

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 12<sup>th</sup> day of  
April, 2018.

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

**ORDER GRANTING APPLICATION**

Issue Date: April 12, 2018

Effective Date: April 24, 2018

Entergy Arkansas, Inc. ("EAI") filed the application,<sup>1</sup> seeking authorization for a corporate reorganization and transfer of assets ("the transactions"), a certificate of convenience and necessity ("CCN") for a new entity, and a waiver of regulations.

The Commission's staff ("Staff") filed a recommendation in favor of granting the application conditionally<sup>2</sup> and the Commission received no other filing<sup>3</sup> within the time provided by regulation.<sup>4</sup> When no party requests a hearing, the Commission may base its order solely on verified filings,<sup>5</sup> so this action is not a contested case<sup>6</sup> and the Commission need not separately state its findings of fact. The Commission independently finds, concludes, and orders as follows.

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<sup>1</sup> Electronic Filing Information System ("EFIS") No. 1 (December 15, 2018) *Entergy Arkansas, Inc.'s Notification of Internal Restructuring or Alternative Application for Approval of Internal Restructuring and Related Relief*. EFIS references refer to this file except as stated otherwise.

<sup>2</sup> EFIS No. 8 (March 16, 2018) *Staff Recommendation*.

<sup>3</sup> The Office of the Public Counsel is a party to this action, 4 CSR 240-2.010(10), but exercised its discretion to not participate.

<sup>4</sup> 4 CSR 240-2.080(13).

<sup>5</sup> *State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Com'n*, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).

<sup>6</sup> Section 536.010(4). All sections are in RSMo 2016.

EAI is an Arkansas corporation and an Arkansas public utility holding a CCN from the Commission. EAI provides wholesale electric service to Missouri cities and electric cooperatives. EAI's assets in Missouri, including approximately 87 miles of transmission and distribution lines, are located in the Missouri counties of Dunklin, New Madrid, Oregon, Pemiscot, and Taney.

Those assets constitute electrical plant,<sup>7</sup> which defines EAI as an electrical corporation,<sup>8</sup> a type of public utility.<sup>9</sup> The statutes provide that the Commission's jurisdiction, supervision, powers, and duties generally extend throughout Missouri to any electric plant; to any entity that owns, leases, operates, or controls electric plant; and to any entity that manufactures or distributes electricity.<sup>10</sup> Therefore, EAI and its electric plant are within the Commission's jurisdiction.<sup>11</sup>

EAI argues that the Commission has no jurisdiction over EAI and the transactions because EAI has no retail customers in Missouri and the Commission does not set EAI's terms of service. EAI cites the authority of the Federal Energy Regulatory Commission ("FERC") to approve the transactions and set EAI's terms of service. But EAI cites no law governing the Commission's jurisdiction or authority under which those facts are relevant.<sup>12</sup>

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<sup>7</sup> Section 386.020(14).

<sup>8</sup> Section 386.020(15).

<sup>9</sup> Section 386.020(43).

<sup>10</sup> Section 386.250(1).

<sup>11</sup> Section 393.140(1).

<sup>12</sup> Assuming, without deciding, that FERC's authority effectively reduces this action to a mere registration, that much authority remains, and the Commission still has a duty to rule on the application.

Contrary to EAI's unsupported argument, the statutes specifically require Commission authorization for a public utility to "exercis[e] any franchise,"<sup>13</sup> undertake a corporate reorganization,<sup>14</sup> and transfer necessary or useful plant or certain amounts of stock.<sup>15</sup> The Commission may also waive its regulations, which otherwise govern a public utility,<sup>16</sup> and set conditions on its orders.<sup>17</sup> As to all those matters, the Commission concludes that the law expressly grants the Commission jurisdiction and authority over EAI.

In contrast, EAI also asks the Commission to release EAI from all liability related to the assets. EAI cites no statute authorizing such a declaration.<sup>18</sup> The Commission will deny that request.

### **1. The Transactions**

The statutes do not set forth a standard for granting or denying authorization for the transactions. In such a case, Missouri courts apply the standard of "no public detriment." Under that standard, the Commission grants the application, unless detrimental to the public.<sup>19</sup>

On the closing date of the transactions, EAI will no longer provide wholesale electric service to wholesale customers in Missouri and will have formed a new subsidiary, Entergy Arkansas, LLC, ("EAL"), which will provide the service formerly

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<sup>13</sup> Sections 393.170.2; and 386.020(14), (15) and (43).

<sup>14</sup> Section 393.250(1).

<sup>15</sup> Section 393.190.

<sup>16</sup> 4 CSR 240-3.015.

<sup>17</sup> Sections 393.170.3.

<sup>18</sup> EFIS No. 1 (December 15, 2018) *Entergy Arkansas, Inc.'s Notification of Internal Restructuring or Alternative Application for Approval of Internal Restructuring and Related Relief* page 13 paragraph (e).

