

**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 RECOMMENDATION**

**COMES NOW** the Staff of the Missouri Public Service Commission (“Staff”), by and through counsel, in response to the Missouri Public Service Commission’s January 18, 2017, Order Extending Time For Filing Recommendation directing the Staff to file its recommendation on the Application of Entergy Arkansas, Inc. for Approval of restructuring and related relief no later than March 16, 2018. In response thereto, the Staff states as follows:

1. Initially on December 15, 2017, EAI filed its *Notification of Internal Restructuring or Alternative Application for Approval of Restructuring and Related Relief* (“*Notification/Application*”). On December 18, 2017, the Commission issued its *Order Directing Filing* directing the Staff to file its recommendation regarding the December 15, 2017 *Notification/Application* of EAI no later than January 17, 2018, which was subsequently extended to March 16, 2018.

2. As its Recommendation to the Commission, the Staff is filing the Memorandum Recommendation of Daniel I. Beck and David Murray in addition to this cover recommendation that the December 15, 2017 *Notification/Application* of EAI be approved, with a condition, as “not detrimental to the public interest.”

3. EAI at pages 2-3, Paragraphs 1 and 2 of its *Notification/Application* seeks a Commission declaration that the restructuring (a) does not require Commission

review, approval, and relief,<sup>1</sup> or alternatively, requests a Commission determination that the restructuring (b) is not detrimental to the public interest and should be approved with the relief requested.

4. 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 limited liability corporation. EAP LLC will be a wholly owned subsidiary of EUH. EAP LLC will be renamed Entergy Arkansas LLC (“EAL”) once it is under EUH.<sup>2</sup> EAL will be a Texas limited liability corporation.

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<sup>1</sup> In footnote 3 on page 4 of its Application, EAI states that it “does not believe that the Restructuring falls within the purview of Section 393.190.1, RSMo.” because it “does not hold itself out as providing electric service to the general public in Missouri.”

<sup>2</sup> The EAI November 17, 2017, *Application Of Entergy Arkansas, Inc. For Approval Of Proposed Internal Restructuring And For Related Relief* before the Arkansas Public Service Commission (“ArkPSC”) states at page 8, Paragraph 11 that: Entergy Louisiana LLC is already a subsidiary of EUH; Entergy New Orleans, Inc. has obtained approval from the Council of the City of New Orleans and the Federal Energy Regulatory Commission (“FERC”) to engage in a comparable restructuring [continued next page]

5. EAI filed its *Notification/Application* of an “internal restructuring” pursuant to Sections 393.250 and 393.190 RSMo. 2016 and 4 CSR 240-2.060 and 4 CSR 240-3.110. There is no standard set out within the language of Sections 393.250 and 393.190 RSMo. 2016 themselves. At page 8, Paragraph 14 EAI states that “[t]he long-standing legal standard for Commission review of utility mergers, acquisitions and transfers of assets under Section 393.190.1, RSMo, and for approval of reorganizations under Section 393.250, RSMo, is, ‘not detrimental to the public interest.’ *State ex rel. City of St. Louis v. Public Service Commission of Missouri*, 335 Mo. 448, 73 S.W.2d 393, 400 (Mo. Banc 1934).” The Missouri Supreme Court in the 1934 *City of St. Louis* case addresses Section 5195 RSMo. 1929, a predecessor to Section 393.190.1, RSMo. 2016, but it does not address Section 5201 RSMo. 1929, a predecessor to Section 393.250, RSMo. 2016. However, the Commission in several Commission cases has stated that the same standard is applied to proposed reorganizations. See Paragraph 6 below. 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. Also, the Commission may by its Order impose such condition(s) as it may deem reasonable and necessary.

6. The Commission in *Re Laclede Gas Co.*, Case No. GM-2001-342, 2001 WL 1448586, *Order Approving Stipulation and Agreement* (August 25, 2001), stated that:

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[*continued from prior page*] upon which the New Orleans utility will become an EUH subsidiary (to be named Entergy New Orleans, LLC). EAI further relates it understands that: Entergy Mississippi, Inc. expects to seek Mississippi Public Service Commission, Nuclear Regulatory Commission (“NRC”), and FERC approval to engage in a comparable restructuring that would close in late 2018, and finally Entergy Texas, Inc. could seek a comparable restructuring.

