BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of The Empire District Electric Company for a Certificate of Convenience and Necessity Related to its Customer Savings Plan	))))	File No. EA-2019-0010

EMPIRE'S STATEMENT OF POSITION

COMES NOW The Empire District Electric Company ("Empire") and respectfully states as follows to the Missouri Public Service Commission ("Commission") as its Statement of Position as to the issues identified in the *List of Issues, Order of Witnesses, Order of Cross-Examination, and Order of Opening Statements*:

APPLICATIONS AND BACKGROUND

This case and the requested certificates of convenience and necessity are an extension of Empire's Customer Savings Plan ("CSP") case (Commission Case No. EO-2018-0092, decided on July 11, 2018). The Commission found in the CSP case that:

> It is the public policy of this state to diversify the energy supply through the support of renewable and alternative energy sources. In past decisions, the Commission has stated its support in general for renewable energy generation, which provides benefits to the public. <u>Empire's proposed acquisition of 600 MW of additional wind generation assets is clearly aligned with the public policy of the Commission and this state</u>.

Rep. Ord., p. 20 (emphasis added).

Subsequent to the conclusion of the CSP case, Empire concluded its negotiations to acquire wind generation assets and entered into the Purchase and Sale Agreements that form the basis for the projects that are the subject of this case.

Empire is seeking certificates of convenience and necessity ("CCNs") for:

A) two wind generation resources each up to 150 MW and located in Barton, Dade, Jasper and Lawrence Counties in and near Empire's service territory in Missouri (Kings Point and North Fork Ridge) (Case No. EA-2019-0010, filed October 18, 2018); and

B) one wind generation resource up to 301 MW located in Neosho County, Kansas (Neosho Ridge) (Case No. EA-2019-0118, November 18, 2018)[1],

including related transmission interconnection assets (collectively the "Wind Projects") using federal tax incentives in conjunction with a tax equity structure.

To create the tax equity structure, Empire and a tax equity partner will form a holding company for each Wind Project, each of which will be a direct subsidiary of Empire (the "Wind Holdco"). Empire, via the Wind Holdco, will acquire a wind project company ("Wind Project Co.") that owns a specific Wind Project. After approximately ten years of tax equity participation and Empire joint ownership of the Wind Project Co. (through the Wind Holdco), Empire will have the right to purchase the tax equity partner's ownership interest in the Wind Holdco, at which point Empire would wholly own the Wind Project Co.[2]

The Commission's Report and Order in Case No. EO-2018-0092 further provided:

> Adding wind generation to Empire's portfolio significantly reduces financial risk for Empire customers. Wind in the portfolio mitigates the impact that rising fuel and market prices have on Empire's retail rates. In a rising market price environment, Empire would be able to sell wind output at higher prices without any incremental fuel costs. Empire's credible analysis shows that adding up to 600 MW of wind to its portfolio would result in lower risk to that portfolio under three different market scenarios, relative to Empire's current resource plan.

Rep. Ord., p. 14-15 (emphasis added).

[1] Cases Nos. EA-2019-0010 and EA-2019-0118, were later consolidated by the Commission with Case No. EA-2019-0010 being the lead case.
[2] There may be multiple tax equity partners, and thus multiple Wind Holdco(s), as well as multiple Wind Project Co(s).

This case represents the next step in the addition of the 600 MWs of wind generation referenced by the Commission.

The projects for which Empire seeks certificates of convenience and necessity are in the public interest. The Commission should grant the requested certificates of convenience and necessity, subject to the conditions Empire outlines below.

0010 Mertens Dir., p. 3-5, 8-10.
0118 Mertens Dir., p. 3-5, 8-10.
0010 Wilson Dir., p. 2-13.
0118 Wilson Dir., p. 2-6.
0010 Mooney Dir., p. All.
0118 Mooney Dir., p. All.

LIST OF ISSUES

ISSUE 1

Does the evidence establish that the Kings Point, Neosho Ridge, and North Fork Ridge wind projects for which The Empire District Electric Company ("Empire") is seeking certificates of convenience and necessity ("CCN") are "necessary or convenient for the public service" within the meaning of that phrase in section 393.170, RSMo.?

