

**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 Regional Transmission)
System Organization or Alternative Request to Change)
Functional Control and Motions for Waiver and Expedited)
Treatment)

File No. EO-2013-0431

EMPIRE AND MJMEUC'S RESPONSE TO ORDER DIRECTING FILING

COMES NOW The Empire District Electric Company (Empire) and the Missouri Joint Municipal Electric Utility Commission (MJMEUC), and, in response to the Missouri Public Service Commission (Commission) Order Directing Filing, issued on May 10, 2013, state as follows:

1. The issue currently before the Commission concerns its Order Granting Interventions and Setting Procedural Schedule issued April 18, 2013. In that Order, the Commission granted Empire's (as well as other parties') application to intervene in Case No. EO-2013-0431. The Commission further established a common procedural schedule for Cases Nos. EO-2013-0431 and EO-2013-0396, both of which concern facilities currently owned by Entergy Arkansas, Inc.
2. On April 29, 2013, EAI filed a Motion for Reconsideration (the Motion). That Motion asked the Commission to reconsider the Order Granting Interventions and Setting Procedural Schedule as to this case for a variety of reasons. The Commission directed Staff, and invited other parties, to respond to the Motion by its Order Directing Filing issued May 3, 2013. Staff, Empire, Kansas City Power & Light Company (KCPL), KCP&L Greater Missouri Operations (GMO) and Missouri Joint Municipal Electric Utility Commission (MJMEUC) all responded on May 9, 2013.

3. Thereafter, on May 10, 2013, the Commission issued another Order Directing Filing wherein it directed Empire, KCPL, GMO and MJMEUC to “state the legal authority the Commission has over EAI’s desire to move to MISO, and the facts they assert are in dispute.”

4. It is important to first note that this case was not initiated by Empire, KCPL, GMO or MJMEUC. It was initiated by EAI. EAI’s pleading was styled as a notice of intent to change functional control of its Missouri facilities to Midwest Independent Transmission System (MISO) or, in the alternative, a request for permission to change functional control of such facilities.

5. Section 393.190.1, RSMo states, in part, as follows:

No . . . electrical corporation . . . shall hereafter *sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber* the 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. Every such sale, assignment, lease, transfer, mortgage, disposition, encumbrance, merger or consolidation made other than in accordance with the order of the commission authorizing same shall be void.

(emphasis added)

6. Section 393.190.1, RSMo has previously been relied upon for the Commission to take jurisdiction of the proposed transfer of functional control of certain electric facilities to regional transmission organizations MISO and the Southwest Power Pool (SPP). *See* Commission Cases Nos. EO-2006-0141, EO-2006-0142, EO-2008-0134, EO-2009-0179, EO-2011-0128, EO-2012-0135, EO-2012-0136 and EO-2012-0269.

7. If it is assumed, based on these past cases, that the transfer of functional control does constitute the sale, assignment, lease, transfer, mortgage or disposition of the subject plant,

the remaining question is whether the facilities at issue are “necessary or useful in the performance of [EAI’s] duties to the public.”

8. EAI has acknowledged that its Missouri transmission facilities are used to furnish wholesale electric service to various cities and cooperatives in Missouri. Empire (an investor-owned utility regulated by this Commission) has additionally alleged (and no party has contested) that EAI’s Missouri facilities also interconnect with Empire’s facilities at a location in Missouri and are used to deliver capacity and energy to Empire’s Missouri wholesale and retail consumers from the EAI transmission system. Specifically, this described interconnection is required to be “in service” for the delivery of Plum Point Power Station capacity and energy to Empire and the SPP.

9. In Case No. EO-2007-0485, this Commission found it had jurisdiction over the transfer of certain ITC transmission facilities- approximately 9.5 miles of 161 kV transmission line in Clark County, which connected a transmission system in Keokuk, Iowa with Ameren’s transmission system near Wayland, Missouri. The Commission similarly indicated that “no Missouri retail customers are served by the transmission assets that the applicants proposed to transfer.” *Order Granting Certificate of Convenience and Necessity, Granting Variances from Certain Commission Rules, and Authorizing Sale of Assets*, Case No. EO-2007-0485 (August 30, 2007). Based on these similar facts, the Commission found that both the seller and buyer of the transmission line would be “electrical corporations” and “public utilities” and “subject to the jurisdiction of this Commission.” *Id.* Further, based on Section 393.190, RSMo, the Commission found that “before ITC may acquire the transmission line in Clark County, Missouri, the Commission must first authorize ITC to do so.” *Id.*

10. These Commission findings were consistent with the Staff position in Case No. EO-2007-0485. Staff stated that “the transmission line the applicants propose to transfer to ITC Midwest LLC is “electric plant” and ITC Midwest LLC is an “electrical corporation.” *Staff’s Recommendation to Authorize Transfer of Line, Grant Certificate of Convenience and Necessity and Grant Variances from Commission Reporting Rules*, Case No. EO-2007-0485 (Filed August 17, 2007).