The Commission reads *State ex rel. City of St. Louis v. Public Service Commission of Missouri* to require a direct and present public detriment. [Footnote omitted.] . . . . In the present case, there is no evidence of a direct and present public detriment in the record. If the reorganization is approved, Laclede will still be a public utility subject to regulation by this Commission; it will still serve the same customers with the same system pursuant to its existing tariffs.

\* \* \* \*

Based on its consideration of the record before it, the Commission concludes that the proposed reorganization is reasonable and is not a detriment to the public interest. Therefore, it should be approved.

Very similar language appears in *Re Kansas City Power & Light Co.*, Case No. EM-2001-464, 2001 WL 1402082, *Order Approving Stipulation and Agreement and Closing Case* (August 2, 2001).<sup>3</sup>

7. EAI notes in its *Notification/Application* that it has been before the Commission in recent years in other cases (File Nos. EA-2012-0321,<sup>4</sup> EO-2013-0396,<sup>5</sup>

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<sup>3</sup> See *Re Sho-Me Power Corp.*, Case No. EO-93-259, *Report and Order*, 1993 WL 719871 (September 17, 1993) – the Commission determined that Section 393.250.1, not Section 393.190.1, was the controlling statute that would operate respecting the conversion of Sho-Me from a Chapter 351 general corporation operating in a nonprofit manner on the cooperative business plan to a Chapter 394 rural cooperative; regardless the standard of review under Section 393.190 and Section 393.250 are the same “not detrimental to the public” and that applies if the reorganization is from Chapter 351 to Chapter 394. *Re Fee Fee Trunk Sewer, Inc. and Butler Hill Sewer Co.*, Case No. 16,990, *Report and Order*, 1970 WL 224105 (June 30, 1970) – Fee Fee Trunk Sewer and Butler Hill Sewer sought to reorganize pursuant to Section 393.250.1 RSMo. by means of a statutory merger. The Commission concluded that the proposed merger was just and reasonable and not detrimental to the public interest, and the requested authority should be granted.

<sup>4</sup> 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.

<sup>5</sup> 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 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.

and EO-2013-00431<sup>6</sup>) raising questions regarding the Commission's jurisdiction over EAI. File No. EA-2012-0321 is addressed in Paragraphs 15 and 17-19 below and File No. EO-2013-00431 is addressed in Paragraphs 20-22 below.

8. At pages 3 and 4, Paragraph 3 and 4 of its *Notification/Application*, EAI states that it maintains limited transmission and distribution assets in Missouri, approximately 87 miles of transmission and distribution assets (page 4, Paragraph 5 of the *Notification/Application*) that are located within Dunklin, New Madrid, Oregon, Pemiscott, and Taney Counties. EAI relates that those assets are used to provide wholesale electric service in Missouri to various cities and electric cooperatives, subject to the exclusive ratemaking jurisdiction of the FERC.

9. On page 8, Paragraph 2 of its *Notification/Application* where EAI alternatively seeks a Commission determination that the restructuring is not detrimental to the public interest in Missouri and should be approved. EAI goes on to state: "As discussed herein, EAI believes that this Restructuring will be beneficial to the Company and its retail customers in Arkansas; again, the Company has no retail customers in Missouri." EAI indicates in its *Notification/Application* at pages 4-5, Paragraphs 6 and 7 that the proposed restructuring would enhance the separation of EAI / EAL's utility business from Entergy Corporation's unregulated merchant generation businesses and could provide an additional source of financing to EAL. EAI's response to Staff Data Request No. 1 relates that these are the two principal reasons for the proposed restructuring.

