BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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	))))))))	**File No. EA-2012-0321**

STAFF RECOMMENDATION TO GRANT CERTIFICATE OF CONVENIENCE AND NECESSITY

COMES NOW the Staff of the Missouri Public Service Commission ("Staff"), by and through counsel, and for its recommendation on the *Application* of Entergy Arkansas, Inc. ("EAI") that initiated the above case, states:

1. On March 27, 2012, EAI filed an *Application* with the Missouri Public Service Commission (Commission) seeking (1) a certificate of convenience and necessity ("CCN") to own, acquire, construct, operate, control, manage and maintain its existing Missouri-based electric plant consisting of electric transmission and distribution facilities within Dunklin, New Madrid, Oregon, Pemiscot and Taney counties in Missouri as well as new facilities proposed to be constructed in Pemiscot County, Missouri[1] (EAI also requests the Commission waive the

[1] The existing transmission and distribution facilities are facilities that Arkansas Power & Light Company ("AP&L"), i.e., the predecessor to EAI, retained to serve various cities and electric cooperatives when the Commission authorized AP&L's sale of its retail facilities to Union Electric Company ("UE") and Sho-Me Power Corporation ("Sho-Me") in Case Nos. EM-91-29 and EM-91-404, respectively. EAI states in its *Application* that it has no Missouri retail customers and notes that the Commission in its *Report and Order* in consolidated Case Nos. EM-91-29 and EM-91-404 to the extent any of AP&L's certificates of convenience and necessity ("CCN") or portions thereof were not transferred to UE or Sho-Me were cancelled and AP&L was relieved of its obligations as a public utility to render service in its service area. *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). The proposed new transmission facilities are the new interconnection point that Associated Electric Cooperative, Inc. ("AECI") has requested from EAI in Pemiscot County, Missouri and that EAI proposes to construct to one of its transmission lines at a proposed

notice requirements of 4 CSR 240-4.020 (minimum 60-day notice requirement of filing a contested case) and the reporting requirements of Rule 4 CSR 240-3.175 (depreciation) and Rule 4 CSR 240-3.190(1) and (3)(generation related)), (2) that the Commission find EAI already holds all necessary Commission authorization for it to engage in the activities that the granting of a CCN would authorize, or (3) that the Commission affirmatively decline jurisdiction in this matter on the grounds that the described facilities and operations are subject to the jurisdiction of the Federal Energy Regulatory Commission ("FERC"), or otherwise affirmatively decline jurisdiction.

2. EAI states in its *Application* that it is a corporation organized and existing under the laws of the State of Arkansas, and is a public utility, as defined by Arkansas Code Annotated §23-1-101 *et seq*., subject to the jurisdiction of the Arkansas Public Service Commission. EAI also states in its *Application* that it is authorized by the Missouri Secretary of State to do business in Missouri; since Case Nos. EM-91-29 and EM-91-404, it has continued to provide wholesale services to cities and electric cooperatives in Missouri subject to the jurisdiction of the FERC through the Missouri facilities it retained; it has no Missouri retail customers; and it is not regulated by the Commission.

3. EAI notes in its *Application* that in Case No. EA-2002-296, the Commission granted a CCN to IES Utilities, Inc. authorizing the construction and operation of a transmission line in Clark County, Missouri to serve IES customers in the State of Iowa and that in Case No. EO-2007-0485, the Commission authorized ITC Midwest LLC ("ITC") to acquire by transfer a 161 kV transmission line and in connection therewith also granted to ITC a CCN, notwithstanding the fact that ITC had no Missouri retail customers.

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new Steele substation, approximately 2.5 miles northeast of Steele, Missouri. EAI's estimated cost for constructing its portion of the interconnection is approximately $1.03 million.

4. Staff notes that when AP&L proposed, and no one opposed, in 1990/1991 that the AP&L's CCNs not transferred to UE or Sho-Me be cancelled by the Commission, there were no independent transmission companies such as Ameren Transmission Company, Transource Energy LLC, and Clean Line Energy Partners; no regional transmission organizations such as the Southwest Power Pool, Inc. ("SPP") is now, or independent transmission system operators, such as the Midwest Independent Transmission System Operator, Inc. ("MISO"); and no FERC Order No. 1000.

