

BEFORE THE
MISSOURI PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE JOINT APPLICATION)
OF ENERGY ARKANSAS, INC., MID SOUTH)
TRANSCO LLC, TRANSMISSION COMPANY)
ARKANSAS, LLC, AND ITC MIDSOUTH LLC)
FOR APPROVAL OF A TRANSFER OF ASSETS) FILE NO. EO-2013-0396
AND CERTIFICATE OF CONVENIENCE AND)
NECESSITY, AND MERGER AND, IN)
CONNECTION THEREWITH, CERTAIN OTHER)
RELATED TRANSACTIONS)

JOINT APPLICANTS' RESPONSE
TO INTERVENORS' JOINT REQUEST FOR ADMINISTRATIVE NOTICE AND
MOTION TO DELAY COMMISSION DECISION

Now come Entergy Arkansas, Inc. ("EAI"), Mid South TransCo LLC, Transmission Company Arkansas, LLC, and ITC Midsouth LLC ("ITC") (collectively the "Joint Applicants") pursuant to 4 CSR 240-2.080 and Commission Order Directing Filing and submit as follows for their response to the Joint Request for Administrative Notice and Motion to Delay Commission Decision ("Motion to Delay") filed by Kansas City Power & Light Company, KCP&L Greater Missouri Operations Company, and the Empire District Electric Company (collectively, the "Intervenors").

1. Intervenors continue their efforts to confuse the Missouri Public Service Commission ("Commission") by lumping together the completely distinct matters of the proposed ITC Transaction and EAI's separate proposal to join MISO, as well as by arguing about matters that have nothing to do with the limited assets at issue in Missouri.

2. EAI has already shown by its pleading in separate File No. EO-2013-0431 that the Commission should reject the attempt by Intervenors to use delays in other state proceedings regarding the proposed ITC Transaction to interfere with EAI's separate efforts to join MISO. And in its Response, the Staff has urged the Commission to approve EAI's integration into MISO without delay.

3. Further, Joint Applicants have already shown in their Briefs submitted in this case that the Commission should reject all of the Intervenors' efforts to derail the ITC Transaction, including Intervenors' arguments that relate to MISO and/or assets in other states.

4. As it pertains to this instant case, the Intervenors' Motion to Delay requests that the Commission delay its decision regarding the ITC Transaction until such time as the retail ITC Transaction proceedings in Texas and Arkansas are resolved. As part of their request, the Intervenors request that the Commission take administrative notice of a motion to suspend that was filed in Arkansas Docket No. 12-069-U ("Arkansas Motion to Suspend").

5. Given that the record in this proceeding is closed, rather than burden the Commission with disputes about extraneous facts, Joint Applicants further reserve the right to address in detail the invalidity of the Intervenors' various assertions set forth in the Motion to Delay. In short, the Intervenors fail in many respects to account for differences between the proceedings in other jurisdictions considering the ITC Transaction in the context of retail operations by Entergy Operating Companies and the instant proceeding which concerns interstate transmission facilities operating solely in a

wholesale context subject to the jurisdiction of the Federal Energy Regulatory Commission (“FERC”), which already has approved the ITC Transaction.¹

6. Joint Applicants request that to the extent the Commission takes official notice of the Arkansas Motion to Suspend, the Commission also take notice of the Joint Applicants’ response to the Arkansas Motion to Suspend that corrects several inaccuracies and misrepresentations therein. (A copy of that response is attached hereto as Exhibit 1.) The Arkansas Motion to Suspend was based upon a fundamental misunderstanding of the actions taken by the Public Utility Commission of Texas (“PUCT”) on the proposed ITC Transaction. For example, the Arkansas Motion to Suspend provided the impression that the PUCT intended to reject the ITC Transaction outright. While the PUCT’s intentions cannot be known at this time, the clear indication was that one of the PUCT commissioners had concluded that, due to the strict statutory deadline in that proceeding, the PUCT was unable to consider certain information. That information, already in the record in the Arkansas Public Service Commission (“APSC”) ITC Transaction docket, was not in the PUCT record (most notably, the enhanced Rate Mitigation Plan, Benefits Test, and selection of an independent Third Party Evaluator). The transcript of the PUCT hearing also indicated that the PUCT’s objectives were to place itself in the same position as the APSC.²

7. Notwithstanding the inaccuracies in the Arkansas Motion to Suspend or the Motion to Delay filed in this proceeding, the Joint Applicants recognize that the decision to withdraw the Texas application without prejudice and the resulting decision

¹ As the Commission is aware, Joint Applicants also question the Commission’s jurisdiction in this matter because of these differences in circumstances.