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<sup>6</sup> 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

10. In response to Staff Data Request No. 7, EAI identified that Entergy Corporation engages in the following unregulated businesses:

1. Nuclear generation and sale of power via the following subsidiaries:  
a. Entergy Nuclear Generation Company (owns Pilgrim Nuclear Power Station), b. Entergy Nuclear Indian Point 2, LLC, c. Entergy Nuclear Indian Point 3, LLC, d. Entergy Nuclear; Palisades, LLC, e. Entergy Nuclear Power Marketing, LLC, f. Entergy Solutions, LLC;

2. Fossil generation and sale of power via the following subsidiaries:  
a. Entergy Power, LLC, b. RS Cogen, LLC, c. EWO Marketing, LLC, d. EAM Nelson Holding, LLC;

3. Nuclear power plant operations via the following subsidiary: a. Entergy Nuclear Nebraska, LLC;

4. Power plant operations via the following subsidiary: a. Entergy Power Operations U.S., Inc.;

5. Nuclear decommissioning services via the following subsidiary: a. TLG Services.

11. The Staff notes that EAI's November 17, 2017, *Application Of Entergy Arkansas, Inc. For Approval Of Proposed Internal Restructuring And For Related Relief ("Application")* before the Arkansas Public Service Commission ("ArkPSC") in Docket No. 17-052-U for approval of proposed internal restructuring and for related relief states at pages 1 and 2, Paragraph 1 that the restructuring will enhance the separation of EAI / EAL's utility business from Entergy Corporation's unregulated merchant generation businesses and could provide an additional source of financing to EAI / EAL. The *Notification/ Application* at page 10, Paragraph 16 states that the enhanced separation is beneficial even with Entergy's plan to leave the unregulated merchant generation businesses:

The enhanced separation is beneficial, even with Entergy Corporation's plan to cease operations of its unregulated merchant generation businesses. At a high level, Entergy's plan to exit its merchant

generation businesses involves ceasing operations of Pilgrim Nuclear Power Station in Plymouth, Massachusetts in May of 2019, Indian Point Unit 2 in Buchanan, New York in April of 2020, Indian Point Unit 3 in Buchanan, New York in April of 2021, and Palisades Nuclear Plant in Covert, Michigan in the spring of 2022. After closure of each merchant nuclear plant, absent a sale transaction, Entergy Corporation subsidiaries would be responsible for full decommissioning of each site. [Footnote omitted.] . . . .

12. The Staff also notes EAI's Arkansas Application states at pages 2 and 12, Paragraphs 1 and 18 that the Direct Testimony of EAI witness James I. Warren<sup>7</sup> discusses that if the ArkPSC approves the restructuring by September 1, 2018 and the restructuring closes on or before December 1, 2018, EAI would guarantee retail customer credits of \$66 million over six-years beginning in 2019. Mr. Warren's public prepared Direct Testimony filed on November 17, 2017 relates, in part, at page 5:

. . . Once approved and completed, the Restructuring will have a number of significant income tax consequences that will be relevant to EAL's customers. The specific purpose of my direct testimony is to describe these consequences and to explain the Company's proposed regulatory treatment.

Mr. Warren's public Supplemental Direct Testimony filed before the ArkPSC on February 5, 2018 identifies at page 3 "[t]he new amount of proposed guaranteed credits is \$39.6 million, in total, to be provided over the six-year period of 2019 through 2024."<sup>8</sup>

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<sup>7</sup> Mr. Warren has a J.D. and a LL.M. in Taxation and is a member of the law firm Miller & Chevalier Chartered.

<sup>8</sup> In footnote 2 above, the Staff commented that the EAI November 17, 2017, *Application* before the ArkPSC, noted that Entergy New Orleans, Inc. ("ENO") obtained approval from the Council of the City of New Orleans ("Council") and the FERC to engage in a comparable restructuring upon which ENO would become an EUH subsidiary (to be named Entergy New Orleans, LLC ("ENOL")). On April 25, 2017, a non-unanimous restructuring Agreement in Principle ("Restructuring AIP") was reached, executed, and filed with the Council. On May 4, 2017, the Council in Resolution No. R-17-228 in Docket No. UD-16-03 approved, without modification, the Restructuring AIP. The Restructuring AIP provided, in part, that ENO customers would receive (1) a guaranteed customer credit of \$10 million in 2017 by reduced customer billing in 2017, contingent solely on Council approval of the ENO *Application For Approval To Restructure*; and (2) a contingent customer credit of \$5 million in each of the years 2018, 2019, and 2020 for utility related purposes as the Council may determine appropriate pursuant to its plenary authority and all relevant and applicable laws, if the proposed restructuring is approved [continued next page]

