

**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	)	
Transmission System Operator Inc.	)	File No. EO-2013-0431
Regional Transmission System Organization	)	
or Alternative Request to Change	)	
Functional Control and Motions for Waiver	)	
And Expedited Treatment	)	

**RESPONSE OF ENTERGY ARKANSAS, INC. TO MOTION TO DELAY ACTION**

COMES NOW Entergy Arkansas, Inc. ("EAI"), pursuant to the August 20 Order of the Missouri Public Service Commission ("Commission") and submits this Response to the Joint Request for Administrative Notice and Motion to Delay Commission Decision ("Motion to Delay") submitted by Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company ("KCPL") and The Empire District Electric Company ("Empire") (collectively, the "Intervenors"). As the Commission stated in its Order Directing Filing of May 10, 2013 in this case, "although this case is set for hearing simultaneously with File No. EO-2013-0396, these cases are not consolidated." Therefore, the Commission should deny in this case the Motion to Delay, which relates in its entirety only to the transfer of assets from EAI to ITC as addressed in File No. EO-2013-0396, which is a separate and distinct proceeding from the instant one. EAI's integration into MISO is the sole subject of the instant docket, and that MISO integration is scheduled to occur on December 19, 2013, as explained fully below.

## **I. INTRODUCTION**

The Intervenor has asked the Commission to “[d]elay its decision regarding the pending transfer of EAI’s Missouri transmission assets until such time as the Texas and Arkansas proceedings [regarding the ITC transaction] are resolved.”<sup>1</sup> This request for indefinite delay was submitted in both this file concerning EAI’s voluntary decision to join MISO (“MISO Integration”) and the separate file EO-2013-0396 concerning the merger and spin-off of the Entergy Operating Companies’ transmission facilities to ITC (“Entergy-ITC Merger”). Intervenor appears to contend that both files should be put on hold because both face similar procedural issues in the other jurisdictions.

Intervenor ignores the fact that the MISO Integration file and the Entergy ITC Merger file before this Commission involve two separate and distinct transactions. They also ignore the fact that this Commission consolidated these two files for hearing purposes only and that the consolidated hearing has now concluded. There is no valid reason to delay the decision on the MISO Integration file because, as explained below, the recent developments in other jurisdictions relate exclusively to the Entergy ITC Merger. EAI submits this detailed response to avoid confusion created by the Intervenor so that the Commission has a clear basis upon which to act on this file concerning MISO Integration.

The following facts are beyond reasonable dispute and demonstrate that the Motion to Delay is without merit:

- The MISO Integration and Entergy-ITC Merger are separate transactions that were initiated at different times for different reasons. The Entergy Operating Companies announced their decision to join MISO in April 2011

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<sup>1</sup> Motion at 5.

to achieve an estimated \$1.4 billion in production cost savings for the customers of the Operating Companies and the benefits of a regional Day 2 Market<sup>2</sup> that, including the Entergy Region, would span more than a dozen states. The Entergy-ITC Merger was executed in December 2011 to achieve greater independence with regard to the transmission ownership and operations, and to address the significant capital demands faced by the Operating Companies.

- The only direct relationship between the two transactions is the transmission assets involved.<sup>3</sup>
- Consistent with these differences in objectives and timing, the Operating Companies' regulatory filings for these two transactions have proceeded separately in each and every case. Every regulator, state and federal, has considered the two transactions separately. FERC found them to be separate and distinct, rejecting the argument of KCPL and its counterparts in the Southwest Power Pool ("SPP") that the transactions be treated the same. The Operating Companies' five retail regulators<sup>4</sup> also treated them

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<sup>2</sup> Day 2 Markets are centralized region-wide markets operated by RTOs that include day ahead unit commitments, a real time balancing market, and an integrated ancillary services markets. In a Day 2 Market, generators are required to schedule or bid into the market, locational marginal prices are used to price the use of the transmission grid, congestion charges replace "first come, first served" transmission service, and financial transmission rights ("FTRs") are used to hedge congestion. The "Day 2" label arose because these are things that RTOs began to implement after they initially began to operate, or in the "Day 2" of their creation.

<sup>3</sup> As explained later herein, the Operating Companies must have secured applicable regulatory approvals to join an acceptable RTO (determined to be MISO) before the Entergy-ITC Merger closes, but that is merely a prerequisite condition in the Entergy-ITC Merger.

<sup>4</sup> The Arkansas Public Service Commission ("APSC"), Louisiana Public Service Commission ("LSPC"), Mississippi Public Service Commission ("MPSC"), Council of the City of New Orleans ("CCNO"), and the Public Utility Commission of Texas ("PUCT")

separately and on very different procedural tracks over different periods of time.

- Each of the Operating Companies' regulators with jurisdiction over their retail rates—including the Arkansas Public Service Commission ("APSC") in the case of EAI—has *already approved*, with conditions, MISO Integration, which is the subject of this Commission File No. EO-2013-0431. The last of these approvals was obtained in November 2012,<sup>5</sup> more than nine months ago.
- By contrast, the retail proceedings related to the Entergy-ITC Merger were not initiated until late 2012 or after and were docketed and considered separately by each regulator. That is why the Texas and Arkansas proceedings referred to in KCPL's Motion to Delay relate *only* to the Entergy-ITC Merger, not MISO Integration.

With all these required MISO Integration approvals now obtained, MISO Integration will occur on December 19, 2013. This date was selected because EAI terminates its participation in the Entergy System Agreement at midnight December 18, 2013 and therefore no longer has access to the central planning and dispatch of generation that has historically occurred among the Operating Companies. In turn, *all* five retail regulatory approvals contemplate (and, in many cases, require) that all the Operating Companies join MISO together on that date. And it is not only the Operating

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<sup>5</sup> As noted below, all five retail jurisdictions had, by that date, approved, with conditions, the Operating Companies decision to join MISO. With respect to EAI's application before the APSC, the APSC authorized EAI to move forward with the MISO Integration process in October 2012 and execute the MISO Transmission Owners Agreement. The APSC subsequently issued another order in April 2013 finding that all of the relevant conditions to its prior approval had been satisfied, subject to continued compliance by EAI and MISO with the APSC's prior orders.

Companies that will join MISO on that date: MISO will also integrate approximately 13 balancing authorities, 8 load serving entities, 40 Qualified Facilities, and 15 merchant generators within the Entergy Region on that date as well.

