

**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.)	File No. EO-2013-_____
Regional Transmission System Organization)	
or Alternative Request to Change)	
Functional Control and Motions for Waiver)	
And Expedited Treatment)	

**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 ORGANIZATION OR
ALTERNATIVE REQUEST TO CHANGE FUNCTIONAL CONTROL
AND MOTIONS FOR WAIVER AND EXPEDITED TREATMENT**

COMES NOW Entergy Arkansas, Inc. ("EAI" or the "Company"),¹ and for its Notice of Intent to Change Functional Control of Missouri Electric Transmission Facilities to the Midwest Independent Transmission System Operator, Inc. ("MISO")² Regional Transmission Organization ("RTO") (hereinafter, "Notice"), states as follows:

¹ EAI is the Entergy Operating Company that serves retail customers primarily in Arkansas and a small number in Tennessee and is a public utility subject to the jurisdiction of the Arkansas Public Service Commission. EAI also serves wholesale customers subject to tariffs approved by the Federal Energy Regulatory Commission.

² See <https://www.midwestiso.org/AboutUs/Pages/MISOFAQ.aspx>. MISO describes its organization as follows: The Midwest ISO is an independent, non-profit regional transmission operator currently responsible for maintaining reliable transmission of power in 11 U.S. states and the Canadian province of Manitoba.

1. The Entergy Operating Companies³ are changing functional control of their electric transmission facilities to MISO subject to certain conditions. To effectuate this transfer to MISO, the Entergy Operating Companies have received orders - from all five jurisdictions that set their retail rates – granting, subject to conditions, the Entergy Operating Companies' respective requests to change functional control of their transmission facilities to MISO.⁴ The Entergy Operating Companies also have requested approval from the Federal Energy Regulatory Commission ("FERC")⁵ by June 1, 2013 of the relevant tariffs and contracts that relate to the Entergy Operating Companies' integration into MISO. EAI did not previously file a functional change of control request with this Commission regarding EAI's proposal to join MISO because such a transfer does not dispose of or encumber EAI's transmission assets and further because EAI has no retail customers in Missouri, does not hold itself out as offering service to the public in Missouri, does not maintain any tariffs on file with the Commission, and does not maintain an electric system necessary or useful in the performance

³ The Entergy Operating Companies include EAI; Entergy Gulf States Louisiana, L.L.C.; Entergy Louisiana, LLC; Entergy Mississippi, Inc.; Entergy New Orleans, Inc.; and Entergy Texas, Inc.

⁴APSC Order No. 68 may be found at http://www.apscservices.info/pdf/10/10-011-u_918_1.pdf. APSC Order No. 72 may be found at http://www.apscservices.info/pdf/10/10-011-u_956_1.pdf. The Council of the City of New Orleans issued Resolution R-12-439, dated November 15, 2012, in Docket No. UD-11-01. The Louisiana Public Service Commission order may be found at <http://lpscstar.louisiana.gov/star/ViewFile.aspx?Id=7d9a988e-e3f0-49c2-8e45-5e03ac8fb31d>. The Mississippi Public Service Commission order may be found at http://www.psc.state.ms.us/InsiteConnect/InSiteView.aspx?model=INSITE_CONNECT&queue=C_TS_ARCHIVEQ&docid=298280. The Public Utility Commission of Texas order may be found at http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/40346_410_740074.PDF.

⁵ FERC is an independent federal agency that regulates the interstate transmission of natural gas, oil, and electricity. FERC also regulates natural gas and hydropower projects.

of any duty by EAI to serve the public in Missouri.⁶ Rather, as noted above, EAI sought and received an order from each of the state jurisdictions in which retail service is provided, including the Arkansas Public Service Commission (“APSC”)⁷ granting its request to transfer functional control of its transmission facilities to MISO subject to certain conditions. Thus, no regulatory gap exists, and the Commission need not expend its resources on these matters. Every regulator with jurisdiction over retail service has granted the change of control request with respect to MISO, subject to conditions, and the FERC has exclusive jurisdiction over transmission, wholesale, and interstate matters arising under the FPA.

2. On March 11, 2013, Kansas City Power & Light Co. (“KCPL”) submitted a pleading in File No. EO-2013-0396⁸ that asserted as follows:

While the Arkansas PSC has approved, with a number of conditions, Entergy’s application to join MISO, this Commission has never approved Entergy’s choice to join MISO. The Commission views the transfer of control of electric facilities to a Regional Transmission Organization such as MISO by an electric utility as within its jurisdiction. Entergy has not provided sufficient information to the Commission to evaluate whether the approval of the Joint Application is not detrimental to the public interest. This docket is the proper forum for the Companies to conduct discovery on the impact of the transfer of Entergy facilities to ITC and the

⁶ As addressed herein, any jurisdictional limitation on the transmission component of bundled retail service does not apply in this case because EAI does not provide retail electric service in Missouri.

