

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

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

**EMPIRE'S INITIAL BRIEF**

Dean L. Cooper, MBE #36592  
**BRYDON, SWEARENGEN  
& ENGLAND P.C.**  
P.O. Box 456  
Jefferson City, MO 65012  
(573) 635-7166  
[dcooper@brydonlaw.com](mailto:dcooper@brydonlaw.com)

Sarah B. Knowlton, MBE #71361  
Liberty Utilities  
116 North Main Street  
Concord, NH 03301  
(603) 724-2123  
[Sarah.Knowlton@libertyutilities.com](mailto:Sarah.Knowlton@libertyutilities.com)

**ATTORNEYS FOR THE EMPIRE DISTRICT ELECTRIC COMPANY**

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**COMES NOW** The Empire District Electric Company (“Empire”) and, as its Initial Brief, respectfully states as follows to the Missouri Public Service Commission (“Commission”):

**I. INTRODUCTION**

This case arises out of Empire’s application for three Certificates of Convenience and Necessity (“CCN”) to acquire approximately 600 MW of wind generation facilities in conjunction with tax equity partners. The projects, two of which will be located in southwestern Missouri and one in southeastern Kansas (the “Wind Projects”), will advance renewable policy goals identified by the Commission, while simultaneously delivering significant savings to Empire’s customers in comparison to maintaining the status quo of Empire’s generation fleet. Staff of the Commission, Midwest Energy Consumers Group, Missouri Department of Economic Development – Division of Energy, and Renew Missouri Advocates are all signatories (and Department of Conservation, Sierra Club, and National Resources Defense Council have affirmatively stated their non-objection) to a *Non-Unanimous Stipulation and Agreement* that recommends that the CCNs be granted based on protective conditions set forth in that stipulation. The Missouri Department of Conservation has also entered into an uncontested stipulation that provides certain protections for wildlife in the areas of the Missouri Wind Projects.

These parties support the Wind Projects for good reason. Section 393.170.3, RSMo, states in relevant part that the Commission may grant a CCN when it determines that such construction “is necessary or convenient for the public service.” Empire’s applications for certificates of convenience and necessity are a positive development for

both its customers and the state of Missouri and, therefore, “necessary or convenient for the public service.”

Staff witness Luebbert testified that the Company’s analysis has “substantially demonstrated” that the addition of the Wind Projects would reduce that present value revenue requirement of Empire’s 2016 resource acquisition plan over a 20-year and 30-year period<sup>1</sup>, thereby delivering benefits to Empire’s customers. Customers are also protected from any downside risk by the Market Protection Provision in the Non-Unanimous Stipulation and Agreement, which Staff witness Oligschlaeger testified appropriately balances the interests of the Company and shareholders.<sup>2</sup>

There are also benefits for the State of Missouri generally. As observed by Office of the Public Counsel (“OPC”) witness Marke:

. . . wind generation has many benefits in that it helps diversify Missouri’s energy generation mix, offers a renewable energy source, and provides economic benefits in the form of property taxes, land lease payments, and jobs for local communities.<sup>3</sup>

Similarly, the Missouri Department of Economic Development – Division of Energy described the economic development benefits that the proposed projects would create and the long-term benefits the projects offer by improving the diversity and security of Missouri’s energy supply, asserting that the projects would support Missouri’s ability to perform more competitively on the national economic stage.<sup>4</sup>

The two Wind Projects located in Missouri alone will require over 200 construction employees at the peak of construction and, over the projected 30-plus years of their lives, will create approximately 20 permanent jobs directly hired to

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<sup>1</sup> Tr. 329-330, Luebbert.

<sup>2</sup> Tr. 334-335, Oligschlaeger.

<sup>3</sup> Exh. 200P, Marke Reb., p. 2, ln. 5-7.

maintain and operate the facilities. There will also be longer term benefits, in the form of property taxes or similar payments to support local governments and schools, indirect permanent jobs to support the workers and the required needs of the facilities, and technical training for the local workforce, just to name a few.<sup>5</sup>

Renew Missouri Advocates witness James Owen pointed out that that customers and other entities are interested in access to renewable sources:

Moreover, a growing number of customers want more access to renewable energy resources to meet their own sustainability metrics. This is evidenced by the dozens of major companies that have signed on to support the Corporate Renewable Energy Buyers' Principles. Governmental bodies in Missouri are also beginning to establish their own clean energy goals. With this pressure from large utility customers that are industry leaders and local governments the utilities in Missouri, including Empire, must continue to look to renewable generation to meet customers' need and preferences.<sup>6</sup>

Further, the Commission previously concluded 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. 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.<sup>7</sup>

As to the interest of Empire's customers, the Commission stated:

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

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<sup>4</sup> Exh. 400, Hyman Reb., p. 2.

<sup>5</sup> Exh. 3P, Mertens Sur., p. 7.

<sup>6</sup> Exh. 300 Owen Sur., p. 3.

<sup>7</sup> *In the Matter of the Application of The Empire District Electric Company for Approval of Its Customer Savings Plan*, Case No. EO-2018-0092, Rep. Ord., p. 20 (MoPSC July 11, 2018) (emphasis added).

result in lower risk to that portfolio under three different market scenarios, relative to Empire's current resource plan.<sup>8</sup>

Two of the projects for which Empire seeks certificates of convenience and necessity are located in Empire's service territory and the third is located near Empire's territory, which greatly simplifies the necessary transmission facilities, as compared to other projects with which the Commission is familiar. The projects have also obtained all necessary land rights without the need to resort to the use of eminent domain.<sup>9</sup>

However, the opportunities presented by these projects are time sensitive. The phase out and expiration of federal production tax credits for wind necessitates that Empire move quickly to add wind to its portfolio. To capture the full production tax credit, which will reduce the effective capital cost of the Empire wind projects by at least half<sup>10</sup>, the wind projects must enter service by the end of 2020.

To the extent there is any question about the savings that the Wind Projects will deliver to customers, the *Non-Unanimous Stipulation and Agreement*<sup>11</sup> provides extensive financial protections to customers against the unlikely scenario of low market prices and low wind performance.

