



## TABLE OF CONTENTS

<b>I.</b>	<b>Introduction</b>	1
<b>II.</b>	<b>List of Issues</b>	6
	<b>Issue 1:</b>	
	<i>Does the evidence establish that the Kings Point, Neosho Ridge, and North Fork Ridge wind projects for which Empire is seeking certificates of convenience and necessity are “necessary or convenient for the public service” within the meaning of that phrase in section 393.170, RSMo.?</i>	6
	<b>Issue 2:</b>	
	<i>For each CCN the Commission grants, what conditions, if any, should the Commission deem to be reasonable and necessary, and impose?</i>	10
<b>III.</b>	<b>Conclusion</b>	11

**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 POST-HEARING BRIEF**

COMES NOW Renew Missouri Advocates d/b/a Renew Missouri (“Renew Missouri”), and presents its post-hearing brief to the Missouri Public Service Commission (“Commission”):

**I. Introduction**

*“You don’t need a weatherman to know which way the wind blows.”<sup>1</sup>*

The Empire District Electric Company (“Empire”), the Midwest Energy Consumers Group (“MECG”), the Staff of the Missouri Public Service Commission (“Staff”), Renew Missouri Advocates (“Renew Missouri”), and the Missouri Department of Economic Development – Division of Energy (“DE”) jointly present the Commission a framework outlined in the Non-Uniform Stipulation and Agreement that will allow Empire to build 600 MW of low-cost, renewable wind generation that will save customers money – approximately \$169 million over twenty years and up to \$295 million over thirty years.<sup>2</sup> Separately, Empire and Missouri Department of Conservation have agreed to certain discrete conservation conditions in the Stipulation and Agreement Concerning Wildlife Issues.<sup>3</sup> The evidence presented during the evidentiary hearing in this case proves that the requested Certificates of Convenience and Necessity (“CCNs”) advance the public interest and will benefit the people of Missouri.

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<sup>1</sup> Bob Dylan, Subterranean Homesick Blues, on Bringing It All Back Home (Columbia Records 1965).

<sup>2</sup> Ex. 13P and 13 HC; Ex. 6, p. 4.

<sup>3</sup> Ex. 12P, 12C, and 12HC.

This application does not occur in a vacuum. As a state, as a nation, and as a planet, we are witnessing a long-term comprehensive movement towards renewable energy - including wind energy.<sup>4</sup> The Commission has recognized the numerous benefits renewable energy brings to Missouri and has supported policies or approved projects that will save customers money, allow customers to meet sustainability metrics, improve system reliability through diverse generation, and create economic benefits including jobs, lease-payments, and increased tax revenue. This arc towards an economic, renewable future is particularly evident in a litany of recent cases. When KCP&L Greater Missouri Operations (“GMO”) sought permission to build its Greenwood solar facility, the Commission found “... customers and the general public have a strong interest in the development of economical renewable energy sources to provide safe, reliable, and affordable service ... [i]t is clear, solar power will be an integral part of this development, building a bridge to our energy future.”<sup>5</sup> The Commission reiterated these findings as Ameren Missouri later sought permission to build an additional solar facility, emphasizing that “Ameren’s Missouri’s customers also ‘have a strong interest in 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>6</sup>

The Commission also speaks positively of wind generation. Most recently, in approving a transmission line that will bring low cost wind to Missouri, the Commission concluded “... our energy future will require more diversity in energy resources, particularly renewable resources” and “[w]ind energy provides great promise as a source for affordable, reliable, safe, and environmentally-friendly energy.”<sup>7</sup> Finally, this past summer, in Empire’s Customer Savings Plan

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<sup>4</sup> Dissenting Opinion of Commissioner Hall in the Report and Order, Case No. EA-2014-0207, Doc. No. 559, p. 6.

<sup>5</sup> Report and Order, Case No. EA-2015-0256, Doc. No. 84, p. 15.

<sup>6</sup> Report and Order, Case No. EA-2016-0208, Doc. No. 126, p. 20.

<sup>7</sup> Report and Order on Remand, Case No. EA-2016-0358, Doc. No. 758, p. 47.

case, this Commission declared “[i]t is the public policy of this state to diversify the energy supply through the support of renewable and alternative energy sources” and that “...Empire’s proposed acquisition of 600 MW of additional wind generation is clearly aligned with the public policy of the Commission and this state.”<sup>8</sup> Together, all of these decisions communicate a message that Missouri will support companies already here that seek renewable energy and welcomes new companies seeking to invest in Missouri, bringing jobs, infrastructure, new revenue for the state, and least-cost energy for customers. The Commission should approve the requested CCNs and continue our progress towards a renewable future while assuring companies interested in renewable energy that Missouri is open for business.

