

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,
AND TRANSMISSION COMPANY ARKANSAS, LLC’S
RESPONSE IN OPPOSITION TO APPLICATIONS TO INTERVENE
AND
MOTION TO LIMIT THE SCOPE OF THE PROCEEDING**

COME NOW Entergy Arkansas, Inc. (“EAI”), Mid South TransCo LLC (“Mid South TransCo”), and Transmission Company Arkansas, LLC (“TC Arkansas”) (collectively, “EAI Applicants”), pursuant to Missouri Public Service Commission (“Commission”) Rule 4 CSR 240-2.080(13), and for their (1) Response in opposition to Empire’s Application To Intervene (the “Empire Application”) filed by The Empire District Electric Company (“Empire”) and the Application of Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company for Leave to Intervene (collectively, “KCP&L”; “KCP&L/GMO Application”) and (2) Motion to Limit the Scope of the Proceeding, respectfully state as follows:

I. BACKGROUND

1. As reflected in the Commission's *Order Directing Notice, Setting Intervention Deadline, Directing Filing and Scheduling A Conference* ("Order") issued in this matter on February 15, 2013, "Entergy Arkansas, Inc. ('EAI') filed the Joint Application with the other named entities in the caption above for approval of the transfer of certain assets, through a series of steps, which will ultimately result in the transmission assets of EAI being transferred to an independent transmission company whose business model is solely focused on the provision of transmission services."¹

2. Less than eight months ago in File No. EA-2012-0321, this Commission granted EAI a line certificate of convenience and necessity ("CCN"), for its limited transmission and distribution facilities² 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"),³ 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").⁴ EAI does not hold itself out as providing electric service to the general public in Missouri and, indeed, it has no retail customers in Missouri.⁵

¹ Order at 1. EAI notes the "series of steps" include various reorganizations that accomplish the Transaction.

² EAI's facilities located in Missouri are very limited, as fully described in Appendix 4 to the Joint Application.

³ 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.

⁴ The APSC regulates public utilities which provide electric, gas, telecommunications, water and sewer services to Arkansas consumers.

⁵ As addressed in File No. EA-2012-0321, EAI's predecessor (Arkansas Power and Light Company, "AP&L") served wholesale and retail customers in Missouri in the 1980s and 1990s. In 1991, after receiving authorization in consolidated Cases No. EM-91-29 and EM-91-404, AP&L sold the substantial portion of its Missouri assets to Union Electric Corporation, now known as Ameren Missouri, and to Sho-

3. These same limited transmission facilities, pursuant to the subject Joint Application in this proceeding, are now being transferred to Joint Applicant ITC Midsouth LLC, an operating subsidiary of ITC Holdings Corp. (“ITC”). One of ITC Holding Corp.’s other operating subsidiaries, ITC Midwest LLC, is known to this Commission and operates limited transmission facilities in northeastern Missouri as approved in Commission File No. EO-2007-0485.⁶

4. Assuming the closing of EAI’s proposed transaction to spin off and merge its transmission assets with ITC (the “ITC Transaction”), EAI will retain limited distribution facilities in Missouri and, accordingly, its CCN will need to be amended to reflect only those remaining facilities.⁷

5. Thus, the matters set forth in the Joint Application are very straightforward matters, based on facts, or facts very similar to, those recently considered by this Commission in granting EAI’s CCN in July 2012.

Me Power Corporation. AP&L disposed of its Missouri retail service assets used to serve retail customers in Missouri, and the Commission cancelled AP&L’s certificates of convenience and necessity (“CCNs”), to the extent they were not transferred to Union Electric Company or to Sho-Me Power Corporation. EAI retained limited transmission and distribution facilities used to furnish wholesale electric service to various cities and electric cooperatives in Missouri subject to the rate jurisdiction of the FERC and retail electric service only to EAI customers in Arkansas subject to the retail rate jurisdiction of the APSC. When a cooperative requested a new interconnection point in Pemiscot County, EAI filed the application initiating File No. EA-2012-0321, to the extent the Commission believed action was necessary with respect to the FERC-jurisdictional facilities; the Commission granted a CCN for EAI’s existing limited facilities in Missouri, including the new facility, and waived the reporting requirements of certain Commission rules.