² PUCT Transcript at 161.

to temporarily delay the Arkansas hearing are new developments that create some uncertainty regarding the timing of the retail regulatory approvals necessary to close the ITC Transaction. Although expected to be expedited, the schedule for regulatory approval in Texas will not be known until after an application is re-filed in Texas.³ Additionally, the APSC cancelled the September 4 hearing and directed the Joint Applicants to work with the other parties to reach a schedule that allows a reasonable time for the APSC to conduct the evidentiary hearing, deliberate and develop a final ruling if possible by the end of 2013.⁴

8. The Joint Applicants appreciate that this Commission may desire to postpone its decision in this case pertaining to the Transaction until the parties have more certainty regarding the schedules in Arkansas and Texas. As such, the Joint Applicants do not oppose postponing issuance of a decision in this proceeding for a limited period of time until procedural schedules are adopted in Arkansas and/or Texas, at which time the Joint Applicants would so notify this Commission so as to allow for a decision to be rendered before the end of the year. At that time, Joint Applicants could also provide the additional information that Staff has requested in its Response.

9. The hearing in this matter already has been concluded, and the necessary facts pertaining to the FERC-regulated assets have been introduced. All that remains when action renews would be for the Commission to render its decision

³ ETI and ITC are evaluating whether and when to resubmit the Texas application.

⁴ APSC Docket No. 12-069-U, Order No. 17 at 5-6.

by December 31, 2013. The Joint Applicants propose filing notice and a status report with the Commission promptly after new schedules are set in Arkansas and Texas.⁵

WHEREFORE, the Joint Applicants request that the Commission issue an order consistent with this Response and granting all other just relief to which the Joint Applicants are entitled.

⁵ This offer to provide the additional information does not constitute the Joint Applicants' agreement that the requested information is relevant to the instant proceeding.

Respectfully submitted,

BLITZ, BARDGETT & DEUTSCH, L.C.

/s/ Thomas R. Schwarz, jr.,

By: _____

Thomas R. Schwarz, Jr., #29645
308 East High Street, Suite 301
Jefferson City, MO 65101
Telephone: 573/634-2500
Facsimile: 573/634-3358
Email: tschwarz@bbdlc.com

Attorneys for Entergy Arkansas, Inc., Mid
South TransCo LLC, and Transmission
Company Arkansas, LLC

/s/ Carl J. Lumley

Carl J. Lumley #32869
Curtis, Heinz, Garrett, and O'Keefe P.C.
130 S. Bemiston Ave., Suite 200
Clayton, Missouri 63105
(314) 725-8788
(314) 725-8789 facsimile
clumley@lawfirmemail.com

Brett D. Leopold #45289
Senior Counsel
ITC HOLDINGS CORP.
3500 SW Fairlawn Road, Suite 101
Topeka, KS 66614
Telephone: (785) 783-2226
Fax: (785) 783-2230
bleopold@itcTransCo.com

Attorneys for ITC Midsouth LLC

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the above and foregoing has been served upon counsel of record by forwarding the same by electronic mail and/or first class mail, postage prepaid, this 30th day of August, 2013.

Office of the Public Counsel
PO Box 2230
Jefferson City, Missouri 65102
opcservice@ded.mo.gov

Office of General Counsel
Missouri Public Service Commission
PO Box 360
Jefferson City, Missouri 65102
shelley.brueggemann@psc.mo.gov

Roger W Steiner
1200 Main Street, 16th Floor
P.O. Box 418679
Kansas City, MO 64105-9679
roger.steiner@kcpl.com

Douglas Healy
939 Boonville Suite A
Springfield, MO 65802
doug@healylawoffices.com

Dean L Cooper
312 East Capitol
P.O. Box 456
Jefferson City, MO 65102
dcooper@brydonlaw.com