*“How many times can a man turn his head and pretend that he just doesn't see?”<sup>9</sup>*

The Office of Public Counsel (“OPC”) ignores these policy directions on renewable energy and opposes, or otherwise obstructs, nearly every renewable project proposed.<sup>10</sup> All of these recent instances occur after OPC challenged two renewable CCNs where that office raised concerns similar to those here and was ruled against. OPC does not see – or chooses to ignore – the policy choices the Commission has made on those issues. In Case No. EA-2015-0256, OPC challenged a solar CCN because it was not necessary to meet the generation needs of GMO’s customers or necessary to comply with the state’s Renewable Energy Standard (“RES”).<sup>11</sup> The Commission granted the CCN and, on appeal, the Western District Court affirmed, concluding:

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<sup>8</sup> Report and Order, Case No. EO-2018-0092, Doc. No. 228, p. 20.

<sup>9</sup> Bob Dylan, Blowin’ in the Wind, single from the album The Freewheelin’ Bob Dylan (Columbia Records 1963).

<sup>10</sup> See The Office of Public Counsel’s Objection to the Non-unanimous Stipulation and Agreement Filed April 5, 2019, Doc. No. 88; The Office of the Public Counsel’s Objection to the Non-Unanimous Stipulation and Agreement Filed April 24, 2018, Case No. EO-2018-0092, Doc. No. 108; Notice of Appeal, Case No. EA-2018-0202, Doc. No. 153 (OPC’s appeal of a wind CCN focused on limiting cost-recovery); Response to the Third Stipulation and Agreement, Case No. EA-2019-0021, Doc. No. 97 (notice indicating OPC’s “concerns regarding prudence” and intent to challenge costs in the future for an Ameren Missouri wind farm).

<sup>11</sup> See Public Counsel’s Statement of Positions, Case No. EA-2015-0256, Doc. No. 47.

[t]he Commission's findings acknowledged the facts raised by Appellants that the plant is not currently needed to supplement its load capacity, is not the least-cost alternative, and is not needed to comply with current environmental regulatory requirements. However, after proper consideration to these facts, the Commission reached several conclusions, including that the solar plant is (1) an improvement justifying its cost; (2) in the public interest; and (3) necessary and convenient for the public service.<sup>12</sup>

Put simply, a project does not need to be absolutely necessary to meet generation needs or to comply with the RES in order to be considered “necessary or convenient” within the meaning of Section 393.170 RSMo. Later, in Case No. EA-2016-0208, OPC challenged another solar CCN, in part, on the grounds that Ameren Missouri failed to meet its evidentiary burden to prove the project was “necessary or convenient” while conceding that a project does not need to be necessary to meet customer load.<sup>13</sup> There, too, the Commission disagreed with OPC and issued the CCN noting that the benefits do not have to be easily quantifiable in order to outweigh projected costs.<sup>14</sup> Based on that history, OPC should know that challenging a CCN on the grounds that it is not needed to serve the company’s native load is unlikely to succeed.

Here, after the parties developed and refined a customer Market Protection Plan, OPC objected to the Non-unanimous Stipulation and Agreement. OPC’s stated reasons for objecting ignore the CCN statute, relevant caselaw, and the Commission’s recent policy choices. Instead, OPC raises two main points; each is without merit. First, OPC says the additional generation is not required to meet the needs of its customers and references Section 393.135 RSMo. as support

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<sup>12</sup> In re KCP&L Greater Mo. Operations Co., 515 S.W. 3d 745, 764 (Mo. App. W.D. 2016).

<sup>13</sup> Reply Brief of the Office of the Public Counsel, Case No. EA-2016-0208, Doc. No. 120, pp. 5-6.

<sup>14</sup> Report and Order, Case No. EA-2016-0208, Doc. No. 126, pp. 17-18.

without explanation. What does Section 393.135 RSMo. have to do with this CCN case? Absolutely nothing. This statute prevents utilities from charging customers rates that include costs for incomplete projects. OPC's reliance on this unrelated statute has nothing to do with Empire's request for permission to build 600 MW of wind capacity. Cost recovery will be addressed in a rate case after the turbines are up and running. OPC's argument about Section 393.135 RSMo. is not relevant and merely reflects its philosophical opposition, or unwillingness, to accept the current state of the law on the Commission's CCN authority or the current reality in which electric utilities operate as members of an integrated marketplace.<sup>15</sup>