EAI's Arkansas Application identifies at page 3, Paragraph 5 that it is in the business of generating, transmitting, and distributing electrical power and energy in Arkansas and as of December 31, 2016 EAI had a total of 706,879 retail customers in Arkansas.

13. EAI's December 15, 2017, *Notification/Application* states at page 6, Paragraph 9 in part that to effectuate the restructuring EAI will need to make a filing with FERC under Federal Power Act ("FPA") Section 203 to establish that the Restructuring will not have an adverse effect on competition, wholesale rates, or regulation, will not result in cross-subsidization among EAL and its non-utility associate companies or the pledge or encumbrance of utility assets for the benefit of an associate company, and is therefore consistent with the public interest. In its *Notification/Application* at page 7, Paragraph 11, EAI relates that it anticipates that it and/or EAL will make filings with FERC in early 2018 under FPA Sections 204 and 205 in addition to Section 203. The filings referred to have not occurred yet.

14. In response to Staff Data Request No. 3 about staffing and resources in Missouri, EAI related that immediately following the restructuring, EAI's employee's will become employees of EAL, so that "the Restructuring would not affect the employees and resources that would be providing service to EAI's customers." In said response,

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[continued from prior page] by the FERC by December 31, 2018. The guaranteed credits for 2017 were provided and to date credits of \$416,667 per month have been provided for 2018.

Resolution No. R-17-228 of the Council notes that an Application by ENO with the FERC seeking FPA Section 203 authorization of a proposed change in control of FERC-jurisdictional assets was filed on February 24, 2017. That filing, which was subsequently amended May 19, 2017, was assigned Docket No. EC17-85-000 and more specifically was pursuant to FPA Section 203(a)(1)(A) requesting authorization for a proposed internal restructuring of the ownership of the ENO public utility business. On June 12, 2017, the FERC issued in Docket No. EC17-85-000, 159 FERC ¶ 62,264 *Order Authorizing Disposition Of Jurisdictional Facilities*. The *Order* stated, in part, "[a]fter consideration, it is concluded that the Proposed Transaction is consistent with the public interest and is authorized . . ." On December 7, 2017, Entergy Services, Inc. in Docket No. EC17-85-000 advised the FERC that the transaction authorized by the FERC on June 12, 2017, was consummated on November 30, 2017.



EAI also stated that “[t]here are no significant budget or personnel cuts planned or foreseen in the next five years as a result of the Restructuring.”

15. In File No.EA-2012-0321, the Commission granted EAI a CCN authorizing it to own, acquire, construct, operate, control, manage and maintain certain existing electric plant consisting of electric and distribution facilities and new electric facilities consisting of a new transmission interconnection point which Associated Electric Cooperative, Inc. (“AECI”) requested with M&A Electric Power Cooperative (“M&A”) in Pemiscot County. AECI requested the new interconnection point adjacent to EAI’s existing Hayti (Mo) South to Blytheville (Ark) I-55 161 kV transmission line to connect with M&A’s proposed new 161/69 kV substation.

16. Prior to the early 1990’s, EAI served wholesale and retail customers in Missouri doing business under its former name Arkansas Power & Light Co. (“AP&L”), a subsidiary of Middle South Utilities (“MSU”), now Entergy Corp. In *Re Arkansas Power & Light Co. and Union Electric Co.*, Case No. EM-91-29, filed 1990, and in *Re Arkansas Power & Light Co. and Sho-Me Power Corp.*, Case No. EM-91-404, filed 1991, which were consolidated, AP&L sold the substantial portion of its Missouri assets to UE and some assets to Sho-Me, comprising all of its retail service. EAI retained certain transmission and distribution assets to furnish wholesale electric service to various cities and electric cooperatives in Missouri. The Commission in “Ordered: 14.” of its *Report and Order* in Case Nos. EM-91-29 and EM-91-404 cancelled the CCNs issued to AP&L to the extent any such CCNs or portions thereof were not transferred to UE or Sho-Me. *Re Arkansas Power & Light Co.*, 1 Mo.P.S.C.3d 96, 105, Case Nos. EM-91-29 and EM-91-404, 1991 WL 498651, *Report and Order* (1991).

