

**BEFORE THE  
ARKANSAS PUBLIC SERVICE COMMISSION**

**IN THE MATTER OF A SHOW CAUSE ORDER )  
DIRECTED TO ENTERGY ARKANSAS, INC. )  
REGARDING ITS CONTINUED MEMBERSHIP IN )  
THE CURRENT ENTERGY SYSTEM AGREEMENT, ) DOCKET NO. 10-011-U  
OR ANY SUCCESSOR AGREEMENT THERETO, AND )  
REGARDING THE FUTURE OPERATION AND )  
CONTROL OF ITS TRANSMISSION ASSETS )**

**POST HEARING BRIEF OF SOUTHWEST POWER POOL, INC.**

COMES NOW Southwest Power Pool, Inc. (“SPP”) and for its Post-Hearing Brief states:

**I. INTRODUCTION**

The Arkansas Public Service Commission (“Commission” or “APSC”) states that the purpose of this proceeding is to assess the “viable strategic reorganization options” for Entergy Arkansas, Inc. (“EAI”) when it exits the Entergy System Agreement (“ESA”) in December 2013. Over the course of this proceeding, three options for EAI have emerged: (i) join the SPP Regional Transmission Organization (“RTO”), as initially considered by the Commission in Order No. 1; (ii) join the Midwest ISO (“MISO”); and (iii) operate as a standalone company with third party arrangements and coordination. The Commission has noted the “substantial public interest involved in this proceeding” and the fact that EAI’s choice of option will have effects “for years – if not decades – to come.”<sup>1</sup> It is with this proceeding’s significance in mind that SPP submits its Brief to help the Commission with its decision.

The Commission should find that SPP membership is in the public interest and the only prudent decision. There are four critical factors upon which such finding may be based: (i) the Commission’s defined role in RTO governance, (ii) cost savings for EAI and Arkansas, (iii) timing and certainty of full integration, and (iv) hands-on experience with EAI.

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<sup>1</sup> Order No. 36 in APSC Docket No. 10-011-U, p. 6.

## II. THE COMMISSION SHOULD APPLY A PUBLIC INTEREST STANDARD

In Order No. 1, the Commission pointed to the public interest standard and appropriately noted that its “statutory mandates require action to ensure that the public interest is being served.” Order No. 1, p. 29. As stated by Chairman Honorable on September 9, 2011, the Commission is the “guardian of the public interest, and it’s the [C]ommissioners’ role to make decisions that are in the public interest.”<sup>2</sup> Indeed, the Commission should determine the best result for all members of the public impacted by this decision. This standard is consistent with prior determinations by the Commission having state-wide impacts. For example, in *Arkansas Electric Cooperative Corporation (“AECC”) v. APSC*, the Arkansas Supreme Court recognized that rules and regulations promulgated by the Commission were “in the public interest because they seek to advance the welfare of all consumers.”<sup>3</sup>

The evidence establishes that EAI’s decision will affect all Arkansas customers, not just those of EAI.<sup>4</sup> More importantly, as discussed in greater detail below, unlike prior decisions by Arkansas utilities to join SPP, the post-ESA options have impacts state-wide. Therefore, when rendering its decision and recommendation in this docket, the Commission should consider the impact of EAI’s proposal to join MISO on all affected Arkansas consumers, including those of other electric utilities. This view is shared by the General Staff’s witness Mr. Peaco and the Attorney General’s witness Mr. Woodruff.<sup>5</sup>

EAI has asserted that the public interest standard should exclude non-EAI customers because state-wide impacts were not studied or considered in APSC Docket No. 04-137-U, in

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<sup>2</sup> APSC Docket No. 10-011-U Hearing Transcript, September 7-9, 2011, p. 649 at lines 13-14.

<sup>3</sup> *AECC v. APSC*, 42 Ark. App. 198, 212, 856 S.W.2d 880, 887 (1993).

<sup>4</sup> *See generally*, Surrebuttal Testimony of Carl A. Monroe, filed August 18, 2011, p. 5 at lines 3-8; *See also* Surrebuttal Testimony of Kip Fox, filed August 18, 2011; Supplemental Initial Testimony of Ricky Bittle, filed July 12, 2011; Petition to Intervene filed by The Empire District Electric Company on July 6, 2011; and Petition to Intervene filed by Oklahoma Gas & Electric on July 7, 2011.

<sup>5</sup> *See*, Supplemental Initial Testimony of Daniel Peaco filed July 12, 2011, p. 10; APSC Docket No. 10-011-U Hearing Transcript, September 7-9, 2011, p. 756 at lines 1-11.

which Southwestern Electric Power Company (“SWEPCO”) was granted the authority to transfer functional control to SPP.<sup>6</sup> EAI’s assertion fails to acknowledge that there was nothing to indicate that any other parties or any other ratepayers were impacted by SWEPCO’s decision to join SPP, and that the issue was never raised. Mr. McDonald testified that he has a fiduciary responsibility to his customers and when asked if Entergy would have intervened in Docket No. 04-137-U had material harm been suspected, Mr. McDonald answered “[l]ikely, we would have, yes.”<sup>7</sup> The reason that possible state-wide impacts of SWEPCO joining SPP were not considered is because there was no risk of harm to other parties raised as an issue in that docket. One particular question asked of Mr. McDonald seems to capture this clearly. On behalf of AECC, Mr. Lyford asked “[a]nd would you also agree with me, based on the crowd in the room today, that when parties think they are harmed, they don’t hesitate to intervene in dockets that they think are important to them?” to which Mr. McDonald responded “That’s true.”<sup>8</sup>

There seems to be no bright-line definition of who should be considered the “public” when determining public interest because different decisions have different impacts. There are some decisions that have only local impacts and others that have state-wide impacts. Thus, the reasonable conclusion is that the interests considered should be those of the public who will be impacted by a decision. In Docket No. 04-137-U, there were no far-reaching impacts throughout Arkansas, so the public interests at hand were those of SWEPCO’s customers. In this docket, it has been demonstrated that there will be impacts throughout the state that are not limited to EAI. Therefore, the state-wide impacts should be considered, because in this instance it is clear that the public interest is greater than the sole interest of EAI. Accordingly, the Commission’s action

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<sup>6</sup> APSC Docket No. 10-011-U Hearing Transcript, September 7-9, 2011, p. 90 at lines 12-19.

<sup>7</sup> *Id.* at p. 105 at line 1.

