

Issue: Conservation Issues  
Witness: Timothy N. Wilson  
Type of Exhibit: Surrebuttal Testimony  
Sponsoring Party: The Empire District  
Electric Company  
Case No. EO-2019-0010  
Date: March 5, 2019

**Before the Public Service Commission  
of the State of Missouri**

**Surrebuttal Testimony**

**of**

**Timothy N. Wilson**

**March 5, 2019**



**Liberty Utilities**<sup>®</sup>  
EMPIRE DISTRICT

TABLE OF CONTENTS  
OF  
TIMOTHY N. WILSON  
THE EMPIRE DISTRICT ELECTRIC COMPANY  
BEFORE THE  
MISSOURI PUBLIC SERVICE COMMISSION  
CASE NO. EO-2019-0010

**TABLE OF CONTENTS**

**I. INTRODUCTION .....1**

**II. THE MISSOURI PUBLIC SERVICE COMMISSION’S STATUTORY  
JURISDICTION IN REGARD TO WILDLIFE AND CONSERVATION ISSUES .....2**

**III. THE REQUIREMENTS OF THE PURCHASE AND SALE AGREEMENTS  
REGARDING WILDLIFE AND CONSERVATION PERMITTING.....4**

**IV. MDC’S RECOMMENDATIONS. ....5**

SURREBUTTAL TESTIMONY  
OF  
TIMOTHY N. WILSON  
THE EMPIRE DISTRICT ELECTRIC COMPANY  
BEFORE THE  
MISSOURI PUBLIC SERVICE COMMISSION  
CASE NO. EO-2019-0010

1 **I. INTRODUCTION**

2

3 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

4 A. My name is Timothy N. Wilson and my business address is 602 South Joplin Avenue,  
5 Joplin, Missouri, 64801.

6 **Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY IN THIS**  
7 **PROCEEDING?**

8 A. Yes. My professional background and qualifications are contained in that prior  
9 testimony.

10 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

11 A. I plan to respond to the rebuttal testimony of Missouri Department of Conservation  
12 (“MDC”) witnesses Jennifer Campbell, Dr. Janet Haslerig, and Dr. Kathryn Bulliner (the  
13 “MDC Witnesses”) who request that this Commission place limitations on the  
14 construction and operation of the North Fork Ridge and Kings Point wind farms (the  
15 “Missouri Wind Projects”) to address wildlife and conservation interests within the  
16 MDC’s jurisdiction. My testimony addresses my understanding of the Missouri Public  
17 Service Commission’s jurisdiction over wildlife and environmental issues, and explains  
18 the significant protections in place for wildlife and environmental interests that are

1 already addressed through the federal U.S. Fish and Wildlife permitting process in  
2 addition to protections contained in the Purchase and Sale Agreements for these two  
3 projects. I will also address some issues raised by the MDC Witnesses, which I do not  
4 believe pose any concerns regarding either the construction or operation of the wind  
5 farms.

6  
7 **II. THE MISSOURI PUBLIC SERVICE COMMISSION'S STATUTORY**  
8 **JURISDICTION IN REGARD TO WILDLIFE AND CONSERVATION ISSUES**

9 **Q. PLEASE EXPLAIN YOUR UNDERSTANDING OF THE MISSOURI PUBLIC**  
10 **SERVICE COMMISSION'S STATUTORY JURISDICTION OVER THE**  
11 **MISSOURI WIND PROJECTS.**

12 A. As set forth in the Company's application in this docket, the Company has applied for  
13 Certificates of Convenience and Necessity for the Missouri Wind Projects pursuant to  
14 Section 393.170.1, RSMo, and Missouri Public Service Commission ("Commission")  
15 Rules 4 CSR 240-2.060 and 4 CSR 240-3.105. RSMo **393.170 states that:**

16 1. No gas corporation, electrical corporation, water corporation or sewer  
17 corporation shall begin construction of a gas plant, electric plant, water system or  
18 sewer system, other than an energy generation unit that has a capacity of one  
19 megawatt or less, without first having obtained the permission and approval of the  
20 commission.