⁶ Joint Application at note 6.

⁷ *Id.* at note 7 and Appendix 4.

II. PENDING INTERVENTION REQUESTS

6. The Commission's Order of February 15 directed any person or entity wishing to intervene in this matter to file an application no later than February 26, 2013 and instructed that the "Staff of the Missouri Public Service Commission shall investigate and file a report and recommendation regarding this application no later than May 15, 2013."⁸

7. The Empire Application was filed on February 25, 2013, and asserts that Empire is a member of the Southwest Power Pool Regional Transmission Organization ("SPP RTO"), has an ownership share of the Plum Point coal fired power station near Osceola, Arkansas, and is electrically interconnected to EAI's high voltage transmission system.⁹ Further, Empire asserts that its Missouri customers "will be directly impacted as a result of this proceeding."¹⁰ However, Empire does not support how the transfer of the limited facilities in Missouri, which is the subject of the Joint Application, creates any such impacts; instead, Empire alleges "maintenance and outage management" issues and transmission scheduling with the Arkansas Plum Point "generation from the EAI transmission system to the SPP regional system."¹¹ Finally, Empire states that it is interested in generating capacity as a "utility on the seam of the EAI transmission system."¹² As explained below, these issues concern agreements and matters that are

⁸ Order at 2.

⁹ Empire Application at 2.

¹⁰ *Id.*

¹¹ *Id.* at 3.

¹² *Id.*

subject to the jurisdiction of the FERC and, in any event, do not arise as a result of the limited facilities transfer set forth in the Joint Application.

8. Empire's assertions are a thinly veiled attempt to reassert complaints it previously raised before FERC and in Arkansas with respect to EAI's proposal to join the Midwest Independent Transmission System Operator, Inc. ("MISO") Regional Transmission Organization ("RTO").¹³ It is true that under the proposed ITC Transaction, ITC would become the transmission owner and would be responsible for scheduling and performing maintenance activities on the respective transmission assets. However, as discussed below, EAI proposes to join MISO regardless of whether or not the ITC Transaction closes and so in any event MISO would be the reliability coordinator for those facilities.¹⁴ As the reliability coordinator for EAI's transmission facilities, MISO would have the authority to resolve any potential reliability conflicts related to planned outages about which Empire is complaining in this proceeding. Indeed, MISO serves in that role today as the Independent Coordinator of Transmission for the Entergy Transmission System. Similarly, Empire's stated concerns regarding scheduling of transmission service relate to FERC-jurisdictional agreements administered, and functions performed, by MISO (and not to the ITC Transaction set forth in the Joint Application) because, upon integration into MISO, EAI would take transmission service under the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff, and MISO would be responsible for scheduling

¹³ See <https://www.midwestiso.org/AboutUs/Pages/MISOFAQ.aspx>. MISO describes its organization as follows: The Midwest ISO is an independent, non-profit regional transmission operator responsible for maintaining reliable transmission of power in 15 U.S. states and the Canadian province of Manitoba.

¹⁴ The North American Electric Reliability Corporation ("NERC") requires all transmission owners (including Empire) to designate a reliability coordinator.

transmission service and performing any security functions, such as transmission outage scheduling. Thus, when analyzed more closely, the issues Empire raises in its petition fairly relate to EAI's integration into MISO, which is the subject of multiple proceedings pending before FERC, and do not arise as a result of the limited facilities transfer set forth in the Joint Application.