⁷ The APSC regulates public utilities which provide electric, gas, telecommunications, water and sewer services to Arkansas consumers. Information filed in the APSC’s EAI MISO proceeding may be found generally in Docket No. 10-011-U, and links to significant orders are provided elsewhere in this filing.

⁸ The Joint Application initiating File No. EO-2013-0396 pertains only to the transfer of the very limited transmission facilities and CCN authority from EAI to ITC - not EAI’s separate efforts to join the MISO RTO.

resulting functional control of those facilities by MISO.⁹

3. KCPL's pleading is consistent with its longstanding opposition to the Entergy Operating Companies' decision to join MISO, an opposition that is shared by the Southwest Power Pool ("SPP") and that has been expressed by SPP and/or KCPL in multiple federal and state proceedings. Each regulator to consider these objections has rejected them.¹⁰ The FERC has rejected KCPL's "loop flow" and related operational claims¹¹ and each of the Entergy Operating Companies' retail jurisdictions have determined subject to certain conditions that it is in the public interest for the Entergy Operating Companies they regulate to join MISO.

⁹ Response of KCP&L to Order Directing Response from All Applicants to Intervene at 1-2. It is worth noting that the Crossroads facilities on which KCPL relies to support its intervention request in the ITC Transaction proceeding are in Mississippi, and the issues asserted by KCPL arise as a result of a separate Entergy Operating Company (Entergy Mississippi, Inc.) joining MISO. These issues have no bearing on EAL's efforts to join MISO. Despite KCPL's current MISO assertions, KCPL did not intervene in Entergy Mississippi, Inc.'s MISO proceeding before the Mississippi Public Service Commission.

¹⁰ For example, the APSC ruled that concerns relating to loop flows and transmission seams are jurisdictional to the FERC:

Several of the issues discussed above that have been raised by the Parties in opposition to EAL's possible MISO membership are outside this Commission's jurisdiction or the scope of this Docket. For example, concerns associated with the JOA, its renegotiation and any resulting compensation associated with loop flows pursuant to the JOA are FERC matters on which this Commission will not comment. That said, the Commission is persuaded that FERC's policies toward compensation for loop flow are clear and are tied not to whether any loop flows will occur, but whether such loop flows result in the congestion of flowgates.

The Commission similarly finds that the concerns raised in this Docket regarding transmission seams are, generally speaking, FERC jurisdictional.

APSC Order No. 54, Docket No. 10-011-U (October 28, 2011) at 104-105.

¹¹ *Midwest Independent Transmission System Operator, Inc.*, 136 FERC ¶ 61,010 (2011), *reh'g denied*, 138 FERC ¶ 61,055 (2012), *appeal pending sub. nom.*, *Southwest Power Pool, Inc. v. FERC*, No. 12-1158 (DC Cir., March 23, 2012)..

4. EAI strongly disagrees with KCPL's argument set forth in File No. EO-2013-0396 that the ITC Transaction proceeding is the proper forum for KCPL to raise issues related to EAI's change of functional control, because the Entergy Operating Companies' decision to join MISO is separate and distinct from the merger involving ITC Holdings, Inc. ("ITC").¹² EAI does not believe that KCPL's MISO-related, FERC-jurisdictional loop flow and transmission seams assertions are properly raised before the Missouri Commission in any form. EAI submits this Notice to provide the Commission the opportunity to consider the facts presented and to determine that it has no jurisdiction over EAI's integration into MISO in the narrow circumstances presented here. Such an action would avoid the Commission's expending its resources on these matters. Consistent with the arguments set forth below, EAI respectfully requests that the Commission determine that it lacks jurisdiction over and dismiss this matter because EAI's Missouri transmission facilities are used to furnish only wholesale electric service

