BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of The	)	
Empire District Electric Company for a	)	Case No. EA-2019-0010
Certificate of Convenience and Necessity	)	
Related to its Customer Savings Plan	)	

The Office of the Public Counsel's Positions on Listed Issues

COMES NOW the Office of the Public Counsel and states its positions on the listed issues as follows:

Issue 1. Does the evidence establish that the King's Point, Neosho Ridge, and North Fork Ridge wind projects for which The Empire District Electric Company ("Empire") is seeking certificates of convenience and necessity ("CCN") are "necessary or convenient for the public service" within the meaning of that phrase in section 393.170, RSMo.?

Position: As explained following, only if the Commission conditions the CCNs on the Office of the Public Counsel's *Missouri Empire Retail Customer Protection Plan* described below, which is designed so that Empire, collectively for the three wind projects, would not receive through its Missouri retail customer rates for Empire's investment in and costs for these wind projects more than an aggregate total of $25 million during the time when Empire is paying hedge costs to the Wind Project Cos for the difference between a fixed hedge price and the floating SPP market price (Empire anticipates this time period to be approximately ten years) should the Commission issue CCNs for these wind projects.

Empire's justification for CCNs for these over $1 billion wind projects is its assertion that they are economic, *i.e.*, that over their lives the revenues they generate will exceed the investment, return on that investment, and operational, maintenance and managerial costs so that, economically they will provide a net benefit to Empire's retail customers. The Office of the Public Counsel believes Empire's increasing revenues forecasts based on increasing SPP market prices are overly

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optimistic because the SPP has an excess of generating capacity now, the SPP footprint is wind rich, and SPP is forecasting that 6.5 GW to 11.5 GW of wind capacity will be added in its footprint by 2025. This increase in supply in a market awash with energy will pressure SPP market prices to decline.

Further, many of the costs of these wind projects are still unknown and others have increased substantially. Empire still has not executed any tax equity partnership agreements, so still unknown are how much tax equity partner(s) will invest in the wind projects, how much return on its investment the tax equity partners require, the creditworthiness of the tax equity partner(s), and the timing and amounts of the cash distributions to the tax equity partner(s). Because the SPP studies have not yet been performed, Empire does not know what it will cost for these wind projects to interconnect with the SPP-controlled transmission system. The installed cost of the wind turbines for the wind projects have escalated by as much as **—**% or more since Case No. EO-2018-0092.

In response to concerns parties raise in rebuttal testimony, Empire is proposing in its surrebuttal case a "Market Protection Provision." Empire witness Holmes states, "The purpose of the Market Protection Provision is to provide customers with time limited protection in the event of changing factors in the marketplace once the Wind Projects come online."[1] The essence of Empire's Market Protection Provision is that, if SPP market revenues generated from the wind projects do not exceed the sum of the revenue requirement associated with the wind projects plus a wind projects capacity value plus a wind projects purchased power replacement value during the first ten years after the wind projects are built, then Empire and its retail customers bear equally the amount of the shortfall that exceeds $2 million each year, subject to Empire not bearing more

[1] Empire witness Holmes surrebuttal testimony, p. 9, ll. 17-19.

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than $25 million in the aggregate. Empire justifies lowering its exposure from $35 million in Case No. EO-2018-0092 to $25 million in this case as follows:

> Since the time of the Non-Unanimous Stipulation and Agreement, there is more certainty about the economics of the Wind Projects. As Mr. Mooney described in his Direct Testimony, the Levelized Cost of Energy for the three Wind Projects came in lower than the costs that were projected in Case No. EO-2018-0092. In addition, during the course of the past year, Empire has collected more wind data that further confirms that wind projects in Southwest Missouri are not only viable, but will be important contributors to the economics of Empire's fleet. Also, the $35 million covered the maximum foreseeable exposure based on a low wind and low market condition. With the updates to the Market Protection Provision, the cap can be reduced to $25 million and still provide protection in the low wind low market scenario. This can be seen in the low market case and low wind example in Exhibit D of Schedule DH-S-4 where the total regulatory liability remains lower than the cap. As a result, Empire believes that $25 million is more than ample protection for Empire's customers against any fluctuations in SPP market prices during the first ten years of the Wind Projects.[2]

Because it is the Commission's purpose to protect the public by utility overreaching, rather than focusing on insulating Empire and its tax equity partner(s) from market risk, the Office of the Public Counsel has crafted the *Missouri Empire Retail Customer Protection Plan* below that limits Empire's Missouri retail customers' risk that these wind projects are uneconomic. Therefore, as stated above, only if the Commission conditions the CCNs on the Office of the Public Counsel's *Missouri Empire Retail Customer Protection Plan* should the Commission issue the CCNs.

