

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

In the Matter of Entergy Arkansas, Inc.'s)	
Notification of Internal Restructuring or)	File No. EO-2017-
Alternative Application for Approval of)	
Restructuring and Related Relief)	

**ENTERGY ARKANSAS, INC.'S
NOTIFICATION OF INTERNAL RESTRUCTURING OR
ALTERNATIVE APPLICATION FOR APPROVAL OF INTERNAL RESTRUCTURING
AND RELATED RELIEF**

COMES NOW Entergy Arkansas, Inc. ("EAI" or the "Company"), by undersigned counsel and pursuant to Sections 393.190 and 393.250, RSMo. and 4 CSR 240-2.060 and 4 CSR 240-3.110, and seeks in the first instance to notify the Missouri Public Service Commission ("Commission") of an internal restructuring ("Restructuring")¹ or, alternatively, to request approval by the Commission of the Restructuring and related relief, explained in detail below. The Restructuring would result in a new operating company, Entergy Arkansas, LLC ("EAL") providing the wholesale electric service in Missouri that is currently provided by EAI.² In support of its Notification or Application, EAI states as follows:

1. EAI seeks first a Commission determination that the Restructuring does not require Commission review. To begin, EAI does not hold itself out as providing

¹ Consistent with its prior submissions before the Commission in File Nos. EA-2012-0321, EO-2013-0396, and EO-2013-0431, EAI asks the Commission to determine that it need not review the Company's Restructuring on the narrow fact pattern presented or, alternatively, to find that the Restructuring is not detrimental to the public interest in Missouri.

² The names of certain entities identified in the Restructuring steps are subject to availability as determined by the Arkansas Secretary of State. Accordingly, it is possible that the names of some of the entities identified in the steps could change. The steps themselves, however, are not anticipated to change, and EAI will inform the Commission of any determinations made by the Arkansas Secretary of State regarding name availability.

electric service to the general public in Missouri, has no retail customers in Missouri, and has no Missouri tariffs. EAI provides only wholesale service in Missouri. The Missouri assets involved in the Restructuring are Federal Energy Regulatory Commission (“FERC”)-jurisdictional, and the Restructuring is subject to FERC approval. For the Commission to assert jurisdiction over the same Restructuring risks inconsistent determinations between FERC and the Commission as to the same assets. As discussed more fully below, EAI previously filed for a certificate of convenience and necessity (“CCN”) in File No. EA-2012-0321 out of an abundance of caution. As noted in EA-2012-0321, as well as in the Company’s filings throughout File Nos. EO-2013-0396 and EO-2013-0431, EAI does not hold itself out as offering service to the general public in Missouri and provides instead only wholesale service in Missouri subject to the jurisdiction of FERC. EAI’s submissions made before this Commission have been submitted out of an abundance of caution given the Commission’s indications regarding its jurisdiction over transmission-only entities. Commission Staff noted in its recommendation regarding EAI’s CCN, “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 ***.” (File No. EA-2012-0321, *Staff Recommendation* at p. 8.) Although EAI invoked the question as to jurisdiction in its CCN application, the Commission did not address the issue and simply granted the CCN. Likewise, the facts of this filing support a declaration that Commission review is not required.

2. Alternatively, EAI seeks a Commission determination that the Restructuring is not detrimental to the public interest in Missouri and should be approved. The Restructuring would result in a new operating company, EAL, providing the wholesale service in Missouri that EAI currently provides. 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. The end result of the Restructuring is that EAL (as opposed to EAI) would be the entity providing service to the Company's customers.