¹² The FERC has acknowledged that the ITC Transaction and MISO integration are "separate and distinct" events. *Midwest Independent Transmission System Operator, Inc.*, 139 FERC ¶ 61,056 at P 229 (2012) (finding that "[w]e agree" that "these two events are separate and distinct"), *reh'g denied*, 141 FERC ¶ 61,128 (2012), *reh'g pending*. Consistent with the fact that the two events are separate and distinct, the Entergy Operating Companies have filed separate change in control applications in each of their five retail jurisdictions concerning MISO integration, on the one hand, and the ITC transaction, on the other hand, and each of the five retail jurisdictions is processing them separately. Indeed, in distinguishing between the two events, the Public Utility Commission of Texas held that the "proposed transfer of the ETI transmission system to ITC Holdings is independent of any EOC joining MISO and will be the subject of separate Commission review." PUCT Docket No. 40346, Order at 28, ¶107. Likewise, in Docket No. 10-011-U considering EAI's efforts to join MISO, the APSC held that if "Entergy and EAI intend to pursue the sale of its transmission assets to [ITC], then EAI forthwith shall file an application seeking Commission approval to divest its transmission assets to ITC." Order No. 68 at 32. EAI and ITC did so in separate Docket No. 12-069-U.

to various cities and electric cooperatives in Missouri subject to the rate jurisdiction of the FERC and retail electric service only to EAI's customers located in north Arkansas subject to the retail rate jurisdiction of the APSC; further, by changing functional control, EAI is not selling, disposing, or encumbering Missouri transmission assets serving the general public in Missouri as contemplated by Section 393.190 RSMo. Alternatively, and without waiving any claim, assertion, or defense EAI may have with respect to the proposed change in functional control to MISO, including that the Commission lacks jurisdiction or should dismiss this action or that the FERC has preemptive jurisdiction over such matters, EAI seeks, pursuant to Section 393.190.1, RSMo 2000, 4 CSR 240-2.060 and 4 CSR 240-3.110, a Commission determination, to the extent the Commission believes it is necessary, that EAI's change in functional control of its limited transmission facilities located in Missouri to MISO is not detrimental to the public interest as evidenced by this filing and otherwise is granted.

I. EAI AND OVERVIEW OF ITS MISSOURI FACILITIES

5. EAI is a corporation organized and existing under the laws of the State of Arkansas and holds a certificate of convenience and necessity from the Commission. As discussed below, EAI obtained the certificate from the Commission under 393.170 R.S.Mo. in File No. EA-2012-0321 with respect to the limited transmission and distribution assets that EAI currently owns in Missouri. As set forth in File No. EA-2012-0321, EAI has limited electric facilities

located in Missouri within Dunklin, New Madrid, Oregon, Pemiscot, and Taney Counties, consisting of electric transmission facilities used to furnish only wholesale electric service in Missouri to various cities and electric cooperatives subject to the rate jurisdiction of the FERC and distribution facilities used to furnish retail electric service to EAI's customers in north Arkansas subject to the retail rate jurisdiction of the APSC. EAI's facilities in Missouri are not used to provide retail electric service to any EAI Missouri customers (indeed, EAI has no Missouri retail customers). Consequently, EAI does not maintain tariffs on file in Missouri and has not maintained any such tariffs offering electric service to the general public in Missouri in over 20 years.

6. On December 18, 2005, EAI issued notice that it was terminating its participation in the Entergy System Agreement ("System Agreement")¹³ effective December 2013. EAI must have in place by then the systems and services necessary to operate an electric system that formerly were provided under the System Agreement. EAI's plan for post-System Agreement operation is joining an RTO, and on November 28, 2011, EAI submitted an application to its retail regulator (the APSC) requesting a finding that EAI's proposed change in functional control of its transmission facilities to MISO is consistent with the public interest. The APSC conducted extensive proceedings and, as discussed

¹³ The System Agreement is a rate schedule approved by the FERC and contract entered into among ESI and the Entergy Operating Companies, which requires the Entergy Operating Companies to plan, construct and operate their generation and bulk transmission facilities as a single, integrated electric system. On December 19, 2005, EAI gave notice that it will terminate its participation in the System Agreement effective December 18, 2013.

herein, issued Order No. 72 (dated October 26, 2012) granting EAI's and MISO's Motions for Finding of Compliance and authorizing EAI to move forward with the EAI/MISO integration process.¹⁴ EAI's integration into MISO will continue regardless of the outcome of the ITC Transaction.

7. EAI's principal place of business is the Metropolitan National Bank Building, 425 West Capitol Avenue, Little Rock, Arkansas 72201. Service of process may be made to Janan Honeysuckle via: Email [jhoney@entergy.com](mailto:jhoneys@entergy.com), Fax (501) 377-5814, Telephone (501) 377-5886. A certificate from the Missouri Secretary of State indicating that EAI is authorized to do business in Missouri was filed with the Commission in File No. EA-2012-0321, and said document is incorporated by reference in accordance with 4 CSR 240-2.060(1)(G).

