Exhibit No.
Issue: _____________
Witness: Bary K. Warren
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Sponsoring Party: Empire
Case No. EO-2013-0396

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

REBUTTAL TESTIMONY

OF

BARY K. WARREN

ON BEHALF OF

THE EMPIRE DISTRICT ELECTRIC COMPANY

May 24, 2013

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BEFORE THE
MISSOURI PUBLIC SERVICE COMMISSION

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Bary K. Warren and my business address is 602 Joplin Avenue, Joplin, Missouri.

Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A. I am presently employed by The Empire District Electric Company. ("Empire" or "Company") as the Director of Transmission Policy and Compliance. I have been employed by Empire for more than 10 years and in the electric industry for over 27 years. My current responsibilities include the development, implementation, and advocacy of corporate transmission policy and strategy as well as oversight of balancing authority and transmission system operations, NERC reliability compliance and reporting. I also monitor and participate in FERC and multiple state commission regulatory proceedings, as well as SPP stakeholder committees, such as the SPP Seams Steering Committee, Markets and Operations Policy Committee, Regional Tariff Working Group, RSC Cost Allocation Working Group, Regional State Committee, Board of Directors, and the Regional Allocation Review Task Force.

Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?

A. I hold a Masters in Business Administration with High Honors from Oklahoma City University and Bachelors of Science Degree in Electrical Engineering from the University of Missouri at Rolla.

II. PURPOSE

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY IN THIS CASE BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION ("COMMISSION")?

A. My testimony is presented in response to the Direct Testimony of Richard C. Riley. Mr. Riley presented testimony on behalf of Entergy Arkansas, Inc. ("EAI"), Mid South TransCo LLC and Transmission Company Arkansas.

Q. TO WHAT PORTION OF MR. RILEY'S REBUTTAL TESTIMONY ARE YOU RESPONDING?

A. Mr. Riley's stated purpose is to address "the limited nature and extent of EAI's facilities located in Missouri, including the transmission assets to be transferred to TC Arkansas and ultimately [ITC Midsouth LLC]." In response to his descriptions, I will clarify Empire's interconnection with the EAI facilities and explain how the EAI facilities are necessary for Empire to provide safe and adequate service to its Missouri, Kansas, Arkansas and Oklahoma customers. I will further discuss how this transaction will impact Empire's customers.

III. FACILITIES

Q. ON PAGE 7, LINES 15 – 17, EAI WITNESS RILEY STATES THAT "EAI'S FACILITIES IN MISSOURI ARE USED TO FURNISH WHOLESALE

ELECTRIC SERVICE IN MISSOURI TO VARIOUS CITIES AND ELECTRIC COOPERATIVES SUBJECT TO THE RATE JURSIDCTION OF THE FERC." IS THAT A COMPLETE STATEMENT OF HOW THOSE FACILITIES ARE USED?

A. No. In addition to "cities and electric cooperatives," EAI's Missouri facilities are directly interconnected with those of Empire, an investor-owned utility, subject to the jurisdiction of this Commission. Empire has a very important "single" 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 the Joint Application.

Q. WHAT IS THE NATURE OF EMPIRE'S CONNECTION WITH THE EAI FACILITIES?

A. 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 both 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). In addition to the direct interconnection facilities, any other EAI transmission facilities required to maintain a continuous path between the interconnection with Empire and the interconnection of the Plum Point facility in eastern Arkansas are required for Empire to deliver from the Plum Point facility to Empire.

Q. DO EMPIRE AND EAI HAVE A CURRENT INTERCONNECTION AGREEMENT?

A. Yes. The Agreement, as amended, is provided as **Schedule BKW-1**.

Q. PLEASE BRIEFLY DESCRIBE THAT AGREEMENT.

A. Empire entered into an Interconneciton Agreement with Arkansas Power and Light (now EAI) in 1941. The Agreement has been amended over the years with the additions and cancelations of various rate schedules. The Agreement is filed as a FERC Rate Schedule 45.

Q. WILL THAT AGREEMENT BE ASSIGNED TO ITC?

A. It is unclear. The Agreement has a general assignment provision. However, it is Empire's position that such assignment requires the consent of the parties, the applicable RTO as a signatory, and the acceptance of FERC.

Q. HAS EAI, ITC, OR MISO APPROACHED EMPIRE WITH PLANS FOR ASSIGNMENT OF THE INTERCONNECTION AGREEMENT?

A. No. Empire has received no notification of EAI's plans to assign the agreement nor any plans to negotiate a new Interconnection Agreement.

Q. IN YOUR OPINION, IS A NEW INTERCONNECTION AGREEMENT REQUIRED PRIOR TO EAI'S TRANSFER OF THE SUBJECT ASSETS OR ITC'S TRANSFER OF FUNCTIONAL CONTROL TO MISO?

