, Case No. EO-2013-0431 involves a notice by EAI that it is transferring functional control of its Missouri transmission facilities to MISO. Case No. EO-2013-0396 involves a request by EAI to transfer these same Missouri transmission assets to a subsidiary of ITC Holdings Corp, which will result in MISO assuming functional control of EAI's Missouri transmission assets and transmission service being provided under the MISO OATT. Notably, the outcome under either proceeding will be essentially the same—EAI's assets will move from being controlled by EAI to being controlled by MISO. The exact same parties have sought and been granted intervention in both cases. All intervening parties have filed pleadings in both dockets setting forth specific, demonstrable interests in both cases, and particularly stating the potential detriments to their business interests if the issues in both cases are not fully explored through discovery, a full record created, and a determination made by the Commission.

8. Joint Respondents assert that the presence of common parties, common assets, and common questions of law and fact clearly support consolidation of the cases so that a common record may be created, which will further administrative economy and avoid wasting Commission, Staff, and intervenor resources that may result from the establishment of two very similar records.

9. EAI next argues that there are no facts in dispute that warrant a hearing, and that the matters set forth in this case present a straightforward legal question as to the Commission's jurisdiction.⁷ Joint Respondents dispute both of these statements. As no full record has been created, there are relatively few facts for the Commission's consideration at all. EAI argues that the only potential basis for the Commission's jurisdiction is Mo.Rev.Stat. § 393.190, but states

⁷ EAI Motion at para. 4.

that no facts have been alleged to support application of this statute to the facts of this case.⁸ Similarly, EAI asserts that there is no fact on which to conclude that EAI's integration into MISO pertains to property which is necessary or useful in the performance of EAI's duties to the public.⁹ EAI is impermissibly continuing to push this Commission for a summary determination prior to a full exploration of all relevant facts and applicable law. Unless and until discovery is completed and evidence is adduced at hearing, there will continue to be minimal facts upon which the Commission may make its determination.

10. EAI further challenges the April 18 Order to the extent it establishes a procedural schedule that provides for reply briefs in early August, and requests that the procedural schedule be amended to provide for one round of legal briefs to be filed by June 28, 2013. Joint Respondents respectfully request that the Commission retain the current procedural schedule. The procedural schedule ordered by the Commission has already expedited the *Jointly Proposed Procedural Schedule* filed by the Companies, Empire and MJMEUC on April 8, 2013. Given the number of parties and the issues of fact and law presented in these matters, Joint Respondents assert that reply briefs are necessary in order to provide the Commission with a full and comprehensive record upon which to base its decision.

11. Further, one effect of consolidation of the two matters is that a hearing is now required to be held pursuant to Missouri law. EAI has previously argued that a hearing is not required pursuant to Mo.Rev.Stat. § 393.190.¹⁰ However, EAI overlooks the fact that a portion of the approval sought in the Joint Application docket does require a hearing, that of a certificate of convenience and necessity for TC Arkansas, pursuant to Mo.Rev.Stat. § 393.170.¹¹ The

⁸ *Id.*

⁹ *Id.*

¹⁰ Case No. EO-2013-0396, EAI Applicants *Motion for Reconsideration and Dispositive Treatment and Response to April 2 Order*, April 8, 2013, at para. 9.

¹¹ Joint Application at para. 12.

consolidation of the Joint Application docket, in which a hearing is required, with the MISO docket, in which a hearing is not required, results in a hearing being required. Commission precedent supports this outcome.

12. This Commission recently evaluated a case in which it was asked to jointly approve a transfer of assets and grant a certificate of convenience and necessity.¹² 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.¹³ The Commission further noted that the statute governing the grant of a certificate of convenience and necessity contemplates a Commission decision following “due hearing,” while the statute governing a transfer of assets does not require a hearing prior to the Commission rendering a decision.¹⁴ In its decision, the Commission stated that the term

‘hearing’ presupposes a proceeding before a competent tribunal for the *trial of issues between adversary parties*, the presentation and the consideration of proofs and arguments, and determinative action by the tribunal with respect to the issues... ‘Hearing’ involves an *opposite party*;...it contemplates a listening to facts and evidence for the sake of *adjudication*... The term has been held synonymous with ‘opportunity to be heard’.¹⁵ [Italics in original.]

13. The current matters are notably distinguishable from the *Valley Woods* matter, in which no party petitioned to intervene or requested a hearing. In the current matters, there are numerous intervenors with divergent interests at stake, three of whom joined in proposing a procedural schedule in the Joint Application docket that requests testimony, discovery, and an evidentiary hearing. Unlike in *Valley Woods*, the present matters clearly involve parties with opposing positions who seek an adjudication of issues from the Commission.