The Commission should grant the requested certificates of convenience and necessity, because as described in this brief, there is substantial evidence of record demonstrating that Empire's applications for certificates of convenience and necessity are a positive development for both its customers and the state of Missouri and, therefore, are "necessary or convenient for the public service."

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<sup>8</sup> *Id.*, p. 14-15 (emphasis added).

<sup>9</sup> Tr. 314, Wilson.

<sup>10</sup> Exh. 8, McMahon Sur., p. 7.

## II. BACKGROUND

### A. Customer Savings Plan Case

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).<sup>12</sup>

Empire arrived at the plan to acquire wind generation after conducting an analysis to determine whether it could deliver savings to its customers through the acquisition of renewable resources and the retirement of a coal fired power plant. That analysis has been referred to as the Generation Fleet Savings Analysis ("GFSA"). It had a particular focus on costs for renewable energy resources, including construction cost declines and technology advancements along with tax equity financing and updates to the SPP Integrated Marketplace that occurred in recent years.<sup>13</sup>

Empire selected wind projects on the basis of a detailed portfolio analysis using industry standard modeling software and detailed and wide-ranging scenarios to test risk. That analysis included evaluating alternative portfolios across scenarios that flexed fuel and market prices, CO2 policy, nodal basis, load, and the build out of wind in SPP. All in all, Empire ran 54 scenario combinations, as well as the high wind case requested by the parties.<sup>14</sup>

The modeling indicated that adding wind generation to Empire's portfolio in or near Empire's service territory was not only possible, but brought significant benefits to

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<sup>11</sup> Exh. 13.

<sup>12</sup> Exh. 1P, Mertens Dir., (0010), p. 3-5; Exh. 2P, Mertens Dir. (0118), p. 3-5.

<sup>13</sup> Exh. 1P, Mertens Dir. (0010), p. 4; Exh. 2P, Mertens Dir. (0118), p. 4.

<sup>14</sup> Exh. 8, McMahon Sur., p. 17.

Empire's customers.<sup>15</sup> In relation to the status quo, the modeling showed that the added wind generation provided savings in the Base Market case of \$169 million on a net present value basis over a twenty year period.<sup>16</sup> Net present values savings over that twenty year period were also projected in the High Market (\$320 million) and Low Market (\$67 million) scenarios.<sup>17</sup> Moreover, there was less risk for customers in all three scenarios as the spread between the High Market and Low Market scenarios was much less than the High Market v. Low Market spread for the status quo.<sup>18</sup> This analysis demonstrated that under all three scenarios – low, base and high market cases, significant savings would be delivered to Empire's customers.

This makes sense because, relative to conventional resources, wind's costs are more certain. The vast majority of a wind project's costs are incurred during construction and are reasonably foreseeable. Fossil fuel plants, on the other hand, tend to have significant fuel costs that are a major expense through the plant's life.

In the CSP Case (Step 1 of this process), Empire, Staff, Midwest Energy Consumers Group, Renew Missouri Advocates, and Division of Energy, entered into a Non-Unanimous Stipulation in which Empire agreed to reduce its proposed acquisition of wind generation assets from 800 MW to 600 MW and to delay the retirement of Asbury. While the Commission did not adopt the Non-Unanimous Stipulation, Report and Order in Case No. EO-2018-0092, as indicated above, the Commission stated that

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<sup>15</sup> Exh. 1P, Mertens Dir. (0010), p. 4; Exh. 2P, Mertens Dir. (0118), p. 4.

<sup>16</sup> Exh. 8, McMahon Sur., p. 13-14.

<sup>17</sup> Id.

<sup>18</sup> Id.



“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.”<sup>19</sup>

## **B. The Wind Projects**

Subsequent to the conclusion of the CSP case, Empire entered into Purchase and Sale Agreements and, thereby, agreed to purchase approximately 600 MWs of wind generation once it has been constructed and is in service. Empire is seeking CCNs for the following projects:

- 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)<sup>20</sup>.

### **i. The Kings Point and North Fork Ridge Wind Projects**

On October 12, 2018, Empire entered into two Purchase and Sale Agreements (the “PSAs”) with Tenaska Missouri Matrix Wind Holdings, LLC and Steelhead Missouri Matrix Wind Holdings, LLC (“Tenaska/Steelhead”) – Kings Point and North Fork Ridge.<sup>21</sup> Both the Kings Point and North Fork Ridge facilities and associated generation tie lines are located entirely within the state of Missouri, primarily in the general vicinity

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<sup>19</sup> Exh. 1P, Mertens Dir. (0010), p. 5; Exh. 2P, Mertens Dir. (0118), p. 5.

<sup>20</sup> 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.

<sup>21</sup> Exh. 5P, Mooney Dir. (0010), p. 3.

of Joplin and will reduce the risk of transmission upgrades and congestion pricing in the Southwest Power Pool Integrated Marketplace.<sup>22</sup>

Kings Point will be constructed in southeastern Barton County, southwestern Dade County, northeastern Jasper County and northwestern Lawrence County, Missouri. The point of interconnection for the generation tie lines will be the substation at Empire's La Russell Energy Center. Kings Point will have a capacity of approximately 150 MW.<sup>23</sup> Kings Point will consist of approximately seventy wind turbine generators and the infrastructure necessary for these generators to operate as an integrated energy production facility and deliver energy to the generation system.<sup>24</sup>

North Fork Ridge will be constructed in northwestern Jasper County and southwestern Barton County, Missouri. The point of interconnection for the generation tie lines will be the substation at Empire's Asbury Power Plant. North Fork Ridge will have a capacity of approximately 150 MW.<sup>25</sup> North Fork Ridge will consist of approximately seventy wind turbine generators and the infrastructure necessary for these generators to operate as an integrated energy production facility and deliver energy to the generation system.<sup>26</sup>

Tenaska, based in Omaha, Nebraska, is a leading independent power producer in the United States. Ranked by Forbes among the largest private U.S. companies, Tenaska has plant and office locations across the United States and in Canada. The company has developed more than 10,000 megawatts of fossil-fueled and renewables power generation projects, both in the United States and internationally, and has vast

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<sup>22</sup> Exh. 9P, Wilson Dir. (0010), p. 2; Tr. 432, Wilson; Tr. 240-241, Holmes.

<sup>23</sup> Exh. 9P, Wilson Dir. (0010), p. 4.