5. Staff further notes that on May 8, 2012, Kansas City Power & Light Company ("KCPL") and KCP&L Greater Missouri Operations Company ("GMO") filed a Notice of Intended Case Filing ("Notice") with the Commission in File No. EO-2012-0267. The Notice states at paragraphs 4 and 5:

> 4. Without waiving their right to request that the Commission disclaim jurisdiction over certain matters and issues related to this proceeding, KCP&L and GMO state that they intend to file a joint application regarding their rights and responsibilities to construct certain regionally-funded high-voltage transmission projects which have been approved by Southwest Power Pool, Inc. ("SPP"), and the anticipated designation of Transource Energy, LLC or a subsidiary thereof to construct such projects.
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> 5. The Companies intend to submit such an application within the next sixty days or thereafter. Because the Companies do not know whether this matter will become a "contested case" within the meaning of Section 536.010(4), as referenced in 4 CSR 240-4.020(1)(C), they are filing this notice out of an abundance of caution. KCP&L and GMO believe that issues likely to come before the Commission in this proceeding will relate to the rights and responsibilities of the Companies with regard to certain SPP-approved regional transmission projects, the plans of the Companies to discharge their obligations to construct those projects, the designation of a third party under Attachment O of SPP's Open Access Transmission Tariff to construct the projects, and the Commission's Affiliate Transactions Rule.

6. On March 27, 2012, the Commission issued an *Order Directing Notice and Setting Date for Submission of Intervention Requests*, directing that any party wishing to

intervene in the case should file an application no later than April 16, 2012. No party sought to intervene; therefore, the parties in this case are EAI, Staff, and the Office of the Public Counsel.

7. On April 17, 2012, the Commission issued an *Order Directing Filing*, which directed Staff to file a recommendation or, in the alternative, a status report on the *Application* no later than May 17, 2012.

8. On May 17, 2012, Staff filed a status report stating that it anticipated filing its recommendation by June 14, 2012. On June 14, 2012, Staff filed its Second Status Report and Notification of Need for Additional Time until June 26, 2012. Staff noted that EAI's *Application* states that it desires to have the planned interconnection in place and operating by September 1, 2012. Staff counsel stated in said filing that in a conversation with local counsel for EAI in May 2012, Staff counsel was advised that for some period of time September 1, 2012 has not remained the operative schedule for having the planned interconnection in place and operating.

9. Section 393.170, RSMo. 2000 governs certificates of convenience and necessity. It provides:

> 1. No gas corporation, electrical corporation, water corporation or sewer corporation shall begin construction of a gas plant, electric plant, water system or sewer system without first having obtained the permission and approval of the commission.
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> 2. No such corporation shall exercise any right or privilege under any franchise hereafter granted, or under any franchise heretofore granted but not heretofore actually exercised, or the exercise of which shall have been suspended for more than one year, without first having obtained the permission and approval of the commission. Before such certificate shall be issued a certified copy of the charter of such corporation shall be filed in the office of the commission, together with a verified statement of the president and secretary of the corporation, showing that it has received the required consent of the proper municipal authorities.
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> 3. The commission shall have the power to grant the permission and approval herein specified whenever it shall after due hearing determine that such construction or such exercise of the right, privilege or franchise is necessary or

> convenient for the public service. The commission may by its order impose such condition or conditions as it may deem reasonable and necessary. Unless exercised within a period of two years from the grant thereof, authority conferred by such certificate of convenience and necessity issued by the commission shall be null and void.

