

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

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| 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) | File No. EO-2013-0396 |
| Transfer of Assets and Certificate of Convenience and) | |
| Necessity, and Merger and, in connection therewith,) | |
| Certain Other Related Transactions) | |

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

EMPIRE'S REPLY BRIEF

COMES NOW The Empire District Electric Company (Empire), and, in reply to the initial briefs filed in these matters, states as follows to the Missouri Public Service Commission (Commission):

INTRODUCTION

Initial briefs were filed in these matters by Empire; the Staff of the Commission (Staff); Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company (KCP&L/GMO); the Missouri Joint Municipal Electric Utility Commission (MJMEUC); Entergy Arkansas, Inc., Mid South TransCo LLC, Transmission Company Arkansas, LLC and ITC Midsouth LLC (Joint Applicants) (Case No. EO-2013-0396); and, Entergy Arkansas, Inc. (Entergy) (Case No. EO-2013-0431).

JURISDICTION

Empire is aligned generally with the briefs of KCP&L/GMO, MJMEUC and Staff as to the jurisdiction question. These parties have all suggested that the Commission has jurisdiction over both matters, primarily pursuant to Section 393.190, RSMo.

Joint Applicants question very briefly whether there is jurisdiction over the ITC transaction (Case No. EO-2013-0396). However, the Joint Applicants provide no argument, other than to point out that the underlying facilities are “interstate” in nature. Given the Commission’s earlier assertion over ITC in a very similar situation (*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)) and the arguments of the parties, there is no basis for the Commission to find it lacks jurisdiction over the matters in File No. EO-2013-0396.

Entergy makes a more spirited argument as to jurisdiction in regard to its proposed transfer of functional control to MISO (Case No. EO-2013-0431). Entergy suggests that “the Commission should dismiss the case for lack of jurisdiction, including holding that it need not issue any determination in this matter for the reason that EAI’s joining MISO does not require Commission approval under Section 393.190.1, RSMo.” (Entergy Brf., p. 8)

Entergy’s position creates two primary questions for the Commission in regard to its jurisdiction over the proposed transfer of functional control – 1) does the underlying plant qualify Entergy as an electrical corporation within the meaning of Section 393.190?; and 2) does the transfer of functional control cause Entergy to “sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system”?

As to the first question, if Entergy is an electrical corporation for purposes of the ITC transaction case (Case No. EO-2013-0396) (which also concerns Section 393.190), it must necessarily be an electrical corporation for purpose of Case No. EO-2013-0431. These matters concern the same assets and are governed by the same statute. There is no way to distinguish between the two matters on this issue.

Moreover, if Entergy is an electrical corporation in Missouri, the analysis of whether the “transfer of functional control” triggers Section 393.190 is no different than that analysis that forms the basis for the Commission’s authority in a variety of cases where the Commission has considered proposed transfer of functional control from other Missouri electrical corporations to regional transmission organizations. (*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)

Entergy suggests that there are “unique facts present in EAI’s case from those of the other cases” (Entergy Brf., p. 8) and that the Commission is not bound by *stare decisis*. While it is possible for the Commission to change its approach on this issue, the Commission must be mindful that the “unique facts” cited by Entergy are a “distinction without a difference” in terms of the applicable statute – Section 393.190, RSMo. Again, if Entergy is an electrical corporation, Section 393.190 applies. A transfer of functional control of transmission assets to a regional transmission organization either does or doesn’t constitute the sale, assignment, lease, transfer, mortgage, disposal or encumbrance of its franchise works or system. The nature of necessary and useful assets makes no difference to the question.

CASE NO. EO-2013-0396

Empire suggested that the Commission impose the following two conditions, if it approves the ITC transaction:

- 1) That Empire be “held harmless” from increased costs due to this transaction, as ITC and EAI have attempted to partially address in several states; and,
- 2) The negotiation of a new Interconnection Agreement to ensure that responsibilities for Empire’s critical interconnection with EAI are addressed prior to any closing of this transaction.

Staff’s Initial Brief recognizes that there will be rate impacts associated with the transaction. (Stf. Brf., p. 17) The Joint Applicants’ Brief also confirms that there will be increased costs due to this transaction. (Jt. App. Brf., p. 34) Joint Applicants describe a mitigation plan that is being provided as a result of the Arkansas Public Service Commission’s regulation of this transaction. However, no such rate mitigation plan is being proposed specifically for Missouri and there is no explanation as to what extent the Arkansas PSC plan will impact or mitigate the detriment to the Missouri interveners. The only way for the Commission to protect the Missouri public interest in this matter is to impose a condition that forces the Joint Applicants to address these Missouri impacts. As documented in testimony and Empire’s Initial Brief, such detriments have been addressed within other state proceedings. There is no reason that they cannot also be addressed by this Commission.