<sup>24</sup> Exh. 9P, Wilson Dir. (0010), p. 5.

<sup>25</sup> Exh. 9P, Wilson Dir. (0010), p. 6.

experience owning, operating and managing these types of assets. Currently, Tenaska has approximately 686 MW of wind projects in mid- to advanced-stage wind development in the United States.<sup>27</sup>

Steelhead is partnering with Tenaska to jointly develop and construct the Wind Projects. As a wind project developer that has incurred cost for wind turbine components in 2016, Steelhead's partnering with Tenaska allows the Wind Projects to qualify for 100% PTCs according to the IRS guidelines.<sup>28</sup>

## **ii. The Neosho Ridge Wind Project**

On November 16, 2018, Empire entered a Purchase and Sale Agreement with Neosho Ridge Wind Joint Venture, LLC ("NRWJV"), a joint venture between a subsidiary of Apex Clean Energy, Inc. ("Apex") and a subsidiary of Steelhead Wind 2, LLC ("Steelhead").<sup>29</sup>

The Neosho Ridge facility and associated generation tie line will be located in Neosho County the state of Kansas, thirty-five miles to the west of Empire's service territory.<sup>30</sup> Its location will reduce the risk of transmission upgrades and congestion pricing in the Southwest Power Pool Integrated Marketplace.<sup>31</sup> The point of interconnection for the generation tie line will be a new substation on Westar's Neosho-to-Caney River 345 kV transmission line. Neosho Ridge will have a capacity of approximately 300 MW.<sup>32</sup> Neosho Ridge will consist of approximately one hundred forty wind turbine generators and the infrastructure necessary for these generators to

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<sup>26</sup> Exh. 9P, Wilson Dir. (0010), p. 7.

<sup>27</sup> Exh. 5P, Mooney Dir. (0010), p. 7-8.

<sup>28</sup> Exh. 5P, Mooney Dir. (0010), p. 8.

<sup>29</sup> Exh. 6P, Mooney Dir. (0118), p. 3.

<sup>30</sup> Exh. 2P, Mertens Dir. (0118), p. 8.

<sup>31</sup> Exh. 10P, Wilson Dir. (0118), p. 2; Tr. 432, Wilson; Tr. 240-241, Holmes.

<sup>32</sup> Exh. 10P, Wilson Dir. (0118), p. 4.

operate as an integrated energy production facility and deliver energy to the generation system.<sup>33</sup>

Apex Clean Energy is a U.S.-focused independent renewable energy company based in Charlottesville, Virginia. Founded in 2009, Apex is the fastest-growing clean energy company in the industry, with over 220 employees. Apex has completed development and construction of twelve wind and solar facilities in Illinois, Texas, and Oklahoma. These projects represent a total capital investment of approximately \$4 billion. Operating assets under management have grown to over 1,500 MW. Apex has signed contracts for power and the sale of sixteen projects totaling nearly 3,200 MW of capacity with utility, co-op, government, and corporate customers.<sup>34</sup>

Steelhead is partnering with Apex to jointly develop and construct the Wind Project. As a wind project developer that has incurred cost for wind turbine components in 2016, Steelhead's partnering with Apex allows the Wind Projects to qualify for 100% PTCs according to the IRS guidelines.<sup>35</sup>

### **III. NECESSARY OR CONVENIENT FOR THE PUBLIC SERVICE (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 is seeking certificates of convenience and necessity ("CCNs") are "necessary or convenient for the public service" within the meaning of that phrase in section 393.170, RSMo.?**

#### **A. 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

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

<sup>34</sup> Exh. 6P, Mooney Dir. (0010), p. 8-9.

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). As detailed below, the Wind Projects meet each of the *Tartan factors*.

#### **i. 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

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<sup>35</sup> Exh. 6P, Mooney Dir. (0010), p. 9.

of Production Tax Credits, which in turn will provide low cost energy for Empire's customers for years to come.<sup>36</sup> Empire assessed the need for 600 MW of wind on the basis of a portfolio analysis that looked at many factors. This analysis, which formed the basis for its Change in Preferred Plan filing on October 17, 2018, showed that adding 600 MW of wind to its portfolio had significant benefits for its customers. These benefits include substantially lowering the net present value revenue requirement of the Empire generation portfolio and significantly reducing portfolio cost risk.<sup>37</sup>

As demonstrated by this analysis, adding wind to the portfolio reduces risk (in addition to decreasing cost) because wind performs much better than the status quo resource acquisition plan under nearly all market conditions evaluated. On the other hand, maintaining the status quo is not only more costly in the base case, it is more costly in most of the scenarios that were evaluated.<sup>38</sup>

This is especially important for Empire as its two wind purchased power agreements (PPAs) (255 MWs in total) will expire after Empire purchases the 600 MW in January 2021 - 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.<sup>39</sup> Thus, the proposed Wind Projects not only have the benefit of rebalancing the portfolio with more wind, they represent a low-cost opportunity to replace the existing wind.<sup>40</sup>

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<sup>36</sup> Exh. 3P, Mertens Sur., p. 4-5.

<sup>37</sup> Exh. 8, McMahon Sur., p. 7, 14.

<sup>38</sup> Exh. 8, McMahon Sur., p. 16.

<sup>39</sup> Exh. 1P, Mertens Dir. (0010), p. 12; Exh. 2P, Mertens Dir. (0118), p. 11.

<sup>40</sup> Exh. 8, McMahon Sur., p. 8.

Empire's focus on the cost of its generation fleet is further consistent with the generation acquisition policy set forth in the Commission's rules. As pointed out by Staff witness Luebbert, the primary policy objective of Chapter 22 of the Commission's Rules on Integrated Resource Planning is the focus on net present value of the revenue requirement associated with a utility's resource plan. Staff witness Luebbert testified that the Company's analysis has "substantially demonstrated" that the addition of the Wind Projects would reduce that present value revenue requirement of Empire's 2016 resource acquisition plan over a 20-year and 30-year period<sup>41</sup>, thereby delivering benefits to Empire's customers. While the timing of the acquisition of the Wind Projects may not match up perfectly with the timing of the expiration of the Elk River and Meridian Farm wind PPAs, the Commission should not ignore that this is an appropriate time for Empire to both replace these renewable resources and to transition its fleet to a greater percentage of renewable resources, as Empire can acquire significant renewable energy resources as proposed at a 50% savings due to the availability of Production Tax Credits in a way that is projected to deliver significant savings to its customers.