<sup>8</sup> *Id.* at p. 105 at lines 10-14.

in this docket must be guided by the interest of all the “public” impacted, meaning it should consider the impact of EAI’s exit option on all Arkansas electric consumers.

In Order No. 1, the Commission also invoked a prudence standard by indicating its intention to render a decision regarding the prudence of EAI entering into a successor ESA, operating as a standalone utility upon exit from the ESA, as well as RTO participation.<sup>9</sup> Mr. McDonald testified that its determination was based on an inquiry of whether the decision was “reasonable for EAI’s customers.”<sup>10</sup> According to Mr. McDonald, the prudence standard considers whether a utility’s actions were reasonable.<sup>11</sup> Consequently, EAI’s position seems to be that the prudence standard has a relatively low bar or threshold.

However, the threshold for meeting the prudence standard is higher than EAI suggests. As it has done so elsewhere, the Commission should define prudence as choosing the best of the alternatives for Arkansas consumers. For example, in Order No. 6 in APSC Docket No. 06-028-R, in the context of resource planning guidelines, the Commission seems to suggest that to be prudent, an Arkansas jurisdictional electric utility must utilize an integrated planning and acquisition/implementation process that will *maximize* available cost savings and benefits. That is, prudence requires choice of the best among all relevant options. Moreover, there is regulatory precedent, although not in Arkansas, that foregoing greater benefits than could be obtained from one course of action to instead accept lesser benefits from a different course of action is a potential detriment to the public, and thereby, by definition, not prudent.<sup>12</sup>

EAI seems to assert that its proposal to join MISO is a reasonable business decision and as such should stand without question. There is one distinct difference with respect to the

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<sup>9</sup> Order No. 1, in APSC Docket 10-011-U, p. 30.

<sup>10</sup> APSC Docket No. 10-011-U Hearing Transcript, September 7-9, 2011, p. 90 at line 2.

<sup>11</sup> Sur-Surrebuttal Testimony of Hugh McDonald, filed August 25, 2011, p. 10 at lines 9-14.

<sup>12</sup> *See*, In the Matter of the Application of Aquila, Inc., Missouri Public Service Commission Case No. EO-2008-0046, Report and Order, dated October 19, 2008, p. 17.

sovereignty of a business decision of a regulated utility as compared to that of an ordinary, non-regulated corporation. In exchange for allowing a utility to operate as a monopoly, its business decisions are subject to strict regulation. The Arkansas Supreme Court has opined that “[t]he regulation of utilities is one of the most important of the functions traditionally associated with the police power of the states.”<sup>13</sup> Further, the court explained that “the Arkansas General Assembly has delegated broad regulatory and supervisory powers to the Commission. Under this comprehensive regulatory scheme, the public utility is granted monopoly status. As a quid pro quo for its monopoly status, a public service utility is the subject to vigilant and continuous regulation.”<sup>14</sup> EAI’s business decisions do not merely impact its shareholders and persons choosing to do business with it. Instead, its business decisions have far reaching impacts on others, both inside and outside of the EAI footprint, who have no choices or other options. Accordingly, EAI’s business decision in this matter is subject to the approval and judgment of the Commission, which is responsible for considering the broader public interest.

As documented in the remainder of this Brief, and in the evidence presented in this docket, joining SPP is the best option for EAI and the best option for the state of Arkansas. Accordingly, the Commission should find that SPP is the best post-ESA option for EAI because it is both in the public interest and prudent.

### **III. THE COMMISSION SHOULD HEAVILY WEIGH ITS CONSIDERATION OF EAI’S OPTIONS IN THIS MATTER ON FOUR CRITICAL FACTORS**

#### **A. RTO GOVERNANCE IN SPP ALLOWS THE COMMISSION’S VOICE TO BE HEARD**

The first critical factor comes from a comparison of the Commission’s role in governance within SPP and MISO. The Commission should conclude that the public interest is better served

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<sup>13</sup> *AECC*, 42 Ark. App. at 207, 856 S.W.2d at 884-885.

<sup>14</sup> *Id.*

through SPP's open and transparent, stakeholder driven process. It is evident that the Commission wants to be assured that its voice will be heard in matters involving EAI and the RTO it joins. The Chairman focused on this when she said that the Commission is "accustomed to having input that is significant."<sup>15</sup> This is also highlighted by Staff's Witness Mr. Peaco who stated "[g]overnance structure remains an important policy consideration in this decision."<sup>16</sup> Only SPP provides the opportunity for significant involvement through the explicit roles for the Regional State Committee ("RSC") defined in the SPP Open Access Transmission Tariff ("Tariff"). As the Commission well knows, the RSC in SPP has explicit and significant authority in essential areas.<sup>17</sup> When the public interest is truly considered, membership in SPP is the best option.

**1. The SPP RSC's role is well-defined and that definition gives explicit authority to state regulatory commissions.**

The Commission's role and opportunity to participate in the SPP stakeholder process through the RSC is well-defined. The RSC is an official Organizational Group within SPP. Under the SPP Bylaws and RSC Bylaws, the RSC has explicit and significant authority in essential areas including transmission planning, cost allocation and resource adequacy, plus the right to order SPP to make Section 205 filings at the Federal Energy Regulatory Commission ("FERC").<sup>18</sup> These areas have been specifically identified as important issues in this docket and should be key factors in considering the role of governance and the ability to advocate the interests of Arkansas ratepayers in the RTO setting.

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<sup>15</sup> APSC Docket No. 10-011-U Hearing Transcript, September 7-9, 2011, p. 649 at lines 9-10.

<sup>16</sup> Surrebuttal Testimony of Daniel Peaco filed August 18, 2011, p. 28 at line 18.

<sup>17</sup> Supplemental Initial Testimony of Carl A. Monroe, filed July 12, 2011, p. 15 at lines 11-22 and p. 16 at lines 1-20.

<sup>18</sup> Supplemental Initial Testimony of Carl A. Monroe, filed July 12, 2011, p. 15 at line 11 through p. 16 at line 20.

Such explicit roles are not found in MISO or its Organization of MISO States (“OMS”). The role of the OMS within MISO is simply “advisory.”<sup>19</sup> The OMS is an external group to MISO with no formal responsibilities or formal voting rights before the MISO Board of Directors nor any role defined in the MISO Tariff.<sup>20</sup> Unlike the RSC, the OMS only provides comments and recommendations.<sup>21</sup> This is not a fact disputed by MISO or EAI.

