

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

In the Matter of the Application of	)	
The Empire District Electric Company	)	
for Authority to Transfer Functional Control	)	Case No. EO-2006-_____
of Certain Transmission Assets to the	)	
Southwest Power Pool, Inc.	)	

**APPLICATION**

COMES NOW The Empire District Electric Company (Empire or Applicant), in accordance with Section 393.190.1, RSMo (2000) and 4 CSR 240-3.110, and, for its application to transfer functional control of certain transmission assets to the Southwest Power Pool, Inc. (SPP), states as follows to the Missouri Public Service Commission (Commission):

**Applicant**

1. Empire is a Kansas corporation with its principal office and place of business at 602 Joplin Street, Joplin, Missouri 64801. Empire is qualified to conduct business and is conducting business in the states of Missouri, Kansas, Arkansas and Oklahoma. Empire is engaged, generally, in the business of generating, purchasing, transmitting, distributing and selling electric energy in portions of said states. Empire also provides water service in Missouri. Empire's Missouri operations are subject to the jurisdiction of the Commission as provided by law.

2. A certified copy of Empire's Restated Articles of Incorporation, as amended, was filed in Case No. EF-94-39 and is incorporated herein by reference in accordance with Commission rule 4 CSR 240-2.060(1)(G). A Certificate from the Missouri Secretary of State that Empire, a foreign corporation, is authorized to do business in Missouri was filed with the Commission in Case No. EM-2000-369 and is incorporated by reference in accordance with Commission rule 4 CSR 240-2.060(1)(G). This information is current and correct. Empire has

no pending actions or final unsatisfied judgments or decisions against it from any state or federal agency or court that involve customer service or rates. Empire has a general rate case pending before the Kansas Corporation Commission that is identified as Case No. 05-EPDE-980RTS. Empire's annual report and assessment fees are not overdue.

3. Pleadings, notices, orders and other correspondence and communications concerning this application should be addressed to the undersigned counsel and:

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### **SPP**

4. SPP is an Arkansas non-profit corporation with its principal place of business in Little Rock, Arkansas. SPP came into existence in 1941, when 11 companies joined together voluntarily to serve critical national defense needs during World War II. When the war ended in 1945, SPP's Executive Committee, which included a representative from Empire, decided the organization should be retained to further the benefits of coordinated operation of their electric systems. As a result of the northeast power interruption in late 1965, a number of reliability councils were organized, and in 1968 SPP joined with 12 other entities to form the National

Electric Reliability Council, now known as the North American Electric Reliability Council (NERC). SPP incorporated as a not-for-profit corporation in 1994.

5. SPP currently has forty-five members serving more than 4 million customers in a 255,000 square mile area covering all or part of the States of Arkansas, Kansas, Louisiana, Mississippi, Missouri, New Mexico, Oklahoma and Texas. SPP's membership includes thirteen investor-owned utilities, seven municipal systems, eight generation and transmission cooperatives, two State authorities, one Federal power-marketing agency, three independent power producers and twelve power marketers. A list of SPP's current members is attached as **Appendix A**.

6. Empire is a transmission-owning member of the SPP pursuant to the SPP Membership Agreement (Membership Agreement), attached as **Appendix B**, and currently receives SPP regional reliability coordination, open access transmission tariff (OATT) administration, and network integrated transmission services (NITS) for Empire's retail and wholesale electric customers.

7. Since 1998, SPP has administered open-access transmission service across the SPP region under the terms of SPP's open-access transmission tariff, filed with and approved by the Federal Energy Regulatory Commission (FERC). The transmission facilities used to provide service under the SPP tariff are comprised of the transmission facilities owned by a number of public utility and non-public utility members of SPP that are currently committed to the SPP tariff. Customers taking service under the SPP tariff now possess the ability to receive and/or deliver power throughout the SPP region with one-stop shopping, while paying only a single non-pancaked transmission charge for service under the SPP tariff.

## **SPP RTO**

8. FERC Order No. 2000<sup>1</sup> strongly encouraged all public utilities that own, operate or control interstate transmission facilities to participate in a Regional Transmission Organization (RTO). On October 15, 2003, SPP submitted a filing pursuant to Section 205 of the Federal Power Act (FPA), 16 U.S.C. § 8244, and Section 35.34 of the FERC's regulations to establish the SPP RTO. This filing sought recognition that the SPP RTO satisfied the requirements of Order No. 2000 and FERC's regulations issued thereunder.

9. In an order issued February 10, 2004, the FERC granted RTO status to SPP, subject to fulfillment of certain requirements. *Southwest Power Pool, Inc.*, 106 FERC ¶ 61,359 (Docket Nos. RT04-1-000 and ER04-48-000). The order noted that approving SPP's RTO proposal would further the FERC's goals of establishing efficient, reliable markets throughout the region, and prevent undue discrimination in the provision of electric transmission services.