Standard

The underlying public interest is the controlling concern in regard to Section 393.170, RSMo, and "it is within the discretion of the . . . Commission to determine when the evidence indicates the public interest would be served in the award of the certificate." *Office of Pub. Counsel v. Mo. PSC (In re KCP&L Greater Mo. Operations Co.)*, 515 S.W.3d 754, 764 (Mo.App. 2016).

When determining whether the project is necessary or convenient for the public service, 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. Intercon Gas, Inc. v. Pub. Serv. Commission of Missouri*, 848 S.W.2d 593, 597 (Mo. Ct. App. 1993) (emphasis added).

When making a determination as to whether a project is "necessary or convenient for the public service," the Commission has traditionally exercised its discretion by applying the following five criteria, commonly known as the *Tartan factors*:

a) There must be a *need* for the service;

b) The applicant must be *qualified* to provide the proposed service;

c) The applicant must have the *financial ability* to provide the service;

d) The applicant's proposal must be *economically feasible*; and

e) The service must promote the *public interest*.

In re Tartan Energy , Report and Order, 3 Mo.P.S.C. 3d 173, Case No. GA-94-127, 1994 WL 762882 (September 16, 1994) (emphasis added).

Empire will address the *Tartan Factors* in the following paragraphs.

There is a Need for the Service

The proposed Wind Projects will take advantage of real opportunities that exist today to add generation capacity to Empire's fleet at reduced cost given the availability of Production Tax Credits, which in turn will provide low cost energy for Empire's customers for years to come.

Adding wind to the portfolio reduces risk (in addition to decreasing cost) because wind performs much better than the status quo under most market conditions evaluated. On the other hand, the status quo is not only more costly in the base case, it is more costly in most of the scenarios that were evaluated. This is especially important for Empire as two of its existing PPAs, for a total of 255 MWs, will expire after the 600 MW of wind comes online in December of 2020 - expiration of Elk River wind farm in 2025 (150 MW) and Meridian Way wind farm in 2028 (105 MW). These expiring contracts represent all of Empire's current wind capacity and more than 40% of the new capacity that was described in Case No. EO-2018-0092

Further, as stated by the Commission, "it is the public policy of this state to diversify the energy supply through the support of renewable and alternative energy sources" and "Empire's proposed acquisition of 600 MW of additional wind generation assets is clearly aligned with the public policy of the Commission and this state." Rep.Ord., p. 20.

There is a need for the proposed wind generation.

McMahon Sur., 4-9.
0010 Mertens Dir., p. 10-13.
0118 Mertens Dir., p. 10-13.
Mertens Sur., p. 3-10.

Empire is Qualified to Provide the Proposed Service

Empire has a vast amount of experience in the generation, transmission, and distribution of electricity. Empire owns and operates an electric utility system located in contiguous portions of Arkansas, Kansas, Missouri and Oklahoma, which is used to serve approximately 172,000 total electric customers. Empire has owned generation capacity of 1,447 MWs and purchased generation capacity of 303 MWs. This includes coal-fired, natural fired, hydroelectric and wind generation assets. Empire owns and operates approximately 1,208 miles of transmission lines and 6,911 miles of distribution lines.

Further, Empire's ultimate parent, Algonquin Power & Utilities Corp., which has developed many renewable energy projects with tax equity partners and, as a result, has expertise in these types of transactions.

Empire is qualified to provide the proposed service.

0010 Mertens Dir., p. 6-7.
0118 Mertens Dir., p. 6-7.

Empire has the Financial Ability to Provide the Proposed Service

Empire has an investment grade credit rating and is part of a corporate family that is also investment grade and has nearly $9 billion in assets.

Empire is proposing a tax equity structure for the projects in order to maximize customer savings by utilizing the value of available tax incentives. Such a structure enables Empire to reduce the capital investment it needs to construct the Wind Projects by an amount that reflects the ability of a Tax Equity Partner to utilize the tax savings provided by both Production Tax Credits ("PTCs") and the Modified Accelerated Tax Recovery System ("MACRS") in the near term. This reduced capital investment allows customers to realize the benefits of the full 10 years of PTCs and MACRS from day 1 through a reduced rate base. Given the time value of money, using a tax equity structure (as compared with direct ownership of the Wind Projects by Empire without a partner) would result in between $4 and $7 per MW hour more savings for Empire customers.

