

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

In the Matter of the Application of Union Electric                    )  
Company d/b/a Ameren Missouri for Permission and                    )  
Approval and a Certificate of Public Convenience and                )  
Necessity Authorizing it to Construct a Wind Generation            )  
Facility.    )  
File No. EA-2019-0021

**THIRD STIPULATION AND AGREEMENT**

**COME NOW** Union Electric Company, d/b/a Ameren Missouri ("Ameren Missouri" or the "Company"), the Staff of the Missouri Public Service Commission ("Staff"), Renew Missouri Advocates ("Renew Missouri"), the Missouri Industrial Energy Consumers ("MIEC"), the Missouri Department of Economic Development – Division of Energy ("DE"), the Natural Resources Defense Council ("NRDC"), the Missouri Department of Conservation ("MDC"), Atchison County, Missouri, DeKalb County, Missouri, the Tarkio, Missouri R-1 School District, the Rock Port, Missouri R-2 School District, and the Fairfax, Missouri R-3 School District (collectively, the "Signatories"<sup>1</sup>), and submit this Third Stipulation and Agreement ("Agreement") and respectfully state as follows:

**BACKGROUND**

1. On October 22, 2018, Ameren Missouri filed its *Application*, which requested a Certificate of Convenience and Necessity ("CCN").
2. Renew Missouri, NRDC, MIEC, MDC, the Sierra Club, the Division of Energy, MDC, Atchison County, DeKalb County, the Rockport R-2 School District, the Tarkio R-1 School District, and the Fairfax R-3 School District applied for, and were granted, intervention. OPC is also a party to this docket.

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<sup>1</sup> While the Sierra Club and the Office of the Public Counsel ("OPC") are not Signatories, they have indicated that they do not object to this stipulation.

3. After several discussions, the Signatories have reached a Stipulation and Agreement ("Agreement"), as is set forth below. This Agreement supersedes the Stipulation and Agreement filed on January 30, 2019 and the Second Stipulation and Agreement filed on February 11, 2019.

### **AGREEMENTS AMONG THE SIGNATORIES**

4. Ameren Missouri, Staff, Renew Missouri, MIEC, DE, and NRDC, and in consideration of the Settlement and Services Agreement and Settlement Agreement attached hereto as Exhibits A and B, respectively,<sup>2</sup> Atchison County, Missouri, DeKalb County, Missouri, the Tarkio, Missouri R-1 School District, the Rock Port, Missouri R-2 School District, and the Fairfax, Missouri R-3 School District, agree that, on the terms provided for herein, the Missouri Public Service Commission ("Commission") should grant Ameren Missouri's request for a CCN pursuant to Section 393.170.1 to construct and own a wind generation facility, which includes a gen-tie line, to be constructed in Atchison County Missouri, under the Build Transfer Agreement ("BTA") with EDF-RE US Development, LLC (the "Project") as set forth in the Company's *Application*. This authority includes permission to acquire any Non-Compliant wind turbine generators, as defined by and according to the terms of the BTA. The Signatories agree the costs of this Project are Renewable Energy Standard compliance costs so long as the facility is certified by DE as a renewable energy resource under 4 CSR 340-8.010. MDC's principal interest in this case are the wildlife issues addressed in paragraph 6.D of this Agreement. Therefore, it neither supports nor opposes the grant of the CCN.

5. Authority to Merge: The Signatories agree the Commission should grant Ameren

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<sup>2</sup> The Company and Atchison County and DeKalb County have agreed on these agreements and will substitute fully executed copies in the next several days. It was not possible given the short-time frame until the scheduled hearings for the counties to properly notice a meeting and formally approve the agreements as required by law.

Missouri authority to merge the special purpose entity Brickyard Hills Project, LLC into Ameren Missouri with Ameren Missouri to be the surviving entity pursuant to § 393.190.1, as set forth in the Company's *Application*.

6. Conditions: The Signatories agree that the CCN should be granted subject to the following conditions:

A. Plans and Specifications: Ameren Missouri shall file with the Commission quarterly progress reports on the plans and specifications for the Project, and the first report shall be due on the earlier of the first day of the first calendar quarter beginning after the CCN is issued. Ameren Missouri shall also include an update on all permits obtained as part of its quarterly progress reports, and will file complete plans and specifications prior to commencement of construction. Ameren Missouri shall also include documentation regarding transmission and interconnection progress, including supporting documentation of cost increases.

B. Ameren Missouri must receive approval from the Federal Energy Regulatory Commission pursuant to § 203 of the Federal Power Act.

C. Production Tax Credits (“PTCs”): Ameren Missouri will provide the full grossed-up value of PTCs to customers through the Renewable Energy Standard Rate Adjustment Mechanism or in rates when earned (subject to normal billing lags), without any reduction and without a return on any deferred tax assets, regardless of Ameren Missouri’s tax position (the “PTC Guarantee”). Notwithstanding the foregoing, this PTC Guarantee will not apply to the extent a change in law or a force majeure event results in a tax position for Ameren Missouri that prevents Ameren Missouri from utilizing the PTCs in the year earned. If the PTC Guarantee did not apply in a given year because of the immediately

preceding sentence, the Company will provide to customers the grossed-up value of the PTCs that are earned in that year when and to the extent that those PTCs are actually utilized to reduce the Company's tax liability. For purposes of this agreement, a “force majeure event” is defined as an act of God such as an earthquake, tornado, or severe flood, or a war or act of terrorism.