KCPL has, along with the other SPP transmission owners (“TOs”) and SPP itself, opposed MISO Integration—raising the very same arguments made here— for nearly three years in every possible forum. These challenges have been rejected in every jurisdiction yet KCPL and Empire now seek another forum, this time before this Commission, to block EAI’s and the other Operating Companies’ integration with MISO. Their arguments are not only without merit, but, more importantly, threaten to put this Commission directly at odds with all five retail regulators of the Operating Companies and the FERC. Each regulator expects MISO Integration to occur on December 19, 2013. But KCPL now argues this Commission should try to undermine EAI’s MISO integration by taking no action at all. In support of its request, the Intervenor’s cite the unrelated ITC Transaction proceedings that are pending before various retail regulators. Those out-of-state proceedings, however, have no bearing on MISO integration and, conspicuously, the Intervenor’s Motion fails to state any connection whatsoever between those ITC dockets and the matters set forth in this MISO proceeding.

There is no need for this inter-state conflict. First, the Intervenor’s raised the very same arguments at FERC, which has exclusive jurisdiction over them. FERC has rejected those arguments, KCPL has sought rehearing with respect to them, and KCPL’s rehearing petition remains pending at FERC. It is therefore clear that the Intervenor’s have an adequate forum in which to address its concerns. Indeed, FERC is the only forum that can lawfully consider those arguments.

Second, even if the Intervenor's arguments were considered here, the Commission should reject them as a conflict with the filed rate doctrine. The U.S. Supreme Court has long held that states may not trap FERC-approved costs and, consistent with this precedent, this Commission rejected similar arguments this year in the proceeding regarding Ameren's continued participation in MISO.<sup>6</sup> In that file, Public Counsel had recommended that the Commission disallow the *regional* transmission charges assessed by transmission owners in MISO *other than* Ameren. The Commission rejected that argument, holding that "the 'filed rate doctrine' means that this Commission will not be able to deny Ameren Missouri the ability to recover in rates the amounts that it must pay to transmission owners for FERC-established rates for power transmission." This holding applies with equal or greater force here because the Intervenor's are seeking a discount (which they call "mitigation" or "hold harmless") on MISO's "through-and-out rate," which is based on the costs of *all* MISO transmission owners, not just EAI's costs. For the same reasons, the Intervenor's argument that this Commission should assert jurisdiction over terms of MISO's seams agreement with SPP should be rejected as plainly in conflict with the filed rate doctrine.

Third, this file does not implicate the concerns regarding FERC-approved incentive returns on equity ("ROEs") that have arisen in other files concerning RTO participation. EAI has not sought an incentive ROE, and EAI's rates are not even at issue here. Rather, as noted, the Intervenor's are challenging MISO's through-and-out rate and MISO's seams agreement with SPP. These challenges have nothing to do with incentive rates.

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<sup>6</sup> Report and Order at 14, File No. EO-2011-0128, *In the Matter of Application of Union Electric Company for Authority to Continue the Transfer of Functional Control of its Transmission System to the Midwest Independent Transmission System Operator, Inc.*, (MoPSC April 19, 2012).

Fourth, the only independent party in this case, the Commission's Staff, has recommended that the Commission approve MISO Integration without condition. The Commission should accept that recommendation and leave the Intervenor to pursue their desired remedies at FERC, which has exclusive jurisdiction over them and where they remain pending on rehearing.

EAI therefore respectfully requests that the Commission deny the Motion and issue a decision in this file by September 4, 2013. The Intervenor's request for an indefinite delay in this file based on unrelated events seeks to undermine the decision of the Entergy Operating Companies to join MISO, thereby undermining the decisions of the Operating Companies' five retail regulators to approve MISO integration as well as the preparation undertaken by the numerous parties across the Entergy Operating Companies' footprint to join MISO on December 19, 2013. To respect the decisions of the Entergy Operating Companies' five retail regulators that have approved MISO Integration, EAI and the other Operating Companies may have no choice but to seek appropriate relief from FERC in the event that this Commission puts this file on hold, or otherwise imposes impediments to MISO Integration, as requested by the Intervenor.<sup>7</sup>

Finally, EAI notes that EAI and ITC may file a separate response as it relates to the Motion to Delay consideration of the Entergy-ITC Transaction in the separate File No. EO-2013-0396. However, because that file concerns a separate transaction with separate timing and substantive considerations, the Commission should, for all the

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<sup>7</sup> See *New PJM Companies*, Opinion No. 472, 107 FERC ¶ 61,271 at P 84 (2004) ("Under PURPA section 205, the [FERC] has exclusive authority over the interstate issues that arise when, as here, states disagree on the voluntary coordination of electric facilities" and the corresponding authority "to preempt state laws that prohibit or prevent such coordination" when joining an RTO).

reasons stated herein, act promptly on this file concerning MISO Integration by September 4, 2013.

## **II. BACKGROUND ON RECEIPT OF ALL NECESSARY REGULATORY APPROVALS FOR MISO INTEGRATION**

To explain why the recent procedural developments in Texas and Arkansas regarding the ITC Transaction have no relation to MISO Integration, EAI provides the following background regarding MISO Integration, including a description of the approvals, with conditions, by all five retail regulators to join MISO on December 19, 2013.

### **A. The Operating Companies' Decision to Join MISO**

The Entergy Operating Companies made several proposals to transfer control of their transmission facilities to an independent entity following the issuance of FERC's Order No. 2000, but none of the initial proposals succeeded in gaining sufficient support from the Entergy Operating Companies' retail regulators.<sup>8</sup> To garner the support of Entergy Operating Companies' five retail regulators, the Operating Companies proposed in 2004 to create an Independent Coordinator of Transmission ("ICT") that would have broad "authority to grant or deny requests for transmission service, calculate AFC, administer Entergy's OASIS, and perform an enhanced planning function," but not acquire "control" of the transmission system.<sup>9</sup> The FERC approved

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<sup>8</sup> See, e.g., *Entergy Servs., Inc.*, 88 FERC ¶ 61,149 (1999), *reh'g denied*, 90 FERC ¶ 61,191 (2000); *Cleco Power LLC*, 101 FERC ¶ 61,008 (2002), *order on reh'g*, 103 FERC ¶ 61,272 (2003); *Cleco Power LLC*, 112 FERC ¶ 61,169 (2005).

