

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

In the Matter of the Application of The)
Empire District Electric Company for)
Certificates of Convenience and Necessity) File No. EA-2019-0010
Related to Wind Generation Facilities)

RENEW MISSOURI'S REPLY BRIEF

Tim Opitz, Mo. Bar No. 65082
409 Vandiver Drive, Building 5, Ste. 205
Columbia, MO 65202
T: (573) 303-0394 Ext. 4
F: (573) 303-5633
tim@renewmo.org

May 7, 2019

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an additional service would be an improvement justifying its cost.”² Rather than accepting the foregoing settled law, OPC argues that a different legal standard applies, stating:

§ 393.135 RSMo., and the requirement that investments be “used and useful” both independently would make it unlawful for Empire to recover any of its investment in or profit on these wind projects through its Missouri retail customer rates, they are not “necessary or convenient for the public service” within the meaning of that phrase in § 393.170, RSMo.³

OPC’s argument is wrong on both the law and the facts. First, we know the legal meaning of “necessary or convenient for the public service” is that the project is “an improvement justifying its cost.”⁴ We also know that a project “does not need to be ‘absolutely indispensable.’”⁵ Section 393.135 RSMo and the “used and useful” standard concern the timing of rate recovery and are not relevant in this case. Cost recovery will be addressed in a rate case after the turbines are up and running.

Second, even if OPC’s legal standard were appropriate, its argument hinges on incorrect factual findings. Once complete and operating, these wind farms *will* be “used for the public convenience,”⁶ or “used for service”⁷ contrary to OPC’s unsupported assertions. The evidence in the record shows that the turbines will be used to benefit and serve Empire’s Missouri customers. These wind farms allow Empire to: (1) add diversity and security to its generation⁸, (2) use these projects to comply with the Renewable Energy Standard (“RES”) in the future,⁹ (3) offer a tariff

² *State ex rel. Intercon Gas, Inc. v Pub. Serv. Comm’n*, 848 S.W.2d 593, 597 (Mo. App. W.D. 1993).

³ OPC Br. p. 5.

⁴ *State ex rel. Intercon Gas, Inc. v Pub. Serv. Comm’n*, 848 S.W.2d 593, 597 (Mo. App. W.D. 1993).

⁵ *Id.*

⁶ OPC br. p. 5.

⁷ OPC br. p. 7.

⁸ Ex. 400, p. 2.

⁹ Ex. 3, p. 4.

where commercial customers can purchase the Renewable Energy Credits (“REC”) in a “green power program,”¹⁰ and (4) save customers hundreds of millions of dollars.¹¹

Sierra Club and NRDC aptly point out in their initial brief: “[a] public utility’s obligation is to ‘provide such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable,’ and to do so at ‘just and reasonable rates.’”¹² OPC argues that “just and reasonable rates do not include infrastructure that does not serve customers.”¹³ That may be accurate, but is irrelevant in this case. All of the foregoing benefits – diversity and security, RES compliance, programs that allow commercial customers to meet sustainability goals – help Empire provide safe and adequate service. Moreover, using a tax-equity financing structure to add 600 MW of wind generation, helps achieve these benefits and services in a way that is modeled to keep rates just and reasonable by saving Empire’s customers \$169 million over the twenty year Integrated Resource Planning (“IRP”) period and up to \$295 million over a thirty year time period.¹⁴ Thus, applied to facts in evidence, OPC’s argument fails under its own inappropriate standards to screen CCN applications. The Commission should reject OPC’s attempt to distort and diminish the Commission’s ability to issue CCNs under Section 393.170 RSMo.

III. Evidentiary record

OPC argues the evidence does not show the project is economically feasible, alleging “too much uncertainty regarding the costs and benefits of these wind projects for the Commission to find that Empire’s customers would realize economic benefits from them.”¹⁵ This, too, is contrary to the applicable law and facts in this case. “[W]hether the evidence indicates the public interest

¹⁰ Ex. 13, p. 8.