BEFORE THE
ARKANSAS PUBLIC SERVICE COMMISSION

IN THE MATTER OF AN APPLICATION OF)
ENERGY ARKANSAS, INC., MID SOUTH)
TRANSCO LLC, ITC MIDSOUTH LLC,)
TRANSMISSION COMPANY ARKANSAS, LLC,)
AND ITC HOLDINGS CORP. TO ENTER) DOCKET NO. 12-069-U
TRANSACTIONS RESULTING IN A)
CERTIFICATE OF PUBLIC CONVENIENCE)
AND NECESSITY FOR A NEW ARKANSAS)
UTILITY TO OWN EAI'S ELECTRIC)
TRANSMISSION FACILITIES)

JOINT APPLICANTS' RESPONSE
TO ARKANSAS ELECTRIC ENERGY CONSUMERS'
MOTION TO SUSPEND PROCEDURAL SCHEDULE

Now come Entergy Arkansas, Inc. ("EAI"), Mid South TransCo LLC ("Mid South TransCo"), ITC Midsouth LLC ("ITC Midsouth"), Transmission Company Arkansas, LLC ("TCA"), and ITC Holdings Corp. ("ITC") (EAI, Mid South TransCo, ITC Midsouth, TCA and ITC, collectively the "Joint Applicants") and submit their response to the Motion to Suspend Procedural Schedule filed by the Arkansas Electric Energy Consumers ("AEEC").

1. AEEC's motion requests that the Arkansas Public Service Commission ("APSC" or "Commission") suspend the procedural schedule in this proceeding due to activities before the Public Utility Commission of Texas ("PUCT"), as well as other retail regulatory jurisdictions where ITC and other Entergy Operating Companies are seeking approval for the proposed ITC Transaction. AEEC requests that the Commission

suspend the procedural schedule “[t]o avoid what may be the unnecessary expenditure of time and resources associated with preparing for and attending that hearing.”¹

2. The Joint Applicants first address certain incorrect statements and representations in AEEC’s Motion. The Motion is based upon a fundamental misunderstanding of the PUCT’s actions on the proposed ITC Transaction. Whereas AEEC correctly asserts that Entergy Texas, Inc. (“ITC”) and ITC withdrew their application filed with the PUCT, AEEC fails to provide any additional details regarding the PUCT’s actions and views of the Transaction, instead providing the impression that the PUCT intended to reject the Transaction outright. In fact, that is not accurate, and the PUCT’s intentions cannot be known at this time. The memorandum prepared by PUCT Commissioner Kenneth W. Anderson, Jr., attached to AEEC’s Motion as Exhibit A, reflects Commissioner Anderson’s conclusion that, due to the strict statutory deadline imposed upon on the PUCT in that proceeding, the PUCT was unable to consider certain information, contained in the record in this Docket, which was not in the PUCT record. For example, the PUCT record did not contain the Amended Proposed Commitments of Applicants first filed in this Docket on June 21, 2013 as ITC Exhibit CMB-11 to the Sur-surrebuttal Testimony of ITC witness Cameron M. Bready.² The Amended Proposed Commitments, including an enhanced Rate Mitigation Plan, a Benefits Test and the selection of an independent Third Party Evaluator, were developed after the record had closed in the Texas proceeding in response to concerns

¹ AEEC Motion at 5.

² The Amended Proposed Commitments were also filed in this docket on July 9, 2013 as ITC Exhibit CMB-12 to the supplemental testimony of ITC witness Cameron Bready. The Amended Proposed Commitments in Exhibit CMB-12 contain additional enhanced Rate Mitigation Funds.

voiced by parties to this docket and in other jurisdictions. In addition, the PUCT record did not contain the rebuttal testimony of Christopher Kapfer, filed in this Docket on May 17, 2013, addressing expected savings from economies of scale attributable to the Transaction.³ Contrary to the negative connotations that AEEC seeks to derive from the PUCT's actions, PUCT Commissioner Anderson's memorandum specifically states that "[t]he inclusion of those materials in evidence would go a long way in providing firmer support for a finding that the [proposed ITC Transaction] is in the public interest."⁴

3. The transcript of the PUCT hearing referenced in AEEC's motion indicates that the PUCT's objectives were to place itself in the same position as the APSC, with specific reference to the fact that this Commission's prior delay in the procedural schedule provided for additional evidence and information to be provided regarding the proposed rate mitigation proposal:

