

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

In the Matter of Entergy Arkansas, Inc.'s Notification)
of Internal Restructuring or Alternative Application) **File No. EO-2018-0169**
for Approval of Restructuring and Related Relief)

STAFF RESPONSE AND REQUEST FOR ADDITIONAL TIME

COMES NOW the Staff of the Missouri Public Service Commission ("Staff"), by and through counsel, in response to the Missouri Public Service Commission's December 18, 2017, Order Directing Filing directing the Staff to file its recommendation regarding *Entergy Arkansas, Inc.'s Notification of Internal Restructuring or Alternative Application for Approval of Restructuring and Related Relief* ("Notification/Application") filed on December 15, 2017. The Staff requests additional time to March 16, 2018, to review the filing of Entergy Arkansas, Inc. ("EAI") and make recommendations regarding said *Notification/Application*. In support thereof, the Staff states as follows:

1. On December 15, 2017, EAI filed its *Notification/Application* of an "internal restructuring" pursuant to Sections 393.250 and 393.190¹ RSMo. 2016 and 4 CSR 240-2.060 and 4 CSR 240-3.110. Under Section 393.250, reorganizations of electrical corporations are subject to the supervision and control of the Commission and no such reorganization shall be had without the authorization of the Commission. The Commission may by its Order impose such condition(s) as it may deem reasonable and necessary.

¹ Under Section 393.190.1, no electrical corporation shall 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.

2. EAI requests that the Commission find that the restructuring (a) does not require Commission review, approval, and relief, or alternatively, (b) the restructuring is not detrimental to the public interest and should be approved with the relief requested.

3. EAI states in the opening paragraph of its *Notification/Application* that the restructuring ultimately will result in a new operating company Entergy Arkansas, LLC (“EAL”) providing the service in Missouri that is currently provided by EAI. Although EAI relates in paragraph 3, page 3 of its *Notification/Application* that EAI is a corporation organized and existing under the laws of the State of Arkansas, as a public utility in Arkansas, EAI will convert to a Texas corporation, prior to the restructuring occurring under the Texas Business Organizations Code (“TXBOC”), as described in paragraph 8, pages 5 and 6 of the *Notification/Application* and in paragraph 6, pages 4 and 5 of the *Notification/Application*. EAI will use the merger provisions of TXBOC to transfer substantially all of its assets and liabilities to a new subsidiary, a Texas limited liability company, Entergy Arkansas Power, LLC (“EAP LLC”). EAI will contribute its membership interests in EAP LLC to Entergy Utility Holding Company, LLC (“EUH”), an intermediate holding company of Entergy Corporation (“Entergy”) that is also a Texas LLC. EAP LLC will be a wholly owned subsidiary of EUH. EAP LLC will be renamed Entergy Arkansas LLC (“EAL”) once it is under EUH.

4. EAI notes in its *Notification/Application* that it has been before the Commission in recent years in other cases (File Nos. EA-2012-0321,² EO-2013-0396,³

² File No. EA-2012-0321 – In the Matter of the Application of Entergy Arkansas, Inc. for a Certificate of Convenience and Necessity Authorizing it to Own, Acquire, Construct, Operate, Control, Manage and Maintain Certain Electric Plant Consisting of Electric Transmission and Distribution Facilities Within Dunklin, New Madrid, Oregon, Pemiscot and Taney Counties, Missouri and/or for Other Relief.

³ File No. EO-2013-0396 – 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 Transfer of

and EO-2013-00431⁴) raising questions regarding the Commission's jurisdiction over EAI. EAI at paragraph 1, page 2 of its *Notification/Application* states as follows regarding its certificate of public convenience and necessity ("CCN") proceeding File No. EA-2012-0321:

. . . Although EAI invoked the question as to jurisdiction in its CCN application, the Commission did not address the issue and simply granted the CCN.

EAI does not mention the Commission's holding in File No. EO-2013-0431 in its November 26, 2013, Revised Report And Order at pages 13-14 finding Commission jurisdiction:

EAI's claim that the Commission lacks jurisdiction over this transaction is based on the erroneous position that the Commission's jurisdiction is limited to utilities with retail customers. The Commission finds no such jurisdictional limitation in the language of Section 393.190.1. EAI has a certificate of convenience and necessity with the Commission. EAI owns electrical plant in Missouri that is being used to serve the public, and EAI wishes to transfer functional control of that plant to MISO. As such, as stated in Section 393.190.1 RSMo, the Commission has jurisdiction over the transfer. The Commission has jurisdiction over the applicants and the proposed migration of the functional control of EAI's transmission assets into MISO.

5. EAI asserts that the requested restructuring would enhance the separation of EAI/EAL's utility business from Entergy unregulated merchant generation businesses. The Staff would note EAI's November 17, 2017, Application before the Arkansas Public Service Commission ("ArkPSC") in Docket No. 17-052-U for approval of proposed

Assets and Certificate of Convenience and Necessity, and Merger and, in Connection Therewith, Certain Other Related Transactions. On December 24, 2013, the Commission granted the Motion For Leave To Dismiss of the Joint Applicants. The Joint Applicants stated in their Motion filed on December 13, 2013 that the multistate transaction that is the subject of this proceeding is no longer moving forward, and as a result, the Joint Applicants no longer intended to attempt to consummate the transaction in Missouri.

⁴ File No. EO-2013-0431 – 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

internal restructuring and for related relief states that Entergy is getting out of the unregulated merchant generation businesses.

6. On January 10, 2017, the Staff submitted into EFIS for sending to counsel for EAI eight (8) Staff Data Requests. The time set by Commission Rule for responding to Staff's Data Requests, one of which has been responded to EAI, will run beyond the January 17, 2018 date for the Staff to submit its recommendation.

7. In paragraph 26, pages 11 and 12 of the *Notification/Application*, EAI requests a waiver of 4 CSR 240-4.017 asserting as good cause that there has been no communication with the office of the Commission within the prior 150 days or at any other time regarding the substantive issues that are likely to be involved in the case. The Staff has no objection to EAI's request for a waiver of 4 CSR 240-4.017.

8. In paragraph 25, page 11 of the *Notification/Application*, EAI states that the restructuring is scheduled to close by December 1, 2018 and as a consequence EAI requests a determination from the Commission that its review is not required or a determination that the restructuring is not detrimental to the public interest no later than September 1, 2018.

9. The Commission's December 18, 2017, Order Directing Filing directed the Staff to file its recommendation no later than January 17, 2018. Due to the press of other Commission business, the irregular availability of personnel during the latter part of December, the fact that the transaction in question is a restructuring/reorganization, and the fact that a determination is requested from the Commission no later than September 1, 2018, the Staff is requesting an extension until March 16, 2018. If for any reason the Staff believes that it needs any additional time, which is not considered likely

at this time, the Staff will advise the Commission. The Staff does not ask for this additional time to unduly delay this proceeding or inconvenience the Commission or EAI.

WHEREFORE the Staff requests additional time to March 16, 2018, to review the filing of Entergy Arkansas, Inc. ("EAI"), conduct discovery, and make recommendations to the Commission regarding EAI's *Notification/Application*.

Respectfully submitted,

/s/ Steven Dottheim

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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 17th day of January, 2018.

/s/ Steven Dottheim