17. In File No. EA-2012-0321, EAI requested an Order from the Commission granting a CCN covering both proposed new facilities and EAI's existing Missouri facilities through which it was furnishing wholesale electric service to various cities and electric cooperatives. Alternatively, EAI requested that the Commission issue an Order finding and concluding that EAI already had such authorizations from the Commission required for it to engage in its desired activities. As a third alternative, EAI proposed as the proper determination that the Commission issue an Order declining jurisdiction.

18. The Commission determined the first option was the correct option. The Commission granted EAI a CCN for (1) a new interconnection point and (2) EAI's existing Missouri facilities through which EAI continued to furnish wholesale electric service to various cities and electric cooperatives after Case Nos. EM-91-29 and EM-91-404, but without a CCN. The Commission granted EAI a waiver from the reporting requirements of Commission Rule 4 CSR 240-3.175 (depreciation studies) and Commission Rule 4 CSR 240-3.190(1) and (3) (certain system facilities events which primarily relate to generation). *In Re Entergy Arkansas, Inc.*, File No. EA-2012-0321, *Order Granting Certificate Of Convenience And Necessity*, July 11, 2012, 22 Mo.P.S.C.3d 177, 178 (2012)

19. EAI at page 2, Paragraph 1 of its *Notification/Application* states regarding the CCN proceeding File No. EA-2012-0321 that “[a]lthough 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 findings and conclusions in *In Re Entergy Arkansas, Inc.*, File No. EO-2013-0431, 2013 WL 6384965, *Revised Report And Order*, November 26, 2013.

20. In File No. EO-2013-0431 EAI filed a 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. EAI asserted at page 14, Paragraph 14 of its Application in File No. EO-2013-0431 that EAI's facilities in Missouri are subject to the exclusive rate jurisdiction of the FERC, EAI has no retail customers in Missouri, EAI does not offer electric service to the general public in Missouri, and EAI does not maintain tariffs on file with the Commission. EAI asserted that by transferring functional control to MISO, EAI was neither selling nor encumbering transmission assets serving the general public in Missouri as contemplated by Section 393.190.1 RSMo. Thus, Section 393.190.1 RSMo. did not apply to EAI. In Footnote 22 on page 14, EAI stated that a change of only functional control of its transmission facilities to MISO was even farther removed from Section 393.190.1 RSMo. because such a change was not a sale, assignment, lease, transfer, mortgage, disposition, or encumbering of the assets as set forth in Section 393.190.1 RSMo.

21. In the *Revised Report And Order* in File No. EO-2013-0431 at pages 11-12, in the "Conclusions of Law" section under the heading "Jurisdiction," the Commission found that even though EAI had no retail customers in Missouri, the Commission had jurisdiction over EAI because: it was an "electrical corporation" pursuant to Section 386.020(15) RSMo.; it was a "public utility" pursuant to Section 386.020(42) RSMo. (now Section 386.020(43) RSMo. 2016); its Missouri facilities were "electric plant" pursuant to Section 386.020(14) RSMo.; and its Missouri

facilities were used for the transmission and distribution of electricity that was used for “light, heat, or power.” See Section 386.250(1) RSMo. 2016.

22. At pages 13-14 in the “Decision” section of the *Revised Report And Order* in File No. EO-2013-0431, the Commission noted “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.” Addressing this charge, the Commission stated: “The Commission finds no such jurisdictional limitation in the language of Section 393.190.1.” In addition to the Commission’s findings cited in Paragraph 21 above, the Commission stated that EAI had a CCN, owned electric plant in Missouri that was being used to serve the public, and EAI wished to transfer functional control of that plant to MISO. Thus, the Commission related it had jurisdiction under Section 393.190.1 RSMo. over EAI and the proposed transfer of functional control of EAI’s transmission and distribution facilities to MISO.