Pursuant to §393.120, RSMo. 2000, the terms "electrical corporation" and "electric plant" are defined in §386.020(14) and (15), RSMo. Cum. Supp. 2010 as follows:

> (14) "Electrical corporation" includes every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, other than a railroad, light rail or street railroad corporation generating electricity solely for railroad, light rail or street railroad purposes or for the use of its tenants and not for sale to others, owning, operating, controlling or managing any electric plant except where electricity is generated or distributed by the producer solely on or through private property for railroad, light rail or street railroad purposes or for its own use or the use of its tenants and not for sale to others;
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> (15) "Electric plant" includes all real estate, fixtures and personal property operated, controlled, owned, used or to be used for or in connection with or to facilitate the generation, *transmission*, *distribution*, sale or furnishing of electricity for light, heat or power; and any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power;

(Emphasis added). Both definitions have remained unchanged since the enactment of the Public Service Commission Act in 1913, and the only change since 1913 to the language of §393.170, RSMo. 2000 has been to add sewer corporations to the list of utilities.

10. Section 1.190, RSMo, provides, "Words and phrases shall be taken in their plain or ordinary and usual sense, but technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import"; however, when the Legislature provides a definition for a word or phrase, that definition is authoritative and to be read into the statute where that word or phrase appears as a part of the statute itself. *State ex rel. Exchange Bank of Richmond v. Allison*, 155 Mo. 325, 56 S.W. 467 (1900); *State v. Brushwood*,

171 S.W.3d 143 (Mo. App. W.D. 2005). Under these directives and as further set out herein, EAI is an "electrical corporation" that owns and operates "electric plant" and requires a CCN for its existing transmission and distribution facilities and proposed transmission facilities in Missouri. Based on its statutory authority, EAI requires a CCN from the Commission.

11. The Missouri Supreme Court in *Public Serv. Comm'n v. Kansas City Power & Light Co.*, 325 Mo. 1217, 31 S.W.2d 67 (1930) held that an extension of an existing transmission line, not authorized by an existing CCN, required a new CCN from the Commission. In that case the Commission sought, and obtained an injunction against KCPL from operating or using a six-mile extension of one of its transmission lines. KCPL had a CCN from the Commission for the transmission line, but not the extension. It is noteworthy that KCPL was then a vertically integrated electric utility, and the Court spoke in its opinion about the potential impacts not only on existing utility customers of a utility extending its transmission lines, but also of the utility's wherewithal to make the extension. The Supreme Court affirmed the circuit court and held the Commission had authority under the statute now codified at §393.170, RSMo, to condition a CCN to assure the transmission line provides adequate and efficient service to the public without injuring the operation of telephone lines.

12. That public utilities do not seek new CCNs for every transmission line and transmission line extension is due to the Commission taking the approach in the 1930's of granting blanket certificates. That approach began in 1934 with the Commission's *Report and Order* in *Re Kansas City Power & Light Co.*, 21 Mo.P.S.C. 1 (1934). In that *Report and Order*, the Commission granted Kansas City Power & Light Company "authority to construct, reconstruct, locate, relocate, maintain and operate electric transmission lines along, over, and across the highways of the Counties of Jackson, Clay, Cass, Platte, Carroll, Chariton, Howard,

Lafayette, Pettis, Randolph and Saline, and along such other routes as may be properly provided in said counties, all in the State of Missouri, with authority to furnish electric service to all persons in the area for which this certificate is granted, such area being more fully described by the maps filed herein by this Applicant . . . ." *Id*. at 6. In the "Conclusions" section of that *Report and Order*, the Commission said:

> In our opinion, the present application as amended, and construed by us in this report, should be sustained, and the authority sought should be granted. The issue of this order constitutes an important step in a program which the Commission has long contemplated.
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> During the life of this Commission the electric utilities have expanded from modest enterprises each serving restricted, local, usually municipal needs, to wide flung systems serving hosts of communities and the intervening rural areas. Reductions in the rates charged for electricity have been constant during the life of this Commission partly as a result of the exercise of our powers of regulation, partly because of improvements in the art, and partly because of increased use. The electricity now consumed in the State would have cost at least twelve million dollars per annum more than it now costs if the rates charged when this Commission was organized were still prevailing, or even at the rates charged in 1921 when the present uses of current for other purposes than lighting had been developed.
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> So far as can be foreseen, the uses of electricity have only begun. The improvements in the art have been so rapid, the economies affected by the development of large transmission systems have been so great, the possible uses for this quiet, clean, efficient servant of human needs so manifold, that it requires no very lively imagination to envision the entire state gridironed with transmission lines and every homestead, however humble, enjoying the benefits of cheap and constant light, heat, and power. As a harbinger of the realization of this vision, we now find the state served by a number of large and efficient electric systems. It is clearly to the public interest that the area in which service is to be rendered by each of them be marked out and designated. Thus responsibility will be fixed; the citizen will know to whom to look for service; the utility will know within what field to concentrate its activities and to develop its market.
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> We may now contemplate the possibility of the division of the state into districts each served by a dependable electric utility upon which may reasonably be imposed the duty of service in its given area. Studies looking to this end have been made by the Electric Department of the Commission during the last few