Empire has the financial ability to provide the proposed service.

0010 Mertens Dir., p. 7.
0118 Mertens Dir., p. 7.
Mooney Dir., p. 17.
Mooney Sur., p. 8-12.

The Proposal is Economically Feasible

Through the use of a tax equity ownership structure in conjunction with approximately 600 MWs of wind generation, Empire has a time-limited opportunity to bring significant savings, which are approximately $169 million over the twenty year period used to assess integrated resource plans and up to $295 million in savings to customers over a thirty year period, which is closer to the life of these assets. These savings are occasioned based on unique market conditions, which allows for production tax credits and the availability of financing to support these tax credits.

Furthermore, adding wind to the portfolio reduces risk (in addition to decreasing cost) because wind performs much better than the status quo under most market conditions evaluated. On the other hand, the status quo is not only more costly in the base case, it is more costly in most of the scenarios that were evaluated.

The proposed projects are economically feasible.

Holmes Sur., p. 2-6.
McMahon Sur., p. 10-14.
Mertens Sur., p. 6-9.
0010 Mooney Dr., p. 4.
0118 Mooney Dr., p. 4-5.
Mooney Sur., p. 14-20.

The Projects Promote the Public Interest

The Commission recently stated as follows:

> In Missouri, state energy policy can be found in laws such as the Renewable Energy Standard, established by vote of the Missouri public in 2008, and the Energy Efficiency Investment Act, promulgated by the Missouri legislature in 2013, as well as the Comprehensive State Energy Plan, an initiative implemented by the Missouri Division of Energy in 2015. Consistent with these state policies, this Commission has in the past expressed strong support for the "development of economical renewable energy sources to provide safe, reliable, and affordable service while improving the environment and reducing the amount of carbon dioxide released into the atmosphere".

In the Matter of the Application of Grain Belt Express Clean Line LLC, Report and Order on Remand, EA-2016-0358, p. 45 (March 20, 2019) (citations omitted).

The projects will meet the policy goals identified by the Commission and are poised to deliver significant savings to Empire's customers for many years to come, at a lower risk as to energy production costs. Any potential negative impacts of the projects are mitigated by the conditions outlined by Empire below.

> There can be no debate that our energy future will require more diversity in energy resources, particularly renewable resources. We are witnessing a worldwide, long-term and comprehensive movement towards renewable energy in general and wind energy specifically. Wind energy provides great promise as a source for affordable, reliable, safe, and environmentally-friendly energy.

Id. at p. 46.

To paraphrase the Commission from the recent Grain Belt decision - The projects proposed by Empire will facilitate this movement in Missouri, will thereby benefit Missouri citizens, and is, therefore, in the public interest

0010 Mertens Dr., p. 10-13.
0118 Mertens Dr., p. 10-13.
Mertens Sur., p. 9-10
McMhaon Sur., p. 15-16.
0010 Mooney, Dir., p. 23-24.
0118 Mooney, Dir., p. 23-24

ISSUE 2

For each CCN the Commission grants, what conditions, if any, should the Commission deem to be reasonable and necessary, and impose?

Standard

In granting a certificate of convenience and necessity, the "commission may by its order impose such condition or conditions as it may deem reasonable and necessary." Section 393.170.3, RSMo.

Conditions that Should be Imposed

Empire believes that the proposed projects satisfy the *Tartan Factors* and should be approved without conditions. Having stated this, Empire further believes that the matters raised by the parties may be addressed through the addition of certain conditions and, thereby, mitigate any negative impacts that might otherwise be possible.

Empire will explain below its support for the imposition of the following conditions in conjunction with an order approving the requested certificates of convenience and necessity:

- Market Protection Provision (as proposed by Empire);
- Filing of plans and specifications;
- Filing of permits; and,
- Use of the in-service criteria proposed by Staff.