9. Further, Empire asserts that, as a long-term transmission service customer of EAI, it is likely that the rates, terms, and conditions of those FERC-jurisdictional interconnection agreements (*i.e.*, the interconnection agreement between EAI and Empire and the interconnection agreement between Plum Point and Entergy Services, Inc.¹⁵ on behalf of EAI) will be affected by the proposed actions in the Joint Application. Empire fails to explain that while transmission rates that Empire pays for transmission service from Plum Point will be affected by ITC's FERC-approved tariff, the primary source of the rate impacts about which Empire complains are the result of EAI's integration into MISO pursuant to a transmission rate proposal filed before FERC in Docket No. ER13-948 to facilitate integration into MISO. Empire will have the opportunity to raise the potential cost increase issues at FERC in the context of that MISO integration proceeding. Moreover, the potential increases in the cost of transmission service from Plum Point associated with EAI's joining MISO, as well as potential congestion issues, were concerns Empire raised as a party to the APSC's proceeding addressing the proposed transfer of control to MISO, which is discussed in greater detail below.¹⁶ In that Arkansas proceeding, the APSC determined that it is

¹⁵ Entergy Services, Inc. is a subsidiary of Entergy Corporation that provides technical and administrative services to all the Entergy Operating Companies.

¹⁶ Docket No. 10-011-U before the APSC.

consistent with the public interest to allow EAI to pursue integration into MISO.¹⁷ Empire is now attempting a third bite at the apple—having first raised these issues before the APSC and now having the opportunity to raise them at FERC—by rearguing the same rate concerns and suggesting that they are the result of the ITC Transaction set forth in the Joint Application.¹⁸ Indeed, as evidenced by the fact that Empire began asserting such claims before the APSC in Docket No. 10-011-U, the issues predate even EAI's announcement of the ITC Transaction in December 2011. The issues set forth in the Empire Application do not support Empire's intervention in this Missouri transfer proceeding.¹⁹

10. Similarly, the KCP&L/GMO Application was filed on February 26, 2013, and on its face seeks to interject issues related to integration into MISO that are the subject of ongoing proceedings before the FERC. Specifically, KCP&L alleges incorrectly that the “asset transfer requested in this case is merely one piece of the much larger ‘Transaction’...that would result in the integration of all of Entergy Corporation's transmission facilities into [MISO].”²⁰ KCP&L and other parties have raised this argument at FERC in multiple pending proceedings and FERC has already once rejected it, stating as follows:

¹⁷ In Docket No. 10-011-U before the APSC, EAI received Order No. 72 (dated on October 26, 2012) granting EAI and MISO's Motions for Finding of Compliance and authorizing EAI to move forward with the EAI/MISO integration process.

¹⁸ Empire Application at 2-3.

¹⁹ Indeed, Empire used its Plum Point interest in Arkansas to support its intervention in EAI's application to the APSC in Docket No. 12-069-U seeking approval of the ITC Transaction. Empire's intervention was granted on December 21, 2012, and discovery in the Arkansas transfer proceeding has been ongoing for over five months. Empire has been provided more than ample opportunity to become familiar with the ITC Transaction and the fact that it is separate and apart from EAI's integration into MISO.

²⁰ KCP&L/GMO Application at 3.

[C]oncerning the proposed ITC transaction [and MISO integration], Filing Parties have made clear that *these two events are separate and distinct*. We agree. As Entergy notes in its answer, the proposed Tariff revisions are relevant to Entergy's regulators and transmission customers regardless of the ownership status of the transmission facilities.

Midwest Independent Transmission System Operator, Inc., 139 FERC ¶ 61,056 at P 229 (2012) (emphasis added). This finding is consistent with the fact that, as discussed in greater detail later, EAI will join MISO regardless of the outcome of the ITC Transaction. Further, as discussed below, the cost and congestion concerns asserted by KCP&L in support of its intervention are issues, with respect to the integration of certain Entergy Operating Company assets into MISO, that are properly FERC jurisdictional issues.

11. Even putting aside the fact that all the issues raised by these two entities are subject to FERC's jurisdiction or were already addressed by the APSC, it is also worth noting that neither of those parties' concerns stems from the limited transfer of EAI's Missouri facilities, which is the subject of the instant Joint Application. The Missouri facilities that are the subject of the instant Joint Application relate to EAI's interconnection points with Associated Electric Cooperative, Inc. These connection points are not implicated, however, by the transmission paths that Empire and KCP&L have for the Plum Point and Crossroads generating units referenced in their applications. To the contrary, Empire's transmission service from Plum Point is delivered to the Empire balancing area within SPP, and KCP&L's (GMO) transmission service from Crossroads is delivered to the Central Southwest ("CSW") balancing area within SPP – neither interconnection point is in Missouri. Thus, even though these

delivery points are not within the Missouri facilities that are the subject of this proceeding, this does not change the fact that MISO-driven concerns are not properly within the scope of the ITC Transaction.