<sup>9</sup> *Entergy Servs., Inc.*, 110 FERC ¶ 61,295 at P 3 (2005).



the ICT proposal in 2006 for an experimental four-year term, noting that it had the support of all five of Entergy Operating Company retail regulators.<sup>10</sup>

In 2009, the FERC reviewed the initial performance of the ICT arrangements and found that "it is undisputed that having the ICT in place the last two years has had a positive impact by providing increased transparency on, and non-discriminatory access to, the Entergy Electric System."<sup>11</sup> However, the FERC noted that the ICT arrangement was nearing the end of its four-year term and that not all of the projected benefits had been obtained.<sup>12</sup> The FERC therefore decided to convene "a conference of all commissions, the ICT, Entergy, and customers to undertake a comprehensive assessment of the success of the ICT arrangement" and to evaluate alternatives, such as RTO participation.<sup>13</sup> The first such conference was held in Charleston, South Carolina, in June 2009 and, as later described by the FERC:

One of the primary outcomes of this meeting was the Commission's offer to fund the cost-benefit study that would evaluate the possibility of Entergy joining the SPP RTO. During the process of performing that study, several stakeholders suggested additional addendum studies that would expand the scope of the original cost-benefit analysis. One such addendum was to examine the costs and benefits of Entergy joining MISO. Entergy agreed to fund this portion of the study. Entergy Arkansas also included an examination of the costs and benefits of joining MISO as a stand-alone company.<sup>14</sup>

A key impetus for the consideration of RTO options was EAI's planned departure from the Entergy System Agreement on December 19, 2013. In connection with the

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<sup>10</sup> *Entergy Services, Inc.*, 115 FERC ¶ 61,095 (2006).

<sup>11</sup> *Entergy Servs., Inc.*, 126 FERC ¶ 61,227 at P 79 (2009) ("*March 2009 ICT Order*"). The Entergy Electric System is comprised of the generation and bulk transmission facilities of the Operating Companies, which facilities are operated as a single, integrated electric system pursuant to the terms of the System Agreement.

<sup>12</sup> *Id.* at P 86.

<sup>13</sup> *Id.* at P 82.

<sup>14</sup> *Midwest Independent Transmission System Operator, Inc.*, 136 FERC ¶ 61,010 at P 6 (2011).

planning for this event, the APSC required EAI to consider various post-withdrawal options, including RTO participation. In late 2009, the FERC approved EAI's notice of termination of participation in the Entergy System Agreement, as well as EMI's notice that would take effect in 2015.<sup>15</sup> As a result of terminating its participation in the System Agreement, EAI would no longer participate in regional coordination with the other Operating Companies after December 18, 2013. It was therefore imperative that EAI consider whether to join an RTO *on December 19, 2013*.

After a period of detailed study and analysis—supported by the joint federal-state cost-benefit study referenced above—the Operating Companies in April 2011 announced their decision that MISO was the best RTO option for their customers and, in May 2011, submitted a report to their five retail regulators outlining the analysis and support for that decision.<sup>16</sup> The studies estimated that joining MISO would produce a projected \$1.4 billion in benefits to the customers of the Operating Companies collectively and that these benefits would be spread among each of the Operating Companies individually. After a period of time for information gathering and stakeholder review of the analysis supporting MISO Integration, the Operating Companies submitted RTO Integration applications over the period October 2011 to April 2012 in each of the five jurisdictions that regulate their retail rates.<sup>17</sup>

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<sup>15</sup> *Entergy Servs., Inc.*, 129 FERC ¶ 61,143 (2009), *reh'g denied*, 134 FERC ¶ 61,075 (2011), *pet. for review denied*, *Council of City of New Orleans v. FERC*, 692 F.3d 172 (2012).

<sup>16</sup> An Evaluation of the Alternative Transmission Arrangements Available to the Entergy Operating Companies And Support for Proposal to Join MISO (May 12, 2012) ("*RTO Evaluation Report*").

<sup>17</sup> As noted throughout this case, no filing was made by EAI at that time in Missouri for the reason that EAI did and does not believe that these matters are properly before this Commission. Consequently, EAI initiated this proceeding only after the Intervenor began inappropriately raising issues related to the MISO Integration in the separate File No. EO-2013-0396.

## **B. The Entergy-ITC Merger**

On December 4, 2011, Entergy Corporation and ITC Holdings, Inc. agreed to the Entergy-ITC Merger. Pursuant to the Merger Agreement and associated agreements, the transmission assets of the Entergy Operating Companies would be transferred into separate transmission companies that would be owned by the new Entergy Corporation intermediate holding company, Mid South TransCo LLC ("Mid South"), which would then be distributed to Entergy Corporation's shareholders in a spin-off or split-off and subsequently merged with the new ITC intermediate public utility holding company, ITC Midsouth LLC ("ITC Midsouth"). Mid South would be the surviving entity, under ITC ownership, and would be renamed as ITC Midsouth. Entergy Corporation would continue to own the Entergy Operating Companies with their electric generation and distribution assets.

The Entergy-ITC Merger contains a prerequisite condition in the Merger Agreement that the Operating Companies have obtained applicable approvals to be a member of an acceptable RTO before the closing date of the Entergy-ITC Merger. Recognizing the separate nature of the two transactions, however, the Operating Companies did *not* amend their applications pending in the five retail jurisdictions with respect to MISO Integration. Rather, separate applications were filed in each jurisdiction in late 2012 or thereafter and, in fact, all retail regulatory approvals for MISO Integration were obtained *before* hearings even commenced on the Entergy-ITC Merger. Moreover, the Operating Companies have consistently stated to their retail regulators that MISO Integration is *not* dependent on approval of the Entergy-ITC Merger because MISO integration will occur regardless of whether the ITC Transaction is approved.

**C. The Retail Regulatory Orders Approving, with Conditions, MISO Integration**

EAI explains briefly below the retail regulatory proceedings and approvals associated with the Operating Companies' applications regarding MISO Integration.

**1. The APSC Proceedings regarding MISO Integration**

The MISO Integration was, as indicated above, motivated in significant part by EAI's long-planned exit from the System Agreement. After EAI issued its notice of withdrawal from the System Agreement on December 19, 2005—the eight-year notice of withdrawal ends at midnight December 18, 2013—the APSC initiated a proceeding intended to address EAI's post-System Agreement alternatives.<sup>18</sup> On September 25, 2008, the APSC opened a proceeding to evaluate continued participation in the ICT or potential RTO options.<sup>19</sup> On February 11, 2010, the APSC initiated a new proceeding to consolidate both inquiries.<sup>20</sup>

In April 2011, during the pendency of this new proceeding, the Operating Companies announced their voluntary decision to join MISO and, in May 2011, EAI submitted testimony to the APSC showing that MISO Integration would provide projected production cost savings to EAI customers of up to \$263 million, depending on the outcome of MISO's transmission cost allocation proposal, and access to a regional

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<sup>18</sup> *In The Matter Of An Investigation Regarding Entergy Arkansas, Inc.'s Continued Participation In The Entergy System Agreement, And The Future Protection Of Its Ratepayers*, Docket No. 04-023-U (APSC) (the "APSC System Agreement Proceeding").

<sup>19</sup> *The Matter Of An Inquiry Into Electric Transmission Issues Within The Areas Served By The Southwest Power Pool Regional Transmission Organization And The Entergy Corporation As Such Issues Affect Electric Service Within Arkansas*, Docket No. 08-136-U (APSC).