Missouri Empire Retail Customer Protection Plan

1. **$25 million Missouri retail customer cap**: Under this plan Empire's Missouri retail customers shall pay in their electric rates no more than $25 million for the King's Point, North Fork Ridge, and Neosho Ridge wind projects (This includes, but is not limited to the cost of the turbines, lease agreements, transmission upgrades and gen-ties.) during the time when Empire is paying hedge costs to the Wind Project Cos for the difference between a fixed hedge price and the floating SPP market price (Hedging Period) (Empire anticipates this time period to be approximately ten years).

[2] Empire witness Holmes surrebuttal testimony, as correccted, p. 13, l. 12 to p. 14, 1. 2.

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2. **Missouri retail customer risk sharing**: Subject to the $25 million limitation, Empire's Missouri retail customers will share equally with Empire in the risk that, over the same period of time bookended by rate cases, Empire's SPP revenues plus renewable energy credits sale revenues from the King's Point, North Fork Ridge, and Neosho Ridge wind projects ("Wind Project Revenues") do not exceed the sum of the accumulated depreciation reserve for those assets plus a return on those assets based on the rate of return the Commission most recently determined for Empire's electric operations grossed up for income taxes plus Empire's share of the prudent expenses to operate and maintain the wind projects plus Empire's prudent administrative and general wind project expenses ("Wind Project Expenses"). Because Empire has so much existing generation resources, during the Hedging Period the wind projects will have no capacity value for Empire's customers and the wind projects will have no replacement value for Empire's current wind PPAs; therefore, the Office of the Public Counsel has intentionally not included capacity and PPA replacement values in this plan.

3. **Revenue and Expense Tracking**: To effectuate this plan Empire monthly shall record and accumulate on its books and records in separate accounts, for each wind project and for them in the aggregate, both the Wind Project Revenues and the Wind Project Expenses.

4. **Rate Case Implementation**: In Empire's Missouri general electric rate cases that include periods during the Hedging Period, to the extent the Wind Project Expenses accrued since the Wind Project Expenses ending balance used in Empire's immediately preceding Missouri general electric rate case exceed the Wind Project Revenues accrued since the Wind Project Revenues ending balance used in Empire's immediately preceding Missouri general electric rate case, then, subject to the $25 million limitation, one-half of that difference shall be amortized over four years and included Empire's cost of service used for setting rates in its pending general electric rate case.

5. **Clawback**: If at the end of the Hedging Period the Wind Project Revenues balance exceeds the Wind Project Expenses balance, and any amounts for the King's Point, North Fork Ridge, and Neosho Ridge wind projects have been included in Empire's cost-of-service during the Hedging Period, then the lesser of the aggregate of those amounts or the aforesaid difference in Hedging Period accruals shall be used to reduce Empire's rate base.

6. **Ratebasing Wind Projects**: 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 of this plan, nor any amount in excess of the $25 million limitation.

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

Position:

1. The *Missouri Empire retail customer protection plan* set out in the Office of the Public Counsel's **Position** under **Issue 1.** above.
2. Before building any of the wind projects, Empire must secure tax equity financing on terms within the ranges set forth in the highly confidential table on page eleven (11) of the surrebuttal testimony of Empire witness Todd Mooney and consistent with his description of tax equity financing in his direct testimony at pages thirteen to twenty-one (13-21).
3. All of the Commission Staff's in-service criteria must be met before the Commission considers any amount for a wind project when setting Empire's Missouri retail rates.
4. Property taxes, payments-in-lieu of taxes, and negotiated payments to governmental entities for the Neosho Ridge wind project will not exceed, in the aggregate, $100 million over thirty (30) years.
5. Empire's Missouri retail customers will bear no financial responsibility for any increase in wind project costs due to delays that cause a wind project not to meet the December 31, 2020, commercial operation date required for eligibility to receive 100% of the presently available production tax credits for each of the three wind farms—Kings Point, North Fork Ridge, and Neosho Ridge, including financial responsibility Empire contractually bears for events within or without its control. These events include:

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(g) Delays as a result of Empire's inability to obtain approval from local, county, state or federal entities necessary for operation as listed in Staff's Rebuttal Report page 7-10 as well as Southwest Power Pool approval.

Respectfully,

/s/ Nathan Williams
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 22nd day of March 2019.

/s/ Nathan Williams

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