23. The Staff believes that EAL should receive a waiver from the reporting requirements of Commission Rules 4 CSR 240-3.175 (depreciation studies) and 4 CSR 240-3.190(1), (2), and (3)(certain system facilities events which primarily relate to generation).

24. EAI at page 11, Paragraphs 22 and 24 of its *Notification/Application* requests a waiver of Commission Rule subsections 4 CSR 240-3.110(1)(B) and 3.110(1)(E), respectively, on the basis that the transaction is an internal restructuring and not a traditional sale with a purchaser. The Staff has no objection to the request.

25. EAI at page 10, Paragraph 20 of its *Notification/Application* states that a copy of a certificate from the Missouri Secretary of State demonstrating that EAI is

authorized to do business in Missouri was filed with the Commission in File No. EA-2012-0321 and is incorporated by reference to the *Notification/Application* in accordance with 4 CSR 240-2.060(1)(G). EAI further states that evidence of registration of EAL with the Missouri Secretary of State, pursuant to 4 CSR 240-2.060(5)(B) will be provided to the Commission “as soon as practicable after the requisite Restructuring approvals are received and the Restructuring transaction closes.” The Staff recommends that the Commission condition its approval of its authorization of the *Notification/Application* on EAI/EAL filing with the Commission in this proceeding evidence of the registration of EAL with the Missouri Secretary of State that EAL is authorized to do business in Missouri.

26. EAI at pages 11 and 12, in Paragraph 26 of its *Notification/Application* requests a waiver from the 60-day notice requirement of 4 CSR 240-4.017(1) 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 from the 60-day notice requirement of 4 CSR 240-4.017(1).

**WHEREFORE** the Staff recommends the Commission (1) authorize EAI the requested internal restructuring to form EAL pursuant to Sections 393.250 and 393.190 RSMo. 2016 and 4 CSR 240-2.060 and 4 CSR 240-3.110, as not detrimental to the public interest; (2) transfer to EAL from EAI the CCN granted by the Commission in File No. EA-2012-0321 to EAI; (3) condition its approval of authorization of the EAI *Notification/Application* requested internal restructuring to form EAL on EAI/EAL filing in this proceeding evidence of the registration with the Missouri Secretary of State that

EAL is authorized to do business in Missouri; (4) authorize waiver from the 60-day notice requirement of 4 CSR 240-4.017(1) for good cause; (5) authorize waiver of the reporting requirements of Commission Rules 4 CSR 240-3.175 and 4 CSR 240-3.190(1), (2), and (3); and (6) authorize waiver of Commission Rule subsections 4 CSR 240-3.110(1)(B) and 3.110(1)(E).

Respectfully submitted,

**/s/ Steven Dottheim**

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Attorney for the Staff of the  
Missouri Public Service Commission

### **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 16th day of March, 2018.

**/s/ Steven Dottheim**

## MEMORANDUM

TO: Missouri Public Service Commission Official Case File  
Case No. EO-2018-0169 - In the Matter of Entergy Arkansas, Inc.'s  
Notification of Internal Restructuring or Alternative Application for  
Approval of Restructuring and Related Relief

FROM: /s/ Daniel I. Beck, P.E 03/16/18    /s/ Steven Dottheim 03/16/18  
Manager, Engineering Analysis                      Staff Counsel's Office / Date  
Unit / Date

/s/ David Murray, CFA 03/16/18                      /s/ Steven Dottheim 03/16/18  
   Manager, Financial Analysis                      Staff Counsel's Office / Date  
   Unit / Date