Second, OPC objects because they believe the project would place too much financial risk on Empire's customers, listing a few variables that might impact the cost/benefits of the wind turbines. Setting aside the philosophical question discussed above, OPC's concern is that customers will be worse-off if the market price for the wind energy produced will be less than the levelized cost of the project. Despite the evidence of projected benefits to customers from these wind projects, other parties also wanted to protect customers in the unlikely event this occurs. The Non-unanimous Stipulation and Agreement contains a detailed Market Price Protection Mechanism ("MPP") that provides customers protection from financial risk associated with changes to capital costs, operating costs, SPP prices and wind production. If a financial harm occurs, the Company will share in the cost. If the wind projects perform better than projected, customers keep the benefit. OPC's objection to the Non-unanimous stipulation based on financial risk shows a lack of understanding of the MPP and perhaps shows that this objection, too, is

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<sup>15</sup> Tr. Vol. 4, pp. 380-381 (Commissioner Hall discussing that "[w]hether they need it or not, everything gets sold into SPP and everything gets purchased back. In terms of the economics of it, it really doesn't matter if they're long or short."); Tr. Vol 2, pp. 180-181 (Mr. Holmes discussing that all electricity to meet Empire's load is purchased from the SPP integrated market and that these wind projects would operate the same as the rest of Empire's fleet).

founded on its philosophical disagreement about how utilities in a Regional Transmission Organization should serve their customers.

Empire is willing to embrace renewable resources in meeting the energy needs of its customers in a way that will save customers hundreds of millions of dollars. If Empire can provide savings to customers with renewable energy – it arguably has the *obligation* to do so. This approach will also facilitate the numerous benefits renewable energy brings in terms of reliability, sustainability, and economic impact as we move towards a renewable energy future. OPC may refuse to see that “the answer is blowin’ in the wind,”<sup>16</sup> but the evidence shows this project will replace wind PPA’s used to comply with the RES that will expire in 2025 and 2028, meet the desires of customers wishing satisfy sustainability metrics, save customers money, and diversify the energy supply owned by Empire. This project is an improvement justifying its cost, and the Commission should grant the requested CCNs.

## **II. List of Issues**

**Issue 1:** *Does the evidence establish that the Kings Point, Neosho Ridge, and North Fork Ridge wind projects for which Empire is seeking certificates of convenience and necessity are “necessary or convenient for the public service” within the meaning of that phrase in section 393.170, RSMo.?*

Prior to building these wind projects, Empire must receive permission from the Commission.<sup>17</sup> Section 393.170.3 RSMo. provides the standard to be applied when evaluating an application: “...whenever it shall after due hearing determine that such construction or such exercise of the right, privilege or franchise is necessary or convenient for the public service.” The

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<sup>16</sup> Bob Dylan, Blowin’ in the Wind, single from the album The Freewheelin’ Bob Dylan (Columbia Records 1963). This song was featured in Budweiser’s 2019 Super Bowl commercial “Wind Never Felt Better” with the tagline “Now brewed with wind power for a better tomorrow.”

<sup>17</sup> Section 393.170.1 RSMo.



Missouri Court of Appeals has explained that when applying that standard “[t]he term ‘necessity’ does not mean ‘essential’ or ‘absolutely indispensable’, but that an additional service would be an improvement justifying its cost.”<sup>18</sup> Furthermore, “whether the evidence indicates the public interest would be served in the award of the certificate is within the discretion of the Commission.”<sup>19</sup> In its discretion, the Commission has traditionally applied the following five criteria, known as the *Tartan* factors:

- 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.<sup>20</sup>

There is a need for the service. As explained in the testimony of Renew Missouri’s James Owen, 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.<sup>21</sup> Governmental bodies in Missouri are also beginning to establish their own clean energy goals.<sup>22</sup> 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. The Non-unanimous Stipulation and Agreement will allow Empire to add wind resources and provides that Empire will “propose a tariff to implement a program by which

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<sup>18</sup> *State ex rel. Intercon Gas, Inc. v Pub. Serv. Comm’n*, 848 S.W.2d 593, 597 (Mo. App. W.D. 1993).

<sup>19</sup> *In re KCP&L Greater Mo. Operations Co. for Permission*, 515 S.W.3d 754, 759 (Mo. App. W.D. 2016)(internal citations omitted).

<sup>20</sup> *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).

<sup>21</sup> Ex. 300, p. 3.