> years and in some instances boundaries between utilities have been established and small areas, such as a portion of a county, have been assigned to a utility. The present order by which the allocation of a large area to a utility is made is the first of what is hoped to be a series of such orders.

Id. at 5-6.

13. In its Memorandum, attached hereto as Appendix A, Staff describes the March 27, 2012 *Application* of EAI and the 1990/1991 requests of AP&L to sell and/or transfer its retail customer base and associated facilities to Union Electric Company, now doing business as Ameren Missouri, and Sho-Me Power Corporation in Case Nos. EM-91-29 and EM-91-404, respectively. In its filings in 1990/1991, AP&L included a list of electric transmission and distribution facilities which it intended to retain ownership of in order to serve cities and electric cooperatives. EAI addresses in its *Application* and Staff in its Memorandum that if the Commission deems that it has jurisdiction, EAI is seeking from the Commission a CCN to own, acquire, construct, operate, control, manage and maintain facilities for a new transmission interconnection point Associated Electric Cooperative, Inc. ("AECI") has requested with M&A Electric Power Cooperative's proposed construction of a new Steele 161/69 kV substation to be located in Pemiscot County, Missouri adjoining EAI's existing Blytheville, Arkansas to Hayti, Missouri 161 kV transmission line. As Staff relates in its Memorandum and EAI in its *Application*, the new interconnection point will be a new substation that will provide a second transmission connection for M&A Electric Power Cooperative around Steele in Southeast Missouri, and at a higher voltage. Recent analytic studies AECI conducted revealed multiple low voltage and thermal loading problems during single and/or multiple contingencies on M&A Electric Power Cooperative's network in this area and that load shedding would be required in response to several contingencies analyzed, load that without the new connection might take

days to restore. The EAI *Application* states that M&A Electric Power Cooperative's new Steele substation would resolve the existing operating problems during certain contingencies and would improve voltage stability and electrical service reliability for the southeast Missouri area. Staff's Memorandum relates that the new interconnection point proposed by EAI would also enhance reliability for Ameren Missouri's retail customers in the Bootheel. Details of EAI's existing system in Missouri and the new project it proposes are included in the *Application*. Staff recommends the Commission waive the notice requirements of Rule 4 CSR 240-4.020 (minimum 60-day notice requirement of filing a contested case) and the reporting requirements of Rule 4 CSR 240-3.175 (depreciation) and Rule 4 CSR 240-3.190(1) and (3) (generation related).

CERTIFICATE OF CONVENIENCE AND NECESSITY FOR NEW CONSTRUCTION

14. EAI, previously known as Arkansas Power & Light Company ("AP&L"), provides wholesale electric service to electric cooperatives and municipal electric systems in Missouri. Although EAI, doing business as AP&L, provided retail electric service in Missouri until the early 1990s, it no longer serves any retail customers in Missouri. EAI owns and operates a transmission and distribution system, consisting of transmission lines and substations, through which it provides service to its Missouri wholesale customers, electric cooperatives and municipals. A list of these facilities is included as Attachment 2 to Staff's Memorandum. EAI is now proposing to build a new interconnection point to one of its transmission lines in order to better serve one of its wholesale customers, AECI.

15. Because EAI is a company "owning, operating, controlling or managing" facilities used for the "transmission, distribution, sale or furnishing of electricity," it must be

granted a CCN before it can proceed with the projects detailed in its *Application* and in Staff's Memorandum.