SUBJECT: Recommendation to Approve Application with Conditions

DATE: March 16, 2018

### **OVERVIEW**

The Staff of the Missouri Public Service Commission ("Staff") submits the instant Memorandum Recommendation regarding the Application of Entergy Arkansas, Inc. ("EAI") for a Commission declaration that the restructuring (a) does not require Commission review, approval, and relief, or alternatively, requests a Commission determination that the restructuring (b) is not detrimental to the public interest and should be approved with the relief requested. Staff recommends the Commission (1) authorize EAI the requested internal restructuring to form EAL pursuant to Sections 393.250 and 393.190 RSMo. 2016 and 4 CSR 240-2.060 and 4 CSR 240-3.110, as not detrimental to the public interest; (2) transfer to EAL from EAI the CCN granted by the Commission in File No. EA-2012-0321 to EAI; (3) condition its approval of its authorization of the Application of EAI/EAL on the filing in this proceeding of evidence of the registration of EAL with the Missouri Secretary of State that EAL is authorized to do business in Missouri; (4) authorize waiver from the 60-day notice requirement of 4 CSR 240-4.017(1) for good cause; (5) authorize waiver of the reporting requirements of Commission Rules 4 CSR 240-3.175 and 4 CSR 240-3.190(1), (2), and (3); (6) authorize waiver of Commission Rule subsections 4 CSR 240-3.110(1)(B) and 3.110(1)(E).

### **DISCUSSION**

On December 15, 2017, EIA filed Entergy Arkansas, Inc.'s Notification of Internal Restructuring or Alternative Application for Approval of Internal Restructuring and Related Relief. The Application explains that EAI does have a Certificate of Convenience and Necessity in Missouri but the Restructuring described in the Application does not require Commission review. The Restructuring ultimately would

transfer all of the assets of EAI to Entergy Arkansas, LLC (“EAL”) and EAL would provide the wholesale electric service in Missouri that EAI is currently providing. Based on the advice of Staff Counsel, which is explained in greater detail in the cover Staff Recommendation to which this Staff Memorandum Recommendation is attached, Staff maintains that Commission review is required.

EAI’s Application contains specific references to the requirements of the Commission’s Rule 4 CSR 240-3.110, Filing Requirements for Electric Utility Applications for Authority to Sell, Assign, Lease or Transfer Assets. 4 CSR 240-2.060(1) lists 6 requirements that shall be included in the Application:

- (A) *A brief description of the property involved in the transaction.* The Application generally describes assets located within Dunklin, New Madrid, Oregon, Pemiscot, and Taney Counties as 87 miles of electric transmission and distribution lines in Missouri. The Application also referenced File No. EA-2012-0321 where a more specific list of Missouri properties was provided and is attached to the Staff Memorandum Recommendation in the 2012 case. The present Application also discusses CCNs that were previously granted by the Commission.
- (B) *A copy of the contract or agreement of sale.* Paragraph 22 of the Application states that there is no contract or agreement because this is an internal restructuring and requests a waiver from this requirement. Staff believes that the description which explains why a contract or agreement is not available meets this requirement and a waiver is not necessarily needed for this provision but since it has been requested should be granted.
- (C) *The verification of proper authority by the person signing the application or a certified copy of resolution of the board of directors of each applicant authorizing the proposed action.* A certified copy of resolution of the board of directors authorizing the proposed action. See Exhibit A to the Application which is The Unanimous Written Consent of the Board of Directors of EAI.
- (D) *The reasons the proposed sale of the assets is not detrimental to the public interest.* Paragraph 15 of the Application addresses this.
- (E) *If the purchaser is subject to the jurisdiction of the commission, a balance sheet and income statement with adjustments showing the results of the acquisitions of the property.* Paragraph 24 of the Application states that there is no purchaser and to the extent necessary, a waiver of this requirement is respectfully requested. Staff agrees that there is no purchaser but would also note that EAI filed its 2016 FERC Form 1 Annual Report with the Commission on May 10, 2017. Staff believes a waiver is not necessarily needed for this provision but since it has been requested should be granted.
- (F) *A statement of the impact, if any, the sale, assignment, lease or transfer of assets will have on the tax revenues of the political subdivisions in which any structures, facilities or equipment of the companies involved in that sale are located.* No impact is expected.