As to the second condition, the evidence in this matter established that the existing Interconnection Agreement between Empire and Entergy will need to be addressed with the proposed ITC transaction. The solutions offered by Entergy and ITC in testimony did not make

sense and were internally inconsistent. In fact, Entergy's own testimony indicated that a new interconnection agreement will have to be negotiated. Entergy witness Riley testified that the Empire Interconnection Agreement will have to be amended to address the fact that some current responsibilities under the agreement are planned to go to ITC and some responsibilities under that agreement will stay with Entergy. (Tr. 69, Riley) The Joint Applicants' Initial Brief makes no mention of this issue that is directly related to the safe and adequate provision of electric service in Missouri. The Commission should require the completion of the negotiation of a new interconnection agreement so that this issue is addressed while the Commission has the attention of the parties so that it does not "fall through the cracks."

Staff also made no mention of the Interconnection Agreement or any other proposed condition in its Initial Brief. Perhaps this is because of its view that "ITC is likely to be more responsive and responsible owner than was EAI." (Staff Brf., p. 17) While this may be the case, the Commission can reach the same outcome and still take the opportunity to address known detriments such as the cost increase and the lack of an Interconnection Agreement by imposing the conditions suggested by Empire.

CASE NO. EO-2013-0431

Empire proposed that the following conditions be imposed in regard to any approval of the transfer of functional control of EAI's Missouri transmission assets to MISO (Case No. EO-2013-0431):

- 1) Require the negotiation of an acceptable Joint Operating Agreement between MISO and SPP that includes at a minimum, resolution of the unaccounted for and intended use of SPP members', including Empire, KCPL, and GMO's, transmission system that will undoubtedly create harmful loop flow issues and provides for adequate

compensation to SPP members, including Empire, KCPL and GMO related to the Missouri seam between SPP and MISO);

- 2) Require EAI and/or MISO to “hold harmless” non MISO Missouri retail consumers from all increased transmission costs due to Entergy’s proposed voluntary transfer of functional control to MISO; and,
- 3) If the Commission believes it needs additional information concerning these subjects, it should order and direct its Staff to investigate this matter and report to the Commission its position on the issues/concerns and alleged benefits raised by the Applicants and concerns raised by Empire, KCPL, and stakeholders. Such a report could include whatever conditions, if any; Staff believes are necessary to protect Empire and Missouri retail customers, without regard to Staff’s views on jurisdiction.

Empire identifies both operational and financial detriments from this transaction that will be suffered by Empire and, in turn, its customers. Entergy does not directly challenge the existence of those detriments. Entergy’s Initial Brief instead suggests that there may be benefits for other Missouri customers and that, regardless, that both the proposed Joint Operating Agreement and hold harmless conditions are “preempted under federal law because the FERC has exclusive jurisdiction over the wholesale rates charged to the Intervenor, and those rates cannot be collaterally attacked in state proceedings.” (Entergy Brf., p. 24-25)

Empire addressed the federal preemption issue in detail in its Initial Brief section titled “Conditions Concerning Impact of FERC-Approved Rates.” (Empire Brf., p. 7-8) Because these issues arise within a proceeding where the Commission’s approval of a proposed transaction is required, the Commission need not pass on whether the subject FERC rates are just and reasonable or violate the preemption doctrine. The Commission’s authority allows it to

determine whether the results of the transactions are detrimental to the public interest and, if so, whether conditions should be imposed to mitigate that detriment. If those conditions cannot be satisfied, the transaction does not move forward. There is no attack on, or changing of, FERC rates in this scenario.

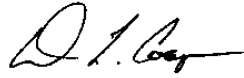
As described more fully in Empire's Initial Brief, ITC witness Bready provided an example of how state regulatory proceedings can interact with FERC requirements when he described the interaction between the Iowa Utilities Board and FERC in regard to ITC's acquisition of the transmission assets of Interstate Power & Light. (Tr. 165, Bready) In that case, ITC was able to satisfy an Iowa regulatory board condition even though implementation required interaction with FERC and FERC approval of a compliance plan. (Tr. 165-66, Bready)

Additionally, Entergy argues that the detriment identified by Empire "does not occur as a result of the integration of EAI's *Missouri* facilities into MISO." (Entergy Brf., p. 25. However, no matter what percentage part of the transmission path is found in another state, Empire's interconnection with Entergy is in Missouri and a part of EAI or ITC transmission system that will be subject to functional control of MISO. A transfer of the Missouri assets creates this Commission's jurisdiction and requires approval.

Lastly, Empire believes that the Commission would be benefited by a more in depth review by its Staff, specifically reasonable conditions and reporting requirements While Staff has stated a position in regard to the ITC transfer (Case No EO-2013-0396), its Initial Brief contains no analysis of the impacts or benefits, if any, of Entergy's transfer of functional control to MISO. Directing Staff to take the time to investigate and complete such analysis, as it does with "all" other jurisdictional Missouri electric utilities, would be a reasonable step for a cautious regulator.

WHEREFORE, Empire prays that the Commission consider its briefs and, thereafter, issue such orders as it shall find to be just and reasonable.

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 August 2, 2013, to the following:

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