21 2. No such corporation shall exercise any right or privilege under any franchise  
22 hereafter granted, or under any franchise heretofore granted but not heretofore  
23 actually exercised, or the exercise of which shall have been suspended for more  
24 than one year, without first having obtained the permission and approval of the  
25 commission. Before such certificate shall be issued a certified copy of the charter  
26 of such corporation shall be filed in the office of the commission, together with a  
27 verified statement of the president and secretary of the corporation, showing that  
28 it has received the required consent of the proper municipal authorities.

1 3. The commission shall have the power to grant the permission and approval  
2 herein specified whenever it shall after due hearing determine that such  
3 construction or such exercise of the right, privilege or franchise is necessary or  
4 convenient for the public service. The commission may by its order impose such  
5 condition or conditions as it may deem reasonable and necessary. Unless  
6 exercised within a period of two years from the grant thereof, authority conferred  
7 by such certificate of convenience and necessity issued by the commission shall  
8 be null and void.

9  
10 **Q. HAS THE COMMISSION COMMONLY USED ANY PARTICULAR**  
11 **STANDARD BY WHICH IT ASSESSES PROPOSED CERTIFICATES OF**  
12 **CONVENIENCE AND NECESSITY (“CCNS”) UNDER THIS STATUTE?**

13 A. Yes. As explained on page 3 of Staff Witness Dietrich’s Rebuttal Testimony, the  
14 Commission applies the so-called “Tartan Factors” in reviewing CCN applications. The  
15 Tartan factors are as follows: (1) whether there is a need for the project in question; (2)  
16 whether the utility proposing the project is qualified to own, operate, control and manage  
17 the facilities and provide the proposed service; (3) whether the utility has the financial  
18 ability; (4) whether the proposed projects are economically feasible, and; (5) whether the  
19 proposed projects are in the public interest. There is no explicit requirement in the Tartan  
20 Factors for consideration of wildlife issues. To my knowledge, the Commission statutes  
21 and rules do not identify wildlife interests for Commission consideration. There are other  
22 state agencies with that responsibility.

23 **Q. HAS THE COMMISSION IMPOSED WILDLIFE CONDITIONS IN THE**  
24 **CONTEXT OF OTHER CCN APPLICATIONS?**

25 A. Based on my understanding, the Commission has not itself imposed wildlife conditions  
26 on parties outside the context of proposed settlements. In other words, the only situations  
27 with which I am familiar where the Commission has ordered wildlife limitations on

1 projects, is in situations where the parties to a case have agreed among themselves to  
 2 those conditions. The Commission should not change course in this case and impose  
 3 wildlife conditions other than those that are voluntarily agreed to by the parties. Further,  
 4 as Ms. Campbell points out in her testimony, it is the Missouri Department of  
 5 Conservation – not this Commission – which has “a constitutional mandate to conserve  
 6 fish, forest, and wildlife in the state.” Campbell Rebuttal at p. 5.

7 **Q. HAS THE MISSOURI DEPARTMENT OF CONSERVATION (“MDC”)**  
 8 **ENACTED ANY REGULATIONS TO PROTECT THE TYPES OF SPECIES**  
 9 **THAT IT RAISES CONCERNS ABOUT IN THIS DOCKET?**

10 A. Not to my knowledge. Ms. Campbell’s rebuttal testimony cites general regulations of the  
 11 MDC, but no regulations that specifically address the MDC’s request in this docket  
 12 regarding the gray bat and the bald eagle.

