

**BEFORE THE PUBLIC SERVICE COMMISSION
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) Case No. EA-2019-0010
Customer Savings Plan)

**THE MISSOURI DEPARTMENT OF CONSERVATION'S
STATEMENT OF POSITIONS**

The Missouri Department of Conservation (“MDC”) takes a position only on the issue designated below. MDC does not take a position on any other issue at this time but reserves the right to do so as additional evidence is presented to the Commission, and reserves the right to cross-examine any witness on, and to brief, any issue. For its Position Statement, MDC states:

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.?

MDC Position

In considering Empire’s Application, the Commission should evaluate evidence using the “tartan criteria”, which are: “(1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest.” Report and Order, *In re Application of Tartan Energy Company, L.C. d/b/a Southern Missouri Gas Company for a Certificate of Convenience and Necessity*, File No. GA-94-127, 3 Mo. P.S.C. 3d 173 (September 16, 1994) 1994 WL 762882, *3.

In considering the fifth and final factor – whether the service promotes the public interest – the Commission can and should consider environmental, agricultural, wildlife, and conservation concerns in its analysis. See EA-2016-0358, Report and Order, *In the Matter of the Application of Grain Belt Express Clean Line LLC for a Certificate of Convenience and Necessity Authorizing It to Construct, Own, Operate, Control, Manage, and Maintain a High Voltage, Direct Current Transmission Line and an Associated Converter Station Providing an Interconnection on the Maywood-Montgomery 345kV Transmission Line*; see also EA-2015-0146, Report and Order, *In the Matter of the Application of Ameren Transmission Company of Illinois for Other Relief or, in the Alternative, a Certificate of Public Convenience and Necessity*

Authorizing it to Construct, Install, Own, Operate, Maintain and Otherwise Control and Manage a 345,000-volt Electric Transmission Line from Palmyra, Missouri, to the Iowa Border and Associated Substation Near Kirksville, Missouri (April 27, 2016), 26-27. The rebuttal testimony of MDC Witnesses Jennifer Campbell, Dr. Kathryn Bulliner, and Dr. Janet Haslerig establish there are significant conservation concerns surrounding the Kings Point and North Fork Ridge projects. Missouri citizens invest millions of dollars annually through a constitutionally imposed and voter approved sales tax that is dedicated to the management, restoration and conservation of Missouri wildlife, which includes wildlife potentially impacted in this case. The public has an interest in ensuring that their conservation investments in wildlife are preserved and not harmed or jeopardized by the Kings Point and North Fork Ridge projects.

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

MDC Position

If the Commission approves the Company's application, the Commission should impose the conditions specified in the rebuttal testimony of MDC Witnesses Jennifer Campbell, Dr. Kathryn Bulliner, and Dr. Janet Haslerig. First, the Commission should require that the Company provide reasonable advanced notice to MDC of all scheduled meetings and conference calls (related to the Project) with the United States Fish and Wildlife Service (USFWS).

Second, the Commission should impose the following conditions related to eagles:

1. Require Empire to conduct post-construction monitoring of eagle fatality and disturbances in accordance with USFWS Eagle Conservation Plan Guidance. Fatality monitoring efforts involve searching for eagle carcasses beneath turbines and other facilities to estimate the number of fatalities. Disturbance monitoring will determine post-construction territory or roost occupancy rates, nest success rates and productivity.

2. Require a minimum of one-mile buffer around known active and inactive or alternative eagle nests within the Project area where turbines cannot be constructed.

3. Require Empire to conduct bald eagle nest surveys this spring (2019) as recommended in the USFWS Eagle Conservation Plan Guidance.

4. Require Empire to report all eagle carcasses observed within 48 hours to the MDC via email noting the date, turbine location (UTMs), species, and sex.

5. Require Empire to report observed mortalities for all raptor and bird species of conservation concern ("SOCC") observed annually by December 31. Describe each individual species, date found, and location.

6. Require Empire to provide MDC copies of all quarterly/annual monitoring reports submitted to USFWS.

7. Require Empire to provide the Public Service Commission annual reports documenting its monitoring and any raptor fatalities on the Project area.

8. Prohibit Empire or its agents from clearing any trees with active or inactive eagle nests during the construction or operation of the Project.

Third, the Commission should impose the following conditions related to bats:

1. Require Empire to conduct post-construction monitoring of bat fatalities and disturbances in accordance with a Service-issued HCP that will cover gray bats and tri-colored bats. Fatality monitoring efforts involve searching for bat carcasses beneath turbines to estimate the number of fatalities.

2. Prohibit Empire from constructing or operating a turbine within one-half mile of known gray bat capture or verified acoustic sites and the associated riparian corridors. *See Bulliner Rebuttal Testimony, Appendices A-1 - A-5.*

3. Require Empire to conduct surveys to determine the arrival of gray bats on both Project areas for the active season to better assess species risk on Project areas.

4. Require Empire to conduct mist-netting in summer 2019 on North Fork Ridge to document if there are gray bat maternity colonies foraging within the Project area.

5. Require Empire to report observed mortalities for all bat species of conservation concern ("SOCC") observed annually by December 31. Describe each individual species, date found, and location.

6. Require Empire to provide MDC copies of all quarterly/annual monitoring reports submitted to the USFWS.

7. Require Empire to provide the Public Service Commission annual reports documenting its monitoring and any bat fatalities on the Project areas.

Finally, the Commission should impose the following conditions related to impacts on Conservation Areas:

1. Require Empire to conduct a traffic count survey at all Conservation Areas within three miles of the Proposed Projects. These Conservation Areas include: Providence Prairie; Shawnee Trail; Bethel Prairie; and Mon-Shon Prairie.

2. Require Empire to conduct a viewshed study at all Conservation Areas within three miles of the Proposed Projects.

3. Prohibit the Company from constructing or operating a wind turbine within three miles of any Conservation Area.

WHEREFORE, MDC respectfully submits its Statement of Position.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served upon all of the parties of record or their counsel, pursuant to the Service List maintained by the Data Center of the Missouri Public Service Commission, on March 22, 2019.

 /s/ Stephanie S. Bell
Stephanie S. Bell