General Staff’s Witness, Mr. Peaco, highlights the “notable difference” between MISO and SPP due to the role of the RSC.<sup>22</sup> He recognizes that:

SPP’s governance structure gives a more clearly defined position for regulators and gives them more authority as compared to MISO’s structure. SPP has a formal process for retail regulators to participate in the RSC. The RSC has authority over transmission upgrade cost allocation, allocation of market transmission rights, and regional resource adequacy. It also has the power to direct SPP to make FERC section 205 filings.<sup>23</sup>

Additionally, after citing the differences in physical size and location between SPP and MISO, Mr. Peaco observed that “these characteristics could give the Commission more influence over the decision making process should EAI join SPP rather than MISO.”<sup>24</sup>

**2. The well-defined role for the RSC has allowed it to have major influence on major issues for ratepayers and provides for consensus among state regulators and SPP.**

Both Mr. Monroe and Dr. Roach cite numerous instances of the RSC’s real world impact, including, but not limited to, the development of Highway-Byway methodology for transmission cost allocation and the assessment of both the existing Energy Imbalance Services (“EIS”)

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<sup>19</sup> *Id.* at p. 22 at lines 10-20.

<sup>20</sup> See, Supplemental Initial Testimony of Craig R. Roach, filed July 12, 2011, p. 56 and 59; Supplemental Initial Testimony of Carl A. Monroe, filed July 12, 2011, p. 21.

<sup>21</sup> *Id.*

<sup>22</sup> Surrebuttal Testimony of Daniel E. Peaco, Filed August 18, 2011, p. 26 at line 22 through p. 27 at line 2.

<sup>23</sup> *Id.* at 28.

<sup>24</sup> *Id.*

Market and the soon-to-be implemented Integrated Marketplace.<sup>25</sup> Notably, the RSC-led cost-benefit studies of the EIS market and Integrated Marketplace were material considerations within the SPP stakeholder process in determining whether to proceed with implementation.<sup>26</sup>

Mr. Moeller testified about the OMS and how MISO interacts with the state regulatory commissions. Specifically, he mentioned planning meetings, commission visits and receiving commission input.<sup>27</sup> These things do not replace, and are not an adequate substitute for, the actual authorities of the RSC.

A recent OMS FERC filing clearly demonstrates the deficiencies in its role in MISO. As identified above, the RSC has responsibility for regional resource adequacy in SPP; an authority not delegated to the OMS. On September 15, 2011, the OMS filed its Notice of Intervention and Protest in FERC Docket No. ER11-4081-000, in opposition to MISO's proposed tariff provisions on Resource Adequacy Requirements, which include its proposed capacity market.<sup>28</sup> The OMS sharply criticizes the MISO filing stating that it "goes far beyond what [FERC] directed in its two Compliance Orders and that the filing negatively impacts state jurisdictional responsibilities, lacks clear net benefits, and should not be found just and reasonable."<sup>29</sup> Although MISO may interact with and visit its state commissions and obtain their input, this filing is a clear example of the true position of the OMS within MISO.

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<sup>25</sup> See, Supplemental Initial Testimony of Carl A. Monroe, filed July 12, 2011, p. 16; Supplemental Initial Testimony of Craig R. Roach, filed July 12, 2011, p. 59.

<sup>26</sup> Supplemental Initial Testimony of Carl A. Monroe, filed July 12, 2011, p. 17-18.

<sup>27</sup> APSC Docket No. 10-011-U Hearing Transcript, September 7-9, 2011, p. 646 at lines 5-8; p. 647 at lines 6-9; and p. 648 at lines 648.

<sup>28</sup> The OMS has protested a number of MISO filings. As of the filing of Mr. Monroe's Supplemental Initial Testimony on July 12, 2011, the OMS had protested 18 of the 184 initial filings at FERC made by MISO since 2006. In sharp contrast, the RSC has opposed none of the initial filings SPP has made at FERC.

<sup>29</sup> Notice of Intervention and Protest of the Organization of MISO States, Inc., filed September 15, 2011, FERC Docket No. ER11-4081-000, available at: [http://elibrary.ferc.gov/idmws/File\\_list.asp?document\\_id=13955823](http://elibrary.ferc.gov/idmws/File_list.asp?document_id=13955823).

**3. The RSC's role in transmission cost allocation and in the unintended consequences process reduces uncertainty, rather than increases it as argued by EAI.**

EAI has continually criticized SPP's process colloquially referred to as the "Unintended Consequences" review or the "Reasonableness Review." Unlike the OMS, the RSC has direct authority over transmission cost allocation and direct input to the effort to assure that, over time, costs continue to be allocated to those who benefit.<sup>30</sup> The RSC's role in the Reasonableness Review includes review and approval of the recommendations from the Regional Allocation Review Task Force ("RARTF") charged with determining metrics to review the fairness of cost allocation methodology.<sup>31</sup>

EAI's complaint about the Reasonableness Review is that "certain stakeholder committees have the ability to establish the playing field for Unintended Consequences, and that those committees have a clear incentive to do so in a manner that results in a reallocation of a share of the costs to Entergy;<sup>32</sup> further, Entergy says it would not have sufficient votes to override any decision by this committee to reallocate costs.<sup>33</sup> As Dr. Roach points out, EAI's "conspiracy theory" should be dismissed because it implies that the stakeholders and state commissions "lack integrity."<sup>34</sup> Moreover, any re-allocation of transmission costs proposed through the Reasonableness Review process would have to be approved by the SPP Board of Directors and FERC, implying that those independent entities would have to be part of the conspiracy against Entergy.<sup>35</sup> The occurrence of unintended consequences arising from cost allocation is not unique to SPP.<sup>36</sup> SPP's Tariff mandated review, including the substantial role

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<sup>30</sup> Surrebuttal Testimony of Carl A. Monroe, filed August 18, 2011, p. 9 at line 16 through p. 11 at line 19.

<sup>31</sup> *Id.* at 10, lines 12-21.

<sup>32</sup> Rebuttal Testimony of Michael Schnitzer, filed August 4, 2011, p. 27-30.

<sup>33</sup> *Id.*

<sup>34</sup> Surrebuttal Testimony of Craig R. Roach, filed August 18, 2011, p. 23.

<sup>35</sup> *Id.*

<sup>36</sup> APSC Docket No. 10-011-U Hearing Transcript, September 7-9, 2011, p. 622 at lines 21-24.

for the RSC, is demonstrative of the strength of SPP's governance, not a weakness as mischaracterized by EAI.