13  
 14 **III. THE REQUIREMENTS OF THE PURCHASE AND SALE AGREEMENTS**  
 15 **REGARDING WILDLIFE AND CONSERVATION PERMITTING**

16 **Q. DO THE PURCHASE AND SALE AGREEMENTS FOR THE MISSOURI WIND**  
 17 **PROJECTS ADDRESS ANY WILDLIFE CONCERNS IN ASSOCIATION WITH**  
 18 **THE DEVELOPMENT OF THE PROJECTS?**

19 A. Although the purchase and sale agreement does not itself provide any protections for  
 20 wildlife, it does require Liberty Utilities as the Purchaser to take steps for the protection  
 21 of wildlife that would otherwise be voluntary. \*\*\* \_\_\_\_\_  
 22 \_\_\_\_\_

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

---

---

**IV. MDC'S RECOMMENDATIONS**

**Q. DO YOU AGREE WITH MS. CAMPBELL AND DR. HASLERIG THAT FEDERAL LAWS THAT GOVERN BALD EAGLES ARE NOT SUFFICIENT IN THE CASE OF THE MISSOURI WIND PROJECTS?**

A. No, I do not. Ms. Campbell does not identify any issues with federal regulation of bald eagles other than the fact that the U.S. Fish and Wildlife Service is reviewing and taking action on an eagle conservation plan developed by the wind developer. There is nothing suspect about that; it is no different than the work of this Commission, which reviews proposals by those entities that it regulates and acts upon them. The crux of Ms. Campbell's concern with federal law is that it does not protect species that are only regulated at the state level and that the MDC has no authority to impose limitations in the wind farm siting process. Campbell Rebuttal at p. 8-9. In effect, Ms. Campbell is asking that the Commission fill this regulatory gap, even though there is nothing in the CCN statute which expressly authorizes the Commission to impose restrictions on wildlife in the CCN process.

Dr. Haslerig asks that the Commission mandate an Eagle Conservation Plan as part of the Missouri Wind Projects. This condition is unnecessary, because as described below, the ECP is an obligation in the Purchase and Sale Agreement for the Missouri Wind Projects. Dr. Haslerig also argues that the Commission should impose other conditions such as post-construction monitoring of eagle fatality and disturbances, bald eagle next surveys,

1 and various reporting requirements. These conditions will be required by the ECP and  
2 the Eagle Incidental Take Permit that the Company will be seeking.

3 **Q. HAVE YOU REVIEWED DR. BULLINER'S TESTIMONY REGARDING**  
4 **PROTECTION OF CERTAIN BAT SPECIES, AND IF SO, DO YOU HAVE ANY**  
5 **RESPONSE TO IT?**

6 A. Yes. I have reviewed Dr. Bulliner's rebuttal testimony and her recommendations relating  
7 to a bat habitat plan. As Dr. Bulliner points out, neither the gray bat nor the tri-colored  
8 bat is currently the subject of any federal protections and are not the subject of any state  
9 specific requirements. Nonetheless, the MDC requests that the Commission impose  
10 limitations on the Missouri Wind Projects in order to protect against potential harm to  
11 gray and tri-colored bats. I would first note that by Dr. Bullinar's own admission, "in  
12 Missouri the population [of gray bats] is thought to be fairly stable due to cave gating at  
13 hibernacula and maternity locations." Bullinar Rebuttal at p. 15. From the Company's  
14 perspective, we have been studying gray bats in the areas of the projects since early in  
15 2018 and will continue to do so through 2019. These studies were undertaken under the  
16 direction of the USFWS, and technical consultation with MDC. The information will be  
17 used to develop the habitat conservation plans and incidental take permits as required to  
18 protect the covered species. We assume there will also be mitigation opportunities  
19 presented during the discussions. However, the limitations need to be informed by the  
20 completed studies. USFWS indicated our studies will be the best indicator of gray bat  
21 activity in the project area. Dr. Bullinar admits "there have not been any studies showing  
22 the impacts of wind turbines on gray bats". Bullinar Rebuttal at p. 23. describe what we  
23 agree to do]