THE COMPANY

3. EAI is a corporation organized and existing under the laws of the State of Arkansas, a public utility in Arkansas which, in Missouri, is exclusively engaged in the business of providing electric services to wholesale customers. The Company's principal place of business is located at the Simmons Building, 425 West Capitol Avenue, Little Rock, Arkansas (AR) 72201. Telephone: (501) 377-5886. Fax: (501) 377-5814. Email: JHONEY@entergy.com. Subject to the explanation above, EAI holds a CCN from the Commission (File No. EA-2012-0321) and maintains limited transmission and distribution assets in Missouri. As set forth in File No. EA-2012-0321, those assets are located within Dunklin, New Madrid, Oregon, Pemiscot, and Taney Counties, and they consist of electric transmission and distribution facilities that are subject to the rate jurisdiction of FERC and are used only to furnish wholesale electric service in Missouri to various cities and electric cooperatives. Those assets are also used to provide

electric service to EAI's retail customers in North Arkansas, and that service is subject to the retail rate jurisdiction of the Arkansas Public Service Commission ("APSC").³

4. EAI previously served both wholesale and retail customers in Missouri, doing business under its former name, Arkansas Power and Light Company ("AP&L"), a subsidiary of Middle South Utilities ("MSU"), now Entergy Corporation. 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 and the related portions of its CCN to Union Electric Corporation, now known as Ameren Missouri, and to Sho-Me Power Corporation. EAI retained certain transmission and distribution facilities, which were and are used to furnish wholesale electric service, under the exclusive ratemaking jurisdiction of the FERC, in the Missouri counties of Dunklin, New Madrid, Oregon, Pemiscot and Taney. The remaining certificates, or portions thereof, of AP&L were cancelled by the Commission.⁴

5. Today, EAI owns and operates approximately 87 miles of transmission and distribution lines in Missouri. EAI serves no retail customers in Missouri.

THE RESTRUCTURING

Overview and Transaction Steps

6. In the Restructuring, EAI will use the merger provisions of the Texas Business Organizations Code (sometimes referred to as the Texas merger-by-division

³ EAI does not hold itself out as providing electric service to the general public in Missouri and, indeed, it has no retail customers in Missouri. Accordingly, EAI does not believe that the Restructuring falls within the purview of Section 393.190.1, RSMo. However, 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, EAI respectfully seeks the alternative relief requested herein.

⁴ *Re Arkansas Power & Light*, Case Nos. EM-91-29 and EM-91-404, 3 MoPSC 3rd 96, ORDERED: 14, Report and Order issued September 19, 1991. See also, *Supplemental Report and Order and Order Amending Report and Order*, 3 MoPSC 3rd 116.

("MBD") statute),⁵ to transfer⁶ substantially all of its assets and liabilities to a newly-created subsidiary, Entergy Arkansas Power, LLC ("EAP LLC"), a Texas limited liability company ("LLC"). Thereafter, EAI would contribute its membership interests in EAP LLC to Entergy Utility Holding Company, LLC ("EUH"), an intermediate holding company that is also a Texas LLC. EUH is an existing subsidiary of EAI's parent company, Entergy Corporation. Once under EUH, EAP LLC would be renamed Entergy Arkansas, LLC. Under this Restructuring, EUH would enhance the separation between EAI's utility business and Entergy Corporation's unregulated merchant generation businesses. Under the proposed holding company structure, EUH would not be used to make borrowings on behalf of the unregulated merchant generation businesses owned by Entergy Corporation. Nor would EUH make direct equity investments in those businesses.

7. In addition, through the Restructuring, EUH could provide an additional source of financing to EAL. Specifically, although EAL generally would be expected to finance its own obligations, just as EAI generally does today, if the Restructuring is approved and completed, EUH could, if necessary, one day obtain financing in the bank or capital markets. That capital could be used to make equity investments in EAL and/or EUH's other operating company subsidiaries, but not in Entergy Corporation's unregulated merchant generation business subsidiaries.

8. The Restructuring will require the following steps:

⁵ Texas Business Organizations Code, §§ 1.002(55) & 10.001 *et seq.*

⁶ For clarity, certain assets and liabilities of a company may be described in this document as being transferred or assigned to another company as a result of the merger that occurs in the transaction steps, even though the applicable merger statute states that such merger does not result in a transfer or assignment.