8. EAI does not have any pending complaints or final unsatisfied judgments or decisions against it from any state or federal agency or court that relate to EAI's electric transmission facilities that are the subject of this filing that involve customer service or rate complaints that occurred within three years prior to the date of this filing sufficient to affect EAI's decision to join MISO as described herein. To the extent Rule 4 CSR 240-2.060(1)(K) might require reporting of any minor matter(s), EAI requests waiver thereof. Such waiver will

¹⁴ APSC Order No. 72 may be found at http://www.apscservices.info/pdf/10/10-011-u_956_1.pdf.

not have any impact on any public utility. EAI has no annual reports or assessment fees that are overdue to the Commission.

II. NOTICE CONTACTS

9. All pleadings, notices, orders and other communications and correspondence regarding this matter should be directed to the undersigned counsel as well as to:

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III. BACKGROUND

10. As fully addressed in File No. EA-2012-0321, EAI previously served wholesale and retail customers in Missouri in the 1980s and 1990s, doing business under the name of its predecessor, Arkansas Power and Light Company ("AP&L"), a subsidiary of Middle South Utilities ("MSU"), now Entergy Corporation.¹⁵ In 1991, after receiving authorization from the Commission in consolidated cases EM-91-29 and EM-91-404, AP&L sold the substantial portion of its Missouri assets to Union Electric Corporation, now known as Ameren Missouri and to Sho-Me Power Corporation. AP&L disposed of all of its Missouri retail service assets used to serve retail customers in Missouri, and the Commission cancelled the certificates of convenience and necessity of AP&L, to the extent any of such certificates or portions thereof were not transferred to Union Electric Company or to Sho-Me Power Corporation. EAI retained certain transmission and distribution facilities used to furnish wholesale electric service to various cities and electric cooperatives in Missouri subject to the rate jurisdiction of the FERC and retail electric service only to EAI customers in Arkansas subject to the retail rate jurisdiction of the APSC.¹⁶ When one of those cooperatives requested a new interconnection point in Pemiscot County, EAI

¹⁵ Entergy Corporation is the holding company that owns the Entergy Operating Companies – Entergy Arkansas, Inc.; Entergy Gulf States Louisiana, L.L.C.; Entergy Louisiana, LLC; Entergy Mississippi, Inc.; and Entergy New Orleans, Inc.; and Entergy Texas, Inc.; as well as System Energy Resources, Inc. (SERI), the owner of Grand Gulf nuclear plant; and numerous other corporate subsidiaries that are engaged in competitive enterprises.

¹⁶ EAI's facilities located in Missouri are very limited and consist of those described in Exhibit A attached hereto.

filed the application initiating File No. EA-2012-0321, resulting in the Commission's granting of a certificate of convenience and necessity for EAI's existing facilities in Missouri, including the new facility, and waiving the reporting requirements of certain Commission rules. EAI's high voltage transmission facilities, located in the Missouri Counties of Dunklin, New Madrid, Oregon, Pemiscot, and Taney, are described in Exhibit A.

11. In April 2011, the Entergy Operating Companies announced, after extensive study, that they had voluntarily chosen MISO as the RTO option that provides the greatest benefits and least risk to their retail customers, including nearly \$1.4 billion in estimated production cost savings and a proven track record of operating Day 2 markets throughout a large geographic region. Both before and after submitting change of control applications in each retail jurisdiction, the Entergy Operating Companies, including EAI, worked closely with their affected stakeholders to demonstrate the benefits of MISO participation and agreed to dozens of conditions in the various retail proceedings to address their concerns. Reflecting the resulting broad support for joining MISO from all stakeholder groups, all five retail regulators of the Entergy Operating Companies have now granted, subject to conditions, the requests to transfer functional control to MISO.¹⁷ The Entergy Operating Companies have also submitted to the FERC

¹⁷ See, APSC Docket No. 10-011-U, Orders No. 68 and 72; Council of the City of New Orleans Docket No. UD-11-01, Resolution R-12-439; Louisiana Public Service Commission Docket No. U-32148, Order No. U-32148; Mississippi Public Service Commission Docket No. 2011-UA-376, Order dated November 15, 2012; and Public Utility Commission of Texas Docket No. 40346, October 2012 Order.

requests for the necessary authorizations of the terms and conditions of their participation in MISO (including the related jurisdictional agreements) under the Federal Power Act ("FPA") and requested action on these filings prior to June 1, 2013, which will provide MISO the time MISO has indicated it requires to perform the multiple integration tasks that must be completed to integrate all the Entergy Operating Companies into MISO on December 19, 2013.