12. Commission Rule 240-2.075(3) indicates that the Commission “*may* grant a motion to intervene or add new member(s) if – (A) The proposed intervenor or new member(s) has an interest which is different from that of the general public and which may be adversely affected by a final order arising from the case; or (B) Granting the proposed intervention would serve the public interest.” (emphasis added). Further, in addressing interventions in File No. EA-2012-0281, the Commission noted that while generally it has interpreted these standards broadly in the interest of having all positions presented and argued to the Commission, “**the public interest is not served if the parties spend time and resources presenting arguments and positions that the Commission is not authorized to address.**”²¹ (emphasis added). Certainly, that is the case in the instant proceeding where Empire and KCP&L attempt to interject unrelated MISO issues that relate to agreements and matters subject to FERC jurisdiction or, in any event, already were addressed by the Arkansas Commission through its retail regulation of EAI .

13. EAI Applicants oppose any attempt by a party seeking intervention in this matter to expand the scope of this proceeding to include FERC-jurisdictional matters or matters pertaining to facilities issues in other states which are beyond this Commission’s jurisdiction and which are clearly outside the four corners of the Joint

²¹ Order Regarding Application to Intervene, File No. EA-2012-0281 at 3.

Application. Accordingly, the EAI Applicants oppose both the Empire Application and the KCP&L/GMO Application to intervene in this matter.

III. MOTION TO LIMIT THE SCOPE OF THE PROCEEDING

14. Through their participation in other APSC and FERC matters, Empire and KCP&L should be aware that EAI plans to integrate into MISO regardless of whether ITC owns the transmission assets or EAI continues to own them. EAI has pursued joining MISO and has taken significant strides toward achieving that objective.

15. On December 18, 2005, EAI issued notice that it was terminating its participation in the Entergy System Agreement (“System Agreement”)²² effective December 2013.²³ In February 2010, the APSC initiated a proceeding to review the process through which EAI would determine its post-System Agreement operating arrangement. On May 12, 2011, EAI submitted to the APSC in that docket a report, with supporting testimony, evaluating the available options for post-System Agreement operations, concluding that participation in MISO was the preferred option for EAI and also noting that EAI would need to maintain a “stand-alone path”²⁴ for implementation in the event that EAI determined it would be unable to integrate into MISO at the time its participation in the System Agreement terminated. On November 28, 2011, EAI

²² The System Agreement is a rate schedule approved by the FERC and contract entered into among ESI and the Entergy Operating Companies, which requires the Entergy Operating Companies to plan, construct and operate their generation and bulk transmission facilities as a single, integrated electric system. On December 19, 2005, EAI gave notice that it will terminate its participation in the System Agreement effective December 18, 2013.

²³ The System Agreement provides that any company may terminate its participation in that Agreement by 96 months written notice to the other companies.

²⁴ This path would contemplate EAI operating as a separate Balancing Authority but continuing to take transmission service under the Entergy OATT.

submitted an application in that docket, requesting a finding from the APSC that EAI's proposed transfer of functional control of its transmission facilities to MISO is in the public interest. The APSC conducted extensive proceedings, including numerous rounds of testimony from EAI and other parties and conducting several days of hearings before the APSC. Similar proceedings regarding the integration of the other Entergy Operating Companies were conducted before their respective retail regulators. All of the regulators in these other states with retail rate jurisdiction have made the applicable public interest determinations regarding their respective Entergy Operating Company's integration into MISO.