11. The Commission uses the standard of “not detrimental to the public interest” in analyzing applications under Section 393.190, RSMo.

12. In Case No. EO-2007-0485, the Staff indicated as follows in regard to the interpretation of the “not detrimental” standard:

The Missouri Supreme Court has stated, in the context of a sale of regulated assets, that under the “not detrimental to the public interest” standard the Commission’s review may be broad.¹ In the mid-1980’s this Commission, applying the standard of “not detrimental to the public interest,” approved the sale of steam operations from a regulated utility to an unregulated subsidiary of the Bi-State Development Agency. The sale was part of a plan by the Bi-State Development Agency to ultimately use refuse to fuel the steam generation and included an immediate rate increase. In its opinion, the Missouri Supreme Court stated:

The Commission's decision and order shows that concern for the public interest was predominant in its deliberations. It considered not only the interest of its customers, but the interest of the St. Louis metropolitan area in solving its refuse problems. The thought of using refuse to produce worthwhile energy is certainly appealing. The Commission is justified in looking at the broad picture.²

IPL has no electric consumer customers in Missouri and the Commission should look broadly when determining whether to authorize IPL to transfer to ITC Midwest LLC that part of its high voltage transmission line located in Missouri.

¹ *Love 1979 Partners, et al. v. Public Serv. Comm’n*, 715 S.W.2d 482 (Mo.banc 1986).

² *Love 1979 Partners*, 715 S.W.2d at 490.

13. In addressing the “not detrimental” standard, the Missouri Supreme Court has stated as follows:

. . . The whole purpose of the act is to protect the public. The public served by the utility is interested in the service rendered by the utility and the price charged therefore; investing public is interested in the value and stability of the securities issued by the utility. *State ex rel. Union Electric Light & Power Co. v. Public Service Commission et al.* (Mo. Sup.) 62 S.W. (2d) 742. In fact the act itself declares this to be the purpose. Section 5251, R.S. 1929 Mo. Stat. Ann. Section 5251, p. 6674), in part reads: “The provisions of this chapter shall be liberally construed with a view to the public welfare, efficient facilities and substantial justice between patrons and public utilities.”

14. In spite of the broad review called for by prior interpretations of the applicable statute, Staff states in its May 9, 2013 Response to Order Directing Filing that “KCPL, GMO, Empire and MJMEUC have not yet raised even a colorable argument the Commission has jurisdiction to address any of the issues they raise in those applications to intervene.” (Staff Response, para. 6).

15. In those referenced applications and other filings in this case:

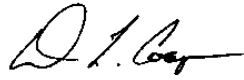
- Empire has alleged, and no party has disputed, that Empire is a network integration transmission service member of the SPP RTO and a firm point to point transmission service customer of EAI, with an ownership and purchase power share of the Plum Point coal fired power station, located near Osceola, Arkansas. Conversion of Empire Plum Point transmission service to MISO, under MISO’s Schedule 7 rates, terms, and conditions will increase Empire’s transmission costs by approximately \$1.2MM per year.
- MJMEUC has alleged, and no party has disputed, that MJMEUC serves Thayer, Missouri, which is directly embedded in EAI’s Missouri transmission system. Thayer does not currently take transmission services from MISO, but would be

forced into the MISO market as a result of the application by EAI. Whether such a move by Thayer into the MISO market is a public benefit or a public detriment has not been shown by EAI. The consideration of the costs impact on non-jurisdictional entities such as Thayer or MJMEUC is well within the scope of the prior court cases cited in the memorandum, as these impacts would be felt by Missouri citizens.

16. The alleged facts raise more than a colorable argument. The Commission should perform a broad review of possible public detriment and weigh the significant impact the proposed Entergy actions will have on a wide variety of Missouri citizens in several areas of the state.³

WHEREFORE, Empire AND MJMEUC pray that the Commission issue its order denying EAI's Motion for Reconsideration.

Respectfully submitted,



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³ Staff's Response to Order Directing Filing refers to EAI's "veiled statement" concerning the PURPA Section 205(a) process for possible exemption from provisions of State law. *In re New PJM Companies, et al.*, 107 FERC 61,271 (June 17, 2004) is an example of a Section 205(a) case. It appears from the time line of that matter that the current MoPSC proceeding will provide a more expeditious answer than the threatened FERC process.

//S// by dlc

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CERTIFICATE OF SERVICE

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