Step 1: EAI will redeem its outstanding preferred stock.

Step 2: Entergy Corporation may contribute certain assets to EAI.

Step 3: EAI will convert to a Texas corporation. Pursuant to the MBD statute of the Texas Business Organizations Code ("TXBOC"), EAI will transfer substantially all of its assets (excluding, among other select assets, the assets received in Step 2 above) and liabilities to a newly-formed subsidiary, EAP LLC. Under the TXBOC, EAI and EAP LLC will survive the mergers, except that the specified assets and liabilities will be allocated from EAI to EAP LLC upon consummation of the merger.

Step 4: EAI will contribute its membership interests in EAP LLC and any assets received in Step 2 above, to EUH, in exchange for common membership interests in EUH. In connection with such contributions, EUH will issue a new series of additional voting preferred membership interests in exchange for a cash contribution by third party, unaffiliated investors. As a result of the contributions, EAP LLC will be a wholly-owned subsidiary of EUH.

Step 5: EAI will change its name to Entergy Utility Property, Inc. EAP LLC will then change its name to remove the word "Power" such that it will be named Entergy Arkansas, LLC.

Required Regulatory Approvals

9. In addition to seeking approval from the APSC to engage in the Restructuring, EAI will need to obtain prior authorizations from the FERC under Federal Power Act ("FPA") Sections 203 and 204 in order to effectuate the Restructuring. FPA Section 203 requires prior FERC authorization of a proposed change in control of FERC-jurisdictional assets (such as a change in control of FERC-jurisdictional assets from EAI to EAL) and a public utility's acquisition of the securities of another public utility with a value in excess of \$10 million. EAI will apply to FERC to establish that the Restructuring would not have an adverse effect on competition, wholesale rates, or regulation, would 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.

10. A public utility's issuance of securities and assumption of liabilities are subject to FERC regulation under FPA Section 204. Certain of EAL's issuances of securities and assumptions of liabilities will be subject to FERC regulation under FPA Section 204. EAL will request FPA Section 204 authorization for any FERC-jurisdictional issuances of securities and assumptions of liabilities that would occur during the intermediate steps of the Restructuring, although EAL currently anticipates that its existing securities issuance authority from the APSC and FERC is adequate for any issuances of securities and assumptions of liabilities that may occur during the Restructuring steps and, therefore, it will not have to request additional authority for purposes of the Restructuring. In addition, EAL will apply to FERC to establish FPA Section 204 authority to undertake FERC-jurisdictional issuances of securities and assumptions of liabilities effective on the Restructuring closing date.

11. EAL and/or EAL also would make filings with FERC pursuant to FPA Section 205, including a pre-closing market-based rate application to establish authority for EAL to make wholesale market-rate sales of capacity, energy, and ancillary services effective as of the date of the Restructuring consummation, and post-consummation notices of succession for EAL to succeed to the FERC-jurisdictional tariffs and rate schedules that EAL would acquire from EAL. The Company anticipates that the FPA Sections 203, 204 and 205 applications will be filed in early 2018, while the "notice of succession" filing would be made within 30 days after consummation of the Restructuring.

12. The Restructuring may have regulatory implications under the Natural Gas Act. To the extent that the FERC's consent may be required for EAL to be assigned the applicable interstate gas transportation contracts and is not otherwise obtained under

the applicable FERC tariff, EAI anticipates seeking a waiver of the applicable pipeline tariff provisions and/or FERC regulations.