1 **Q. ARE THERE ANY RECOMMENDATIONS FROM DR. BULLINAR WITH**  
2 **WHICH YOU DISAGREE?**

3 A Yes. Dr. Bullinar expresses concern and recommends a required setback of one half mile  
4 from known mist-net capture locations, acoustic locations and riparian corridors on Kings  
5 Point. This recommendaiton is not appropriate as we do not have current research that the  
6 suggested buffer distance is pertinent or required. On the other hand, the consequence of  
7 this recomemndation would result in several of the best producing turbines being  
8 eliminated from consideration, which would lower the annual energy production for the  
9 site and potentially increase construction costs, thus raising the levelized cost of energy  
10 for the sites. Although the final site layouts are not complete we do know based upon  
11 initial geotechnical work and the turbine siting criteria that the requirement of one half  
12 mile would be detrimental to the project, especially considering there is not enough  
13 information to suggest the buffer distance is pertinent.

14 **Q. MDC WITNESS CAMPBELL REQUESTS THAT IN ADDITION TO THE**  
15 **ABOVE-DESCRIBED RESTRICTION THAT THE COMMISSION IMPOSE**  
16 **CERTAIN SETBACK REQUIREMENTS GOVERNING THE PLACEMENT OF**  
17 **WIND TURBINES. DO YOU HAVE ANY RESPONSE TO HER REQUESTS?**

18 A. Yes. Ms. Campbell asks the Commission to impose a setback of at least three miles  
19 between the Missouri Wind Projects and all MDC Conservation Areas so that  
20 recreational users of the MDC Conservation Areas do not experience “visual disruptions”  
21 by having to view the wind turbines. Simply put, if the Commission were to impose this  
22 three mile set back on the Missouri Wind Projects, it would mean that the \_North Fork  
23 Ridge and Kings Point projects would no longer be viable options and certainly fall well

1 short of the expected savings modeled and discussed in the Customer Savings Plan. This  
2 is the result of four primary MDC identified land areas on the sites.

3 **Q. HAS EMPIRE ALREADY TAKEN STEPS TO BE MINDFUL OF**  
4 **CONSERVATION AND WILDLIFE AREAS?**

5 A. Yes. As directed by the USFWS Land-based Wind Energy Guidelines (cited by MDC  
6 witness Campbell), wind planning recommends avoiding areas that concentrate wildlife  
7 or provide migration corridors when siting wind projects. Beginning in the fall of 2017,  
8 the Company has conducted 3 seasons of surveys that indicate no concentrated migration  
9 corridors, major migratory bird stopover habitat, raptor flight pathways or concentration  
10 areas within either project. In addition, the Company is actively working with MDC to  
11 minimize, the extent economically possible, their concerns with respect to viewing areas.

12 **Q. DOES MS. CAMPBELL RECOMMEND ANY OTHER CONDITIONS?**

13 A. Yes. Ms. Campbell also asks that the Commission require Empire to conduct viewshed  
14 studies of the Missouri Wind Projects because “MDC suspects” that the presence of wind  
15 turbines could impact the public’s use and enjoyment of certain prairie and conservation  
16 areas.

17 **Q. HOW DO YOU RESPOND TO THAT PROPOSED CONDITION?**

18 A. First, I would note that to my knowledge, the Commission has not required a viewshed  
19 study in any other CCN case. I do not see any basis for treating these Wind Projects  
20 differently.

21 Further, Ms. Campbell also expresses concern about turbine noise, vibrations, blinking  
22 lights, and shadow flicker. The Missouri Wind Projects will meet industry standards  
23 regarding turbine noise, as there are no turbine noise requirements imposed either by the

1 State or the counties where the projects are located. The Federal Aviation Administration  
2 does have requirements governing blinking lights, to which the Wind Projects will  
3 adhere. I do not have any reason to believe that shadow flicker from the turbines would  
4 be an issue based on the proposed turbine locations that are one mile away from the MDC  
5 Conservation Areas in question. In sum, I do not think there is a basis to warrant a  
6 viewshed study.