¹² 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).

¹³ *Id.* at 7.

¹⁴ *Id.* at 6.

¹⁵ *Id.* at 6-7.

14. As the Companies have previously explained, EAI's proposed transmission asset transfer and Entergy's voluntary choice to place its facilities under the functional control of MISO both may have direct and substantial 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 Entergy Corporation'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. Such impacts should be evaluated and considered when this Commission reviews whether the proposed asset transfer and EAI's integration into MISO are detrimental to the public interest.

15. 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.¹⁶ Approval should be based upon a finding of "no net detriment."¹⁷

16. As applicants, EAI Applicants bear the burden to prove that the requested transfers are 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.¹⁸ Joint Respondents therefore maintain that the Commission should receive and consider evidence concerning all aspects of the proposed asset transfer and transfer of functional control to MISO.

17. Further, EAI's Notice clearly identifies potential detriment to the Companies. EAI states that its Missouri transmission customers currently take service under the terms and conditions of the Entergy Open Access Transmission Tariff ("OATT"), noting that after the change of functional control of EAI's transmission facilities to MISO, its transmission customers

¹⁶ 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);

¹⁷ In re Union Elec. Co. at 49.

¹⁸ *Id.*

will take service under the MISO OATT. The Companies anticipate that moving from service under the Entergy OATT to the MISO OATT will more than double its transmission costs for service using the Entergy system. As previously noted in filings before this Commission, several of EAI's facilities in Missouri are used in providing transmission service from the Crossroads Energy Center ("Crossroads") (which is physically located in Entergy's service territory) to GMO service territory. This transmission service for Crossroads uses the Entergy to SPP interconnections at the Omaha switching station to Ozark Beach. The Companies anticipate that the application of MISO's Schedule 7 through and out transmission service will increase GMO's firm transmission fees for Crossroads delivery by approximately \$3.76 million per year, and perhaps higher based upon recent data.¹⁹ Such impacts should be evaluated and considered when this Commission reviews whether EAI's proposed asset transfer and EAI's integration into MISO are detrimental to the public interest.

18. In addition, Empire has a critical 161kV bulk electric system interconnection with EAI at Empire's Powersite Substation located near the Ozark Beach Hydro Plant near Forsyth, Missouri, that delivers capacity and energy to Empire's Missouri wholesale and retail consumers from the EAI transmission system. Empire currently has Interconnection Agreements between itself, Arkansas Power and Light (now Entergy Arkansas, Inc.), Plum Point Energy Partners and Entergy Services. Empire is a network integration transmission service member of SPP and a firm point to point transmission service customer of EAI, with an ownership and purchase power share of the Plum Point coal fired power station, located near Osceola, Arkansas. Such delivery of the Plum Point capacity and energy relies directly on the service availability of this 161kV

¹⁹ See, In re 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, Case No. EO-2013-0396, Response of Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company at para. 4, March 18, 2013.

interconnection. Specifically, this described interconnection is required to be “in service” for the delivery of Plum Point Power Station capacity and energy to Empire and SPP. Further, conversion of Empire Plum Point transmission service to MISO, under MISO’s Schedule 7 rates, terms, and conditions will increase Empire’s transmission costs by approximately \$1.2 million per year.

19. EAI cites the approvals it has obtained from other regulatory bodies in support of its Motion. While perhaps important to the approval process, it should be noted that none of these regulatory bodies are tasked with assessing the public interest as it relates specifically to Missouri. The Missouri Commission has a different place in the regulatory framework from those bodies and need not cede its duties to other regulators. It should also be noted that at least one other state Commission expressed strenuous misgivings concerning EAI’s decision to move functional control of its assets to MISO, and indeed initially found it was unable to conclude that EAI’s Application was in the public interest.²⁰ Further, regulatory bodies in several states have yet to render a decision regarding the proposed transfer of Entergy’s transmission assets to a subsidiary of ITC. The protection of the public interest in Missouri requires a thorough analysis of the issues and a positive showing by the Joint Applicants of no net detriment in both the Joint Application docket and the MISO docket.

WHEREFORE, Joint Respondents respectfully request that the Commission consider this response and affirm its April 18, 2013 Order in the above-captioned consolidated matters.

Respectfully submitted,

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²⁰ See, Arkansas Public Service Commission Docket No. 10-011-U, Order No. 68, issued August 3, 2012.

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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 9th day of May, 2013.

//S// Dean L. Cooper