¹¹ Ex. 8, pp. 13-14.

¹² NRDC/Sierra Club Br. p. 2.

¹³ OPC Br. p. 15.

¹⁴ Ex. 4, p. 4.

¹⁵ OPC Br. p. 3.

would be served in the award of the certificate is within the discretion of the Commission.”¹⁶ In its discretion, the Commission has traditionally applied the five *Tartan* factors.¹⁷ Regarding sufficiency of the evidence for meeting each factor, the Commission has addressed similar challenges before. When OPC challenged the sufficiency of the evidence regarding the economic feasibility of a solar project submitted by Ameren Missouri in a recent case, the Commission explained “Public Counsel states that Ameren Missouri has failed to provide sufficient evidence that the pilot program is economically feasible[,]” and recognized “[t]he company has not performed any feasibility studies to determine the costs and benefits, and does not anticipate doing so until after the pilot program is operational.”¹⁸ In that matter, the Commission issued the CCN without requiring *any* advance study and noted that a project’s benefits do not have to be easily quantifiable in order to outweigh projected costs.¹⁹

Here, Empire has provided sufficient evidence to show the wind projects are economically feasible. The Company produced an extensive economic analysis in support of its projections that adding 600 MW of wind generation will save its customers \$169 million over the twenty year IRP period and up to \$295 million over a thirty year period.²⁰ To reach these projections, Empire conducted a detailed portfolio analysis using industry standard modeling software.²¹ Empire ran modeling scenarios evaluating 54 alternative portfolios that considered fuel and market prices, CO2 policy, nodal basis, load, and the build out of wind in the SPP.²² Furthermore, in the Customer Savings Plan (“CSP”) case preceding this CCN application, the Commission found:

¹⁶ *In re KCP&L Greater Mo. Operations Co. for Permission*, 515 S.W.3d 754, 759 (Mo. App. W.D. 2016)(internal citations omitted).

¹⁷ *In re Tartan Energy*, Report and Report and Order, 3 Mo.P.S.C. 3d 173, Case No. GA-94-127, 1994 WL 762882 (September 16, 1994).

¹⁸ Report and Order, Case No. EA-2016-0208, Doc. No. 126, pp. 17-18.

¹⁹ *Id.*

²⁰ Ex. 4, p. 4.

²¹ Ex. 8, p. 17.

²² *Id.*

Empire presented credible and persuasive evidence that the CSP, if implemented as contemplated in the Joint Position, would generate customer savings in the approximate amount of \$169 million over 20 years and \$295 million over 30 years, relative to Empire's current resource plan, and significantly reduce financial risk for those customers.

The robust analysis completed by Empire demonstrates that adding 600 MW of wind generation will be a significant benefit to customers and is economically feasible. Moreover, as addressed more fully in Renew Missouri's initial brief, Empire's proposed wind projects satisfy *all* of the *Tartan* criteria. Adding 600 MW of wind generation is an improvement justifying its cost and these CCNs are necessary and convenient for the public service.

IV. Conclusion

Our energy future will require more diversity in energy resources, including renewable energy. Empire is willing to embrace meeting the needs of its customers with affordable, reliable, safe, and environmentally-friendly energy by building 600 MW of wind that will save customers money. The Commission should reject OPC's flawed analysis and grant Empire's requested CCNs subject to the negotiated terms in the Non-unanimous Stipulation and agreement.²³

WHEREFORE, Renew Missouri submits its *reply brief*

Respectfully,

/s/ Tim Opitz

Tim Opitz, Mo. Bar No. 65082
409 Vandiver Drive, Building 5, Ste. 205
Columbia, MO 65202
T: (573) 303-0394 Ext. 4
F: (573) 303-5633
tim@renewmo.org

²³ Renew Missouri does not object to discrete conservation conditions in the Stipulation and Agreement Concerning Wildlife Issues submitted by Empire and the Department of Conservation.

Attorney for Renew Missouri

Certificate of Service

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 7th day of May 2019:

/s/ Tim Opitz