16. Section 393.170.3 addresses the standard by which EAI's *Application* may be approved, stating:

> 3. The commission shall have the power to grant the permission and approval herein specified whenever it shall after due hearing determine that such construction or such exercise of the right, privilege or franchise is *necessary or convenient for the public service*. The commission may by its order impose such condition or conditions as it may deem reasonable and necessary. Unless exercised within a period of two years from the grant thereof, authority conferred by such certificate of convenience and necessity issued by the commission shall be null and void.

(Emphasis added). In this case, granting a CCN to EAI must be based on a showing that it is necessary or convenient for the public service for EAI to own, construct, operate, and maintain certain electric transmission and distribution facilities. In *State ex rel. Intercon Gas, Inc. v. Public Serv. Comm'n,* 848 S.W.2d 593, 597-98 (Mo. App. 1993), the Western District Court of Appeals held as follows:

> . . . The term "necessity" does not mean "essential" or "absolutely indispensable", but that an additional service would be an improvement justifying its cost. *State ex rel. Beaufort Transfer Co. V. Clark*, 504 S.W.2d at 219. Additionally, what is necessary and convenient encompasses regulation of monopoly for destructive competition, prevention of undesirable competition, and prevention of duplication of service. *State ex rel. Public Water Supply Dist No. 8 v. Public Service Comm'n*, 600 S.W.2d 147, 154 (Mo. App. 1980). The safety and adequacy of facilities are proper criteria in evaluating necessity and convenience as are the relative experience and reliability of competing suppliers. *State ex rel. Ozark Elec. Coop v. Public Serv. Comm'n*, 527 S.W.2d 390, 394 (Mo. App. 1975). Furthermore, it is within the discretion of the Public Service Commission to determine when the evidence indicates the public interest would be served in the award of the certificate. *Id*. at 392.

17. Staff has examined EAI's proposal and found that the expansion to add a new interconnection on EAI's existing Blytheville, Arkansas to Hayti, Missouri 161 kV transmission line is necessary for the public service to address specific operational, reliability, and stability

issues and also that the proposed project is the least cost alternative to address those issues. For these reasons, as more fully detailed in Staff's Memorandum, it is necessary and convenient for EAI to undertake the proposed additions to its transmission and distribution system in the manner it has suggested.

CERTIFICATE OF CONVENIENCE AND NECESSITY FOR EXISTING FACILITIES

18. In addition to granting a CCN for new construction, Staff recommends that the CCN the Commission grant EAI also include EAI's existing Missouri facilities for which certificates were previously cancelled. In 1990/1991, EAI, then operating as AP&L, submitted two applications requesting authority from the Commission to cease serving its retail customers in Missouri and to transfer the facilities it was using to serve those customers to Union Electric Company and Sho-Me Power Corporation.[2] In both cases, AP&L explicitly requested authority to sell the entirety of its retail electric operations to the two companies, and in its consolidated Order, the Commission discussed the request in those terms. For instance, the Commission ordered that AP&L be authorized to sell, transfer, and assign "all of its franchise, works and system . . . associated with its retail electric service in Missouri . . . as well as its certificates of convenience and necessity issued by this Commission pursuant to which it provides retail electrical service in this state . . . .[3]" However, later in the same Order, the Commission stated that, upon closing the authorized transactions, ". . . the certificates of convenience and necessity issued by this Commission to Arkansas Power & Light Company or to its predecessors in

[2] Case Nos. EM-91-29 and EM-91-404, respectively.

[3] *Re Arkansas Power & Light Co.*, 1 Mo.P.S.C.3d 96, Case Nos. EM-91-29 and EM-91-404, 1991 WL 498651 *Report and Order* (1991).

interest, to the extent any of such certificates or portions thereof are not transferred . . . shall be cancelled."[4]

19. Although all AP&L's certificates not transferred were cancelled by the Commission, the Commission did not expressly disclaim jurisdiction as AP&L had requested. The record in those cases shows that AP&L was very specific about what facilities it would retain, and that it was retaining those facilities in order to continue to provide wholesale electric service in Missouri.[5] At that time and to this day, the EAI facilities enhance reliability for retail facilities if not retail customers in the counties in which they are located, thereby serving the public interest, convenience, and necessity.