Lastly, 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." To that end, the Commission concluded that "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."<sup>42</sup> The Wind Projects satisfy that stated public policy objective of conserving natural resources and pursuing renewable energy sources<sup>43</sup>

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<sup>41</sup> Tr. 329-330, Luebbert.

<sup>42</sup> *In the Matter of the Application of The Empire District Electric Company for Approval of Its Customer*

## ii. 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.<sup>44</sup>

Further, Empire's ultimate parent, Algonquin Power & Utilities Corp. ("APUC"), not only provides utility service through various subsidiaries to nearly 800,000 electric, gas and water customers across 12 states (including Empire) and includes a rate-regulated asset portfolio of 1.3 GW of generation capacity, it also owns a portfolio of over 1.5 GW of hydroelectric, wind, solar, thermal, and natural gas fired generating capacity in the United States and Canada operated by its subsidiary Liberty Power. Since the closing of the acquisition, Empire has been integrated into the APUC family of businesses, which brings benefits and opportunities to Empire's customers based on its experience with developing renewable generation, including renewable energy projects with tax equity partners. As a result, Empire has been able to leverage APUC's expertise in these types of transactions to the benefit of its customers.<sup>45</sup>

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*Savings Plan*, Case No. EO-2018-0092, Rep. Ord., p. 20 (MoPSC July 11, 2018) (emphasis added).

<sup>43</sup> Exh. 3P, Mertens Sur., p. 5.

<sup>44</sup> Exh. 1P, Mertens Dir. (0010), p. 6-7; Exh. 2P, Mertens Dir. (0118), p. 6-7.

<sup>45</sup> Exh. 1P, Mertens Dir. (0010), p. 7; Exh. 2P, Mertens Dir. (0118), p. 7.



There is no question that Empire is qualified to provide the proposed service, and in fact no party has challenged Empire's qualifications.

**iii. 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.<sup>46</sup> Empire will finance the Wind Projects using a combination of debt, equity, and tax equity financing.<sup>47</sup>

The tax equity structure for the projects will 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.<sup>48</sup>

Interest in Empire's projects has been significant and has resulted in Empire completing its selection process for a tax equity partner (Wells Fargo).<sup>49</sup> While final agreements have not yet been executed, a letter of interest and the key agreements were attached as Schedule TM-5 HC, Schedule TM-6A HC, and Schedule TM-6B HC to

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<sup>46</sup> *Id.*

<sup>47</sup> Exh. 1P, Mertens Dir. (0010), p. 9; Exh. 2P, Mertens Dir. (0118), p. 9.

<sup>48</sup> Exh. 5p, Mooney Dir., p. 17; Exh. 6P, Mooney Dir., p. 13.

<sup>49</sup> Exh. 5p, Mooney Dir., p. 18; Exh. 6P, Mooney Dir., p. 18.

the Direct Testimony of Todd Money.<sup>50</sup> The uncontroverted evidence demonstrates that Empire has the financial ability to provide the proposed service.

#### **iv. The Proposal is Economically Feasible**

Through the use of a tax equity ownership structure to acquire approximately 600 MWs of wind generation, Empire has a time-limited opportunity to bring approximately \$169 million of savings to customers 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 possible because of unique market conditions, namely production tax credits and the availability of a tax equity partner that can take advantage of these tax credits in a manner that also benefits Empire's customers.<sup>51</sup>

Empire selected 600 MW of wind on the basis of a detailed portfolio analysis using industry standard modeling software and detailed and wide-ranging scenarios to test risk. As was described extensively in Case No: EO-2018-0092, that analysis included evaluating alternative portfolios across scenarios that flexed fuel and market prices, CO2 policy, nodal basis, load, and the build out of wind in SPP.<sup>26</sup> All in all, Empire ran 54 scenario combinations, as well as the high wind case requested by the parties.<sup>52</sup> Notably, this modeling demonstrated that the Wind Projects had an effective capital cost of \$711/kW, putting the Wind Projects on a parity with a new combined cycle gas plant, yet without any fuel costs.<sup>53</sup> This significant fact – that wind generation does not have any fuel costs – should be considered by the Commission when

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<sup>50</sup> Exh. 7P, Mooney Sur., p. 10.

<sup>51</sup> Exh. 5P, Mooney Dir. (0010), p. 4; Exh. 6P, Mooney Dir. (0118), p. 4-5.

<sup>52</sup> Exh. 8, McMahon Sur., p. 17.

<sup>53</sup> Exh. 8, McMahon Sur., p. 7-8.

assessing the economic feasibility of Empire's proposal. Simply put, adding wind to Empire's portfolio reduces risk (in addition to decreasing cost) because wind performs much better than the status quo generation portfolio under most market conditions evaluated. Stated differently, the status quo is not only more costly in the base case, it is more costly in most of the scenarios that were evaluated.<sup>54</sup> Thus, doing nothing would cost customers more over the long run.

### **1. Tax Equity**

A key component of the savings to be achieved through adoption of Empire's proposal is derived through use of production tax credits and tax equity financing. Customers benefit from a tax equity ownership structure (whereby Empire and a tax equity partner jointly own the Wind Projects through holding companies) because a tax equity partner is willing to contribute half of the capital to acquire the Wind Projects in exchange for the federal tax benefits provided to incentivize the development of renewable generation. This translates into a reduction in the overall cost of energy procured on customers' behalf by Empire.

