

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

In the Matter of the Joint Application of Entergy Arkansas, Inc.,       )  
Mid South TransCo LLC, Transmission Company Arkansas,       )  
LLC and ITC Midsouth LLC for Approval of Transfer of Assets       ) **File No. EO-2013-0396**  
and Certificate of Convenience and Necessity, and Merger and,       )  
in connection therewith, Certain Other Related Transactions       )

**EMPIRE’S RESPONSE TO  
ORDER DIRECTING RESPONSE**

COMES NOW The Empire District Electric Company (Empire), and, in response to the Missouri Public Service Commission’s (Commission) Order Directing Response from All Applicants to Intervene, states as follows:

**BACKGROUND**

1.       On February 25, 2013, Empire filed its Application to Intervene in this matter. On March 7, 2013, ITC Midsouth LLC filed its Reply Regarding Applications to Intervene and Scope of Proceedings. The Commission issued its Order Directing Response from All Applicants to Intervene a short time thereafter on March 7, 2013.

2.       In that Order, the Commission directed that no later than March 11, 2013, the entities with pending applications for intervention to:

- a.) file a more definite statement specifically identifying their interest or interests in these proceedings, which must be different from the general public, and explain, with particularity, how that specific interest or interests may be adversely affected by a final order of this Commission, or, in the alternative,
- b.) the entities shall explain, with particularity, how their intervention in this matter would serve the public interest.

3.       Empire will respond herein to the Commission’s Order.

4. In addition to the ITC Midsouth pleading, Entergy Arkansas, Inc. (EAI) et al. filed a Response in Opposition to Applications to Intervene and Motion to Limit the Scope of the Proceeding on March 7, 2013. *The EAI pleading was not addressed by the Commission's Order and Empire intends to respond to the EAI pleading separately, within the time frame provided for such responses by Commission Rule.*

## **RESPONSE**

5. The underlying application in this matter seeks Commission approval of the transfer of certain EAI 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.

6. ITC Midsouth's reply states, in part, that "Empire's Application to Intervene appears to discuss issues related to its transmission connections with Entergy in Arkansas." While Empire certainly has connections with EAI in Arkansas, Empire also has a very important physical interconnect with EAI in Missouri that delivers capacity and energy to Empire's Missouri wholesale and retail consumers from the EAI transmission system that includes the facilities that are the subject of this Application.

7. Empire has a critical 161kV bulk electric system interconnection with EAI at Empire's Powersite Substation located near the Ozark Beach Hydro Plant near Forsyth, Missouri. Empire currently has Interconnection Agreements between itself, Arkansas Power and Light (now Entergy Arkansas, Inc.), Plum Point Energy Partners and Entergy Services. Empire is a network integration transmission service member of 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. Such delivery of the Plum Point

capacity and energy relies directly on the service availability of this 161kV interconnection that is one of the facilities subject to this Application (Joint App., App. 4). The maintenance and operation of this interconnection along with the overall EAI transfer of all of its transmission assets to ITC will directly affect the cost of power delivery to Empire's retail customers. 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 Southwest Power Pool (SPP).

8. Thus, Empire has a direct and specific interest in these proposed EAI system changes that may impact Empire's operations and ability to deliver generating capacity and energy to Empire's customers, or will impact the assignment of existing contracts and the associated costs of such delivery. To date, neither EAI nor ITC have approached Empire with a formal request of interconnection assignment nor with the specifics of assignment of EAI's Missouri transmission facilities to ITC.

9. This direct connection and dependence upon the facilities at issue represents a unique and specific interest that is different than the general public and, depending upon the evidence produced at a hearing in this matter and the ultimate performance of ITC if this transaction is approved and the costs related to such performance, an interest that may be adversely affected by a final order of this Commission. Further, Empire's direct interest in the condition of the subject facilities and its intervention to examine the plans for maintenance and reliability of those facilities and the costs to be paid for transmission services serves the public interest in the provision of safe and adequate service to Empire's customers.

10. Lastly, there are a couple of suggestions in ITC Midsouth's pleading to which Empire would like to respond. First, ITC Midsouth refers to the "limited scope of this proceeding" (ITC Midsouth, para. 6) a phrase that was picked up by the Commission's order.

Empire is not aware of a “limited scope,” or an “expanded” scope, for that matter, that the Commission applies to asset transfer cases. The standard for the Commission’s consideration, as it is in every case of this nature, is whether the proposed transaction is “not detrimental to the public interest.”<sup>1</sup> The “scope” of the proceeding is whatever the Commission believes is relevant to its consideration of this standard. At this point, the scope has not been “limited,” nor should it be until the Commission has had the opportunity to consider the importance of whatever evidence or views the Commission deems relevant. Empire believes that it is in a unique position to provide information to the Commission that will assist the Commission in its consideration of whether this proposed transfer is not detrimental to the public interest.

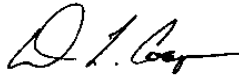
11. ITC Midsouth further alleges that proceedings such as this “typically are resolved by the Commission promptly and without hearing.” While asset transfer cases are often resolved by agreement of the parties, it would be misleading to suggest that these cases are just a formality or are merely “rubber-stamped” by the Commission. Each case is investigated and considered by at least the Staff of the Commission and, many times, by the Office of the Public Counsel. This Counsel has certainly participated in asset transfer cases where an agreed to, proposed resolution has been placed before the Commission for consideration without the conduct of an adversarial proceeding. However, Counsel has also participated in asset transfer cases that have been fully litigated before the Commission. There is nothing about Empire’s proposed intervention that is contrary or inconsistent with Commission statutes, rules, practice or custom.

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<sup>1</sup> “Section 393.190, RSMo 2000, which governs the transfer of assets, does not set forth a standard or test for the Commission’s approval of the proposed transfer. However, when reviewing Section 393.190’s predecessor, i.e. Section 5195, RSMo 1929, the Missouri Supreme Court determined that the standard for Commission approval of transactions pursuant to this statute is the ‘not detrimental to the public interest’ standard.” In the matter of the Joint Application of Valley Woods Water Company, Inc., et al., 2012 Mo. PSC LEXIS 470 (2012).

WHEREFORE, Empire prays that the Commission deem this pleading to comply with its order and, thereafter, issue its order granting Empire permission to intervene in the above-captioned matters.

Respectfully submitted,



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### **CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail, on March 11, 2013, to the following:

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