16. The APSC issued Order No. 72 (dated on October 26, 2012) granting EAI's and MISO's Motions for Finding of Compliance and authorizing EAI to move forward with the EAI/MISO integration process.²⁵ Additionally, in that docket on January 23, 2013, EAI filed a motion and supporting testimony seeking the Arkansas Commission's approval to drop the "stand alone option" and focus its efforts solely on MISO integration. EAI supported this request based upon the progress that EAI has made toward integrating into MISO, including that it signed the MISO Transmission Owners Agreement and submitted its MISO Membership Application on October 31, 2012, that the MISO Board of Directors approved EAI as a new transmission-owning member of MISO, and that current MISO implementation milestones are in green-light status.²⁶ Thus, even though the ITC Transaction is currently pending before the APSC (Docket No. 12-069-U), EAI's request to drop the stand-alone option and pursue MISO

²⁵ APSC Order No. 72 may be found at http://www.apscservices.info/pdf/10/10-011-u_956_1.pdf.

²⁶ EAI's motion may be found at http://www.apscservices.info/pdf/10/10-011-U_983_1.pdf.

integration exclusively demonstrates that decision is independent of and separate from the ITC Transaction.

17. In addition, any purported issues raised by Empire and KCP&L relating to any congestion or loop flows caused by EAI joining MISO and any compensation due to be paid as a result of such congestion/loop flows are clearly jurisdictional to the FERC. The FERC has already addressed congestion/loop flow issues that could result from EAI's integration with MISO, including whether a provision of the Joint Operating Agreement ("JOA") allowing MISO and SPP to use each other's systems was applicable to EAI's integration into MISO. In fact, SPP and KCP&L sought rehearing of the FERC's July 1, 2011 order finding that the provision does apply, and on January 26, 2012, the FERC denied their rehearing request and noted that such issues of congestion and costs should be addressed in a future FERC docket addressing proposed amendments to the MISO/SPP JOA. (See *attached*, Order on Rehearing, January 26, 2012, FERC Docket No. EL11-34-001, Midwest Independent Transmission System Operator, Inc.).²⁷

²⁷ The APSC likewise has ruled that concerns relating to loop flows and transmission seams are jurisdictional to the FERC:

Several of the issues discussed above that have been raised by the Parties in opposition to EAI's possible MISO membership are outside this Commission's jurisdiction or the scope of this Docket. For example, concerns associated with the JOA, its renegotiation and any resulting compensation associated with loop flows pursuant to the JOA are FERC matters on which this Commission will not comment. That said, the Commission is persuaded that FERC's policies toward compensation for loop flow are clear and are tied not to whether any loop flows will occur, but whether such loop flows result in the congestion of flowgates.

The Commission similarly finds that the concerns raised in this Docket regarding transmission seams are, generally speaking, FERC jurisdictional.

18. Such FERC jurisdictional matters are clearly beyond the scope of this limited transfer proceeding in Missouri, as are matters pertaining to Empire's Arkansas Plum Point MISO cost concerns which already were heard by the Arkansas Commission.²⁸ It is inappropriate to facilitate delay and increase the expense to the parties by allowing the attempted interjection of such issues; likewise, allowing interjection of such issues further risks inconsistent results with the decisions of the agencies having proper jurisdiction to hear such matters. Thus, the EAI Applicants respectfully request that the Commission expressly limit the scope of this proceeding by affirming that the Commission will not address issues relating to EAI's integration into MISO, which are the subject of multiple proceedings before the FERC or were already fully addressed by the APSC.

WHEREFORE, the EAI Applicants respectfully request the Commission (1) deny the applications to intervene by Empire and KCP&L; (2) expressly limit the scope of this proceeding by affirming that the Commission will not address issues relating to EAI's integration into MISO; and (3) grant all other appropriate relief to which the EAI Applicants are entitled.

²⁸ Again, although EAI questions the validity of such a claim, to the extent that Empire suggests it has other operational concerns with the facilities in Plum Point, Arkansas as a result of the ITC Transaction, Empire is a party to the Arkansas ITC Transaction proceeding in Docket No. 12-069-U. Any such concerns, however, are without regard to the transfer of limited facilities in Missouri and are not appropriate for the instant proceeding.

Respectfully submitted,

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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 7th day of March 2013 to the following:

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