10. In its order granting RTO status, the FERC directed SPP to: (1) implement its independent Board and modify its governance structure; (2) expand the coverage of SPP's tariff to ensure that SPP is the sole transmission provider; (3) obtain clear and sufficient authority to exercise day-to-day operational control over the appropriate transmission facilities within its footprint; (4) have an independent market monitor in place to monitor the competitiveness and efficiency of the market; (5) obtain clear and precise authority to independently and solely determine which projects to include in the regional transmission plan and to prioritize the projects; and, (6) have on file with the Commission a seams agreement with the Midwest Independent Operator, Inc. prior to receiving RTO authorization. SPP further was required to file revised Bylaws and a revised Membership Agreement, pursuant to Section 205 of the

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<sup>1</sup> *Regional Transmission Organizations*, Order No. 2000, III FERC Stats & Regs, Regs. Preambles ¶ 31,089 (1999), order on reh'g, Order No. 2000-A, III FERC Stats. & Regs., Regs. Preambles ¶ 31,092 (2000).

Federal Power Act. The order provided that SPP RTO status would be achieved once these actions were taken. SPP was directed to make a compliance filing demonstrating those outstanding issues were completed. On May 3, 2004, SPP made the compliance filing required by FERC.

11. By order dated July 2, 2004, FERC accepted in part and rejected in part SPP's compliance filing and directed SPP to make a further compliance filing prior to being recognized as an RTO. *Southwest Power Pool, Inc.*, 108 FERC ¶ 61,003 (Docket Nos. RT04-1-002 and ER04-48-002). SPP made its further compliance filing on August 2, 2004. In a series of orders issued October 1, 2004, FERC granted SPP RTO status subject to certain modifications.<sup>2</sup> SPP submitted the requisite modifications for approval on November 1, 2004. On January 24, 2005, FERC issued an order accepting SPP's compliance filing effective October 27, 2004, finding that SPP's proposed modifications satisfy the requirements of FERC's October 1 order.<sup>3</sup>

#### **Application to Transfer Functional Control**

12. The Membership Agreement requires SPP's transmission-owning members to transfer functional control of their transmission facilities to SPP. Paragraph 109 of the February 10, 2004, FERC Order cited above, states that "under a functioning SPP RTO, the SPP transmission owners will no longer be the transmission providers. The SPP will become the sole provider of transmission service, as prescribed by Order No. 2000, and the transmission owners must take all transmission services from SPP."

13. Section 393.190.1, RSMo states, in part, that "No . . . electrical corporation . . . shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the

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<sup>2</sup> *Southwest Power Pool, Inc.*, Order on Compliance Filing, 109 FERC ¶ 61,009; *Southwest Power Pool, Inc.*, Order on Proposed Joint Operating Agreement, 109 FERC ¶ 61,008; *Southwest Power Pool, Inc.*, Order on Rehearing, 109 FERC ¶ 61,110.

<sup>3</sup> *Southwest Power Pool, Inc.*, 110 FERC ¶ 61,046 (2005).

whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public, nor by any means, direct or indirect, merge or consolidate such works or system, or franchises, or any part thereof, with any other corporation, person or public utility, without having first secured from the commission an order authorizing it so to do.”

14. By this Application, Applicant, as a FERC- and Missouri-jurisdictional utility, seeks approval of the Commission to transfer functional control of certain mutually agreed-to transmission assets to SPP and to continue participation in the SPP RTO. Empire will continue to own its transmission facilities.

15. Transmission owning members of the SPP are required to transfer functional control of their transmission facilities to the SPP. Section 2.1.1(k) of the Membership Agreement states that “SPP shall have the authority to direct the day-to-day operations of the Tariff Facilities in order to carry out its responsibilities as a Transmission Provider and Reliability Coordinator as described in SPP’s Operation Authority Reference document. . .” By virtue of having functional control of such facilities, SPP is able to direct the day-to-day operation of each member’s transmission facilities and to administer transmission service under the SPP Open Access Transmission Tariff (SPP OATT) over each owner’s facilities.

16. The above-referenced Operational Authority Reference document lists the functions that are included in SPP’s authority and that involve functional control. These functions include: scheduling authority over tariff facilities (“The Electric Transmission system and the Distribution Facilities subject to SPP’s tariff administration.” Section 1.17, Membership Agreement (**Appendix B**)); determining the Available Transmission Capacity under the SPP OATT; coordinating with other regions; directing transmission construction under coordinated planning criteria or under the SPP OATT; acting as a reliability coordinator; directing control

areas to maintain adequate reserves; directing the emergency response of any of SPP's members, including the shedding of firm load; monitoring and coordinating voltage schedules; directing redispatch of generation in accordance with the SPP OATT; reviewing and coordinating transmission and generation maintenance schedules; and, redirecting maintenance outage schedules for reliability reasons and providing compensation.