20. Although the Commission has express statutory authority to authorize the sale and transfer of electric utility assets[6] and to issue CCNs,[7] and even to condition those CCNs,[8] it does not have such express statutory authority to revoke a CCN. The Commission rejected the City of Sikeston's argument in the 1930's that the Commission could determine that there no longer exists any public necessity for the continuance of the business of an electrical corporation in a certain city or area, or to order it against it wishes to cease and desist from its operations, when the City of Sikeston began competing with that utility by providing municipal electric service. The Missouri Supreme Court agreed with the Commission stating, "If the Legislature had

[4] *Id*. at 8.

[5] *See* Direct Testimony of AP&L Witness Lee W. Randal, p. 10, lines 2-4. "[AP&L] will continue to provide some wholesale service to cities and electric cooperatives in Missouri, which will be subject to the jurisdiction of the FERC." *See also* Staff Memorandum for discussion of a list (Appendix A) of retained facilities.

[6] Section 393.190, RSMo. 2000, and 4 CSR 240-3.110.

[7] Section 393.170, RSMo. 2000, and 4 CSR 240-3.105.

[8] *Id*.

intended that th[e] Commission could terminate the authority of . . . such utilities it would have conferred appropriate powers upon the Commission, provided it had constitutional authority for such an act. But the Legislature made no such provision."[9]

21. Therefore, Staff recommends that the CCN the Commission issue in this case should also cover EAI's existing Missouri facilities for which CCNs previously issued by the Commission not transferred to UE or Sho-Me were cancelled in the Commission's *Report and Order* in *Re Arkansas Power & Light Company*, 1 Mo.P.S.C.3d 96, Case Nos. EM-91-29 and EM-91-404, 1991 WL 498651 (1991).

WAIVER OF COMMISSION RULES

22. Finally, because EAI's filing with the Commission has drawn no interest of which Staff is aware other than Staff's, and EAI is itself applying for a CCN from the Commission for both its existing and proposed electric transmission facilities, no purpose is served by requiring it to comply with the minimum 60-day notice of filing a contested case requirement of Rule 4 CSR 240-4.020. Also, since EAI is and will continue to provide only wholesale service, no purpose is served by requiring it to comply with the reporting requirements of Rule 4 CSR 240-3.175 (depreciation) and Rule 4 CSR 240-3.190(1) and (3) (generation-related). Rule 4 CSR 240-3.175 and Rule 4 CSR 240-3.190(1) and (3) are designed for vertically integrated retail electric utilities, which EAI is not. Therefore, Staff recommends the Commission waive the requirement that EAI comply with these rules.

[9] *State ex rel City of Sikeston v. Public Service Commission of Missouri*, 336 Mo. 985, 991; 82 S.W.2d 105, 109 (1935). *See also, State ex inf. McKittrick ex rel. City of California v. Missouri Utilities Co*., 339 Mo. 385, 399; 96 S.W.2d 607, 613 (1936). "Further, this court has held that the commission is without power to revoke a certificate once granted upon the ground that the public necessity for it has ceased to exist."

23. EAI is not required to file annual reports with the Commission nor is it required to pay assessment fees. Staff is not aware of any pending actions or unsatisfied judgments against EAI concerning customer service or rates occurring within three (3) years of this filing.

WHEREFORE, Staff recommends the Commission approve the *Application* of Entergy Arkansas, Inc. for a CCN to own, acquire, construct, operate, control, manage and maintain (1) its existing Missouri-based electric plant located in Dunklin, New Madrid, Oregon, Pemiscot, and Taney Counties, Missouri and (2) new electric facilities consisting of a new transmission interconnection point which AECI has requested in Pemiscot County, Missouri, finding that such is required by the public convenience and necessity, waiving the notice requirement of Rule 4 CSR 240-4.020, and granting a waiver from the reporting requirements of Rule 4 CSR 240-3.175 and Rule 4 CSR 240-3.190(1) and (3).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered, transmitted by facsimile or by electronic mail to all counsel of record on this June 26, 2012.

/s/ Steven Dottheim