A. Yes.

Q. WHY DOES A THE LACK OF DISCUSSION CONCERNING THE FUTURE OF THE INTERCONNECTION AGREEMENT CONCERN EMPIRE?

A. The terms and conditions of the Agreement are binding between EAI and Empire. Empire has no assurance that the new interconnection partner will continue to fulfill the performance obligations of the Agreement.

Q. SHOULD THIS COMMISSION BE CONCERNED THAT NEITHER ITC NOR EAI HAVE ADDRESSED THE FUTURE OF THE INTERCONNECTION AGREEMENT?

A. Yes. This interconnection is critical to the reliability of the Empire system and directly impacts the costs to Empire's retail consumers in Missouri when the interconnection is out of service. EAI and ITC have no vested interest in the delivery costs of capacity and energy to Empire's wholesale and retail customers in Missouri. The Commission should ensure that the terms and conditions of performance related to this important interconnection are acceptably addressed prior to the transfer of the subject facilities.

IV. IMPACT OF TRANSACTION ON EMPIRE'S CUSTOMERS

Q. EAI WITNESS RILEY STATES ON PAGE 9, LINES18-19 THAT "EAI IS NOT CURRENTLY A MEMBER OF AN RTO BUT IS IN THE PROCESS OF INTEGRATING WITH MISO." WILL THE MISO INTEGRATION HAVE AN IMPACT ON EMPIRE'S CUSTOMERS?

A. Absolutely. The cost of transmission services related to Plum Point will increase without a commensurate benefit. In our opinion, given the currently known MISO open access transmission tariff and ITC's plans for implementation of formula rates related to these facilities, these two transactions before the Commission – EAI sale to ITC, EAI/ITC transfer of functional control will "increase" costs to Empire.

Q. WHY IS THAT?

A. As described above, Empire is a co-owner of the Plum Point Energy Station, a 670-megawatt, coal-fired generating facility near Osceola, Arkansas, which entered commercial operation on September 1, 2010. Empire's 7.52% ownership interest entitles it to approximately 50 MW of Plum Point's capacity and associated energy. In addition, Empire entered into a long-term (30 year) purchased power agreement for an additional 7.5% of Plum Point capacity, with the option to purchase an undivided ownership interest in 2015 in the approximately 50 MW covered by the purchased power agreement. Empire's entitlements to Plum Point are base-load Designated Network Resources for Empire District under the SPP Open Access Transmission Tariff. Since Plum Point is physically located on Entergy Arkansas's transmission system, Empire procured long term (20 years) point to point transmission service from Entergy Services, Inc. The transmission service agreement (TSA) was entered into in August 2006 and accepted by FERC in Docket Number ER06-1436. Transmission service pricing for this firm transmission service is based on the FERC accepted Schedule 7 of Entergy Services Open Access Transmission Tariff, which is currently approximately $17.76/kW-year or $1.8MM per year. It is our understanding from both Entergy Services, Inc. and MISO representatives that Empire's transmission service for Plum Point would be immediately converted to MISO's Schedule 7 through and out transmission service, which is currently $29.76/kW-year or $2.976MM. In addition, Plum Point is located in the PLUM Balancing Authority Area within the Entergy Arkansas transmission service area. Balancing Authority services for PLUM are provided by Constellation Energy Control and Dispatch, LLC ("CECD"). It is our understanding that the PLUM Balancing Authority would likely be consolidated (continuation of the PLUM BA may be a higher cost option) with the MISO Balancing Authority (Entergy Local Balancing Authority as applicable) and will be subject to MISO's scheduling, loss, and congestion provisions, which in total may be higher than Entergy Services for delivery of receipts of capacity and energy from PLUM to Empire District's Balancing Authority Area within SPP or the SPP Consolidated Balancing Authority, once it becomes operational in 2014.

Q. WHAT DO YOU ESTIMATE TO BE THE IMPACT OF THIS CHANGE ON EMPIRE'S MISSOURI CUSTOMERS?

A. Assuming that Empire will be forced to convert its Plum Point transmission service to MISO, under MISO's Schedule 7 rates, terms, and conditions and the difference in MISO and Entergy Services, Inc. rates is approximately $1.2MM per year, then Empire's Missouri customers will see approximately 89% of those costs for an increase in costs of approximately $1MM per year.

Q. WITH REGARD TO THE $1MM PER YEAR ANTICIPATED INCREASE TO MISSOURI CUSTOMERS, DOES THAT REPRESENT THE TOTAL INCREASE IN COSTS ASSOCIATED WITH ITC OWNING THE EAI FACILITIES AND TRANSFERRING FUNCTIONAL CONTROL TO MISO?

A. No. The $1MM is based on an estimate or comparison of Entergy's firm point to point transmission service rate compared to MISO's Schedule 7 Through and Out rate schedule. We believe the increase will actually be higher due to ITC's significantly different debt to equity capital structure and FERC transmission formula rates.