17. Empire asks the Commission to approve the transfer of functional control of certain transmission assets to the SPP RTO consistent with the recognition by FERC of the SPP as an RTO in Docket No. RT04-01, and subsequent related dockets. The transmission assets for which Empire proposes to transfer functional control to SPP within its four-state territory is marked as **Appendix C**, and attached hereto. Such transfer of functional control to SPP will ensure that the administration of transmission service over these facilities is conducted independently from the owners of electric generation facilities in accordance with the relevant Orders of FERC. Empire will continue to own, operate and be responsible to maintain these transmission facilities.

18. The transfer of functional control is not detrimental to the public interest because Empire does not anticipate any substantial change in the provision of retail electric service and the transfer has the potential to increase transmission system reliability and wholesale competition in generation purchases and sales, consistent with the FERC's expressed desire to establish RTOs.

19. This request for approval to transfer functional control of Empire's transmission systems to the SPP RTO is specifically conditioned upon Empire receiving similar authority and approval from the other state commissions in which Empire operates (where such authorization and approval are required – i.e Arkansas and Kansas). Empire has made a similar application

with testimony to the Kansas Corporation Commission in Docket No. 06-WSEE-203-MIS and has become a party to the SPP's Certificate of Convenience and Necessity Application by Order of the Arkansas Public Service Commission in Docket No. 04-137-U. Empire requests that if the Commission grants the requested authority and approval, the Commission's order specifically provide that such approval shall not become effective until Empire receives approval from the other commissions requiring approval.

20. EDE also seeks authority from the Commission, to the extent such authority is deemed by the Commission to be necessary and appropriate, to continue to take network integration transmission service from SPP to serve EDE's retail load in Missouri.

### **Cost-Benefit Analysis**

21. Section 7.2 of the SPP Bylaws provided for creation of the SPP Regional State Committee (RSC). As described in the bylaws, the RSC is to be comprised of one designated commissioner from each state regulatory commission with jurisdiction over one or more SPP members.<sup>4</sup> The current membership of the RSC is: RSC President Denise Bode, Commissioner, Oklahoma Corporation Commission; RSC Vice-President Sandra Hochstetter, Chairman, Arkansas Public Service Commission; RSC Secretary Julie Parsley, Commissioner, Public Utility Commission of Texas; RSC Member Steve Gaw, Commissioner, Missouri Public Service Commission; and RSC Treasurer Brian Moline, Chair, Kansas Corporation Commission.

22. The SPP RSC, with the assistance of the SPP, facilitated and managed the production of an SPP RTO cost-benefit study by an independent consultant – Charles River Associates. The study quantified the potential costs and benefits associated with participation in

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<sup>4</sup> The state of New Mexico is not currently represented on the RSC because its RSC member, David King of the New Mexico Public Regulation Commission, withdrew from the RSC due to concerns raised about his membership by the New Mexico Attorney General.



the SPP RTO. The cost-benefit study projects the effects and benefits of an SPP RTO energy imbalance market (Phase I) implementation and the RSC-approved regional transmission expansion cost allocation policy. On an overall basis, the RSC cost benefit study showed a net benefit of approximately \$48 million to Empire’s retail electric customers.<sup>5</sup>

**Documents Required by Rule**

23. As to the material required by 4 CSR 240-3.110(1)(B), there is no agreement to “sell.” The agreement that is the subject of the transaction is marked **Appendix B**, and attached hereto.

24. As to the reasons required by 4 CSR 240-3.110(1)(D) as to why “the proposed sale of the assets is not detrimental to the public interest,” Applicant states that there is no proposed sale. Further, the transfer of functional control is not detrimental to the public interest because:

a. The separation of functional control of transmission from generation and the transfer of functional control of the Applicant’s transmission facilities to SPP is strongly encouraged by FERC Order 2000 and is intended to further ensure equal access to the transmission system which should be in the public interest of Missouri electric customers;

b. As demonstrated by the RSC cost-benefit study, transfer of functional control of the Applicant’s transmission facilities to the SPP RTO and Applicant’s participation in the SPP RTO may have an overall benefit for Missouri electric customers. In addition, Applicant will continue to be regulated by the Commission;

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<sup>5</sup> It is important to note that the net benefits to Empire’s electric customers may change dramatically if certain of the Missouri electric utilities do not also participate in the SPP RTO.

c. By promoting the efficient use of generation and transmission resources, the transaction should have positive effects on the environment. The RSC cost-benefit study indicates reductions in both NO<sub>x</sub> and SO<sub>x</sub> emissions for the SPP region as a result of the proposed SPP energy imbalance market;

d. RTO formation will result in new mechanisms that facilitate regional transmission construction. The timely construction of appropriate transmission facilities and the appropriate sharing of costs among transmission customers throughout the SPP area would be in the public interest of Missouri retail electric consumers; and,

e. Transfer of the Applicant's functional control of its transmission facilities will not have any effect on the current allocation of jurisdiction over electric utility operations between the Commission and FERC. The Commission's jurisdiction should be effectively preserved by its continued regulation of the Applicant.