Empire will further address why additional modifications and proposals by the Staff and OPC are unnecessary and should not be imposed in a Commission order.

Implementation of a Market Protection Provision

The Market Protection Provision is designed to provide customers with time limited protection in the event of changing factors in the marketplace once the Wind Projects come online.

The Commission should impose the Market Protection Provision identified in the Surrebuttal Testimony of Empire witness David Holmes. This is the Market Protection Provision from the Non-Unanimous Stipulation and Agreement in Case No. EO-2018-0092, with the following changes made by Empire:

- the Missouri jurisdictional cap to $25 million;
- Added in the capacity value of the wind projects;
- updated the fixed operation and maintenance expenses and the tax equity expense;
- updated the capital costs; and,
- updated P50 production values.

Empire notes that in Case No. EO-2018-0092, the Commission stated in regard to the Market Protection Provision that "the Commission cannot order Empire to implement these provisions without its consent." Rep.Ord., p. 22. The Market Protection Provision proposed by Empire would provide sharing of risk between customers and shareholders associated with the possibility of reduced market prices and wind production and promotes the public interest by providing an appropriate treatment of risk associated with the projects. In the alternative to the Market Protection Provision proposed in this case by Empire, the Commission should impose, and Empire would accept, the Market Protection Provision found Non-Unanimous Stipulation and Agreement in Case No. EO-2018-0092, without changes.

The Market Price Provision, in both the form proposed herein by Empire and in the form found in the Non-Unanimous Stipulation and Agreement in Case No. EO-2018-0092, manages the cost benefit risk associated with the Wind Project in terms of the capital costs, operating costs, SPP prices and wind production. While it is true that all variables could change over time, the Market Protection Provision includes all of these factors and will update these factors based on actual values so customers do not need to lock in future conditions based on today's assumptions. Actual interconnection costs, tax equity cash distributions and Paygo contributions, ongoing operation and maintenance costs, and curtailment will all be captured through the Market Protection Provision over a ten year period. If there is a harm caused, there is a sharing mechanism for the Company to reduce costs to customers, while if the Wind Projects perform better, customers retain 100% of the upside.

Mertens Sur., p. 10-14.
Holmes Sur., p. 6-14.

Filing of construction-level plans

Empire has no objection to this Staff-proposed condition.

Filing of all required permits and approvals

Empire has no objection to this Staff-proposed condition.

Use of the In-Service Criteria

Empire is in agreement with the Staff-proposed in-service criteria.

Mertens Sur., p. 17.

<u>Proposed Conditions that Should Not be Imposed</u>

MPP/ Remove guarantee cap

Empire does not agree with Staff's recommendation to remove this guarantee cap. This recommendation is contrary to the regulatory compact between customers and shareholders, which attempts to balance risks and rewards between customers and shareholders. Regulated utilities, in this case Empire, limit the amount of earning potential they can receive on an investment in return for some certainty from customers to pay a fair rate of return, as set by commissions, that takes into account risks and rewards for both customers and shareholders.

Mertens Sur., p. 11.

MPP/ Limit Value of PPA Replacement to Recs to comply with RES (p. 4)

Empire does not agree with the PPA Replacement Limitations suggested by Staff. Empire's existing PPA's with Elk River and Meridian Way Wind Farms produce in excess of 850,000 MWh of energy annually. The costs associated with these PPA's currently flow through Empire's fuel adjustment clause (i.e. customers pay for all the energy from these wind farms). The Wind Projects that are the subject of this docket will produce electricity that is cheaper than these wind farms on a levelized cost of energy basis and, thus, customers will benefit by replacing all of this energy from the new wind farms as those wind farms roll out of our resource mix.

Mertens Sur., p. 12-13.

MPP/Implement provisions re TCRs and ARRs (p. 4)

Empire does not agree that provisions for TCR's and ARR's should be agreed upon for the Neosho Ridge interconnection point. Empire has diligently worked to identify sites that are within or relatively close to its service territory to limit TCR/ARR risks. We do not have such provisions for interconnection points at our existing wind farms, Iatan 1, Iatan 2, or Plum Point, all of which are much further away from Empire's load than these new wind farm assets, so it does not make sense to treat these interconnection points differently. These ARR/TCR risks are addressed by the Southwest Power Pool's continual review of its system, a process in which Empire and members of the Missouri Public Service Commission actively participate

Mertens Sur., p. 13-14.