PUCT Commissioner Anderson:

I think technically we have to -- I mean, and I think Arkansas -- this is why Arkansas abated their procedural schedule, gave more time, delayed the hearing for this very reason. I think the same thing with any post-hearing. We'd be, in effect, considering that -- we'd be sort of basing a public interest finding on something that may happen in another jurisdiction, and the parties have no idea, one, what it is; we don't. But they wouldn't have been able to test it, to cross-examine it, to get due process required by, among other things, the most recent case, the *Oncor* case.⁵

³ See AEEC Motion, Exhibit A at 3-4.

⁴ *Id.* at 4.

⁵ PUCT Transcript at 161.

4. The Joint Applicants also disagree with AEEC's assertion that the Joint Applicants "have not complied with their own supplemental proposal submitted in July 2013 that they notify the Commission "as soon as they receive them of any decisions of other Entergy retail regulators that approve, deny or otherwise impact the ITC Transaction."⁶ AEEC excludes a citation to the basis for this statement. It is one of the several commitments proposed by Joint Applicants in the event that the Transaction is approved and consummated. Further, there was no failure by Joint Applicants to meet that commitment as of the date of AEEC's filing. Although the PUCT addressed ETI's and ITC's motion at the PUCT hearing, no order was issued, and therefore, no decision was received until the afternoon of Thursday, August 15, after AEEC filed the instant motion. The PUCT's order permitting withdrawal is attached to this response.

5. AEEC also asserts that the existence of a "Most Favored Nations" ("MFN") provision in the Joint Applicants' rate mitigation proposal somehow inhibits this Commission's ability to conduct a hearing in this proceeding. Joint Applicants disagree with that assertion. MFN provisions have been an element of many proceedings before the Commission, including the recent proceedings relating to EAI's request to become a member of the Midcontinent Independent System Operator's ("MISO") Regional Transmission Organization ("RTO") conducted in Docket No. 10-011-U and other proceedings involving multi-state holding companies.⁷

⁶ AEEC Motion at 5.

⁷ See, e.g., Docket No. 98-172-U, Order No. 12, describing orders from other jurisdictions filed by the applicants and requesting that SWEPCO provide an analysis of the benefits provided in each jurisdiction compared to those in Arkansas.

6. This is not a case where, as AEEC claims, the “conditions and parameters of the relief sought by Applicants have been a moving target in this cause and continue to be a moving target.”⁸ The concerns of the other parties related to Joint Applicants’ rate mitigation proposal were addressed by the Commission with its delay of the original hearing date and provision of additional rounds of testimony in this proceeding. In any case, the relief sought by Joint Applicants in this proceeding has not changed. Joint Applicants would agree that, as this case has proceeded, they have seriously considered the issues and concerns raised by the parties to this proceeding and have taken steps and proposed commitments geared towards addressing those matters. The Joint Applicants’ efforts to find common ground and to narrow the issues in this proceeding should not serve as a basis to penalize the Joint Applicants.

7. Notwithstanding the inaccuracies in AEEC’s Motion, the Joint Applicants recognize that the decision to withdraw the Texas application is a new development that creates some uncertainty regarding when a regulatory approval necessary to close the Transaction may be obtained. Although expected to be expedited, the schedule for regulatory approval in Texas will not be known until after an application is filed in Texas.⁹ The Joint Applicants appreciate that this Commission may desire more certainty regarding the schedule for a resubmitted Texas application before conducting the hearing in Arkansas. As such, the Joint Applicants do not oppose suspending the hearing in this proceeding for a limited period of time until a procedural schedule is adopted for a resubmitted Texas application, at which time Joint Applicants could work

⁸ AEEC Motion at 5.

⁹ ETI and ITC are evaluating whether and when to resubmit the Texas application.

with parties to this proceeding to develop a hearing schedule in Arkansas that would allow for a decision to be rendered before the end of the year.