A tax equity structure is a method of financing renewable energy projects (including wind projects and solar generation projects) to optimize the value in the near term of available tax incentives. In a tax equity structure, large, tax-paying corporations (typically large banks and insurance companies) become equity partners in renewable energy projects such as the projects proposed by Empire ("Tax Equity Partners"). In exchange for providing a significant portion of the capital investment of the partnership, which is used to acquire the Wind Projects, a Tax Equity Partner will receive the tax

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<sup>54</sup> Exh. 8, McMahon Sur., p. 16.

incentives (Production Tax Credits and Modified Accelerated Cost Recovery System) generated from the Wind Project during the first 10 years, or so, of the project's life.<sup>55</sup>

In this case, tax equity financing is expected to provide approximately half of the capital necessary to acquire the Wind Projects – meaning that the rate base impact of the projects will be approximately 50% of the total cost.<sup>56</sup> 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 of savings for Empire customers.<sup>57</sup>

Empire has identified a Tax Equity Partner for the Wind Projects.<sup>58</sup> On October 10, 2018, Empire and Wells Fargo Central Pacific Holdings, Inc. (“Wells Fargo”) entered into a letter of interest regarding Wells Fargo role as a tax equity provider for the Wind Projects. A copy of the letter of interest is attached as TM Schedule-5 (Highly Confidential) to the Surrebuttal Testimony of Todd Mooney. Wells Fargo and Empire are negotiating a binding term sheet for Wells Fargo's tax equity investment, and ultimately the parties will execute an Equity Capital Contribution Agreement (“ECCA”) and an LLC Agreement governing it and Empire's membership interests in the holding companies which in turn own the Wind Projects. Form ECCA and LLC Agreements were also attached to the Surrebuttal Testimony of Todd Mooney as Schedule TM-6A (Highly Confidential) and Schedule TM-6B (Highly Confidential).<sup>59</sup>

Wells Fargo has significant experience providing tax equity to renewable energy projects in the United States, financing approximately 11,000 MW of renewable

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<sup>55</sup> Exh.5P, Mooney Dir. (0010), p. 13; Exh. 6P, Mooney Dir. (0118), p. 14

<sup>56</sup> Exh.5HC, Mooney Dir. (0010), p. 16; Exh. 6HC, Mooney Dir. (0118), p. 17.

<sup>57</sup> Exh.5P, Mooney Dir. (0010), p. 17; Exh. 6P, Mooney Dir. (0118), p. 18.

<sup>58</sup> Tr. 252, 254, Mooney.

generation, representing approximately \$6 billion of investment, since 2007.<sup>60</sup> Wells Fargo is leading the solicitation of additional tax equity participants, has contacted a number of tax equity partners who are very interested in the project, and has identified a short list of those partners with whom to then move forward in a short time frame. Those tax equity partners would participate under the same terms as Wells Fargo.<sup>61</sup>

## **2. Consistent with the CSP**

The economics of the Wind Projects for which Empire seeks CCNs are consistent with Empire's modeling in the Customer Savings Plan and, as a result, are poised to deliver significant savings to Empire's customers for many years to come.<sup>62</sup> In Case No. ER-2018-0092, Empire witness James McMahon estimated the customer savings associated with acquiring 600 MW of wind generation with a tax equity partner based on the bids provided in response to a request for proposals issued by Empire.<sup>63</sup> The levelized cost of electricity ("LCOE") utilized for the 600 MW portfolio was a foundational element of the modelled \$169 million in customer savings over 20 years.<sup>64</sup>

Empire has used the LCOE as it has moved forward from Case No. EO-2018-0092 to ensure that the three purchase sale agreements are within the economics modeled and thus will deliver the same level of benefits to customers as was put forward in the previous docket.<sup>65</sup> While some of the project costs have moved during the negotiation of the three purchase sale agreements, the overall portfolio LCOE has

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<sup>59</sup> Exh.5HC, Mooney Dir. (0010), p. 17; Exh. 6HC, Mooney Dir. (0118), p. 18.

<sup>60</sup> Exh.5P, Mooney Dir. (0010), p. 18; Exh. 6P, Mooney Dir. (0118), p. 19.

<sup>61</sup> Tr. 281, Mooney.

<sup>62</sup> Exh. 6P, Mooney Dir., (0118), p. 24.

<sup>63</sup> Exh.5P, Mooney Dir. (0010), p. 22; Exh. 6P, Mooney Dir. (0118), p. 23.

<sup>64</sup> Exh.5HC, Mooney Dir. (0010), p. 22; Exh. 6HC, Mooney Dir. (0118), p. 23.

<sup>65</sup> Tr. 277-278, Mooney.

**decreased** slightly, and as a result, the projects as contracted are consistent with the modelling performed in the CSP case.<sup>66</sup>

Empire produced an extensive economic analysis in support of the CSP that included forecasts of customer costs under dozens of wide-ranging scenarios. These scenarios included ABB's standard high and low market scenarios as well as scenarios proposed by stakeholders, including OPC. That analysis, completed over more than six months, demonstrated clearly that the CSP reduced costs and cost risk to Empire customers even under the "high wind" case proposed by OPC.<sup>67</sup>

Once Empire had firmed up certain wind project costs and performance measures and compared them to the preliminary estimates used in the CSP modeling, it became clear that the actual project costs were similar (actually, slightly less) than its estimates. Thus, there is substantial evidence that the proposed Wind Projects are economically feasible.

#### **v. The Projects Promote the Public Interest**

The Commission recently stated as follows in the *Grain Belt Express Clean Line LLC*:

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".<sup>68</sup>

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<sup>66</sup> Exh. 6HC, Mooney Dir., (0118), p. 23; Exh. 8, McMahon Sur., p.18.

<sup>67</sup> Exh. 8, McMahon Sur., p.19.

<sup>68</sup> *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 Commission went on to further state:

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.<sup>69</sup>

The Wind Projects will meet the policy goals that have been 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. The projects proposed by Empire will facilitate this movement in Missouri, will thereby benefit Missouri citizens, and is, therefore, in the public interest.

#### **IV. CONDITIONS (ISSUE 2)**

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

##### **A. 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.

The Wind Projects satisfy the *Tartan* factors as they are projected to bring benefits to Empire's customers under the low, mid and high price scenarios. That is the expected outcome. However, having stated this, to further address the potential concerns raised by some parties in testimony, Empire believes the addition of those

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<sup>69</sup> *Id.* at p. 46.

conditions found in the Stipulations filed in this case will serve additionally to mitigate any negative impacts that could arise.