<sup>19</sup> ***State ex rel. City of St. Louis v. Pub. Serv. Comm'n of Missouri***, 73 S.W.2d 393, 400 (1934).

provided by EAI with the same personnel and other resources. The transactions will cause no public detriment, EAI argues, because the transactions will alter the provider, but not the service. Also, EAI argues, public benefits will occur because a) EAL's regulated activity—electrical transmission—will be further separated from the unregulated generation and nuclear decommissioning activities of entities related to EAI; and b) financing will be easier for EAL. Staff agrees on the condition that EAL file evidence of registration to do business in Missouri from the Missouri Secretary of State.

The Commission concludes that the transactions will not be detrimental to the public, will grant the application, and will conditionally authorize the transactions.

## **2. Certificate of Convenience and Necessity**

Operating as a public utility<sup>20</sup> requires the Commission's prior permission and approval. Such permission and approval depend on whether the proposed service "is required by the public convenience and necessity [;]"<sup>21</sup> and "necessary or convenient for the public service [.]"<sup>22</sup> "Necessary" and "necessity" relate to the regulation of competition, cost justification, and safe and adequate service.<sup>23</sup> On finding convenience and necessity, the Commission embodies its permission and approval in a certificate,<sup>24</sup> which the regulations call a certificate of convenience and necessity.<sup>25</sup> EAI has already demonstrated the public convenience and necessity of its services, which is why it holds

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<sup>20</sup> Section 393.170.2.

<sup>21</sup> 4 CSR 240-3.205(1)(E).

<sup>22</sup> Section 393.170.3.

<sup>23</sup> *State ex rel. Intercon Gas, Inc. v. Public Serv. Com'n of Mo.*, 848 S.W.2d 593, 597 (Mo. App., W.D. 1993).

<sup>24</sup> Section 393.170.2.

<sup>25</sup> 4 CSR 240-3.205.

a CCN from the Commission.<sup>26</sup> EAI asks the Commission to transfer the CCN of EAI to EAL, but the Commission will issue EAL a new CCN, and cancel EAI's CCN.

### 3. Waiver of Regulations

The standard for a waiver is good cause.<sup>27</sup> EAI and Staff also suggest that the Commission should waive the following regulations because they do not apply to the transactions or to the services that are the subject of this order:

4 CSR 240-3.110(1)(B) and (E)	Contract for sale and buyer information
4 CSR 240-3.175	Depreciation studies
4 CSR 240-3.190(1), (2), and (3)	Reports of specified events

EAI and Staff do not oppose each other's proposed waivers. The Commission concludes that good cause supports the waivers and will waive those regulations.

#### THE COMMISSION ORDERS THAT:

1. *Entergy Arkansas, Inc.'s Notification of Internal Restructuring or Alternative Application for Approval of Internal Restructuring and Related Relief* is granted and the transactions described in the body of this order are authorized.

2. The certificate of convenience and necessity ("CCN") issued to Entergy Arkansas, Inc. shall be canceled; and a CCN shall be issued to Entergy Arkansas, LLC to provide the services formerly provided by Entergy Arkansas, Inc., on the completion of the transactions, as described in the body of this order.

3. Regulations 4 CSR 240-3.175 and 4 CSR 240-3.190(1), (2), and (3) are waived for Entergy Arkansas, LLC.

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<sup>26</sup> File No. EA-2012-0321, EFIS No. 7 (July 11, 2012) *Order Granting Certificate of Convenience and Necessity. 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>27</sup> 4 CSR 240-3.015 and 4 CSR 240-2.015(4)(B).

4. Paragraphs 1, 2, and 3 are conditioned on Entergy Arkansas, LLC filing with the Commission a certificate of registration from the Missouri Secretary of State.
5. The request for a declaration of release from liability is denied.
6. This order shall be effective on April 24, 2018.
7. This file may close on April 25, 2018.



**BY THE COMMISSION**

A handwritten signature in dark ink that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

Hall, Chm., Kenney, Rupp, Coleman, and  
Silvey, CC., concur.

Daniel Jordan, Senior Regulatory Law Judge

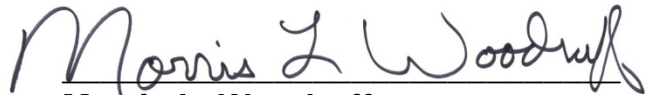
**STATE OF MISSOURI**

**OFFICE OF THE PUBLIC SERVICE COMMISSION**

**I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.**

**WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 12<sup>th</sup> day of April 2018.**



  
**Morris L. Woodruff**  
**Secretary**

**MISSOURI PUBLIC SERVICE COMMISSION**

**April 12, 2018**

**File/Case No. EO-2018-0169**

**Missouri Public Service  
Commission**

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**Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).**

**Sincerely,**

  
**Morris L. Woodruff**  
**Secretary**

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Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.