8. If the Commission opts to suspend the hearing for a limited time, Joint Applicants propose to complete the current procedural schedule to the extent their supplemental rebuttal testimony will be filed on August 23, 2013. Thus, all that would remain for rescheduling purposes would be the actual hearing on the merits, including recalculating the settlement deadline. For these purposes, Joint Applicants would be interested in availability in the Commission's calendar that may allow rescheduling the hearing for early November, which would allow for a Commission decision to be rendered before December 31, 2013. Joint Applicants propose filing notice with the Commission within 24 hours after any procedural schedule may be set in a re-filed Texas application and commit to work with the other parties to this proceeding to promptly propose a mutually agreeable schedule to the Commission.

WHEREFORE, the Joint Applicants request that the Commission issue an order canceling the hearing set to begin on September 4, 2013 and rescheduling for the next earliest available date to allow for a decision before December 31, 2013, and granting all other just relief to which the Joint Applicants are entitled.

Respectfully submitted,

ITC HOLDINGS CORP.

By: /s/Randall L. Bynum

Randall L. Bynum
Dover Dixon Home PLLC
425 West Capitol Ave., Suite 3700
Little Rock, Arkansas 72201
Telephone: (501) 978-9912

Christine Mason Soneral
Vice President and General Counsel
Utility Operations
ITC Holdings Corp.
27175 Energy Way
Novi, Michigan 48377
(248) 946-3553

Brett Leopold
Senior Counsel
ITC Holdings Corp.
3500 SW Fairlawn Road, Suite 101
Topeka, KS 66614
(785) 783-2226

ATTORNEYS FOR ITC HOLDINGS CORP.
AND ITC MIDSOUTH LLC

ENTERGY ARKANSAS, INC.

By: /s/Matthew R. Suffern

Matthew R. Suffern
Assistant General Counsel

Tucker Raney
Assistant General Counsel

Kimberly Bennett
Senior Counsel

N. Wesley Hunt,
Counsel

Entergy Services, Inc.
P. O. Box 551
Little Rock, AR 72203
Telephone: (501) 377-3500

Scott Trotter
Perkins & Trotter, PLLC
P. O. Box 251618
Little Rock, Arkansas 72225
Telephone: (501) 603-9000

N. M. Norton
Wright, Lindsey & Jennings
200 West Capitol Avenue, Suite 2200
Little Rock, Arkansas 72201
Telephone: (501) 371-0808

ATTORNEYS FOR ENTERGY ARKANSAS, INC.,
MID SOUTH TRANSCO, LLC, AND
TRANSMISSION COMPANY ARKANSAS, LLC

CERTIFICATE OF SERVICE

I, Randall L. Bynum, do hereby certify that a copy of the foregoing has been served upon all parties of record by forwarding the same by electronic mail and/or first class mail, postage prepaid, this 21st day of August 2013.

/s/Randall L. Bynum
Randall L. Bynum

**PUC DOCKET NO. 41223
SOAH DOCKET NO. 473-13-2879**

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**APPLICATION OF ENTERGY TEXAS,
INC., ITC HOLDINGS CORP., MID
SOUTH TRANSCO LLC, TRANSMISSION
COMPANY TEXAS, LLC, AND ITC
MIDSOUTH LLC FOR APPROVAL OF
CHANGE OF OWNERSHIP AND
CONTROL OF TRANSMISSION
BUSINESS, TRANSFER OF
CERTIFICATION RIGHTS, CERTAIN
COST RECOVERY APPROVALS, AND
RELATED RELIEF**

**PUBLIC UTILITY COMMISSION
OF TEXAS**

ORDER OF DISMISSAL WITHOUT PREJUDICE

This order addresses the applicants' application for approval of a transaction to change ownership and control of Entergy Texas, Inc.'s transmission facilities to an ITC subsidiary, transfer certificate of convenience and necessity (CCN) for rights associated with the facilities, and for related relief.

On August 9, 2013 at the Commission's open meeting, the applicants jointly moved to withdraw the application without prejudice to refile, pursuant to P.U.C. PROC. R. 22.181(b). Based on the discussion in open meeting, the Commission found good cause for withdrawal and granted the applicants' motion. Accordingly, this order of dismissal without prejudice is issued pursuant to P.U.C. PROC. R. 22.181(b).

SIGNED AT AUSTIN, TEXAS the 15th day of August 2013.

PUBLIC UTILITY COMMISSION OF TEXAS


DONNA L. NELSON, CHAIRMAN


KENNETH W. ANDERSON, JR., COMMISSIONER