

**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

STAFF'S REPLY TO RESPONSES TO ORDER DIRECTING FILING

COMES NOW the Staff of the Missouri Public Service Commission ("Staff") and replies to the responses of Kansas City Power & Light Company ("KCPL"), KCP&L Greater Missouri Operations Company ("GMO"), The Empire District Electric Company ("Empire") and the Missouri Joint Municipal Electric Utility Commission ("MJMEUC") to the Commission's May 10, 2013, *Order Directing Filing* as follows:

1. By its *Order Directing Filing* issued May 10, 2013, as Staff had recommended, the Commission ordered KCPL, GMO, Empire and MJMEUC (i) to present their legal arguments and authority for why this Commission has jurisdiction over those issues they assert the Commission must decide in this case and (ii) to identify the facts they assert are in dispute.

2. In paragraph five of their joint response to the Commission's order KCPL and GMO assert, "Because EAI [(Entergy Arkansas, Inc.)] is an electrical corporation owning electric plant, as those terms are defined by Missouri law, EAI must obtain permission from the Commission to transfer functional control of its transmission system to MISO [(formerly "Midwest Independent Transmission System Operator, Inc." and now "Midcontinent Independent System Operator")], pursuant to Mo.Rev.Stat. § 393.190.1," citing to *In re Union Elec. Co. for Authority to continue the Transfer of Functional Control of its Transmission System*

to the Midwest Independent Transmission System Operator, Inc., File No. EO-2011-0128, April 19, 2012 Report and Order at pp. 19-20 as authority. Their pleading is otherwise barren of any other authority for the Commission to require Entergy Arkansas, Inc. to obtain Commission authority to join MISO.

3. Similarly, in paragraphs six and seven, respectively, of their joint response to the Commission's order, Empire and MJMEUC jointly assert:

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 [(Empire)], EO-2006-0142 [(KCPL)], EO-2008-0134 [(Union Electric Company)], EO-2009-0179 [(GMO)], EO-2011-0128 [(Union Electric Company)], EO-2012-0135 [(KCPL)], EO-2012-0136 [(GMO)] and EO-2012-0269 [(Empire)].

* * * *

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."

4. Each of the foregoing cited cases is materially distinguishable from this one because the electrical corporations in each serve retail customers in Missouri, the rates for which this Commission regulates. Entergy Arkansas, Inc. only sells electricity in Missouri at wholesale rates the Federal Energy Regulatory Commission approves.

5. Staff also has scrutinized the responses KCPL, GMO and Empire filed jointly, and MJMEUC filed separately, on March 9, 2013, to Entergy Arkansas, Inc.'s motion for reconsideration. Neither response provides any authority that the Commission has jurisdiction to address the merits of any of their issues.

6. Staff still believes KCPL, GMO, Empire and MJMEUC have not raised even a colorable argument the Commission has jurisdiction to address any of the issues they raise in their applications to intervene.

7. In their joint response to the Commission's order, Empire and MJMEUC also discuss Case No. EO-2007-0485 where the Commission "authorize[d] Interstate Power and Light Company to transfer to ITC Midwest LLC its high-voltage transmission line assets in Clark County, Missouri, grant[ed] ITC Midwest LLC a certificate of convenience and necessity to operate those assets, and grant[ed] ITC Midwest LLC variances from Commission Rules 4 CSR 240-3.175 and 4 CSR 240-3.190(1) and (3)." That case is on all fours with what Entergy Arkansas, Inc., Mid South TransCo LLC, Transmission Company Arkansas, LLC and ITC Midsouth LLC are seeking in File No. EO-2013-0396 - authority to transfer assets to a new entity with authority to own and operate them, i.e., a certificate of convenience and necessity - not so in this case.

8. As it stated in its May 9, 2013, response to the Commission's May 3, 2013, *Order Directing Filing*, Staff views that the State of Missouri's interests in this case are different than the State of Missouri's interests in File No. EO-2013-0396. This case involves which regional transmission organization/independent system operator ("RTO"/"ISO"), independent coordinator of transmission ("ICT"), or other entity, the FERC approves to assume functional control over all or parts of EAI's transmission facilities in Missouri. File No. EO-2013-0396 involves the Commission's continued intrinsic oversight of the reliability and safety and other aspects of transmission facilities in Missouri.

9. This Commission has never asserted jurisdiction over the ISOs/RTOs Southwest Power Pool ("SPP") or MISO, although both exercise functional control of transmission lines in

Missouri. It also has never asserted that ITC Midwest LLC, Entergy Arkansas, Inc., Interstate Power and Light Company or any other entity with transmission lines that engages only in wholesale transactions in Missouri is required to obtain Commission authority to transfer functional control of its transmission facilities to a RTO, ISO, ICT or other FERC-approved entity. KCPL's and GMO's affiliate Transource Missouri, LLC is seeking a certificate of convenience and necessity from this Commission in File No. EA-2013-0098 for two transmission lines in Missouri. Although both transmission lines are SPP-approved projects, Transource Missouri, LLC is not seeking, and has not indicated that it will seek, authority from this Commission to transfer functional control of those transmission lines to the SPP.

10. In paragraph ten of their joint response to the Commission's May 10, 2013, *Order Directing Filing*, KCPL and GMO reprise and expand their arguments that the Commission should consider the different FERC-approved transmission rates that will be "pancaked"¹ if Entergy Arkansas, Inc. is in MISO instead of operating under the Entergy Open Access Transmission Tariff. The argument presupposes that Entergy Arkansas, Inc. will continue to operate under the Entergy Open Access Transmission Tariff if this Commission does not allow

¹ Rate pancaking is where a transmission customer pays separate rates for a transaction that crosses multiple transmission systems. In this instance, it is a seams matter. Paragraph II.A.(2)(f) of the Non-Unanimous Stipulation and Agreements filed May 17, 2013 in File Nos. EO-2012-0135 and EO-2012-0136 (the Applications of KCP&L and GMO for authority to extend the transfer of functional control of certain transmission assets to the Southwest Power Pool) states:

As part of this Stipulation, SPP agrees to use commercially reasonable efforts to further develop, maintain and improve joint operating agreements or seams agreements with its neighboring transmission providers, as applicable (currently Associated Electric Cooperative Inc.; Entergy Corporation; Midcontinent Independent System Operator ("MISO"); and Western Area Power Administration) for the benefit of SPP's members and Missouri ratepayers.

Entergy Arkansas, Inc. to join MISO. It is unclear from the pleadings in this case what will happen if Entergy Arkansas, Inc. does not join MISO after its participation in the Entergy System Agreement terminates effective December 2013. While that is unclear, the vitality of the Commission's decision in File Nos. ER-2010-0356 and ER-2012-0175 that the costs of transmitting electricity from Crossroads in Clarksdale, Mississippi, to its retail customers in and about Kansas City, Missouri, would not be borne by those customers has become clearer. In its May 14, 2013, opinion in *State ex rel. KCP&L Greater Missouri Operations Company v. Missouri Public Service Commission*, WD75038, the Western District Court of Appeals upheld the Commission's decision on that issue in File No. ER-2010-0356.

WHEREFORE, Staff replies to the responses of KCPL, GMO, Empire and MJMEUC to the Commission's May 10, 2013, *Order Directing Filing* as set forth above, and advises the Commission that it still believes that none of them have raised even a colorable argument the Commission has jurisdiction to address any of the issues they raise in their applications to intervene.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 28th day of May, 2013.

/s/ Steven Dottheim