12. With respect to EAI's retail customers in particular, the APSC held that subject to certain conditions joining MISO was consistent with the public interest. More specifically, as discussed below, in Docket No. 10-011-U before the APSC, EAI received Order No. 72 (dated on October 26, 2012) conditionally granting EAI and MISO's Motions for Finding of Compliance and authorizing EAI to move forward with the EAI/MISO integration process.¹⁸ Additionally, in that docket on January 23, 2013, EAI filed a motion and supporting testimony describing the progress that EAI has made toward integrating into MISO, including that it signed the MISO Transmission Owners Agreement and submitted its MISO Membership Application on October 31, 2012, that the MISO Board of Directors approved EAI as a new transmission-owning member of MISO, and that current MISO implementation milestones are in green-light status.¹⁹

¹⁸ APSC Order No. 72 may be found at http://www.apscservices.info/pdf/10/10-011-u_956_1.pdf.

¹⁹ EAI's motion may be found at http://www.apscservices.info/pdf/10/10-011-U_983_1.pdf.

IV. STATEMENT OF MISSOURI LAW AND APPLICABILITY TO THESE FACTS

13. Missouri law provides, "No . . . electrical corporation . . . shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public, nor by any means, direct or indirect, merge or consolidate such works or system, or franchises, or any part thereof, with any other corporation, person or public utility, without having first secured from the commission an order authorizing it so to do."²⁰

14. EAI is aware that, pursuant to the above-referenced statute, certain Missouri-jurisdictional, vertically integrated, retail-serving electric utilities have sought and received Commission approval to transfer functional control of their respective transmission assets to RTOs.²¹ However, as discussed above, EAI submits that EAI's transition to MISO in Missouri is distinguishable and that the

²⁰ Mo. Rev. Stat. § 393.190.1 (2000).

²¹ Some Missouri applications appear to result from conditions contained in Commission-approved stipulations requiring approval of such transfer of functional control of transmission assets (e.g., KCP&L consented to Commission approval of any transfer by KCP&L of control of its transmission facilities to an RTO in a stipulation and agreement in Case No. EM-2001-464, *In the Matter of the Application of Kansas City Power & Light Company for an Order Authorizing its Plan to Reorganize Itself in a Holding Company Structure*, Par. 10 of approved Stipulation and Agreement: "Membership In A Regional Transmission Organization (RTO) and Transfer of Control of Assets Related to Membership In An RTO"). See also, Ameren Missouri's Statement of Position, Page 5, Footnote 1, November 17, 2011, File No. EO-2011-0128, *In the Matter of the Application of Union Electric Company for Authority to Continue the Transfer of Functional Control of Its Transmission System to the Midwest Independent Transmission System Operator, Inc.*: "Although Ameren Missouri has elected to seek Commission permission under Section 393.190.1 to continue the transfer of functional control, there exists a question regarding whether the Commission in fact has jurisdiction over such a transfer, given that Ameren Missouri is neither selling its transmission assets nor encumbering them.

requirements of Mo. Rev. Stat. § 393.190.1 do not apply. EAI's facilities in Missouri are used to furnish only wholesale electric service to various cities and electric cooperatives in Missouri subject to the exclusive rate jurisdiction of the FERC and electric service to EAI retail customers only in Arkansas subject to the retail rate jurisdiction of the APSC. EAI has no retail customers in Missouri, does not offer electric service to the general public in Missouri, and does not maintain tariffs on file with the Commission. Accordingly, by transferring functional control to MISO, EAI is neither selling nor encumbering transmission assets serving the general public in Missouri, as contemplated by Section 393.190.1, RSMo.²² The facts of this case may be said to fall outside the scope of the statutory provisions altogether or certainly within the exception noted in subsection (1) for property which is not necessary or useful in the performance of any duty to the public in Missouri. EAI is aware of no applications filed with the Commission regarding the change of functional control to an RTO under the distinct and unique fact situation presented herein – particularly none in which the jurisdictional limitation on the transmission component of bundled retail service is not applicable due to the lack of any retail electric service being offered in Missouri. For all these