<sup>20</sup> *In the Matter of a Show Cause Order Directed to Entergy Arkansas, Inc. Regarding its Continued Membership in the Current Entergy System Agreement, or Any Successor Agreement Thereto, and Regarding the Future Operational Control of its Transmission Assets*, Docket No. 10-011-U (APSC).

market spanning more than a dozen states. SPP filed testimony opposing EAI's choice of RTO (as did some of the SPP TOs) and argued, instead, that EAI should be ordered to join SPP. On October 28, 2011, the APSC made a preliminary finding that joining an RTO would be prudent and directed EAI to address certain APSC issues when it filed a formal application for MISO Integration.<sup>21</sup>

On November 28, 2011, EAI filed a formal application with the APSC requesting authorization to join MISO. SPP again opposed MISO Integration and again argued in multiple rounds of testimony and at hearing that EAI should be ordered to join SPP. On August 3, 2012, the APSC issued Order No. 68 and found that joining MISO would be in the public interest if certain issues related to, *inter alia*, cost allocation and MISO governance could be addressed.<sup>22</sup>

EAI and MISO subsequently made compliance filings in which they addressed the APSC's concerns. SPP again opposed the filings and again argued that the APSC should deny EAI the ability to join MISO. On October 26, 2012, the APSC issued Order No. 72 and held that EAI and MISO had substantially complied with all the conditions to join MISO and therefore authorized EAI to "move forward with the EAI/MISO integration process."<sup>23</sup>

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<sup>21</sup> Order No. 54, *In the Matter of a Show Cause Order Directed to Entergy Arkansas, Inc. Regarding its Continued Membership in the Current Entergy System Agreement, or Any Successor Agreement Thereto, and Regarding the Future Operational and Control of its Transmission Assets*, Docket No. 10-011-U (APSC Oct. 28, 2011).

<sup>22</sup> Order No. 68, *In the Matter of a Show Cause Order Directed to Entergy Arkansas, Inc. Regarding its Continued Membership in the Current Entergy System Agreement, or Any Successor Agreement Thereto, and Regarding the Future Operational and Control of its Transmission Assets*, Docket No. 10-011-U (APSC Aug. 3, 2012).

<sup>23</sup> Order No. 72 at 32, *In the Matter of a Show Cause Order Directed to Entergy Arkansas, Inc. Regarding its Continued Membership in the Current Entergy System Agreement, or Any Successor Agreement Thereto, and Regarding the Future Operational and Control of its Transmission Assets*, Docket No. 10-011-U (APSC Oct. 26, 2012). The APSC subsequently held in Order No. 76 issued on April 8, 2013 that EAI's application to join MISO was granted, conditioned on continued compliance by EAI and MISO of the conditions set forth in Order No. 68.

## 2. The LPSC Proceedings regarding MISO Integration

Entergy Louisiana ("ELL") and Entergy Gulf States Louisiana ("EGSL") filed their joint application with the LPSC for approval to join MISO on October 31, 2011. ELL and EGSL demonstrated that joining MISO would provide a range of benefits to the two companies' customers, including production projected cost savings of \$575 million and access to a regional market that, including the Entergy Region, would span more than a dozen states. The Staff of the LPSC, using independent consultants, "testified that the reasons cited by [the Entergy Operating Companies] for favoring MISO over the SPP are valid."<sup>24</sup> SPP was the only party that opposed MISO Integration. Recognizing the broad support for MISO participation, the LPSC on May 23, 2012 voted to conditionally approve MISO Integration "as being in the public interest."<sup>25</sup> In reaching its conclusion, the LPSC made findings, *inter alia*, that MISO Integration would provide "material net savings" to ratepayers;<sup>26</sup> that "[t]he larger market and MISO's market design will likely provide buyers and sellers with more rather than fewer options";<sup>27</sup> and that the transfer will "be beneficial on an overall basis to the State and local economies and to the communities in the area served by" EGSL and ELL.<sup>28</sup> Noting that EAI is the only Operating Company interconnected with MISO, however, the LPSC found that "EGSL

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<sup>24</sup> Order No. U-32148 at 9, *In Re: Joint Application Regarding Transfer of Functional Control of Certain Transmission Assets to the Midwest Independent Transmission System Operator, Inc., for an Accounting Order Deferring Implementation Costs, and Request for Timely Treatment* (LPSC June 28, 2012) ("LPSC MISO Approval Order").

<sup>25</sup> LPSC MISO Approval Order at 47.

<sup>26</sup> *Id.* at 13.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 13-15.

and ELL membership in MISO would be problematic absent EAI membership” and it therefore conditioned its approval to join MISO on EAI also joining MISO.<sup>29</sup>

### **3. The PUCT Proceedings regarding MISO Integration**

On April 30, 2012, Entergy Texas, Inc. (“ETI”) filed its application to join MISO with the Public Utility Commission of Texas (“PUCT”). ETI explained that joining MISO would provide a range of benefits, including production cost savings to ETI customers of \$225 million and access to a regional market that, with the Entergy Region included, would span more than a dozen states.<sup>30</sup> ETI subsequently entered into a settlement with multiple parties. Again, SPP was the only party to oppose MISO Integration.

On October 1, 2012, a panel of three administrative law judges recommended approval of the settlement, finding that ETI joining MISO “is in the public interest” and rejecting each of SPP’s challenges to the settlement, including those related to loop flow.<sup>31</sup> On October 26, 2012, PUCT approved ETI’s application to join MISO, subject to conditions.<sup>32</sup> Included in the conditions was a requirement that all the Operating Companies join MISO at the same time. With respect to the condition that all Operating Companies join MISO at the same time, the PUCT emphasized its importance:

A second condition in section 11.3 of the NUS [non-unanimous stipulation] that must be met before ETI may join MISO is that ETI must determine by

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<sup>29</sup> *Id.* at 18.

<sup>30</sup> Proposal for Decision, *Application of Entergy Texas, Inc. for Approval to Transfer Operational Control of its Transmission Assets to the MISO RTO*, PUCT Docket No. 40346 at 30 (Oct. 1, 2012) (“*PUCT Preliminary Decision*”).

<sup>31</sup> See, e.g., *id.* at 35-37; 44-46; 49-51; 56-59 (rejecting SPP’s arguments asserting that the contract path between MISO and the Entergy Operating Companies was inadequate and that SPP would be able to collect large loop flow charges from the Entergy Operating Companies that would offset the benefits from joining MISO).

<sup>32</sup> Order, *Application of Entergy Texas, Inc. for Approval to Transfer Operational Control of its Transmission Assets to the MISO RTO*, PUCT Docket No. 40346 at 30 (Oct. 26, 2012) (“*PUCT Approval Order*”).