**B. MEMBERSHIP IN SPP WILL PRODUCE GREATER BENEFITS FOR EAI AND ARKANSAS**

The second critical factor for the Commission's decision is that EAI and Arkansas will see greater benefits from EAI joining SPP in the form of quantifiable savings.

**1. Charles River Associates ("CRA") demonstrated that there are greater benefits if EAI joins SPP.**

The comparison of quantifiable net benefits to EAI and the other Entergy Operating Companies joining SPP and to those which would result from joining MISO was calculated in a series of cost benefit studies done by CRA, the independent consulting firm selected by FERC and the Commission.<sup>37</sup> In its May 12, 2011 Evaluation Report ("Evaluation Report") Entergy made five adjustments to the CRA study that altered CRA's conclusion that quantifiable benefits would be greater by joining SPP. As summarized below, none of these five "adjustments" were credible.<sup>38</sup> The CRA studies were the only independent analysis performed with the assumptions and inputs openly vetted by FERC, the Entergy Regional State Committee ("E-RSC") and Entergy stakeholders. The CRA study is credible, Entergy's adjustments are not.

EAI was right, however, to suggest that the updated estimates of transmission cost allocation by SPP and MISO should be incorporated; which Dr. Roach included in his Surrebuttal Testimony, filed August 18, 2011.<sup>39</sup> After revising the calculation with the updated transmission cost allocation estimates, it is clear that CRA's analysis still leads to the obvious result that the ten-year present value of net benefits for the Entergy region with: (i) a range from \$452 million to \$720 million if EAI and the other Entergy Operating Companies join SPP as

<sup>37</sup> Order No. 6, APSC Docket No. 10-011-U, p. 2.

<sup>38</sup> Supplemental Initial Testimony of Craig R. Roach, filed July 12, 2011, p. 22-55.

<sup>39</sup> Surrebuttal Testimony of Craig R. Roach, filed August 18, 2011, p. 9 at line 8.

compared to (ii) a range of \$202 million to \$529 million if they join MISO.<sup>40</sup> The estimates still lead to the same conclusion that SPP is the right choice between the two RTOs, showing that joining SPP is likely to generate substantially more net benefits to consumers than joining MISO. By symmetrically comparing the low and high ends, we see that joining SPP generates 36% to 124% more benefits than joining MISO.<sup>41</sup>

a. The five EAI adjustments to the CRA results were not credible.

Commissioner Reeves expressed his frustration with the cost benefit analysis presented by Entergy as well as his concern about EAI speculating that SPP would allocate substantial transmission costs to EAI through the Unintended Consequences review process.<sup>42</sup> The quantitative analysis presented by EAI is “not convincing.”<sup>43</sup>

EAI’s five “adjustments” were enough to reverse CRA’s conclusion that greater benefits were likely with joining SPP. Dr. Roach reviewed each of these “adjustments” and found none of them to be credible. EAI’s response to this criticism was unconvincing and incomplete. Although SPP continues to assert that all five adjustments were incorrect, for purposes of this brief, it will focus on three. Chief among the “adjustments” was EAI’s narrowing of its focus from all customers in the Entergy region to only EAI’s ratepayers. Dr. Roach criticized this adjustment on two grounds. The first was that it meant that EAI was arguing that one Arkansas ratepayer or business was “more deserving” than another,<sup>44</sup> as was confirmed by Mr. MacDonald in his written Testimony and at the September 7-9, 2011 Evidentiary Hearing (“Hearing”).<sup>45</sup>

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<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at p. 9 at line 11 through p. 10 at line 2.

<sup>42</sup> See APSC Docket No. 10-011-U Hearing Transcript, September 7-9, 2011, p. 370 at lines 3-6.

<sup>43</sup> *Id.* at p. 370 at lines 19-23.

<sup>44</sup> Surrebuttal Testimony of Craig R. Roach, filed August 18, 2011, p. 10 at line 19 through p. 11 at line 18.

<sup>45</sup> Rebuttal Testimony of Hugh T. McDonald, filed August 4, 2011, p. 8 at lines 4-11. See also APSC Docket No. 10-011-U Hearing Transcript, September 7-9, 2011, p. 85 at lines 2-25.

This position is clearly inconsistent with the public interest standard this Commission has identified as applicable in this proceeding.

The second reason Dr. Roach did not find the EAI narrowing to be credible is that EAI could not explain the impact of the adjustment – that is, it could not explain the fact that this “adjustment” biased the analysis toward MISO, which EAI acknowledged in a data response to the Attorney General.<sup>46</sup> At the Hearing, EAI showed once again that it could not explain the anomalous result. Specifically, in response to a Commission question as to why this is the case, Mr. Hurstell gave no explanation and instead stated, oddly, that it could be explained by the great interest in this proceeding by those who would benefit if EAI joined SPP.<sup>47</sup>

A second “adjustment” that EAI made purported to show how the CRA net benefits changed with a change in base case. Again, this lacked credibility and simply does not make sense. Dr. Roach explained that “[l]ogically, this simple change in starting point should add equally to the benefits of joining either RTO, but it does not, and Entergy provided no credible explanation.”<sup>48</sup> In its final opportunity to rebut Dr. Roach, EAI chose not to say anything.

A third EAI “adjustment” was to significantly increase the estimate of Administrative Costs for SPP. Dr. Roach concluded that the adjustment “was not credible because the increase was based on an oversimplified analysis; including the assertion that the start-up costs for SPP’s Integrated Marketplace would be the same as that for the troubled California Market.”<sup>49</sup> EAI attempted to claim this reflected due diligence on administrative costs, but it is clear that this was an arbitrary decision that is not credible.<sup>50</sup>

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<sup>46</sup> Surrebuttal Testimony of Craig R. Roach, filed August 18, 2011, p. 12 at lines 1-5.

<sup>47</sup> APSC Docket No. 10-011-U Hearing Transcript, September 7-9, 2011, p. 310 at line 1 through p. 311 at line 9.

<sup>48</sup> Surrebuttal Testimony of Craig R. Roach, filed August 18, 2011, p. 16 at line 21 through p. 17 at line 2.

<sup>49</sup> *Id.* at p. 14 at lines 8-10.

<sup>50</sup> *Id.* at p. 14 at lines 16-20.