**B. Conditions that Should be Imposed**

Two Stipulations have been filed in this case: 1) the *Stipulation and Agreement Concerning Wildlife Issues*<sup>70</sup>, and; the *Non-Unanimous Stipulation and Agreement*.<sup>71</sup>

**i. Wildlife Stipulation**

The Missouri Department of Conservation and Empire are the signatories to the *Stipulation and Agreement Concerning Wildlife Issues* (“*Wildlife Stipulation*”). No party objected to or requested a hearing as to this *Wildlife Stipulation* and, by rule<sup>72</sup>, it may be treated as unanimous by the Commission.

Empire has followed the U.S. Fish and Wildlife Service’s Land-Based Wind Energy Guidelines in preliminary siting of the Missouri projects. Impacts, if any, are identified during extensive environmental and biological studies that are being 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.<sup>73</sup>

The *Wildlife Stipulation* purports to settle all issues raised by the Missouri Department of Conservation related to wildlife matters and contains requirements related to turbine location, studies, interaction in regard to the U.S. Fish & Wildlife

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<sup>70</sup> Exh. 12.

<sup>71</sup> Exh. 13.

<sup>72</sup> Commission Rule 4 CSR 240-2.115(2)(C).

<sup>73</sup> Exh. 9P, Wilson Dir. (0010), p. 11-12.



Service matters, among other things. These conditions are reasonable, unopposed and should be imposed as conditions related to a grant of the certificates of convenience and necessity requested by Empire.

**ii. Non-Unanimous Stipulation**

The *Non-Unanimous Stipulation and Agreement* (“*Non-Unanimous Stipulation*”) addresses all matters in this case other than the Wildlife issues. Signatories to the *Non-Unanimous Stipulation* are the Midwest Energy Consumers Group, Staff of the Commission, Missouri Department of Economic Development – Division of Energy; and Renew Missouri Advocates. Missouri Department of Conservation, Sierra Club, and National Resources Defense Council have affirmatively stated their non-objection. These signatories and non-objectors represent an impressive range of interests and viewpoints. Only the Office of the Public Counsel has objected to the *Non-Unanimous Stipulation*.<sup>74</sup>

The *Non-Unanimous Stipulation* includes a number of provisions, the purpose of a majority of which is to ensure that the Wind Projects as constructed and financed are consistent with the expectations of the signatories. Those provisions are as follows:

- *Tax Equity Parameters* (Non-Unan. Stip., para. 12g);

This provision requires that tax equity financing be used and that the provisions of that financing be within certain parameters as described in the testimony of Empire witness Mooney, with some adjustment, to the benefit of customers.<sup>75</sup>

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<sup>74</sup> Empire would note that much of the Surrebuttal Testimony of OPC witness Marke addresses his agreement with the Staff Report. It is interesting that OPC does not find the Staff’s agreement with the Non-Unanimous Stipulation to be equally persuasive.

<sup>75</sup> Exh. 7HC, Mooney Sur., p. 11.

- *A Market Protection Provision* (Non-Unan. Stip., para. 21);

The Market Protection Provision is addressed separately below.

- *In-Service Criteria for the Wind Projects* (Non-Unan. Stip., para. 12c);

The in-service criteria, as corrected by Staff witness Eubanks,<sup>76</sup> are consistent with Staff's Report and recommendation.<sup>77</sup>

- *Quarterly filings related to plans and specifications, the SPP Definitive Interconnection System Impact Studies, and transmission and interconnection process* (Non-Unan. Stip., para. 12d and e);

These provisions allow the parties to keep track of the progress of various matters and be in a position to bring issues to the Commission's attention should there be a need to do so.<sup>78</sup>

- *Accounting Matters Related to Asbury* (Non-Unan. Stip., para. 17);

Provides primarily for certain regulatory assets and liabilities if the Asbury generation facility is sold or retired between rate cases and thereby "tees up" potential issues for those future rate cases.<sup>79</sup> Staff witness Oligschlaeger described this as fairly comprehensive in terms of addressing Asbury costs and specifying future accounting treatment.<sup>80</sup>

- *Auditing of Books and Records of the various Wind Project entities* (Non-Unan. Stip., para. 19);

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<sup>76</sup> Tr. 367-368, 371-372, Eubanks.

<sup>77</sup> Tr. 368-369, Eubanks.

<sup>78</sup> Tr. 320-322, Dietrich.

<sup>79</sup> Tr. 335-338, Oligschlaeger.

<sup>80</sup> Tr. 342, Oligschlaeger.

- Rate base of Wind Projects and Depreciation Study consistent with the Commission's Report and Order in Case No. EO-2018-0092 (Non-Unan. Stip., para 13 and 14);

As mentioned in the title, these are provisions identical to those ordered by the Commission in Case No. EO-2018-0092. The purpose of the plant provision is direct that the plant investment be recorded to plant in service.<sup>81</sup>

- Third party professional engineer review before closing (Non-Unan. Stip., para 12b);
- Notice of closings (Non-Unan. Stip., para. 12f);
- Operation of the Wind Projects in a manner that is not detrimental to Empire's customers (Non-Unan. Stip., para 12a);

This phrase means that Empire will continue to operate wind projects in the exact same way that it is currently operating the Elk River and Meridian Way wind projects, which is in a way that is consistent with the SPP rules and in a manner that is not detrimental (not causing harm) to customers.<sup>82</sup>

- Notice that the Stipulation does not preclude questions of prudence in future general rate cases (Non-Unan. Stip., para. 14);

This is a standard recognition of the difference between certificate cases and rate cases that is commonly included in similar stipulations.

- Recommendation for the true-up period in future cases where a Wind Project is sought to be included in rates (Non-Unan. Stip., para. 16);

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<sup>81</sup> Tr. 332-333, Oligschlaeger.

<sup>82</sup> Tr. 263-264, Mooney.

- Multi-jurisdictional cost allocation related to the Wind Projects (Non-Unan. Stip., para. 20);
- That Empire propose a program where non-residential customers may purchase Renewable Energy Credits (Non-Unan. Stip., para. 18);

There are many larger customers, commercial customers or industrial customers that have sustainability programs. This will formalize the process for selling renewable energy credits to those customers, allowing them to achieve those sustainability goals.<sup>83</sup>

and,

- A requirement for presentations related to any proposed additions of battery/energy storage technology for which a certificate of convenience and necessity is not required (Non-Unan. Stip., para. 22).