October 31, 2013 that all of the Entergy operating companies (EOCs) will be integrated into MISO by December 19, 2013. However, the [non-unanimous settlement] NUS provides no standards by which this determination is to be made and does not require that this Commission be notified of such a determination. The Commission finds that this provision does not provide adequate notice of whether all of the EOCs are going into MISO. Therefore, the Commission conditions its public interest finding and approval of the transfer of operational control on ETI making a filing with the Commission, no later than October 31, 2013, declaring whether as a matter of fact, all EOCs will, or will not, integrate into MISO by December 19, 2013.<sup>33</sup>

#### **4. The MPSC Proceedings regarding MISO Integration**

Entergy Mississippi, Inc. ("EMI") filed its MISO Integration application with the Mississippi Public Service Commission ("MPSC") on December 2, 2011. In support of that application, EMI explained that joining MISO would provide a range of benefits, including projected production cost savings to EMI customers of \$284 million and access to a regional market that, with the Entergy Region included, would span more than a dozen states.

On November 15, 2012, the MPSC approved the application to join MISO, subject to conditions.<sup>34</sup> The MPSC noted that, "[of] the intervenors, only SPP, which holds itself out as the better RTO for Entergy to join, is opposed to the Joint Application."<sup>35</sup> The MPSC declined to adopt SPP's arguments, finding that the "bulk of the studies, including [studies commissioned by the MPSC staff], project that the Operating Companies themselves, including EMI, will likely achieve greater trade benefits in MISO than SPP."<sup>36</sup> The MPSC approved the Joint Application subject to the

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<sup>33</sup> *Id.* at 7.

<sup>34</sup> *Order, Joint Application of Entergy Mississippi, Inc. and the Midwest Independent Transmission System Operator, Inc. for Transfer of Functional Control of Entergy Mississippi's Transmission Facilities to MISO*, Docket No. 2011-UA-376 (MPSC Nov. 15, 2012).

<sup>35</sup> *Id.* at 4.

<sup>36</sup> *Id.* at 28.



conditions agreed to by the parties, including the condition that “[a]ll Entergy Operating Companies should join MISO.”<sup>37</sup>

## **5. The CCNO Proceedings regarding MISO Integration**

On November 14, 2011, ENO and ELL (for its service to customers in the Algiers section of the City of New Orleans) submitted their application to join MISO before the Council of the City of New Orleans (“CCNO”). ENO explained that joining MISO would provide a range of benefits, including projected production cost savings to New Orleans customers of up to \$46 million and access to a regional market that, with the Entergy Region included, would span more than a dozen states. After initiating a hearing with respect to the application, ENO/ELL entered into an agreement with the Council’s advisors that provided for Council approval to join MISO with certain conditions, including that all the Operating Companies join MISO. In approving the agreement, the Council noted that, “except for the Southwest Power Pool (“SPP”), which asserts that Entergy’s membership in the SPP RTO would provide greater benefits than Entergy’s membership in MISO, all of the parties in these proceedings either support approval by the Council of the Agreement or do not oppose Council approval.”<sup>38</sup> Finding joining MISO to be in the public interest as conditioned, the Council approved the application to join MISO.<sup>39</sup>

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<sup>37</sup> *Id.* at 50.

<sup>38</sup> Docket No. UD-11-01, *Resolution and Order Approving ENO and ELL’s Joint Application to Transfer Functional Control of Certain Transmission Assets to Midwest Independent Transmission System Operator, Inc.*, RTO at 25.

<sup>39</sup> *Id.*

#### **D. Relevant FERC Proceedings regarding MISO Integration**

Since initiating the collaborative federal-state consideration of RTO options in 2009, the FERC has issued more than two dozen orders pertaining to, and facilitating, the Operating Companies' decision to join MISO. EAI describes below only the orders most relevant to this proceeding to illustrate the depth of the FERC's involvement in MISO Integration and the fact that it has rejected, on several occasions, the very same arguments raised in this proceeding by the Intervenors.

##### **1. The MISO-SPP Dispute Over their Joint Operating Agreement**

Since the Operating Companies began considering MISO as an RTO option, SPP and the SPP TOs have launched a coordinated effort to oppose MISO Integration in multiple forums. SPP's first challenge arose when it argued that MISO could not use the MISO-SPP Joint Operating Agreement ("JOA") to integrate the Operating Companies. The JOA had been used several times in recent years to integrate large members into both SPP and MISO, including integrating the Nebraska Public Power District into SPP and MidAmerican Energy into MISO, yet SPP was claiming that it could not be used to integrate the Operating Companies into MISO.

To resolve this dispute, MISO submitted a Petition for Declaratory Order to FERC. As KCPL and Empire have done in this proceeding, SPP and the SPP TOs not only opposed MISO's substantive position, but opposed any action at all on the Petition. They also argued that, even if the FERC acted on the Petition, it should impose multiple conditions, including requiring MISO to "hold harmless" SPP members for any cost shifts.<sup>40</sup>

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<sup>40</sup> *MISO-SPP JOA Order*, 136 FERC ¶ 61,010 at PP 24, 34, 43, 46, 49.

The FERC rejected each of their arguments and granted the Petition, finding that “section 5.2 of the [MISO-SPP] JOA would allow for the sharing of available transmission capacity between MISO and Entergy Arkansas and SPP and Entergy Arkansas in the event that Entergy Arkansas becomes a transmission-owning member of MISO.”<sup>41</sup> The FERC found that “SPP’s [contrary] argument that MISO cannot have a contract path with one of its own members is unsupported.”<sup>42</sup> The Commission also rejected SPP’s arguments that no action was necessary, finding that time was “of the essence” in resolving the dispute.<sup>43</sup> With respect to SPP’s myriad other challenges, including its allegations regarding “massive” loop flows and its requests for hold harmless relief, the FERC found them “beyond the scope of the Petition or speculative.”<sup>44</sup>

## **2. FERC Orders Addressing Retail Regulator Concerns**

Consistent with initiating a collaborative federal-state approach to explore RTO options, the FERC has also issued several orders that removed potential or perceived obstacles to MISO Integration that were of concern to the Entergy Operating Companies’ retail regulators.

One of the key concerns of the Entergy Operating Companies’ retail regulators was that the Operating Companies could be allocated the costs of certain high-voltage transmission facilities that were planned for existing MISO members, not the Operating Companies. In order to address this concern—and the countervailing concern from

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<sup>41</sup> *Id.* at P 60.

<sup>42</sup> *Id.* at P 62.

<sup>43</sup> *Id.* at P 65.

