

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

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

**JOINT REPLY BRIEF OF NRDC AND SIERRA CLUB**

The Natural Resources Defense Council and Sierra reply to OPC on one point.

**The issue of excess capacity**

OPC claims that Empire's 1750 MW of generating capacity exceeds its all-time peak by over 500 MW.<sup>1</sup> This consists of 1447 MW of owned capacity and 303 MW of PPAs; 1477 MW is SPP-accredited.<sup>2</sup> Empire hit its peak of 1211 MW in January, 2018.<sup>3</sup> Climate change makes it plausible that this record will not endure for long.

It is not imprudent to replace the wind PPAs while the production tax credit is still available. The existing PPAs for 255 MW will expire in 2025 and 2028 and will need to be replaced for RES compliance if for nothing else.<sup>4</sup>

The stipulation in case EO-2018-0092 left the fate of Asbury up in the air. It could be retired shortly.<sup>5</sup> Subtracting Asbury's approximately 200 MW of capacity<sup>6</sup> would remove most of the difference between Empire's accredited capacity and the system peak.

The Commission's power to exclude excess capacity from rate base is undoubted, but the cases cited by OPC do not dictate that result here. As a general rule plant must be used and useful (but even the costs of cancelled projects are open to a prudence determination in the

---

<sup>1</sup> OPC Br. at 1, fn. 3.

<sup>2</sup> Mertens, T. 115-6.

<sup>3</sup> T. 131.

<sup>4</sup> Mertens Surrebuttal p. 4 lines 5-6.

<sup>5</sup> T. 103-4; Exh. 3P, Mertens Surrebuttal, p. 4 lines 8-10.

<sup>6</sup> Exh. 8, McMahon Surrebuttal, p. 9, fn. 11.

Commission's discretion). *Union Electric v. PSC*, 765 S.W.2d 618, 622–3 (Mo.App. W.D. 1988).

In *Summit Natural Gas*, GR-2014-0086,<sup>7</sup> a small gas utility embarked on an expansionary building campaign that left customers in Warsaw and Branson unable to cover the cost in reasonable rates.<sup>8</sup>

In the KCPL case, ER-80-48, 1980 WL 642585,<sup>9</sup> the company had 2824 MW, a projected 1980 peak of 2157 MW, and a “rate case peak for purpose of the revenue requirements” of 1,998 megawatts, a much bigger spread than in this case.

In the Arkansas P&L case, ER-85-265, 28 Mo.P.S.C.(N.S.) 435, 74 P.U.R.4<sup>th</sup> 36, 1986 WL 1301278,<sup>10</sup> the company overbuilt coal capacity in order to diversify away from natural gas and oil to the point where the Commission found, “In the instant case, the generating capacity in question simply is incapable of being used for the necessity or convenience of the ratepaying public.”

This case is different. The new capacity will be used and useful from the start, meeting Empire's load requirements and generating off-system sales that will flow through the FAC to customers' benefit.<sup>11</sup> And it will be lowering the present value of revenue requirement.<sup>12</sup>

The public's interest, convenience and necessity are all served by the plan embodied in the NUS.

---

<sup>7</sup> OPC Br. at 14–15.

<sup>8</sup> Report and Order, pp. 19–20.

<sup>9</sup> OPC Br. at 7–8.

<sup>10</sup> OPC Br. at 13–14.

<sup>11</sup> Mertens, T. 149 line 20–150 line 23

<sup>12</sup> Luebbert, T. 329 lines 11–17.

Respectfully submitted,

/s/ Henry B. Robertson  
Henry B. Robertson (Mo. Bar No. 29502)  
Great Rivers Environmental Law Center  
319 N. Fourth St, Suite 800  
St. Louis, Missouri 63102  
(314) 231-4181  
(314) 231-4184  
[hrobertson@greatriverslaw.org](mailto:hrobertson@greatriverslaw.org)

Attorney for NRDC and Sierra Club

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct PDF version of the foregoing was filed on EFIS and sent by email on this 7th day of May, 2019, to all counsel of record:

/s/ Henry B. Robertson  
Henry B. Robertson