

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

FILED  
April 22, 2019  
Data Center  
Missouri Public  
Service Commission

In the Matter of the Application of The )  
Empire District Electric Company for ) Case No. EA-2019-0010  
Certificates of Convenience and Necessity ) As consolidated with Case No. EA-2019-  
Related to Wind Generation Facilities ) 0118

**STIPULATION AND AGREEMENT CONCERNING WILDLIFE ISSUES**

COME NOW The Empire District Electric Company (“EDE” or “Empire”), and the Missouri Department of Conservation (“MDC”) (collectively, the “Signatories”)<sup>1</sup>, by and through their respective counsel, and, for their Stipulation and Agreement Concerning Wildlife Issues (this “Stipulation”), respectfully state as follows to the Missouri Public Service Commission (“Commission”):

1. The Signatories are entering into this Stipulation to settle all contested issues related to the matters raised by MDC. Unless otherwise explicitly provided herein, by executing this Stipulation none of the Signatories has approved or acquiesced in any ratemaking or procedural principle, including, without limitation, any method of cost of service or valuation determination or cost allocation, rate design, revenue recovery, or revenue-related methodology. Except as explicitly provided herein, none of the Signatories shall be prejudiced or bound in any manner by the terms of this Stipulation in this or any other proceeding.

2. This Stipulation has resulted from extensive negotiations among the parties, and the terms herein are interdependent and non-severable. If the Commission does not approve this Stipulation unconditionally and without modification, or if the Commission approves the Stipulation with modifications or conditions to which a Signatory objects, then this Stipulation shall be void and

<sup>1</sup> Counsel for Renew Missouri Advocates, Midwest Energy Consumers Group, Office of the Public Counsel, Missouri Department of Economic Development – Division of Energy, National Resources Defense Council, Sierra Club, and the Staff of the Commission have all indicated that they have no objection to this Stipulation and do not request a hearing.

Empire Exhibit No. 13 P  
Date 4/9/19 Reporter RJW  
File No. EA-2019-0010

none of the Signatories shall be bound by any of the agreements or provisions hereof.

3. This Stipulation (once approved by the Commission) will constitute an Order of the Commission as to each term thereof. The Signatories agree that disputes related to the implementation and operation of this Stipulation (to include any alleged breach of the terms of this Stipulation) may be taken to the Commission for resolution.

4. This Stipulation is based on the unique circumstances Empire presented to the non-utility Signatories. Except to the extent necessary to implement the terms of this Stipulation, this Stipulation shall not be construed to have precedential impact in any other Commission proceeding.

5. The non-utility Signatories have entered into this Stipulation in reliance upon information and representations Empire provided them, and this Stipulation is predicated explicitly upon that information and those representations.

6. When approved by the Commission, this Stipulation shall constitute a binding agreement among the Signatories hereto. The Signatories shall cooperate in defending the validity and enforceability of this Stipulation and the operation of this agreement according to its terms.

7. The Signatories waive the right to cross examination and stipulate and agree to the admission of all testimony concerning the issues raised by MDC pre-filed herein, without the need for witnesses to take the stand. If the Commission accepts the specific terms of this Stipulation without condition or modification, the Signatories waive their respective rights to seek rehearing pursuant to §536.500, RSMo., and their respective rights to judicial review pursuant to §386.510, RSMo. These waivers apply only to a Commission order approving this Stipulation without condition or modification issued in this proceeding, and only to the issues that are resolved hereby. These waivers do not apply to any issues explicitly not resolved by this Stipulation.

8. This Stipulation contains the entire agreement of the Signatories concerning the issues addressed herein.

9. This Stipulation does not constitute a contract with the Commission. Commission acceptance of this Stipulation shall not be deemed to constitute an agreement on the part of the Commission to forego the use of any discovery, investigatory powers or other statutory powers which the Commission has. Thus, nothing in this Stipulation is intended to impinge or restrict in any manner Commission's exercise of any its statutory powers, including the power to access information.


10. When a Commission order approving this Stipulation becomes effective this Stipulation will become effective.

11. **Wind Projects.** EDE is seeking Commission-issued certificates of convenience and necessity (CCNs) for two wind generation resources each up to 150 MW and located in Barton, Dade, Jasper and Lawrence Counties in and near EDE's service territory in Missouri (Kings Point and North Fork Ridge) and one wind generation resource up to 301 MW located in Neosho County, Kansas (Neosho Ridge), including related transmission interconnection assets using federal tax incentives in conjunction with a tax equity structure.

12. **Wildlife.** Any Commission Order that grants Empire a CCN for the Kings Point or North Fork Ridge Wind Project must include the conditions found in Appendix A hereto.

**WHEREFORE**, the Signatories respectfully request the Commission to issue an order approving this Stipulation and Agreement Concerning Wildlife Issues and authorizing the Company

to take such other actions as are necessary to implement the terms hereof.