This quick review of three of EAI's "adjustments" gives the correct sense that Entergy made these back-of-the-envelope "adjustments" with the intent of reversing the CRA determination that SPP is the RTO with the higher quantifiable cost savings for consumers, and is therefore the better choice.

- b. The most significant shortcomings cited by the Commissioners would bias the results against SPP and, therefore, had they been overcome the quantifiable net benefits to joining SPP would only have been greater than CRA shows.

As noted above, Commissioner Reeves cited two shortcomings in the EAI analysis that carry over to the CRA analysis. The first shortcoming is that the EAI analysis failed to include the costs of compensating for loop flows. It is correct to deduce that, when Mr. Schnitzer admitted that the CRA model did not reflect the Joint Operating Agreement ("JOA") and would have to be "reconfigured" to do so, he was admitting that the CRA model did not include loop flow compensation.<sup>51</sup> As Dr. Roach noted at the Hearing, loop flow compensation should follow the *NIPSCO* precedent and thereby, include the costs of both re-dispatch and transmission system upgrades.<sup>52</sup> If the CRA model predicted re-dispatch, the costs of that re-dispatch would be in the costs of SPP, not in the costs of MISO or EAI. In addition, since CRA did not include the costs of system upgrades in the CRA studies needed because of the increased loop flows, we know the costs of such transmission system upgrades were not considered.

Compensation for loop flows will likely be material. To see this, simply look to the fact that four significant Arkansas utilities, AECC, SWEPCO, Oklahoma Gas and Electric Company ("OG&E"), and The Empire District Electric Company ("Empire"), have intervened in this

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<sup>51</sup> APSC Docket No. 10-011-U Hearing Transcript, September 7-9, 2011, p. 263 at lines 18-19.

<sup>52</sup> *Id.*, at p. 694 at line 14 through p. 695 at line 4. (citing *NIPSCO v. MISO and PJM Interconnection, LLC*, 111 FERC ¶ 61,474 (June 27, 2005)).

proceeding to protect their ratepayers against the cost of loop flows and to ask for compensation.<sup>53</sup>

The second shortcoming noted by Commissioner Reeves is that EAI failed to consider the cost impact of FERC denying MISO's June 3, 2011 request to FERC for a waiver of certain tariff provisions, in which it proposed to create separate sub-regions for planning and cost allocation purposes ("Waiver Request").<sup>54</sup> If the Waiver Request is not granted, the transmission costs allocated to EAI and the other Entergy Operating Companies could be up to \$631 million.<sup>55</sup> Even EAI admitted that it would have to reconsider its choice of RTOs if the waiver is not granted.<sup>56</sup> Moreover, MISO admitted that seeking the waiver puts it in uncharted waters – it has never sought such a waiver before.<sup>57</sup>

## **2. Arkansas will experience greater benefits if EAI joins SPP.**

CRA found that SPP membership provided the most benefit to EAI, and, although SPP disputes and discredits the Evaluation Report findings in favor of MISO, at a minimum, the Evaluation Report still established there is significant value in SPP membership. SPP continues to believe that SPP membership is the most beneficial for EAI and in the public interest; however, even if that point is disputed by Entergy, it cannot dispute the fact that SPP clearly provides the most benefit to the State of Arkansas.

There are approximately 674,000 non-EAI customers in Arkansas served by AECC, SWEPCO, OG&E, and Empire, all of which alleged there will be adverse impacts on their

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<sup>53</sup> See also Surrebuttal Testimony of Kip Fox, filed August 18, 2011; Supplemental Initial Testimony of Ricky Bittle, filed July 12, 2011; Petition to Intervene filed by Empire on July 6, 2011; and Petition to Intervene filed by OG&E on July 7, 2011.

<sup>54</sup> See, FERC Docket. No. ER11-3728.

<sup>55</sup> Surrebuttal Testimony of Carl A. Monroe, filed August 18, 2011, p. 8 at lines 5-9 (citing Limited Supplemental Comments of Entergy Services, Inc., Docket No. ER11-3728-000, at p. 4 (July 11, 2011)).

<sup>56</sup> APSC Docket No. 10-011-U Hearing Transcript, September 7-9, 2011, p. 375 at lines 4-10.

<sup>57</sup> *Id.* at p. 522 at lines 10-14.

systems if EAI joins MISO that the Commission should consider.<sup>58</sup> These impacts include, but are not limited to: increased congestion, reduced congestion hedges, operating in two markets, increased administrative fee, increased reserve sharing costs, pancaked transmission rates, increased complexity for their own operation, no certainty of any near-term change regarding additional transmission investment as the result of the participation in a robust RTO wide planning process, and increased difficulty in expanding the transmission system near the seam.<sup>59</sup>

With respect to the SPP Administrative Fee, SPP has estimated if Entergy were to join SPP that the Administrative Fees paid by AECC, SWEPCO, OG&E and Empire would decrease by approximately \$159,000,000, of which an estimated \$34,000,000 would be saved by Arkansas ratepayers.<sup>60</sup>

No one has made any suggestion that there would be harm to other Arkansas customers should EAI join SPP. There is no evidence in the pre-filed testimony and exhibits, or presented at the Hearing, which indicates that if EAI joins the SPP RTO there will be potentially adverse impacts on any Arkansas electric consumers.

There was a great deal of testimony at the evidentiary Hearing about the JOA. It is important to remember that the impacts on Arkansas are greater than the issue of renegotiating the JOA. The JOA will never completely resolve all issues related to the SPP-MISO seam that would be running through Arkansas. It will not eliminate the fact that Arkansas utilities will be forced to operate in both systems, sometimes having generation in one RTO and load in another, and vice versa. It will not eliminate the increased administrative burden for the RTOs and utilities that will result from the seam. And, it will not eliminate differences between

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<sup>58</sup> Surrebuttal Testimony of Carl A. Monroe, filed August 18, 2011, p. 5 at lines 3-8; *See also*, Surrebuttal Testimony of Kip Fox, filed August 18, 2011; Supplemental Initial Testimony of Ricky Bittle, filed July 12, 2011; Petition to Intervene filed by Empire on July 6, 2011; and Petition to Intervene filed by OG&E on July 7, 2011.

<sup>59</sup> Surrebuttal Testimony of Carl Monroe, filed August 18, 2011, p. 5 at lines 11-17.

<sup>60</sup> Surrebuttal Testimony of Carl A. Monroe, filed August 18, 2011, p. at lines 17-20; *See also*, Attachment 1 to Surrebuttal Testimony of Carl Monroe, filed August 18, 2011.

transmission planning and operational approaches of the two RTOs that would be borne by Arkansas utilities and would consequently increase complexities and costs to Arkansas consumers.