25. As to the material required by 4 CSR 240-3.110(1)(E), Empire states that there is no "purchaser" because there is no sale. Additionally, Empire does not anticipate that SPP will be subject to the jurisdiction of the Commission.

26. As to the material required by 4 CSR 240-3.110(1)(F), Empire states that there is no expected impact on the tax revenues of any political subdivisions because there will be no transfer of title concerning the subject facilities. Empire will continue to own the facilities and will continue to be responsible for taxes levied thereon.

#### **Rate Making Implications and Cost Recovery Certainty**

27. Applicant anticipates that, as a result of participation in the SPP RTO, it will incur costs that generally fall into two categories. These costs are anticipated to be: a) FERC-approved costs and fees under the SPP RTO tariff assessed against and paid by Applicant; and, b) other

costs of participating in the SPP RTO, which Empire may have some ability to control.<sup>6</sup> Empire seeks recognition by the Commission that all FERC-approved costs and fees addressed by item a) above, and costs prudently incurred by Empire and included within the description of item b) will be included by the Commission in Empire's rates, when properly requested.

### **Timing**

28. The SPP RTO is scheduled to begin its Energy Imbalance Service (EIS) market on May 1, 2006. The EIS market is designed to create a real-time energy spot market based on locational pricing. Accordingly, Empire seeks the requested approval sufficiently in advance of May 1, 2006, that Empire may participate in the EIS market from its inception.

WHEREFORE, Empire respectfully requests that the Commission issue its order:

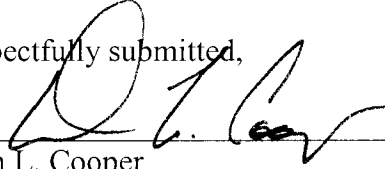
- A. Authorizing Empire to transfer functional control to the SPP RTO in accordance with the SPP RTO Membership Agreement (**Appendix B**) of certain transmission facilities as identified in **Appendix C** in its application and to take any and all other actions which may be reasonably necessary and incidental to Empire's performance thereunder, to include performance under such subsequent agreements as may be approved by FERC;
- B. Acknowledging that if the Commission approves this Application, when properly requested for inclusion in such rates by Empire, the Commission will include in Empire's Commission jurisdictional rates:
  - i. all FERC-approved costs and fees under the SPP RTO tariff assessed against and paid by Empire;

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<sup>6</sup> This latter category would generally include the cost of internal systems that Empire would be required to install to participate in the SPP RTO.

- ii. the prudently incurred costs of participating in the SPP RTO, which Empire has some ability to control;
- C. Making final authorization to Empire by the Commission subject to Empire receiving similar approval from the state commissions in Kansas and Arkansas;
- D. Authorize, to the extent such authority is deemed by the Commission to be necessary and appropriate, EDE to continue to take network integration transmission service from SPP to serve EDE's retail load in Missouri; and
- E. Granting such other relief as may be deemed necessary and appropriate which is not inconsistent with this pleading.

Respectfully submitted,

  
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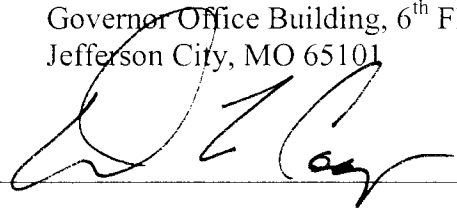
ATTORNEYS FOR THE EMPIRE DISTRICT  
ELECTRIC COMPANY

### **CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing document was hand-delivered, or sent by electronic mail, on September 28, 2005, to the following:

Steve Dottheim  
Office of the General Counsel  
Governor Office Building, 8<sup>th</sup> Floor  
Jefferson City, Mo 65101

Lewis Mills  
Office of the Public Counsel  
Governor Office Building, 6<sup>th</sup> Floor  
Jefferson City, MO 65101

  
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AFFIDAVIT

State of Missouri       )  
                                  ) ss  
County of Jasper    )

I, Michael E. Palmer, having been duly sworn upon my oath, state that I am the Vice President of Commercial Operations of The Empire District Electric Company (Empire), that I am duly authorized to make this affidavit on behalf of Empire, and that the matters and things stated in the foregoing application and appendices thereto are true and correct to the best of my information, knowledge and belief.

Michael E Palmer

Subscribed and sworn before me this 27<sup>th</sup> day of September, 2005.

Patricia A Settle  
Notary Public