13. Finally, EAI holds the Nuclear Regulatory Commission (“NRC”) owners’ licenses for the Arkansas Nuclear One Generating Station, Units 1 and 2, and EAL will need to possess those licenses upon completion of the Restructuring. Under applicable NRC regulations, the Restructuring would entail both an indirect and direct transfer of the owners’ licenses. An indirect transfer involves a sale or merger of a company owning an NRC licensee, while a direct transfer occurs when the holder of the actual NRC license changes. Because the Restructuring includes a change in both the holding company structure and the license holder, both indirect and direct transfers are involved. Those transfers require NRC approval, and while EAI expects to obtain the requisite NRC approval, it is possible that that approval could take approximately one year to obtain, depending on the availability of NRC staff to review the application, given competing priorities. Accordingly, the NRC application was filed in September of 2017.⁷

THE RESTRUCTURING IS

NOT DETRIMENTAL TO THE PUBLIC INTEREST IN MISSOURI

14. The 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 standard is based on the concept

⁷ The License Transfer Application is publicly available on the NRC ADAMS database, <https://adams.nrc.gov/wba/>, using accession number ML17268A213.

that the ability or right to dispose of assets is an important aspect of property ownership that may not be denied by the Commission unless it can be shown that such disposition is 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); *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. App. 1980).

15. The Restructuring of EAI will not be detrimental to the public interest. As explained above, EAI does not hold itself out as providing service to the general public in Missouri, has no retail customers in Missouri, and has no Missouri tariffs. Further, the Restructuring will not affect EAI's Missouri assets or facilities (other than the fact that EAL will own those assets and facilities, as opposed to EAI).

GENERAL INFORMATION

16. All pleadings, notices, orders and other communications and correspondence regarding this application and proceeding should be directed to:

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17. Because EAI provides no retail service in Missouri, it has no tariffs that would need to be adopted or revised per 4 CSR 240-2.060(5)(C).

18. The Restructuring will have no impact on the tax revenues of the political subdivisions in which any structures, facilities or equipment of EAI are located.

19. EAI has no pending actions or final unsatisfied judgments or decisions against it from any state or federal agency or court, which involve customer service or rates that relate to EAI's Missouri assets that have occurred within three years of the date of this Notification or Application.⁸ EAI has no annual reports or assessment fees in Missouri that are overdue.

20. 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 hereby incorporated by reference into this Notification or Application, in accordance with 4 CSR 240-2.060(1)(G). Evidence of registration of EAL with the Missouri Secretary of State, per 4 CSR 240-2.060(5)(B), will be provided as soon as practicable after the requisite Restructuring approvals are received and the Restructuring transaction closes.

21. All facilities used by EAI to provide wholesale service in Missouri today will be owned and operated by EAL after consummation of the Restructuring. If the Commission determines that EAI continues to need a CCN in Missouri, and/or that EAL would need such a certificate, then EAI's CCN from the Commission would need to be

⁸ Although not related to this Restructuring, EAI notes that its wholesale transmission rates are subject to a pending "return on equity" proceeding at FERC in Docket No. EL 15-45. Depending on the outcome of that proceeding, refunds to wholesale customers are possible for the period February 12, 2015 through May 11, 2016.

changed to reflect the new name. In that case, EAI respectfully requests the Commission to transfer its CCN to EAL upon closing of the Restructuring.

22. 4 CSR 240-3.110(1)(B) requires the filing of the contract or agreement of sale. Because this is an internal restructuring and not a traditional sale of assets, there is no such contract or agreement in this case. A waiver of that requirement is respectfully requested.

23. 4 CSR 240-3.110(1)(C) requires a certified copy of the resolution of the board of directors of each applicant authorizing the proposed action. The Unanimous Written Consent of the Board of Directors of EAI is attached as **Exhibit A**.

24. 4 CSR 240-3.110(1)(E) states: "If the purchaser is subject to the jurisdiction of the commission, a balance sheet and income statement with adjustments showing the results of the acquisition of the property." In addition to the reasons set forth above as to why the Restructuring does not require Commission review, this Restructuring is simply an internal restructuring, and there is no "purchaser." Therefore, to the extent necessary, a waiver of this requirement is respectfully requested.