<sup>44</sup> *Id.* at P 66.

existing MISO members that the Operating Companies could shift costs to them—MISO and the MISO Transmission Owners negotiated a five-year transition period proposal for the planning and cost allocation of network upgrades. The FERC approved the transition plan, holding that it was a reasonable approach to allocating costs between and among systems that had no history of joint planning or coordination.<sup>45</sup>

A second key obstacle was the concern that the Organization of MISO States (“OMS”) did not have authority to direct MISO or the MISO transmission owners to make certain section 205 filings under the Federal Power Act concerning transmission cost allocation.<sup>46</sup> To address this concern, MISO committed to work with its transmission owners and affected stakeholders. MISO’s efforts proved successful and FERC approved its proposal to give OMS significantly enhanced authority, finding that “[t]he Commission has recognized that state commissions and state committees play an important and unique role in transmission planning and transmission cost allocation, and has previously accepted similar proposals to grant section 205 filing rights to such entities.”<sup>47</sup>

### **3. FERC Approval of the Transmission Rates for MISO Integration**

MISO and the Operating Companies, including specifically EAI, submitted the transmission rates (including formula rate templates) associated with MISO integration in Docket No. ER13-948-000. SPP and the SPP TOs opposed multiple elements of this proposal, including a request by KCPL that the FERC hold it harmless from any rate

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<sup>45</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,056 at P 10 (2012).

<sup>46</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,283 at PP 65-67 (2008) (denying request for section 205 filing rights because the transmission owners had not agreed to cede those rights).

<sup>47</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 143 FERC ¶ 61,165 at P 32 (2013).

increases associated with the MISO through-and-out rate.<sup>48</sup> The FERC declined this plea for special treatment.<sup>49</sup> The FERC had rejected similar pleas for special treatment in the past.<sup>50</sup> Yet this is the very same argument the Intervenor advance here in the name of “rate mitigation” and “hold harmless” relief.

With respect to the loop flow claims, the FERC stated that “we find that existing arrangements are in place that address power flows between MISO and certain neighboring regions”<sup>51</sup> and rejected the requests for hold harmless relief, finding:

With respect to the arguments that the Commission should require Applicants to hold parties harmless from potential parallel and loop flows, we note that Commonwealth Edison is distinguishable from this proceeding because the hold harmless remedy established in that case for utilities in Wisconsin and Michigan was developed to mitigate the geographic separation of utilities in those two states resulting from Commonwealth Edison and American Electric Power’s decisions to join PJM. Thus, the hold harmless remedy for utilities in Wisconsin and Michigan was not established to address loop or parallel flows per se, but rather geographic separation of certain utilities from the rest of their RTO, a situation that does not exist here.

We also note that, at the time of the Commonwealth Edison proceeding, the present day RTOs were just forming and had not established arrangements to coordinate flows on neighboring transmission systems. Since then, however, to address issues such as these, RTOs have developed joint operating agreements, with mechanisms to coordinate parallel flows, such as the coordination in the Congestion Management Process, which is used in a number of seams agreements between the RTOs and their neighbors. The Congestion Management Process forms the basis for coordination of parallel flows between MISO and SPP under the MISO-SPP JOA, and is included in the seams service that MISO offers under Module F of its Tariff to all of its neighboring utilities, including TVA and Associated Electric Cooperative, on a non-discriminatory basis. The

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<sup>48</sup> Comments of KCPL Greater Missouri Operations Company at 3, FERC Docket No. EC12-145-000 et al. (January 22, 2013) (“GMO therefore urges the Commission to require, as part of any approval, that Entergy and MISO agree to hold GMO harmless for any increased Crossroads transmission service costs and any quantifiable transmission flow/congestion costs to be caused by such Entergy/MISO integration”).

<sup>49</sup> *ITC Holdings, Inc.* 143 FERC ¶ 61,257 (2013).

<sup>50</sup> *PJM Interconnection, LLC*, 106 FERC ¶ 61,252 at P 16 (2004).

<sup>51</sup> 143 FERC ¶ 61,257 at P 128.

Congestion Management Process, further enhanced by market-to-market coordination, is also included in the MISO-PJM JOA. The Congestion Management Process requires, among other things, the identification of impacted flowgates, and the allocation of the capacity of those flowgates based on historic use to serve native load, and requires each entity to respect those allocations in the dispatch of their systems, or, where market-to-market coordination is in place, compensate the other party for redispatch costs of market flows in excess of the allocation.<sup>52</sup>

SPP and the SPP TOs then sought rehearing of these findings in July 2013, with KCPL arguing again that FERC should give them a special discount on the through-and-out rate<sup>53</sup> and SPP and the SPP TOs arguing that FERC should hold them harmless for loop flows.<sup>54</sup> Those requests for rehearing remain pending before FERC.

### **III. RESPONSE TO MOTION TO DELAY**

#### **A. MISO Integration and the Entergy-ITC Merger Are Separate Transactions that Should Be Evaluated Independently**

EAI respectfully submits that the foregoing amply demonstrates that MISO Integration is a separate and independent transaction from the Entergy-ITC Merger. The two transactions have been treated separately in every regulatory filing in every jurisdiction, state and federal, and every regulator has treated them separately. At the retail level, the Operating Companies' retail regulators approved MISO Integration first, with conditions, before evaluating the Entergy-ITC Merger. In fact, they made very clear

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<sup>52</sup> *Id.* at pp 148-49.

<sup>53</sup> Request for Rehearing and Clarification of KCPL and Empire District Electric at 3, FERC Docket No. EC12-145 et al. (July 22, 2013) (arguing that FERC ignored its request and asking the FERC to "find that the application of the MISO RTOR to transmission service transactions through or out of Entergy is unjust and unreasonable, and on that basis should grant the relief requested by the SPP TOs and GMO" and that the FERC "further should find that existing transmission service agreements should be grandfathered at existing rates").

<sup>54</sup> Request for Clarification and Motion for Settlement Judge Proceedings or, in the Alternative, Request for Rehearing of the SPP Transmission Owners, FERC Docket No. EC12-145 et al. (July 22, 2013).

that their approvals of MISO Integration were not contingent on the Entergy-ITC Merger, which would be evaluated separately.<sup>55</sup>

FERC handled the two cases in the same way. It ruled that they are “separate and distinct” transactions, rejecting the argument of the SPP TOs that they be conflated.<sup>56</sup> The only case in which FERC has considered both transactions is when it addressed common issues concerning *zonal* transmission rates (given that, once the Entergy-ITC Merger closes, ITC will assume responsibility for the transmission formula rates previously applicable to the pricing zones of the Operating Companies).<sup>57</sup> Similarly, because the SPP TOs and SPP raised the same arguments regarding loop flows and MISO through-and-out rates in both proceedings, FERC rejected them in both proceedings.