Even if this issue was limited to the JOA, that is a matter of FERC jurisdiction. If this Commission finds that SPP membership is the best post-ESA option for EAI, it can resolve all of these issues by eliminating the seam in Arkansas. The Commission has been presented with a historic opportunity to eliminate the seam in Arkansas, and seizing this opportunity is in the public interest for Arkansas.

Finally, there is no question that EAI can join SPP as a Transmission Owning Member, even if all, or some, of the Entergy Operating Companies join at the same time or later. Unlike with MISO, whose Transmission Owners Agreement requires a “public utility holding company system shall be treated as a single owner for purposes of this agreement,”<sup>61</sup> SPP’s Membership Agreement does not contain such restrictions.

### **C. FULL INTEGRATION INTO SPP IS IMMEDIATE AND CERTAIN**

The third critical factor the Commission may use to base its finding comes from a comparison of the timing of EAI’s integration into the RTO. On June 3, 2011, MISO filed its Waiver Request for the waiver of tariff provisions related to transmission planning and cost allocation for Entergy and EAI. The reason for this is that “MISO has not historically planned system upgrades in close coordination with Entergy”<sup>62</sup> and therefore needs to create the MISO South sub-region because the systems are not comparable. MISO and EAI anticipate that it could take between five to 14 years to accomplish full integration. SPP does not need a waiver of its

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<sup>61</sup> APSC August 19, 2011 Technical Conference Transcript, p. 26 at lines 18-21.

<sup>62</sup> Supplemental Testimony of Carl A. Monroe, filed July 12, 2011, p. 45 at lines 5-6 (quoting p. 4 of MISO’s Filing to Seek Transitional Waiver of Provisions of its Tariff in FERC Docket. No. ER11-3728 on June 3, 2011.

Tariff to fully integrate EAI into the SPP RTO and can promptly integrate EAI, and the other Entergy Operating Companies, upon joining SPP.

Mr. Monroe identified a number of key uncertainties related to this Waiver Request, however, SPP is not alone in recognizing the substantial number of issues with the Waiver Request. There were numerous protests and comments filed in response to MISO's Waiver Request for a special Entergy sub-region describing the same uncertainties, deficiencies and ambiguities in MISO's filing.<sup>63</sup> The state regulatory agencies of Missouri, Illinois, Indiana, and Wisconsin, as well as the MISO Transmission Owners and other MISO market participants, urged FERC to defer or deny MISO's Waiver Request until a complete record could be developed on cost allocation and subsidization impacts.<sup>64</sup> Other intervenors alleged that the proposed creation of sub-regions for planning and cost allocation purposes could not be selectively applied to Entergy.<sup>65</sup>

Notwithstanding the wide-spread opposition to the Waiver Request, EAI have indicated that it is confident this request will be granted; however, it has acknowledged that this issue remains a significant uncertainty.<sup>66</sup> There are uncertainties as to how FERC will rule, as well as when and if FERC will rule on the request. In fact, this ruling could be cause for Entergy to reevaluate its proposal to join MISO.<sup>67</sup> Despite acknowledging the material uncertainties of FERC's ruling, both parties attempted to downplay the uncertainties that will still remain if the waiver is granted and EAI and Entergy are allowed to operate as one sub-region, MISO South.

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<sup>63</sup> Surrebuttal Testimony of Carl A. Monroe, filed August 18, 2011, p. 6 at line 17 through p. 7 at line 16.

<sup>64</sup> See, e.g., Motion to Intervene and Comments of the MISO Transmission Owners, Protest of Coalition of Midwest Transmission Customers, p. 3-4; Comments of Alliant Energy Corporate Services, Inc., p. 4-7.

<sup>65</sup> See Petition to Intervene of the Association of Businesses Advocating Tariff Equity at 5; Motion to Intervene and Protest of Cleco Power, LLC, p. 3.

<sup>66</sup> APSC Docket No. 10-011-U Hearing Transcript, September 7-9, 2011, p. 98 at lines 1-15.

<sup>67</sup> *Id.* at p. 98 at line 17 through p. 99 at line 22.

A number of other doubts and inconsistencies regarding how MISO North and MISO South will function exacerbate the uncertainties related to Entergy joining MISO. Central to this is the timing of integration. At the May 19, 2011 E-RSC meeting, Mr. Rick Riley, Entergy's Vice President of Energy Delivery indicated that the special Entergy MISO South planning area would last "out towards the ten-year area as opposed to the five-year."<sup>68</sup> However, MISO acknowledged in the FERC filing that "if comparability is not achieved at the end of the 10-year maximum transition period, MISO will study and propose alternative cost allocation approaches appropriate for the circumstances prevailing at that time." This timeline has continued to change. At the Hearing, we learned that full integration could actually take 14 years, which includes the 10 year waiver projection with an additional four years of incremental effort to achieve comparability.<sup>69</sup> Indeed, EAI believes the high end of the proposed timeline is most likely.<sup>70</sup>

In addition, MISO and Entergy have both maintained that no transmission will be built for the purpose of obtaining comparability,<sup>71</sup> with EAI surprisingly arguing that it neither needs nor intends to make any transmission investments to assure integration with MISO.<sup>72</sup> Not only is there is no indication of how or if Entergy and MISO will be working to obtain comparability, but this raises other issues such as how joining MISO will help address the recent high amount of congestion in Arkansas.<sup>73</sup> This curious position of EAI on transmission investment was highlighted by Chairman Honorable when she stated: "I don't want to talk about what won't be

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<sup>68</sup> May 19, 2011 E-RSC Transcript, p. 347.

<sup>69</sup> APSC Docket No. 10-011-U Hearing Transcript, September 7-9, 2011, p. 231 at lines 16-18; p. 536 at lines 6-23.

<sup>70</sup> *Id.* at p. 227 at line 21 through p. 228 at line 3.

<sup>71</sup> *Id.* at p. 374 at lines 1-2.

<sup>72</sup> Rebuttal Testimony of Michael M. Schnitzer, filed August 4, 2011, p. 23 at lines 14 to 21 and p. 33 at line 22 through p. 34 at line 2. Also see Rebuttal Testimony of Richard C. Riley, filed August 4, 2011, p. 21 at lines 1-13. *See also*, Response of EAI to the Second Set of Data Requests of SWEPCO, Question No. 2-5, filed June 27, 2011, and Response of EAI to the Thirtieth Set of Data Requests of APSC General Staff Question No. 30-4, filed July 27, 2011.