25. The Restructuring is scheduled to close by December 1, 2018. EAI therefore respectfully requests that the Commission either determine that its review is not required or issue a determination that the proposed Restructuring is not detrimental to the public interest in Missouri no later than September 1, 2018.

REQUEST FOR WAIVER OF 4 CSR 240-4.017

26. Commission Rule 4 CSR 240-4.017 provides, in part, as follows:

(1) Any person that intends to file a case shall file a notice with the secretary of the commission a minimum of sixty (60) days prior to filing such case. Such notice shall detail the type of case and issues likely to be before the commission and shall include a summary of all communication

regarding substantive issues likely to be in the case between the filing party and the office of the commission that occurred in the ninety (90) days prior to filing the notice. ...

(1) (D). A party may request a waiver of this section for good cause. Good cause for waiver may include, among other things, a verified declaration from the filing party that it has had no communication with the office of the commission within the prior one hundred fifty (150) days regarding any substantive issue likely to be in the case

The term, "office of the commission" is defined in 4 CSR 240-4.015 (10) as: "Commissioners, a commissioner, a member of the commission's advisory staff, or the commission's regulatory law judges."

There have been no communications between EAI and the office of the Commission regarding the substantive issues likely to be involved in this case within the last one hundred fifty (150) days or at any other time. Therefore, EAI respectfully requests that said 60-day notice requirement be waived for good cause, pursuant to 4 CSR 240-4.017(1) (D).

WHEREFORE, Entergy Arkansas, Inc. ("EAI"), respectfully requests that the Commission accept this Notification and find that the Restructuring does not require Commission review. Alternatively, out of an abundance of caution and without waiver of any assertion as to the jurisdictional nature of its facilities as noted herein, EAI respectfully requests that the Commission issue, to the extent applicable, an order before September 1, 2018:

- (a) Finding that the Restructuring (including the transfer of substantially all of the Company's assets and liabilities to EAL and all the corporate restructuring steps necessary to consummate the Restructuring) is not detrimental to the public interest in Missouri, and satisfies the standards and requirements contained in Section 393.190.1 and Section 393.250.1, RSMo.;

- (b) Approving all steps that will be undertaken to accomplish the Restructuring;
- (c) Granting any other applicable approvals or authorizations that may be required by the Commission for EAI to lawfully consummate the Restructuring;
- (d) Declaring that on the closing date of the Restructuring, EAI will no longer provide wholesale electric service to wholesale customers in Missouri;
- (e) Declaring that as of the closing date of the Restructuring, EAI and its successors (other than EAL and its successors and assigns) and assigns, will be fully, finally, unconditionally, irrevocably and forever released and discharged from any and all claims, liabilities, and causes of action, both at law and in equity, whether known or unknown, arising out of or related to the ownership and operation of EAI's assets in Missouri or EAI's related obligations prior to the Restructuring to the extent such claims, liabilities, and causes of action arise under the laws and regulations of the State of Missouri and the Commission with respect to the ownership and operation of such assets, all of which shall be assumed by, undertaken by, and be the sole responsibility of EAL as of the closing date of the Restructuring;
- (f) Direct any and all procedural steps necessary to ensure that a decision on the Application may be made by the Commission no later than September 1, 2018;
- (g) If deemed necessary by the Commission, transferring EAI's Certificate of Convenience and Necessity to EAL;
- (h) Granting all other necessary and proper relief; and
- (i) Waiving certain Commission rules as requested above; and any other authorizations deemed necessary.

Respectfully submitted,

/s/ William D. Steinmeier

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COUNSEL FOR ENTERGY ARKANSAS, INC.
(EAI)

CERTIFICATE OF SERVICE

I hereby certify that the undersigned has caused a complete copy of the attached document to be electronically filed and served on the Commission's Staff Counsel (at staffcounsel@psc.mo.gov), and the Office of Public Counsel (at opcservice@ded.mo.gov) on this 15th day of December 2017.

/s/ William D. Steinmeier