To the extent a certificate of convenience and necessity would not be required, Empire would present similar information to the parties prior to moving forward with a battery/storage program. Doing so would allow the parties to provide input as to the public interest and cost.<sup>84</sup>

### **1. Market Protection Provision**

Perhaps the most obvious and talked about item in the *Non-Unanimous Stipulation* is the Market Protection Provision (or “MPP”), which provides \$52.5 million of protection for customers in the unlikely event that the Wind Projects do not generate

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<sup>83</sup> Tr. 102, Mertens.

<sup>84</sup> Tr. 103, Mertens.

enough revenue in the early years to cover the revenue requirement associated with the projects.

Both Empire and the Commission Staff proposed MPP's in their testimony and both were variations of the Market Protection Provision presented to the Commission in the Non-Unanimous Stipulation and Agreement in Case No. EO-2018-0092.<sup>85</sup>

Before going further, it bears mentioning that the concept of a Market Protection Provision to protect Missouri customers is a unique concept (Empire witness Holmes describes it as "unprecedented in terms of generation additions").<sup>86</sup> It is hard to say this added level of protection is not in the public interest under any circumstance. As designed and agreed to by the signatories, the MPP is a positive benefit for customers and the public interest.

The Market Protection Provision manages the cost benefit risk associated with the Wind Project in terms of the capital costs (to include network upgrade costs<sup>87</sup>), operating costs, SPP prices and wind production, while still providing customers all the upside benefits. 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.<sup>88</sup>

As indicated by Staff witness Eubanks, the MPP mitigates risks associated with the projects to her satisfaction.<sup>89</sup> Staff witness Oligschlaeger testified that he believes

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<sup>85</sup> Exh. 4, Holmes Sur., p. 6-14; Exh. 101, Staff Rebuttal Report, p. 29, 37.

<sup>86</sup> Exh. 4P, Holmes Sur., p. 7, 10-11; Tr. 172-173, Holmes.

<sup>87</sup> Tr. 219, Holmes; Tr. 352-353, Lange.

<sup>88</sup> Exh. 4P, Holmes Sur., p. 10.

<sup>89</sup> Tr. 370-371, 372, Eubanks.

the MPP balances the interests of the company and shareholders appropriately.<sup>90</sup> Staff witness Luebbert explained that he believes it is in the public interest because it provides a similar sharing of downside risk, while providing shareholders with the opportunity for a return on their investment and customers with the ability to benefit from all of the upside potential.<sup>91</sup>

As described in greater detail in the *Non-Unanimous Stipulation*, the MPP goes into effect on the first day of the month after the last Wind Project is placed into rates and remains in effect for 10 years following the effective date of rates resulting from the first general rate case in which all Wind Projects are included in rates. It operates by comparing the amount of revenue generated from sales of energy from each Wind Project into the SPP Integrated Marketplace and the capacity benefit of each Wind Project to the revenue requirement associated with the Wind Projects (and to the value of replacing the energy from the Elk River and Meridian Way PPAs once they have expired).<sup>92</sup>

The Market Protection Provision will factor in actual interconnection costs, tax equity cash distributions and PAYGO contributions, ongoing operation and maintenance costs, and curtailment.<sup>93</sup> If there is a harm caused, there is a sharing mechanism with a Missouri jurisdictional cap of \$52.5 million for the Company to reduce costs to customers, while if the Wind Projects perform as projected, customers retain 100% of the upside. The cap of \$52.5 million is appropriate because it is designed such that it should cover those situations up to those having a probability of exceeding the cap only

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<sup>90</sup> Tr. 334-335, Oligschlaeger.

<sup>91</sup> Tr. 327, Luebbert.

<sup>92</sup> Exh. 4P, Holmes Sur., p. 11; Tr. 168, Holmes.

<sup>93</sup> Exh. 4P, Holmes Sur., p. 10.

0.5% over the 10 year period.<sup>94</sup> Additionally, it is a “soft cap, as any amounts that would be incurred above that level, would go back to the Commission in a future rate case for a decision as to how they should be treated.”<sup>95</sup>

The MPP presented in the *Non-Unanimous Stipulation* in this case is a compromise between the two proposals made by Empire and Staff, is supported by the evidence before the Commission, is in the public interest as it adds a layer of protection for low probability events related to supply side generation,<sup>96</sup> and should be adopted in its entirety by the Commission.

### **iii. OPC Conditions that Cannot/Should Not be Imposed**

#### **1. OPC/Hold Harmless or Reduction in Return on Equity**

OPC testimony asks the Commission to either hold Empire’s customers harmless on an annual basis or impose a reduced return on equity for these projects in future rate cases. These proposals are both unreasonable and unnecessary.

As part of its proposal to hold customers harmless, OPC suggests that Empire pursue this project as an independent power producer or as merchant generation and not on its customers’ behalf.<sup>97</sup> That is not what the Commission should expect or encourage. Empire understands it is a public utility. As such, it 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. That was the very

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<sup>94</sup> Tr. 172-173, 218, Holmes.

<sup>95</sup> Tr. 172, 205, Holmes; Tr. 342, Oligschlaeger.

<sup>96</sup> Tr. 172-173, Holmes.

<sup>97</sup> Tr. 384, Marke; Exh. 205P, Mantle Reb., p. 17-18.

intention behind the Generation Fleet Savings Analysis, which was the basis of the Company's proposal in this docket. The Wind Projects fit this description. The weighing of unregulated vs. regulated profit potential is not anything in which Empire should or does engage.<sup>98</sup>

More practically, the Commission cannot lawfully unilaterally impose either of these proposals. Missouri law requires, among other things, that the rates utilities charge for regulated utility services, including water companies, be "just and reasonable". §393.130.1, cl. 2 RSMo., 2016.<sup>99</sup> The constitutional standards for determining whether an authorized return is fair and reasonable was established by the United States Supreme Court as follows: (1) Returns must be consistent with other businesses having similar or comparable risks; (2) Returns must be adequate to support credit quality and access to capital; and (3) The end result, regardless of the analytical methods used, must result in just and reasonable rates. *Bluefield Water Works & Improv. Co.*, 262 U.S. 679, 692-93 (1923); *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944).<sup>100</sup>

Thus, an arbitrary assignment of a return without the agreement of the company and without consideration of the matters described in *Hope* and *Bluefield* is not only beyond the Commission's powers, it is also a violation of constitutional provisions.