7 **Q. DO YOU HAVE ANY RESPONSE TO MS. CAMPBELL'S RECOMMENDATION**  
8 **THAT EMPIRE BE REQUIRED TO CONDUCT PRE AND POST**  
9 **CONSTRUCTION TRAFFIC STUDIES OF THE MDC CONSERVATION**  
10 **AREAS NEAR THE MISSOURI WIND PROJECTS?**

11 A. Yes. This recommendation does not make sense to me, as there are very limited roads or  
12 parking in or near the sites of the Missouri Wind Projects.

13 **Q. MS. CAMPBELL ALSO RAISES CONCERN ABOUT IMPACTS ON HUNTING**  
14 **ON MDC CONSERVATION AREAS, AND THE POTENTIAL IMPACT ON**  
15 **PRESCRIBED FIRES AND SMOKE INHIBITING THE MANAGEMENT OF**  
16 **TRANSMISSION LINES ASSOCIATED WITH THE MISSOURI WIND**  
17 **PROJECTS. WHAT IS YOUR RESPONSE?**

18 A. I am not aware of any reason why hunting on MDC Conservation Areas would be limited  
19 or affected in any manner by the Missouri Wind Projects and would point out that Ms.  
20 Campbell's testimony in this respect is entirely speculative. The same is true with her  
21 concern about the potential impact of prescribed fires on MDC Conservation Areas  
22 impacting transmission lines and operation of the wind turbines. Such smoke would have  
23 no impact on the operation of the transmission lines, and of course any necessary

1 maintenance on such lines could be coordinated with MDC's prescribed burns. It is also  
2 the case that smoke would have no impact on the ability of the wind turbines to operate.  
3 For these reasons, I do not believe that either of these issues are of concern.

4 **Q. DOES EMPIRE AGREE TO ANY OF DR. HASLERIG'S**  
5 **RECOMMENDATIONS?**

6 A. Yes. Empire is agreeable to maintaining a 1-mile setback from currently observed active  
7 or inactive alternate eagle nests. In fact the decision was already made on January 4,  
8 2019, per USFW guidance, to sacrifice the 4 turbine locations described in Figure 1 of  
9 Dr. Haslerig's recommendations. In addition, there are several recommendations  
10 presented by Dr. Haslerig that the Company will already be conducting with the USFWS  
11 through the ECP. The ECP incorporates best management practices into the design and  
12 siting of the Project and includes avoidance and minimization measures to reduce the risk  
13 to eagles during construction, operation and decommissioning. Post construction  
14 monitoring and reporting are included in the ECP outside of the CCN process.

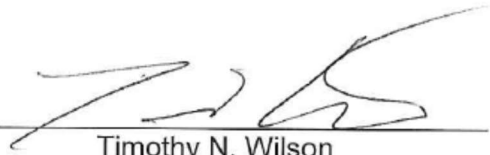
15 **Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?**

16 A. Yes.

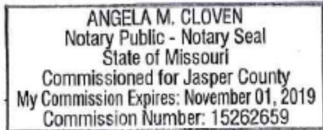
AFFIDAVIT OF TIMOTHY N. WILSON

STATE OF MISSOURI )  
) ss  
COUNTY OF JASPER )

On the 2<sup>nd</sup> day of March, 2019, before me appeared Timothy N. Wilson, to me personally known, who, being by me first duly sworn, states that he is the Central Region Director of Electric Operations – Services of The Empire District Electric Company – Liberty Utilities Central and acknowledges that he has read the above and foregoing document and believes that the statements therein are true and correct to the best of his information, knowledge and belief.

  
\_\_\_\_\_  
Timothy N. Wilson

Subscribed and sworn to before me this 2<sup>nd</sup> day of March, 2019.



  
\_\_\_\_\_  
Notary Public

My commission expires: 11/01/19.