Consistent with the decisions of all other regulators to treat MISO Integration and the Entergy-ITC Merger separately, this Commission stated, in its Order Directing Filing of May 10, 2013 in this case, that, “although this case is set for hearing simultaneously with File No. EO-2013-0396, these cases are not consolidated.” The Commission already has made abundantly clear that this file and the separate File No. EO-2013-0396 have not been consolidated.<sup>58</sup> Likewise, the Commission should rule on this file concerning MISO Integration promptly and without regard to whether it acts immediately with respect to the Entergy-ITC Merger in separate File No. EO-2013-0396. The procedural developments in Arkansas and Texas that underlie the Motion to Delay

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<sup>55</sup> See, e.g., APSC Order No. 72 at 29-31 (finding that APSC approval of MISO Integration does not affect the APSC’s ability to consider the Entergy-ITC Merger in a separate proceeding)

<sup>56</sup> *Midwest Independent Transmission System Operator, Inc.*, 139 FERC ¶ 61,056 at P 229 (2012) (finding that “[w]e agree” that “these two events are separate and distinct”).

<sup>57</sup> *ITC Holdings, Inc.*, 143 FERC ¶ 61,257 at P 5 (2013),

<sup>58</sup> May 10, 2013 Order Directing Filing at 1.

concern only the Entergy-ITC Merger, and the Intervenor set forth no basis in their motion for delaying this separate MISO proceeding. There is therefore no reason to withhold action on MISO Integration promptly.

**B. The Intervenor Raise Only Red Herrings in Seeking to Put this Commission at Odds with the Entergy Operating Companies' Regulators in their Retail Jurisdictions**

The Intervenor have fashioned their arguments as “rate mitigation” or “hold harmless” requests and thereby seek to draw parallels to prior Commission orders that protect ratepayers from FERC-approved incentive returns on equity (“ROE”). The Intervenor have also argued that its “rate mitigation” and “hold harmless” proposals are similar to those proposed by ITC and the Operating Companies in the context of the Entergy-ITC Merger. These comparisons are inapt and confuse the facts and issues.

The issues the Intervenor raise in this file (File No. EO-2013-0431) do not concern EAI’s cost of service, do not concern EAI’s zonal transmission rates and do not concern FERC-approved incentive ROEs. Rather, they concern *MISO’s* FERC-approved *regional* transmission rates. EAI explains these distinctions in more detail below.

**1. MISO Through-and-Out Rate.**

The Intervenor’s first complaint relates to the MISO regional through-and-out rate for transmission service. Under Schedule 7 of the MISO OATT, KCPL must pay the



MISO “single system-wide rate” for that service once EAI joins MISO.<sup>59</sup> The system-wide rate is a *regional* rate based on the weighted average transmission costs in *all* MISO zones, not just EAI or any other transmission owner.<sup>60</sup> Similarly, revenues collected by MISO for drive-through and drive-out service are allocated among all the MISO transmission zones, not just EAI or any other TO.<sup>61</sup>

MISO’s use of *regional* rates for through-and-out transactions has been part of MISO’s rate design since MISO was first approved as an Independent System Operator in 1998.<sup>62</sup> The FERC approved this rate design for a 6-year transition period, finding it to be “similar to that we approved for the PJM and NEPOOL ISOs.”<sup>63</sup> The FERC subsequently upheld MISO’s proposal to continue this rate design after the transition period.<sup>64</sup> In reviewing rate designs in other Regional Transmission Organization proposals, the FERC has consistently held that the use of weighted average rates for RTO through-and-out service is “reasonable.”<sup>65</sup> It is therefore hardly surprising that the FERC rejected KCPL’s request for a special discount off that rate.

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<sup>59</sup> The only exception is that the charge for through-and-out service does not apply to transactions that sink in PJM. FERC determined that MISO’s and PJM’s regional through-and-out charges were unjust and unreasonable for transactions that sink within the combined MISO and PJM regions. See *Midwest Ind. Trans. System Operator, Inc.*, 104 FERC ¶ 61,105 at P 39, *order on reh’g*, 105 FERC ¶ 61,212 (2003).

<sup>60</sup> This rate is developed through a formula described on page 2 of Attachment O of the MISO OATT. Under this formula, the numerator is the sum of the Gross Revenue Requirements determined in the Attachment O rate formula for each transmission owner, minus the sum of the corresponding Revenue Credits. The denominator is the sum of the “Divisors”—*i.e.*, adjusted peak load—for each of the transmission owners as determined in page 1, line 15 of the Attachment O rate formula, adjusted to reflect CBM and TTC flowgate values. The MISO single system-wide rate is a formula rate that is updated to reflect the current information in the Attachment O rate formulas. The system-wide rate is posted on MISO’s OASIS.

<sup>61</sup> The allocation is based on: (a) 50 percent of the revenues are distributed in proportion to transmission investment (as reflected in the Attachment O rate formula) and (b) 50 percent based on power flows using “transmission participation factors.” Appendix C, Section III(7) of the MISO Transmission Owners Agreement (“TOA”).

<sup>62</sup> See *Midwest Ind. Trans. System Operator, Inc.*, 84 FERC ¶ 61,231 at 62,166, *order on reconsideration*, 85 FERC ¶ 61,250, *order on reh’g*, 85 FERC ¶ 61,372 (1998).

<sup>63</sup> 84 FERC at 62,166-67.

<sup>64</sup> See *Midwest Ind. Trans. System Operator, Inc.*, 122 FERC ¶ 61,081 (2008).

<sup>65</sup> See, *e.g.*, *Avista Corp.*, 100 FERC ¶ 61,274 at P 136 (2003); *Carolina Power & Light Co.*, 94 FERC ¶ 61,273 at 62,001 (2002).

This Commission's recent decisions involving KCPL's and Ameren's participation in an RTO underscore why the Intervenor's assertion is without merit. In File No. EO-2012-135, the Commission adopted a Stipulation and Agreement regarding KCPL's continued participation in SPP. The Stipulation treats the incentive ROE issues associated with *utility-specific zonal* transmission rates differently than regional RTO transmission rates. (SPP's zonal rates are applicable to network service, meaning transmission service to loads located within the zone.) With respect to KCPL's zonal transmission rate, the Stipulation provides that "KCP&L recognizes that the Commission has the sole regulatory authority to determine whether or not such incentives related to KCP&L's transmission facilities should be included in rates for Missouri Bundled Retail Load."<sup>66</sup> In contrast, the Stipulation acknowledges that KCPL will be subject to a range of *regional* SPP transmission charges, including with respect to its "balanced portfolio" and other regional projects.<sup>67</sup> Although the Stipulation does not prescribe any specific ratemaking treatment for these regional charges, there is no statement that the Commission may exercise jurisdiction over the transmission costs of other owners (many of which own facilities outside of Missouri) that are included in such a regional charge.