<sup>22</sup> *Id.*

Missouri retail non-residential customers may purchase a portion of RECs received from the wind project.”<sup>23</sup> Furthermore, the wind generation from this project will allow Empire to replace the wind associated with its Elk River and Meridian Way Power Purchase Agreements that will expire in the mid-to-late 2020s.<sup>24</sup> Replacing these PPAs with the low-cost wind generation sought to be built in this case is central to Empire’s plan and ability to comply with the state’s renewable energy standard. Lastly, these projects will allow Empire to diversify its generation portfolio to lower customer costs and reduce risk.<sup>25</sup>

Empire is qualified to provide the proposed service. The Commission’s Staff investigated whether Empire is qualified to construct and operate the wind turbines and concluded:

Empire has the experience through its long history of operating electric generation facilities to operate the three wind generation facilities upon completion. Additionally, Empire has managed the addition of several large generating units to its system, including several combined cycle units, and has also managed several large-scale environmental modification projects made to its existing units. Empire, through its ownership structure, benefits from the experience of LUCo [Liberty Utilities] and APUC [Algonquin Power & Utilities Corporation] in developing wind generation facilities.<sup>26</sup>

Empire’s experience in the generation, transmission, and distribution of electricity, along with the experience and expertise of its parent companies ensure that the Company is qualified and able to provide the proposed service.

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<sup>23</sup> Ex. 13P, p. 8.

<sup>24</sup> Ex. 8, p. 8.

<sup>25</sup> Ex. 8, p. 9.

<sup>26</sup> Ex. 101, pp. 21-24.

Empire has the financial ability to provide the proposed service. Empire has an investment grade credit rating and is part of a corporate family with nearly \$9 billion in assets.<sup>27</sup> Staff reviewed Empire’s financial information and determined that Empire has the ability to purchase the wind projects. Staff also examined the financial information for the companies developing the projects, including Tenaska, and concluded that there is a financial ability to complete construction.<sup>28</sup>

The proposed project is economically feasible. Approval of the CCNs will allow Empire to construct and operate 600 MW of low-cost, renewable energy. Through the use of a tax-equity ownership structure, Empire has modeled that it will save its customers \$169 million over the twenty year Integrated Resource Planning (“IRP”) period.<sup>29</sup> Over a thirty year time period, which is closer to the life of the wind assets, Empire projects customers will save up to \$295 million. To reach these projections, Empire conducted a detailed portfolio analysis using industry standard modeling software.<sup>30</sup> 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.<sup>31</sup> The analysis completed by Empire demonstrates that adding 600 MW of wind generation will be a significant benefit to customers and is economically feasible.

The project promotes the public interest. In evaluating Empire’s Customer Savings Plan and granting certain accounting authority, the Commission explained:

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

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<sup>27</sup> Ex. 1, p. 7.

<sup>28</sup> Ex. 101.

<sup>29</sup> Ex. 4, p. 4.

<sup>30</sup> Ex. 8, p. 17.

<sup>31</sup> Id.

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>32</sup>

As discussed above, this project will replace wind PPA's used to comply with the RES that will expire in 2025 and 2028, meet the desires of customers wishing to satisfy sustainability metrics, save customers money, and diversify the energy supply owned by Empire. This project advances progress towards an economic, renewable future that benefits Empire's customers and the public interest in Missouri.

Because the proposed wind projects satisfy each of the *Tartan* criteria, the Commission should find that adding 600 MW of wind generation is an improvement justifying its cost, and that these CCNs are necessary and convenient for the public service.

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

The Commission should impose the terms and conditions outlined in the Non-unanimous Stipulation and Agreement submitted by Empire, MECG, Staff, Renew Missouri, and DE.<sup>33</sup> These negotiated terms are meant to provide customers with additional protections in the event that changing factors in the marketplace occur to such an extreme degree that customers do not realize the significant benefits modeled by Empire, while enabling customers to enjoy the many significant benefits of adding 600 MW of wind generation. No other conditions are appropriate or necessary.

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<sup>32</sup> Report and Order, Case No. EO-2018-0092, Doc. No. 228, p. 20.

<sup>33</sup> 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.

### III. Conclusion

Customers have a strong interest in the development of economical renewable energy sources to provide safe, reliable, and affordable service while improving the environment. To advance those interests the Commission should issue an order containing the terms and conditions in the Non-unanimous Stipulation and Agreement that will enable customers and the public at-large to benefit from Empire's efforts to acquire 600 MW of wind generation, embrace renewable resources in meeting the energy needs of its customers, save customers hundreds of millions of dollars, and spur additional economic development.

WHEREFORE, Renew Missouri submits its *post-hearing brief*

Respectfully,

**/s/ Tim Opitz**

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#### Certificate of Service

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 29<sup>th</sup> day of April 2019:

**/s/ Tim Opitz**

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