The Application explains that EAI does not serve retail customers in Missouri but instead supplies wholesale service to various cities and electric cooperatives in Missouri. The Application also states that EAI serves retail customers in Arkansas. Staff would also note that the EAI facilities in Missouri are also a critical component to portions of the Missouri transmission system. Staff would also note that in File No. EO-2013-0431, the Commission allowed the Midcontinent Independent System Operator, Inc. (“MISO”) to take functional control of EAI’s Missouri transmission assets.

Since EAI’s facilities are an important part of the Missouri transmission system, Staff requested information about operational changes that would take place as a result of this restructuring. The response to Staff Data Request 0003 states that “the Restructuring would not affect the employees and resources that would be providing service to EAI’s customers”. EAI also stated that no significant budgets or personnel cuts are planned or foreseen in the next five years as a result of the Restructuring.

The Financial Analysis Unit (“Financial Analysis”) reviewed the rationale for the proposed restructuring. Financial Analysis did perform some discovery to attempt to better understand the rationale for the restructuring. It appears that the restructuring is intended to allow Entergy Corporation the ability to issue debt at an intermediate holding company that will only own Entergy’s regulated utility assets. Entergy Corporation represents that its motive for doing so is to allow for a further separation of capital invested in regulated assets as compared to merchant generation assets, including several nuclear generating units it plans to close over the next several years (through 2022). Apparently this capital may be used to invest in the equity of its regulated subsidiaries. Staff would only be concerned about potential ratemaking implications of such a structure. Because the Commission does not have ratemaking authority over Entergy Arkansas, Financial Analysis does not consider the transaction to be “detrimental to the public interest.”

Staff would also note that based on paragraph 20 of EAI’s Application, EAL will not be registered to do business in the state of Missouri with the Missouri Secretary of State until the Restructuring approvals are received and the Restructuring closes. Staff recommends that the Commission condition its approval of its authorization of the Application of EAI/EAL on the filing in this proceeding of evidence of the registration of EAL with the Missouri Secretary of State that EAL is authorized to do business in Missouri.

In paragraph 26 of EAI’s Application, EAI requested a waiver from 4 CSR 240-4.017 related to the Commission’s Standards of Conduct and the requirement that notice of the intent to file a case shall be filed at least 60 days prior to filing the case. This rule allows parties to file a waiver of this section for good cause which could include “a verified declaration from the filing party that it had no communication with the office of the commission within the prior one hundred fifty (150) days regarding and substantive issue likely to be in the case.” The Application makes this representation and a “Verification”

was attached to the Application. Staff concludes that good cause has been shown and the request for a waiver from 4 CSR 240-4.017(1) should be granted.

Although not specifically requested in the Application, Staff would also note that EAI had previously been granted a waiver from specific reporting requirements related to depreciation studies and generation plants. Since EAI did not serve retail customers, the depreciation study is not needed because there are no Missouri rate case proceedings for this Company. Likewise, the reporting requirements for generation plant is not relevant since the Company does not serve retail customers in Missouri and does not own generation in Missouri. EAL should be granted waivers from 4 CSR 240-3.175 and 4 CSR 240-3.190(1), (2) and (3) for the same reasons that EAI was granted these waivers.

### **RECOMMENDATION**

Staff recommends the Commission (1) authorize EAI the requested internal restructuring to form EAL pursuant to Sections 393.250 and 393.190 RSMo. 2016 and 4 CSR 240-2.060 and 4 CSR 240-3.110, as not detrimental to the public interest; (2) transfer to EAL from EAI the CCN granted by the Commission in File No. EA-2012-0321 to EAI; (3) condition its approval of its authorization of the Application of EAI/EAL on the filing in this proceeding of evidence of the registration of EAL with the Missouri Secretary of State that EAL is authorized to do business in Missouri; (4) authorize waiver from the 60-day notice requirement of 4 CSR 240-4.017(1) for good cause; (5) authorize waiver of the reporting requirements of Commission Rules 4 CSR 240-3.175 and 4 CSR 240-3.190(1), (2), and (3); (6) authorize waiver of Commission Rule subsections 4 CSR 240-3.110(1)(B) and 3.110(1)(E).