<sup>73</sup> APSC Docket No. 10-011-U Hearing Transcript, September 7-9, 2011, p. 413 at lines 16-18.

built. I want to talk about what's going to be built.”<sup>74</sup> Given MISO's admission that it has not studied and is not familiar with the EAI and Entergy Systems,<sup>75</sup> it seems that little information can actually be gleaned to determine how the MISO and EAI/Entergy systems will operate together.

More significant perhaps is the uncertainty as to what comparability means and how it will be reached. Neither EAI nor MISO has been able to provide a clear explanation of this concept. Most telling however is that MISO and EAI cannot even agree between themselves how the waiver will be implemented and are currently disputing this matter at FERC.<sup>76</sup> Entergy and EAI believe that a MISO Multi-Value Project (“MVP”) must be identified and built in MISO South, however, MISO believes that an application for permission to proceed with an MVP Project in MISO South will be sufficient.<sup>77</sup> If EAI is already litigating the terms of the waiver and the concept of comparability, it cannot make any guarantees to the Commission as to how the waiver provisions would be implemented. How can this Commission find there is any certainty to this matter? By finding that SPP is the best option, the doubt and uncertainty could be avoided entirely. EAI could join SPP, and be fully integrated as an SPP member immediately.

EAI has asserted that its proposal was predicated on the existence of a day-ahead market, and SPP readily acknowledges that it is still implementing its Integrated Marketplace, which includes its day-ahead market. However, SPP is on schedule and in budget for a March 1, 2014 implementation.<sup>78</sup> This would mean that EAI would have to wait only 90 days past its December 2013 exit from the ESA before the SPP Integrated Marketplace would be operational. During

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<sup>74</sup> APSC Docket No. 10-011-U Hearing Transcript, September 7-9, 2011, p. 413 at lines 10-11.

<sup>75</sup> See MISO Waiver Request, p. 4.

<sup>76</sup> APSC Docket No. 10-011-U Hearing Transcript, September 7-9, 2011, p. 632 at line 21 through p. 637 at line 11.

<sup>77</sup> *Id.*

<sup>78</sup> <http://www.spp.org/publications/Integrated%20Marketplace%20Scorecard%20September%202011.pdf>

that time, however, EAI would be a full member under the SPP Tariff, but would not be a market participant. SPP simply does not see a 90-day wait for market participation as a material factor in what is hoped to be a relationship with EAI lasting for decades into the future. Moreover, SPP is ready, willing, and able to provide EAI with all the services needed for it to serve separately as its own Balancing Authority the moment it exits from the Entergy System and is confident this can be established at a much lower cost than what was cited by EAI.<sup>79</sup> The decision to join an RTO is a long-term decision that should not focus on a 90-day difference in day-ahead market availability. The Commission should not base its decision on a relatively short differential in EAI's ability to operate as part of an RTO's day-ahead market.

Far, far more significant than the 90 day delay for integration into the Integrated Marketplace should be the concern that full integration of EAI into MISO will take a minimum of five years and a maximum of 14 years. As discussed in greater detail herein, SPP has significant experience with the EAI System and would not need five to fourteen years to study and integrate the EAI System into the SPP RTO. In sharp contrast, SPP would not need a tariff waiver and EAI can be fully integrated into the SPP RTO right away.<sup>80</sup> Slow integration into a MISO sub-region should be of no comfort to the Commission that RTO membership will protect the public interest. As MISO South, EAI and the rest of Entergy will continue to be treated as the Entergy region that it is today. Even if MISO's planning principals are applied, it will mean planning for the MISO South region as a whole, and as explained above, unlike in SPP, the Commission would have no direct responsibility in transmission planning through the OMS. SPP questions whether joining a MISO sub-region will really provide EAI the RTO benefits that this Commission is interested in.

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<sup>79</sup> Surrebuttal Testimony of Carl A. Monroe, filed August 18, 2011, p. 21 at lines 10-20.

<sup>80</sup> Supplemental Testimony of Carl A. Monroe, filed July 12, 2011, p. 48 at lines 9-19.

#### **D. SPP HAS MORE HANDS-ON EXPERIENCE WITH EAI.**

The final critical factor is a comparison of the hands-on experience each RTO has with EAI and the other Entergy Operating Companies. MISO readily admits that its exposure to Entergy has been minimal. Mr. Moeller said that there had not been interaction over the EAI/MISO seam and that no joint planning had taken place.<sup>81</sup> In sharp contrast, SPP and EAI have a long-standing relationship. EAI was an original member of SPP. Up until 1997, EAI and the entire Entergy system fully participated in SPP, engaging in all aspects of operations and planning.<sup>82</sup> SPP currently provides contract services to EAI and the other Entergy Operating Companies as the Independent Coordinator of Transmission (“ICT”). SPP provides four primary functions for EAI and the other Entergy Operating Companies: (1) SPP serves as Entergy’s Reliability Coordinator, ensuring the reliability of Entergy’s transmission grid through outage prevention and congestion management; (2) SPP conducts Entergy’s long-term transmission planning including cost allocation determinations; (3) SPP independently administers Entergy’s Open Access Transmission Tariff; and (4) SPP oversees Entergy’s Weekly Procurement Process, which facilitates the integration of merchant generation and other wholesale suppliers into Entergy’s generation mix.<sup>83</sup> In addition, SPP operates the Reserve Sharing Group in which EAI and Entergy participate. Clearly, SPP has years of hands-on experience with and knowledge of the EAI system.

The result of SPP’s years of hands-on experience is that SPP will be in the best position to detect and preempt any failure by EAI to act in the best interests of Arkansas. In addition, SPP does not need a tariff waiver to allow it to take time to study the EAI and Entergy systems.

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<sup>81</sup> APSC Docket No. 10-011-U Hearing Transcript, September 7-9, 2011, p. 552 at lines 2-8.

<sup>82</sup> Direct Testimony of Carl A. Monroe, filed February 11, 2011, p. 5 at lines 18-23; Supplemental Initial of Carl A. Monroe, filed July 12, 2011, p. 48.

<sup>83</sup> Direct Testimony of Carl A. Monroe, filed February 11, 2011, p. 3 at lines 13-27; Supplemental Initial Testimony of Carl A. Monroe, filed July 12, 2011, p. 47 at line 8 through p. 28 at line 8.