²²In the Joint Application submitted in File No. EO-2013-0396, the applicants set forth that the ITC Transaction also is not subject to approval under Section 393.190.1 RSMo. because EAI does not hold itself out as providing electric service to the general public in Missouri and has no retail customers in Missouri. EAI and ITC reserved their rights with respect to their position that they do not believe the ITC Transaction falls within the type of transfers contemplated by the statute but were making the request out of an abundance of caution and without waiving any assertion that the Commission lacks jurisdiction or that the FERC has preemptive jurisdiction over such matters. Additionally, in the even more narrow circumstances presented in this present case, EAI notes that its change of only functional control of its limited transmission facilities to MISO is even farther removed from the statute because such a change is not a sale, assignment, lease, transfer, mortgage, disposition, or encumbering of the assets as set forth in Section 393.190.1 RSMo.

reasons, particularly the unique facts here, EAI respectfully submits that the Commission need not expend its resources hearing a matter in which there is no instance of regulatory gap and, therefore, requests the Commission to determine that it lacks jurisdiction over EAI's integration into MISO and to dismiss this matter accordingly.

15. To emphasize, this requested finding disclaiming jurisdiction does not create any regulatory gaps. As discussed above, all five retail regulators with jurisdiction over the retail customers of the Entergy Operating Companies have granted the request to transfer control to MISO subject to certain conditions. Specifically, the FERC has exclusive jurisdiction under Section 205 of the Federal Power Act, 16 U.S.C. § 824d, to approve the rates, terms and conditions of jurisdictional service associated with joining, participating in, changing, or withdrawing from an RTO. See *Atl. City Elec. Co. v. FERC*, 295 F.3d 1, 9 (D.C. Cir. 2003); *Pub. Util. Dist. No. 1 of Snohomish County, Wa. V. FERC*, 272 F.3d 607, 611 (D.C. Cir. 2001) (affirming *Regional Transmission Orgs.*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 30,933 (1999), 65 Fed. Reg. 810 (Jan. 6, 2000), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000)). The FERC, therefore, has the authority to address any issues that may arise with respect to transmission, wholesale and interstate issues associated with the integration into MISO. *Midwest Independent Transmission System Operator, Inc.*, 136 FERC ¶ 61,010 (2011) (asserting jurisdiction over SPP and KCPL arguments concerning loop flow and related operational issues).

FERC has “exclusive authority to regulate the transmission and sale at wholesale of electric energy in interstate commerce”²³ and, although the FERC has not exerted federal jurisdiction over the transmission component of bundled retail service,²⁴ this limitation does not apply in this case because, as indicated, EAI does not provide retail electric service in Missouri. Therefore, in summary, no regulatory gap exists because every regulator with jurisdiction over retail service has granted the requested change of control to MISO, subject to conditions, and the FERC has exclusive jurisdiction over transmission, wholesale and interstate matters arising under the FPA.

V. ALTERNATIVE REQUEST FOR CHANGE OF FUNCTIONAL CONTROL

16. Alternatively, and without waiving any claim, assertion, or defense EAI may have with respect to the proposed change in functional control to MISO, including that the Commission lacks jurisdiction, or that the FERC has preemptive jurisdiction over such matters, to the extent that the Commission believes that any such obligation may exist in Missouri, EAI seeks, pursuant to Section 393.190.1, RSMo 2000, 4 CSR 240-2.060 and 4 CSR 240-3.110, a Commission determination that EAI’s change of functional control of its transmission facilities to MISO is not detrimental to the public interest and otherwise granted as evidenced by this pleading.

²³ *New England Power Co. v. New Hampshire*, 455 U.S. 331, 340 (1982).

²⁴ *New York v. FERC*, 535 U.S.1 (2002).

17. EAI restates Paragraphs 1-15 herein and incorporates the same by reference in its request that the Commission otherwise grant EAI's request to change functional control to MISO as the Entergy Operating Companies' retail regulators have done with respect to the similar requests by the respective Entergy Operating Companies they regulate.

18. As explained in Section I of the pleading, EAI currently participates in the System Agreement and will terminate its participation in the System Agreement effective December 18, 2013.

19. As the Commission is well aware, MISO is an independent, non-profit regional transmission operator currently responsible for maintaining reliable transmission of power in 11 U.S. states and the Canadian province of Manitoba.

20. EAI's transmission customers in Missouri currently take transmission service under the terms and conditions of the Entergy Open Access Transmission Tariff ("OATT"), a FERC-jurisdictional tariff, or other FERC-jurisdictional arrangements. Following the change of functional control of EAI's transmission facilities to MISO, EAI's transmission customers will take service under the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff ("MISO Tariff"), also a FERC-jurisdictional tariff (or other

FERC-jurisdictional arrangements).²⁵

21. Regarding the information required by 4 CSR 240-3.110(1)(A), a brief description of the applicable property is attached in Exhibit A.