 Dean L. Cooper MBE #36592 Diana C. Carter MBE #50527 BRYDON, SWEARENGEN & ENGLAND P.C. 312 E. Capitol Avenue P. O. Box 456 Jefferson City, MO 65102 (573) 635-7166 <a href="mailto:dcarter@brydonlaw.com">dcarter@brydonlaw.com</a> <a href="mailto:dcooper@brydonlaw.com">dcooper@brydonlaw.com</a> ATTORNEYS FOR THE EMPIRE DISTRICT ELECTRIC COMPANY	ELLINGER AND ASSOCIATES, LLC  By: <u>/s/ Stephanie S. Bell</u> Marc H. Ellinger, #40828 Stephanie S. Bell, #61855 308 East High Street, Suite 300 Jefferson City, MO 65101 Telephone No.: (573)750-4100 E-mail: <a href="mailto:mellinger@ellingerlaw.com">mellinger@ellingerlaw.com</a> E-mail: <a href="mailto:sbell@ellingerlaw.com">sbell@ellingerlaw.com</a> ATTORNEYS FOR MISSOURI DEPARTMENT OF CONSERVATION
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### CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail, on April 5, 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:opcservice@ded.mo.gov">opcservice@ded.mo.gov</a> <a href="mailto:nathan.williams@ded.mo.gov">nathan.williams@ded.mo.gov</a>
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**APPENDIX A TO THE STIPULATION AND AGREEMENT  
CONCERNING WILDLIFE ISSUES  
FILE NO. EA-2019-0010  
Wildlife Conditions**

1. The Company will not cut down or destroy known active (in-use) or inactive (alternate) eagle nest trees.
2. The Company will not construct a turbine within one mile of currently known active (in-use) or inactive (alternate) eagle nests.
3. The Company will use best efforts to obtain an Eagle Incidental Take Permit (pursuant to an approved Eagle Conservation Plan (ECP) from the United States Fish and Wildlife Service (USFWS). For purposes of this paragraph, “best efforts” means diligent pursuit of an Eagle Incidental Take Permit but not an absolute obligation to obtain the same if the terms required by USFWS are such that operation without such permit would be in the interest of the Company’s customers.
4. The Company will comply with operational restrictions, if any, identified by the USFWS as necessary for protection of the eagles.
5. Unless otherwise provided in the Habitat Conservation Plan for gray bats issued by the U.S Fish & Wildlife Service in coordination with MDC, any turbines within 1,000 feet of the designated riparian corridor (as generally reflected in Attachments A-HC and B-HC and specifically defined in Shapefiles provided by MDC to Company on April 4, 2019) will not operate from 30 minutes before dusk until 30 minutes after dawn during the active season for the gray bat when: a) temperatures are above 50 degrees Fahrenheit; and b) wind speeds are less than 8.0 meters per second. The “active season” will be determined by the first and last recorded presence of gray bat on the Kings Point and Norfolk Ridge wind farm, based on acoustic data collected by Empire’s consultant during the 2019 monitoring season.
6. The Company will use best efforts to obtain an Incidental Take Permit (ITP) covering the Gray Bat, (pursuant to an approved Habitat Conservation Plan (HCP)) from the USFWS. For purposes of this paragraph “best efforts” means diligent pursuit of an Incidental Take Permit but not an absolute obligation to obtain the same if the terms required by USFWS are such that operation without such permit would be in the interest of the Company’s customers.
7. The Company will comply with operational restrictions, if any, identified by the USFWS as necessary for protection of the Gray Bat and any other species covered by the HCP.
8. The Company will not construct a turbine within one mile of the boundary of any MDC Conservation Areas. The Company will not construct a turbine within three miles of the boundary of any MDC Conservation Areas, except as generally depicted on Attachments C-HC and B-HC.

9. The Company will fund a traffic count survey at Providence Prairie Conservation Area to be conducted by MDC in an amount not exceeding \*\* \_\_\_\_\_ \*\*. <sup>2</sup>
10. The Company will conduct post-construction monitoring of eagle fatality and disturbances and bat fatalities in accordance in USFWS Guidance, for a minimum of three years, and conduct additional surveys as required by the HCP/ECP. Fatality monitoring efforts involve searching for eagle and bat carcasses beneath turbines and other facilities to estimate the number of fatalities.
11. Reporting of any mortality will be conducted in accordance with the ECP, HCP and the accompanying ITP. Monitoring results will be provided to the MDC and other parties as required in these documents.
12. If an Incidental Take Permit covering bald eagles and gray bats is not received for the Projects, the Company will report to MDC observed mortalities of all bird and bat "Species of Conservation Concern" by December 31 each year, identifying the date, turbine location (UTM), species, and reproductive status (if available), and sex of each individual animal.
13. In order to afford MDC the opportunity to audit post-construction monitoring requirements of any take permit or associated conservation plan approved by the Fish & Wildlife Service, MDC will be allowed (upon completion of the Company's standard requirements for third parties to access Company property) to accompany Company or contracted monitoring personnel for sampling events annually when those personnel conduct post-construction monitoring for eagles and/or bats.
14. The Company will provide MDC a copy of all documents and/or reports related to the Project that it provides to the USFWS at the same time as they are provided to the USFWS.
15. Copies of reports sent to USFWS and MDC shall be submitted as business confidential information to MDC. MDC may include information from such submittals in MDC's Natural Heritage Database.
16. The Company will provide reasonable advanced notice to MDC of all scheduled meetings and conference calls (related to the Project) with the USFWS.

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<sup>2</sup> This item has been marked as Confidential pursuant to 4 CSR 240-2.135(2)(A) 4 and 6.

ATTACHMENTS A-D

HAVE BEEN MARKED  
HIGHLY CONFIDENTIAL