At the Hearing, the Commissioners pushed hard to have EAI and MISO define the mechanics of operation once EAI joins MISO and to have assurances of the “separateness” of EAI.<sup>84</sup> This vast separation and tenuous connection between MISO and EAI is the very reason MISO had to pursue a tariff waiver. Interested parties are left questioning the rationale of the proposal given that under the terms of the Waiver Request EAI will not see any benefits from MISO’s transmission upgrades and EAI will be exempt from MISO’s cost allocation.

#### **IV. JOINING SPP IS IN THE PUBLIC INTEREST AND IS THE ONLY PRUDENT DECISION**

Based on the comparisons of these four critical factors, SPP believes it is clearly in the public interest and prudent for EAI and the other Entergy Operating Companies to join SPP instead of MISO. Although SPP agrees that EAI should join an RTO, the record clearly establishes that MISO is simply not the best RTO for EAI.

The Missouri Public Service Commission (“MoPSC”) faced a strikingly similar set of circumstances in Case No. EO-2008-0046 in which Aquila, Inc. (“Aquila”) sought to become a full member of MISO. The MoPSC denied Aquila’s application to join MISO.<sup>85</sup> The MoPSC opined that an RTO “provides a path by which electricity can be reliably transmitted from a generating facility to the customers that need that electricity” and that it “facilitates short-term deliverability of electricity for economic transactions.”<sup>86</sup>

In its decision, the MoPSC did exactly what SPP is asking the Commission to do in this proceeding, for many of the same reasons. In connection with MoPSC’s proceeding, CRA performed a cost-benefit analysis considering three scenarios: membership in MISO,

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<sup>84</sup> APSC Docket No. 10-011-U Hearing Transcript, September 7-9, 2011, p. 162 at lines 18-25; p. 163 at lines 1-22; p. 170 at lines 12-25; p. 171 at lines 1-24; and p. 424 at lines 6-9.

<sup>85</sup> In the Matter of the Application of Aquila, Inc., MoPSC Case No. EO-2008-0046, Report and Order, dated October 19, 2008. Available at:

[https://www.efis.psc.mo.gov/mpsc/commoncomponents/view\\_itemno\\_details.asp?caseno=EO-2008-0046&attach\\_id=2009005681](https://www.efis.psc.mo.gov/mpsc/commoncomponents/view_itemno_details.asp?caseno=EO-2008-0046&attach_id=2009005681)

<sup>86</sup> *Id.* at p. 5.

membership in SPP and stand-alone status. CRA found that although there were benefits to joining MISO, as compared to the stand-alone scenario, there were greater benefits to joining SPP. The MoPSC opined that the studies by CRA demonstrated that a drawback to Aquila's proposed membership in MISO was that Aquila simply did not have adequate transmission links with the rest of MISO. The MoPSC explained that Aquila was linked to MISO by just two tie line connections with AmerenUE, whereas Aquila was linked to SPP by 14 tie lines, and that the greater interconnection with SPP would allow Aquila to displace expensive generation in its own control area with less expensive purchased power from the SPP control area, resulting in cost savings for Aquila.<sup>87</sup>

The MoPSC opined that foregoing greater financial benefits that could be obtained from joining SPP to instead accept lesser financial benefits from joining MISO is a potential detriment to the public that the Commission must consider.<sup>88</sup> In addition, it further stated that although MISO offered a more fully developed day-ahead energy market than SPP, that Aquila's decision to join an RTO is a long-term decision, and therefore it is appropriate to place greater emphasis on the long-term results of that decision, determining that over the long term, SPP's markets will be implemented.<sup>89</sup> Finally, the MoPSC held that a real life problem with Aquila's proposal to join MISO is that Aquila's existing transmission connections to the rest of MISO, through its interconnections with AmerenUE, simply are not as extensive as its connections to SPP and the additional transmission congestion over those limited connections that would result if Aquila joined MISO was an additional detriment to the public interest.<sup>90</sup>

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<sup>87</sup> *Id.* at p. 12-13.

<sup>88</sup> *Id.* at p. 17.

<sup>89</sup> *Id.* at p. 17-18.

<sup>90</sup> *Id.* at p. 18.

Ultimately, the MoPSC determined that “Aquila, and thereby its ratepayers, will benefit if Aquila joins an RTO” but found that “MISO was not the appropriate RTO for Aquila to join.”<sup>91</sup> Clearly, MoPSC’s decision can serve as a road map for the APSC to make a determination that although RTO membership is beneficial to EAI and its customers, for all of the reasons set forth in this brief and the record, that MISO is not the appropriate RTO for EAI to join.

In rendering its determination and recommendation, the Commission needs to picture the map of existing electrical systems, as was suggested by Dr. Kirsch.<sup>92</sup> Entergy and MISO are attempting to connect their large systems through a single-path, relatively small physical connection. It is unclear at best whether there will be any effort to strengthen the connections between these two systems. Moreover, given that MISO and EAI have such a tenuous connection that EAI will not see any benefits from MISO’s transmission upgrades and should therefore be exempt from cost allocation through the granting of a tariff waiver, it leaves one to question the rationale for joining MISO. Although EAI claims its decision was largely predicated on MISO’s day-ahead market, the Commission and stakeholders understand that it is transmission capacity that defines and enables markets. Given its much stronger interconnection, SPP is the natural RTO choice.

Joining SPP rather than MISO offers significant advantages in terms of (a) the Commission having a continuing, stronger voice through RTO governance, (b) electric customers state-wide realizing greater quantitative net benefits, (c) minimal time needed to fully integrate EAI and to offer full ratepayer protection, and (d) hands-on knowledge of EAI and the

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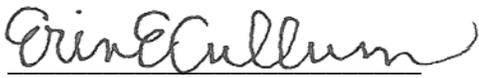
<sup>91</sup> *Id.* at p. 19.

<sup>92</sup> Supplemental Initial Testimony of Laurence Kirsch, filed July 12, 2011, p. 20 at line 7 and p. 21 at line 9.

other Entergy Operating Companies and their systems. Accordingly, the Commission should find that joining SPP is in the public interest, and the only prudent post-ESA option.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Erin E. Cullum, attorney of record for Southwest Power Pool, Inc., do hereby certify that I have, on this 19th day of September, 2011, duly served a true and correct copy of the above and foregoing pleading upon all parties of record by electronic mail.

  
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Erin E. Cullum