22. As to the material required by 4 CSR 240-3.110(1)(B), there is no agreement between EAI and MISO to “sell” assets. The agreement that is the subject of this issue is the “MISO Transmission Owner Agreement,” which can be found at:

<https://www.midwestiso.org/Library/Repository/Tariff/Rate%20Schedules/Rate%20Schedule%2001%20-%20Transmission%20Owners%20Agreement.pdf>

23. The verified affidavit of an officer of EAI is attached hereto as Exhibit B. (4 CSR 240-3.110(C)).

24. Commission regulation (4 CSR 240-3.110(1)(D)) requires a statement by an applicant as to why “the proposed sale of the assets is not detrimental to the public interest.” However, in the case of EAI integrating into MISO, there is no proposed “sale” of assets from EAI to MISO. Therefore, the required determination of 4 CSR 240-3.110(1)(D) that a “sale of the assets is not detrimental to the public interest” is irrelevant in this proceeding. Even if such a

²⁵ See <https://www.midwestiso.org/Library/Tariff/Pages/Tariff.aspx>.

finding were applicable, EAI integrating into MISO is not detrimental to the public interest. To the extent the Commission believes it needs to make some determination on this point, EAI requests that the Commission issue a finding that EAI's joining MISO is not detrimental to the public interest. There is more than an adequate basis to do so on the public record. All five retail regulators of the Entergy Operating Companies have issued findings that joining MISO is in the public interest subject to certain conditions.²⁶ Specifically, the APSC determined, after lengthy proceedings, that EAI joining MISO was consistent with the public interest, subject to EAI's compliance with certain conditions. The APSC found, in particular, that EAI and MISO had complied with a number of conditions including that EAI had committed to remaining under the APSC's jurisdiction (to the extent not otherwise preempted by the FERC) with respect to retail electric rates and that the terms of the FERC's approval of the MISO Tariff modifications to transition EAI into MISO would not materially change in a way that would create a material adverse impact on EAI's retail ratepayers. (APSC Order No. 72 at 15, noting compliance with Condition Nos. 6 and 7.)

25. EAI's limited facilities in Missouri are not used to establish retail rates for EAI customers residing in Missouri. Indeed, EAI has no retail customers in Missouri and does not maintain tariffs on file with the Commission.

²⁶ The retail regulators considered these issues under higher standards requiring findings that the Entergy Operating Companies' MISO membership was consistent with or otherwise in the public interest. These standards of review are more stringent than "not detrimental to the public interest". See, *State ex rel. City of St. Louis v. Public Service Commission*, 73 S.W.2d 393, 400 (Mo. banc 1934).

Instead, EAI's facilities in Missouri are used to provide retail electric service only to EAI's customers in north Arkansas. Therefore, as a practical matter under the unique facts of this case, it is appropriate for the Commission to rely upon the decisions of the retail regulators of the Entergy Operating Companies based on their completed, extensive investigations into the benefits to Entergy Operating Company retail customers associated with the companies' plan to join MISO.

26. As to the material required by 4 CSR 240-3.110(1)(E), EAI states that there is no "purchaser" because there is no "sale" of assets. Additionally, EAI does not anticipate that MISO will be subject to the jurisdiction of the Commission.

27. As to the material required by 4 CSR 240-3.110(1)(F), EAI states that there is no expected impact on the tax revenues of any political subdivisions.

28. Applications pursuant to Section 393.190 are not contested cases because no hearing is required by statute, and no private rights are determined by the Commission's Order.²⁷

²⁷ See, *State ex rel. Public Counsel v. Public Service Commission*, 210 S.W.3d 344, 352-356 (Mo. App. W.D. 2006).

29. As set forth above, EAI has no retail customers in Missouri and submits that the facts surrounding the change of functional control of its Missouri transmission facilities to MISO are distinguishable from those of other Missouri-jurisdictional utilities. EAI files this request out of an abundance of caution and respectfully requests that, to the extent the Commission believes it needs to make some finding in this matter, it issue a determination as expeditiously as possible by June 1, 2013.

VI. CONTINGENT REQUEST FOR WAIVER

30. EAI restates Paragraphs 1-29 herein and incorporates the same by reference. This case is not likely to be a contested case within the meaning of Commission Rule 4 CSR 240-4.020(2), particularly to the extent that the Commission grants EAI's primary relief which is to dismiss and disclaim jurisdiction over this matter. This Commission has held that an application regarding a transfer of assets pursuant to Section 393.190, RSMo, is not a contested case:

Moreover, this is not a contested case pursuant to 536.010(2) because it does not involve a proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be **determined after hearing**. (Emphasis added). Neither Section 393.190, nor Section 393.106, nor any other provision of law requires a hearing be held for these determinations. *In the Matter of the Application of The Empire District Electric Company for Authority to Sell and Transfer Part of its Works or System to the City of Monett, Missouri*, Case No. EO-2009-0159, Order Approving The Transfer Of Assets, Footnote 4, February 11, 2009.