Further, the OPC's premise, that Empire's return on equity should be equal to the target return of the tax equity partner, is fundamentally misplaced. OPC appears to have conflated return on investment with return on equity. The tax equity return refers to

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<sup>98</sup> Exh. 3P, Mertens Sur., p. 18-19.

<sup>99</sup> "All charges made or demanded by any . . . electric corporation . . . for . . . electric . . . service rendered or to be rendered shall be just and reasonable and not more than allowed by law or by order or decision of the commission."



the return that the tax equity partner is seeking on its investment in the Wind Projects. The tax equity partner will finance this investment with a combination of equity and debt, in a similar way to a regulated utility that finances its investments in generation, transmission or distribution assets with a combination of equity and debt. Thus, the tax equity return is analogous to return on rate base for a regulated utility, not return on equity.<sup>101</sup>

#### iv. Office of the Public Counsel's Positions on Listed Issues

In its Positions on Listed Issues, the OPC presented for the first time what it called its *Missouri Empire Retail Customer Protection Plan*. That plan may not be adopted by the Commission. Most obviously, its treatment of the subject investment would be contrary to statute.

Page 4, para. 6, of the OPC's Positions on Listed Issues, OPC stated in part as follows:

While Empire's investment in the King's Point, North Fork Ridge, and Neosho Ridge wind projects are included in Empire's rate base, Empire's Missouri retail customers shall pay in their rates neither a return of nor a return on Empire's investment in those projects during the Hedging Period  
. . . .

Significantly, this part of the proposal would call for Empire to receive neither a return on nor of its investment in these projects during the period the hedging agreements are in effect (approximately 10 years). Like the OPC's testimony proposal, the Commission cannot lawfully impose this proposal.

The OPC proposal starts by assuming the projects are in Empire's rate base, which necessarily assumes the investment was prudent and has been determined to be

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<sup>100</sup> U.S. Const. Amend. V; U.S. Const. Amend. XIV, §1. See also, Mo. Const. Art. I, §10.

in-service. Under these circumstances, the Commission is required to provide Empire a reasonable return on and of its investment. The *Missouri Empire Retail Customer Protection Plan* is not something the Commission may impose over Empire's objection.

As described above, a complete and arbitrary failure to provide a return on and of the Company's investment in this situation would violate both the federal and state constitutions.

## **V. TIMING**

Empire is seeking prompt consideration of its CCN application in order to minimize any costs to Empire under the Purchase and Sale Agreements. Specifically, the date on which Empire receives a ruling on the CCN could have a material impact on any potential termination fees due to the partners under the Purchase and Sale Agreements.<sup>102</sup> Thus, Empire seeks a prompt determination on its CCN application in order to mitigate any termination fees it might incur should its request for a CCN be denied. Further, a prompt ruling on the CCN will also maximize the ability to meet the December 31, 2020 in-service date in order to receive 100% PTC eligibility for the Wind Projects.<sup>103</sup>

## **VI. CONCLUSION**

The Wind Projects at issue in this Step 2 case will meet the policy goals identified by the Commission and are poised to deliver significant savings to Empire's customers

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<sup>101</sup> Exh. 7HC, Mooney Sur., p. 12-13; Tr. 248, Mooney.

<sup>102</sup> Exh.5HC, Mooney Dir. (0010), p. 24-25; Exh. 6HC, Mooney Dir. (0118), p. 24-25; Tr. 281-282, Mooney.

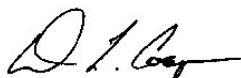
<sup>103</sup> Exh.5HC, Mooney Dir. (0010), p. 24-25; Exh. 6HC, Mooney Dir. (0118), p. 24-25; Tr. 281-282, Mooney.

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 contained in the *Non-Unanimous Stipulation* and the *Wildlife Stipulation*.

The Wind Projects for which Empire seeks certificates of convenience and necessity are in the public interest and the Commission should grant the requested certificates, subject to the Stipulations that have been filed in this case.

**WHEREFORE**, Empire respectfully requests the Commission consider this Initial Brief and issue such orders as it should find to be reasonable and just.

Respectfully submitted,



Dean L. Cooper MBE #36592  
BRYDON, SWEARENGEN & ENGLAND P.C.  
312 E. Capitol Avenue  
P. O. Box 456  
Jefferson City, MO 65102  
Telephone: (573) 635-7166  
E-mail: [dcooper@brydonlaw.com](mailto:dcooper@brydonlaw.com)

Sarah B. Knowlton MBE #71361  
Liberty Utilities  
116 North Main Street  
Concord, NH 03301  
Phone: 603-724-2123  
E-mail: [Sarah.Knowlton@libertyutilities.com](mailto:Sarah.Knowlton@libertyutilities.com)

**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 April 29, 2019, to the following:

Nicole Mers Office of the General Counsel <a href="mailto:staffcounsel@psc.mo.gov">staffcounsel@psc.mo.gov</a> <a href="mailto:nicole.mers@psc.mo.gov">nicole.mers@psc.mo.gov</a>	Nathan Williams Office of the Public Counsel <a href="mailto:opc@ded.mo.gov">opc@ded.mo.gov</a> <a href="mailto:nathan.williams@ded.mo.gov">nathan.williams@ded.mo.gov</a>
David L. Woodsmall Woodsmall Law Office <a href="mailto:david.woodsmall@woodsmalllaw.com">david.woodsmall@woodsmalllaw.com</a>	Tim Opitz Renew Missouri Advocates <a href="mailto:Tim@renewmo.org">Tim@renewmo.org</a>
Rochelle Reeves Missouri Division of Energy <a href="mailto:Rochelle.Reeves@ded.mo.gov">Rochelle.Reeves@ded.mo.gov</a>	Stephanie Bell Ellinger Law <a href="mailto:sbell@ellingerlaw.com">sbell@ellingerlaw.com</a> <a href="mailto:Jennifer.frazier@mdc.mo.gov">Jennifer.frazier@mdc.mo.gov</a>
Henry Robertson <a href="mailto:hrobertson@greatriverslaw.org">hrobertson@greatriverslaw.org</a>	



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