MPP/Empire commitment to cap network upgrade costs

The Market Protection Provision found in the Non-Unanimous Stipulation and Agreement in Case No. EO-2018-0092 and, as proposed in Empire witness Holmes' Surrebuttal Testimony includes network upgrades costs as part of the initial capital investment in the Wind Projects. Thus, these costs are already taken into account in the customer protection mechanism and customers are protected from excessive risk associated with this cost.

Mertens Sur., p. 15-16.

Completion of SPP Definitive Impact System Impact Studies

While Empire does not have any issue with the completion of the SPP Definitive Impact System Impact Studies, it does have a practical concern with the additional Staff requirement as follows:

> Empire will demonstrate that the outstanding studies do not raise any new issues, and if they do, that the Commission is satisfied with Empire's solution to address those issues.

Staff Rep., p. 37.

Because the timing of such studies is unknown at this time., it is unclear what process would be followed to determine whether "any new issues" have been raised; if so, what process would be used to determine whether the Commission "is satisfied with Empire's solution"; and, what impact this would have on Empire's certificates of convenience and necessity in the interim.

Ultimately, SPP will control interconnections with its system and the Market Protection Provision provides mitigation as to cost issues associated with interconnection.

Completion of sensitivity analysis on curtailment and dispatching down of each Wind Project

This Staff-proposed condition is not necessary or appropriate for a few reasons. First, the Market Protection Provision as originally envisioned already provides the assurances required to mitigate the risks associated with curtailments. Further, curtailments often occur in the real time market due to "instantaneous" condition changes caused by unit or transmission outages or rapid and unpredicted weather changes. These real time market implications are not able to be modeled with any accuracy in a production cost model as they usually occur over short periods of time on 5-minute intervals rather than the hourly modeling utilized in production cost modeling. To address the fact that Empire's modeling could not fully reflect real-time market conditions, Empire ran scenarios that significantly lowered the price at the generator node where Empire's wind projects were expected to be located. These scenarios were intended to evaluate risk associated with locational challenges, like curtailment in the real time market. Thus, this has already been considered in the analysis that the Company performed.

Mertens Sur., p. 16-17.

OPC/Hold harmless or Reduction in Return on Equity

Empire has a duty to its customers to provide safe and adequate electric service at just and reasonable rates. In doing so, Empire seeks to invest in ways that will provide its customers with opportunities for savings and that will reduce price risks in the future. The Wind Projects for which Empire seeks CCNs in this case fit this description.

The Market Protection Provision as found in the Non-Unanimous Stipulation and Agreement in Case No. EO-2018-0092, and updated in Empire witness Holmes' Surrebuttal Testimony, properly balances the risks and rewards between customers and shareholders.

Mertens Sur., p. 17-19.
Mooney Sur., p. 12-13.

Wildlife

No Commission-ordered conditions are necessary. Empire has followed the U.S. Fish and Wildlife Service's Land-Based Wind Energy Guidelines in preliminary siting. Impacts, if any, are identified during extensive environmental and biological studies that will be conducted before operation of the projects is allowed to begin. Using this information, Empire is working with the U.S. Fish and Wildlife Service to identify active mitigation measures that will be implemented when the projects begin operation. Empire will implement the active mitigation measures identified by the U.S. Fish and Wildlife Service to minimize the impact that operation of the projects has on any listed species. There will also be a requirement for post construction mortality 1 monitoring to demonstrate that mitigation measures are working as intended to minimize bat and raptor mortality.

0010 Wilson Dir., p. 11-12.
0118 Wilson Dir., p. 7-8.
Wilson Sur., All.

WHEREFORE, Empire respectfully requests the Commission consider this Statement of Position.

Respectfully submitted,

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ATTORNEYS FOR THE EMPIRE DISTRICT ELECTRIC COMPANY

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail, on March 22, 2019, to the following:

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