See also, *In the Matter of the Application of Atmos Energy Corporation for Authority to Sell Part of its Works or System Located at the Hannibal, Missouri Propane Air Plant*, File No. GO-2011-0281, Order Authorizing Sale of Propane

Air Plant Facility Located in Hannibal, Missouri ("Order"), April 19, 2011:

The company also requests a waiver of Commission rule 4 CSR 240-4.020(2), which requires a 60-day notice prior to filing what will be a contested case. A contested case "means a proceeding before an agency . . . required by law to be determined after hearing." Section 393.190.1 does not require the Commission to hold a hearing prior to ruling on this application. This is therefore not a contested case. The Commission's rule regarding contested cases is inapplicable and a waiver of the rule is unnecessary.²⁸

31. Further, Section 393.190 does not affect private rights. The standard it imposes is whether the proposed transaction "is not detrimental to the public interest."

32. Accordingly, EAI was not required to file a 60-day Notice of Filing pursuant to 4 CSR 240-4.020(2), to the extent said provision is determined to be applicable to the facts in this matter. However, in an abundance of caution, EAI respectfully requests that such notice requirement be waived for good cause given the Commission precedent cited above. 4 CSR 240-4.020(2)(B).

VII. MOTION FOR EXPEDITED TREATMENT

33. EAI restates Paragraphs 1-32 herein and incorporates the same by reference. Pursuant to 4 CSR 240-2.080(14), EAI asks the Commission for

²⁸ Order at 4.

expedited treatment of this pleading. EAI asks this Commission to act on this pleading by June 1, 2013.

34. No harm will reasonably result to any party as a result of the Commission's expedited treatment of this pleading. Indeed, as set forth herein, there is no instance of regulatory gap present with these facts such that every regulator with jurisdiction over retail service has granted the change of control request with respect to MISO, subject to conditions, and the FERC has exclusive jurisdiction over transmission, wholesale and interstate matters arising under the FPA. Further, delay would only serve to create unnecessary uncertainty with respect to the change in functional control to MISO. .

35. EAI has filed this pleading promptly after the issue was raised by other entities including KCPL, albeit inappropriately, in pending file EO-2013-0396 pertaining to the ITC Transaction. As noted herein, EAI believes that under the very narrow facts of EAI's presence in Missouri, the Commission does not have jurisdiction over EAI's pending move to MISO and otherwise does not need to expend its resources with respect to these matters which are not subject to any gap in regulatory oversight.

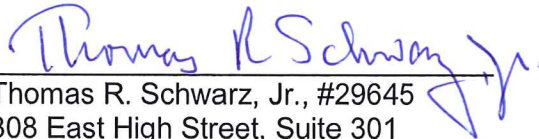
WHEREFORE, EAI requests that, under the unique circumstances presented by this filing, the Commission issue an order affirming that it has no jurisdiction over EAI's transfer of functional control of its Missouri transmission

facilities to MISO; affirming that there is no instance of regulatory gap presented on these facts; disclaiming jurisdiction over and dismissing this matter accordingly; or in the alternative and to the extent the Commission believes it is necessary and appropriate, finding that EAI's change of functional control of its transmission facilities to MISO is not detrimental to the public interest and otherwise granted; granting EAI's request for a waiver under 4 CSR 240-4.020 to the extent the Commission determines the provision to be applicable to the facts of this matter; granting EAI's request for expedited treatment of this matter and acting on this pleading by June 1, 2013; and granting all other necessary and proper relief to which EAI is entitled.

Respectfully submitted,

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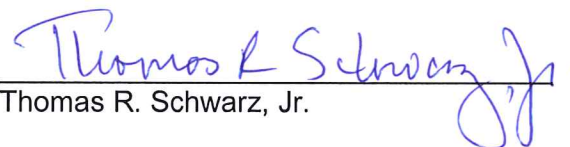
Attorneys for Entergy Arkansas, Inc., Mid
South TransCo LLC, and Transmission
Company Arkansas, LLC

CERTIFICATE OF SERVICE

The undersigned does 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 March, 2013, to the following:

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