The recent proceeding involving Ameren's participation in MISO provides an even clearer example of this distinction. In that file, the parties had resolved some, but not all of the issues, and the Commission therefore was called upon to decide several of them on the merits. The Commission agreed (as did all the parties) that "the

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<sup>66</sup> Stipulation and Agreement at 6, Section II.B.1, Order Approving Stipulation and Agreement, *In the Matter of the Application of Kansas City Power & Light Company for Authority to Extend the Transfer of Functional Control of Certain Transmission Assets to the Southwest Power Pool, Inc.* (MoPSC July 19, 2013).

<sup>67</sup> *Id.* at 7-9.

transmission component of [Ameren's] bundled retail rates remains subject to the Commission's existing jurisdiction."<sup>68</sup> However, Public Counsel had argued that the Commission had authority to deny the pass-through of incentive ROE charges imposed by transmission owners *other than Ameren*, including an Ameren Transco affiliate. The Commission squarely rejected that claim as in direct conflict with the filed rate doctrine:

The final version of the condition suggested by Public Counsel . . . would require Ameren Missouri to forever relinquish recovery of extra costs associated with the recovery of transmission rate incentives allowed by FERC on transmission projects developed by any company, whether or not affiliated with Ameren. Such a condition would clearly be contrary to the filed-rate doctrine, which prevents a state regulatory agency from looking behind a federally approved rate to deny a state regulated utility's recovery of costs incurred due to payment of that rate.

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For purposes of this case, the "filed rate doctrine" means that this Commission will not be able to deny Ameren Missouri the ability to recover in rates the amounts that it must pay to transmission owners for FERC-established rates for power transmission, even if those FERC-established rates are higher than would have been approved by this Commission. This will also be true even if the transmission owner with a FERC-established rate is affiliated with Ameren Missouri.<sup>69</sup>

This finding applies equally to this case. The MISO through-and-out rate is not an EAI rate, and EAI has no control over how that rate is developed or whether it can be discounted. And, as EAI has noted previously, EAI does not serve any retail customers in Missouri and there is therefore no bundled retail rate at all that would provide a basis for Commission jurisdiction over such issues in the first place.

The Arkansas "rate mitigation" proposals filed in the Entergy-ITC Merger proceedings that are cited by the Intervenorors also have no relevance here. These "rate

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<sup>68</sup> Report and Order at 14, File No. EO-2011-0128, *In the Matter of Application of Union Electric Company for Authority to Continue the Transfer of Functional Control of its Transmission System to the Midwest Independent Transmission System Operator, Inc.*, (MoPSC April 19, 2012).

<sup>69</sup> *Id.* at 16, 21.

mitigation” proposals also address utility-specific transmission costs for zonal rates, not regional transmission rates. For example, in APSC Docket No. 12-069-U, ITC witness Cameron Bready submitted Supplemental Testimony on July 9, 2013 that describes the “rate mitigation” proposal applicable to EAI’s transmission facilities (and related cost of service) that would be transferred to ITC. Mr. Bready explains that ITC Arkansas would provide its wholesale customers (which would include EAI in its capacity as a load serving entity in the Arkansas zone) a discount to its *zonal* transmission rate under the MISO Tariff.<sup>70</sup> The effect of this rate mitigation is to mitigate increases in the zonal transmission rates associated with the loss of the MISO bundled load exemption when EAI no longer owns the transmission facilities. It therefore addresses somewhat similar concerns regarding *zonal* transmission rates that this Commission addressed in the KCPL and Ameren proceedings referenced above. It is *not* a proposal to discount MISO’s regional through-and-out rate<sup>71</sup>—which is the issue raised in this proceeding by KCPL and Empire —and is not even a proposal made in conjunction with MISO Integration.

## **2. The SPP-MISO JOA and Loop Flow Issues.**

Finally, it is clear that KCPL’s alleged concern regarding “loop flows” and the existing MISO-SPP JOA has no bearing on any issues subject to this Commission’s jurisdiction. FERC has exclusive jurisdiction to oversee any renegotiation of the JOA and has exercised that jurisdiction, ordering MISO to report on the status of those

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<sup>70</sup> Bready Supplemental Testimony at 2 (describing discount to the Arkansas Transmission Pricing Zone).

<sup>71</sup> As indicated above, the MISO through-and-out rate is comprised of the cost of service of all TOs in MISO. Thus, any rate mitigation applied to ITC’s facilities would have only an indirect and *de minimis* effect on the regional MISO through-and-out rate.

negotiations later this year.<sup>72</sup> The suggestion by Empire and KCPL that every state commission in the SPP and MISO footprints can exercise authority over those negotiations is wrong. "There can be no divided authority over interstate commerce."<sup>73</sup> With respect to multi-state arrangements, such as the JOA, "[o]nly FERC, as a central regulatory body, can make the comprehensive public interest determination contemplated by the FPA and achieve the coordinated approach to regulation found necessary in *Attleboro*."<sup>74</sup>

## V. CONCLUSION

For the reasons set forth above and in EAI's Initial and Reply Briefs in this file, EAI respectfully requests that the Commission deny in its entirety the Motion to Delay brought in this file and further find and conclude by September 4, 2013 that it has no jurisdiction to consider EAI's MISO Notice, or in the alternative, that the facilities at issue are not "necessary or useful" within the meaning of Section 393.190.1, or in the alternative should approve without conditions the MISO integration as not detrimental to the public interest in Missouri.

Respectfully submitted,

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<sup>72</sup> *Entergy Services, Inc.*, 143 FERC ¶ 61,257 at PP 131-135 (2013).

<sup>73</sup> *Ark. La. Gas Co.*, 453 U.S. at 580.

<sup>74</sup> *Appalachian Power Co. v. Public Service Commission of West Virginia*, 812 F.2d 898, 905 (4th Cir. 1986). The Federal Power Act closed the "*Attleboro* gap," which was created when the Supreme Court ruled that states could not regulate wholesale electricity sales, by providing FERC with exclusive jurisdiction over wholesale electricity sales in interstate commerce. The FPA did more than close that gap, however. As the Supreme Court held in *New York v. FERC*, 535 U.S. 1, 6 (2002), "[w]hen it enacted the FPA in 1935, Congress authorized federal regulation of electricity in areas beyond the reach of state power, such as the gap identified in *Attleboro*, but it also extended federal coverage to some areas that previously had been state regulated," such as federal regulation of (1) wholesale interstate sales of electricity that had previously been subject to state regulation, and (2) interstate transmission of electricity that had not been at issue in *Attleboro*.

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## **CERTIFICATE OF SERVICE**

The undersigned does hereby certify that a copy of the above and foregoing has been served upon counsel of record by forwarding the same by electronic mail and/or first class mail, postage prepaid, this 26<sup>th</sup> day of August, 2013.

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