Q. MR. RILEY SUGGESTS THAT "EAI'S DECISION TO JOIN MISO IS INDEPENDENT OF THE TRANSACTION WITH ITC DESCRIBED IN THE JOINT APPLICATION." DOES THERE APPEAR TO BE A LINK BETWEEN THE TWO EVENTS?

A. There appears to be. Mr. Riley's Direct Testimony points out that the Merger Agreemnt "provides that the Transaction described in the Joint Application is conditioned on

Entergy having received all necessary approvals from state and federal regulatory authorities to allow the Transmission Business to become a member of an acceptable RTO." Mr. Riley downplays this as one of many conditions. However, it certainly appears to have some importance to the Transaction.

Q. ON PAGE 15, LINES 14 – 18, MR. RILEY STATES THAT "PRIOR TO THE JOINT APPLICATION BEING FILED, EAI AND ITC CONTACTED INTRESTED ASSOCIATIONS AND OTHER STAKEHOLDERS INCLUDING THE EMPIRE DISTRICT ELECTRIC COMPANY AND MJMEUC TO ASSURE THEM THAT THE TRANSACTION WILL NOT DISRUPT SERVICE." WAS EMPIRE SO CONTACTED?

A. Yes.

Q. DID YOU PARTICPATE IN A MEETING WITH EAI AND ITC?

A. No. There was no in-person meeting. There was a single teleconference in which Empire expressed its concerns regarding transmission cost increases, service reliability for Plum Point delivery and EAI's plans for updating the Interconnection Agreement.

Q. HAVE THOSE CONCERNS BEEN ADDRESSED BY EAI OR ITC?

A. No.

Q. EAI WITNESS RILEY FURTHER STATES THAT "THE RESULT OF THE TRANSACTION WILL BE OWNERSHIP OF THE ENTERGY OPERATING

COMPANIES' TRANSMISSION ASSETS BY AN INDEPENDENT TRANSMISSION-ONLY COMPANY WITH NO GENERATION OR DISTRIBUTION ASSETS." WILL THERE BE ANY ADDIITONAL RATE IMPLICATIONS OR JURISDICTIONAL IMPACTS ASSOCIATED WITH ITC'S INVOLVEMENT IN THE RESULTING OWNERSHIP STRUCTURE?

A. Yes. There will be additional costs to be incurred by Missouri retail customers as a result of this transfer of ownership from EAI to ITC when compared to EAI maintaining ownership and transferring functional control to MISO. These costs include higher point to point transmission delivery services because of ITC's capital structure being more weighted with equity and the likelihood that ITC will be able to achieve a higher annual transmission revenue requirement for these same transmission facilities than EAI. The additional costs will have an impact for Missouri retail customers and Empire doesn't see any benefit to its customers or to the general public of Missouri for this transaction to occur. In fact the higher costs described above are a detriment without a commensurate benefit The Commission should consider this consequence and ensure Missouri customers are sufficiently protected from incremental costs associated with ITC ownership that are not commensurate with any resulting benefits.

Q. MR. RILEY INDICATES THAT THE TRANSACTION WITH ITC IS CONDITIONED UPON REGULATORY APPROVALS. DOES IT APPEAR THAT EAI OR ITC BELIEVE THIS COMMISSION'S APPROVAL IS REQUIRED BEFORE THE TRANSACTION CAN BE COMPLETED?

A Yes.

Q. DOES EMPIRE HAVE CONCERNS ABOUT ITC AND EAI SUCCESSFULLY RECEIVING ALL OF THE REQUISITE REGULATORY APPROVALS?

A. Yes. EAI's principal retail jurisdictional body is the Arkansas Public Service Commission ("APSC"). Empire agrees with a recent filing by General Staff of the APSCin Docket Number 12-069-U suggesting that this "same transaction" should not be approved. We believe the APSC Staff has done a thorough job of reviewing this transaction properly concluded that the EAI/ITC transaction is not in the public interest of the State of Arkansas for reasons that should be equally of interest to the State of Missouri. Attached as **<u>Schedule BKW-2</u>** is the APSC General Staff filing.

Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes.

AFFIDAVIT OF BARY K. WARREN

STATE OF MISSOURI)
) **ss**
COUNTY OF JASPER)

On the 24th day of May, 2013, before me appeared Bary K Warren, to me personally known, who, being by me first duly sworn, states that he is Director of Transmission Policy and Compliance of The Empire District Electric Company and acknowledges that he has read the above and foregoing document and believes that the statements therein are true and correct to the best of his information, knowledge and belief.

Bary K. Warren

Subscribed and sworn to before me this 24th day of May, 2013.

SHERRI J. BLALOCK
Notary Public - Notary Seal
State of Missouri
Commissioned for Newton County
My Commission Expires: November 16, 2014
Commission Number: 10969626

Sherri J. Blalock
Notary Public

My commission expires

Nov. 16, 2014

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