D. Wildlife: The wildlife-related conditions set forth on Exhibit C hereto are incorporated herein by this reference. The Signatories agree that adoption of the conditions reflected in Exhibit C does not imply or suggest that adoption of any one or all of such conditions in any other case is necessary, appropriate, or required by the public interest. The Signatories further agree that the conditions reflected on Exhibit C are specific to the evidence presented in the testimony pre-filed in this case and that they shall not argue or claim in a future Commission case or proceeding that the inclusion of such conditions in this case supports or does not support the inclusion of the same or similar conditions in that case or proceeding, and agree that violation of the proceeding sentence shall be cause for any Signatory to file an objection to or Motion to Strike such argument or claim in such future case or proceeding. .

E. Ameren Missouri shall include transmission capital cost and capacity factor sensitivity analyses, including a “worst-case” scenario, with all future CCN applications for wind and solar projects interconnected at the transmission level.

7. In-Service Criteria: The in-service criteria agreed upon in connection with File No. EA-2018-0202 (attached hereto as Exhibit D) shall apply to the wind facility at issue in this case.

8. Depreciation: The Signatories agree that until such time as a different depreciation

rate is approved by the Commission for wind facility investments recorded to FERC Account 344, the currently-approved depreciation rate of 6.81% shall be used. The Signatories further agree until such time as a different net salvage percentage is approved by the Commission, a net salvage percentage of -17% shall be used and tracked on the Company's books. The Signatories agree that the direct testimony of Ameren Missouri supports a life of the wind assets of 30 years. Prior to the in-service date for the Project, Ameren Missouri will provide a depreciation study potentially proposing a new depreciation rate for the wind facility investments recorded to FERC Account 344.

9. Prudence: The Signatories agree that they shall not challenge the prudence of the decision to acquire the facility under the terms of the BTA, including Non-Compliant wind turbine generators under the terms of the BTA, and to merge Brickyard Hills Project, LLC into Ameren Missouri if the acquisition of the facility closes pursuant to the BTA. Nothing in this Stipulation limits the ability of any Signatory or other party from challenging the prudence of the design, construction costs, interconnection costs, and all other project related costs, including costs impacted by construction duration.

#### **GENERAL PROVISIONS OF AGREEMENT**

10. This Agreement is being entered into solely for the purpose of settling the issues in this case explicitly set forth above. Unless otherwise explicitly provided herein, none of the Signatories to this Agreement shall be deemed to have approved or acquiesced in any ratemaking or procedural principle, including, without limitation, any cost of service methodology or determination, depreciation principle or method, method of cost determination or cost allocation or revenue-related methodology.

11. This Agreement is a negotiated settlement. Except as specified herein, the

Signatories to this Agreement shall not be prejudiced, bound by, or in any way affected by the terms of this Agreement: (a) in any future proceeding; (b) in any proceeding currently pending under a separate docket; and/or (c) in this proceeding should the Commission decide not to approve this Agreement, or in any way condition its approval of same. This Agreement has resulted from extensive negotiations among the Signatories, and the terms hereof are interdependent. If the Commission has questions for the Signatories' witnesses or Signatories, the Signatories will make available, at any on-the-record session, their witnesses (if any) and attorneys on the issues resolved by this Stipulation, so long as all Signatories have had adequate notice of that session. The Signatories agree to cooperate in presenting this Stipulation to the Commission for approval, and will take no action, direct or indirect, in opposition to the request for approval of this Stipulation.

12. If the Commission does not approve this Agreement unconditionally and without modification, then this Agreement shall be void and no Signatory shall be bound by any of the agreements or provisions hereof.

13. If approved and adopted by the Commission, this Agreement shall constitute a binding agreement among the Signatories. The Signatories shall cooperate in defending the validity and enforceability of this Agreement and the operation of this Agreement according to its terms.

14. If the Commission does not approve this Agreement without condition or modification, and notwithstanding the provision herein that it shall become void, (a) neither this Agreement nor any matters associated with its consideration by the Commission shall be considered or argued to be a waiver of the rights that any Signatory has for a decision in accordance with RSMo. §536.080 or Article V, Section 18 of the Missouri Constitution, and (b) the Signatories shall retain all procedural and due process rights as fully as though this Agreement had not been

presented for approval, and any suggestions, memoranda, testimony, or exhibits that have been offered or received in support of this Agreement shall become privileged as reflecting the substantive content of settlement discussions and shall be stricken from and not be considered as part of the administrative or evidentiary record before the Commission for any purpose whatsoever.

15. If the Commission accepts the specific terms of this Agreement without condition or modification, only as to the settled issues in these cases explicitly set forth above, the Signatories each waive their respective rights to present oral argument and written briefs pursuant to RSMo. §536.080.1, their respective rights to the reading of the transcript by the Commission pursuant to §536.080.2, their respective rights to seek rehearing pursuant to §536.500, and their respective rights to judicial review pursuant to §386.510. This waiver applies only to a Commission order approving this Agreement without condition or modification issued in this proceeding and only to the issues that are resolved hereby. It does not apply to any matters raised in any prior or subsequent Commission proceeding nor any matters not explicitly addressed by this Agreement.

16. This Agreement embodies the entirety of the agreements between the Signatories in this case on the issues addressed herein and may be modified by the Signatories only by a written amendment executed by all of the Signatories.

17. Contingent upon Commission approval of this Stipulation without modification, the Signatories hereby stipulate to the admission into the evidentiary record of the testimony of their witnesses.

**WHEREFORE**, the Signatories request the Missouri Public Service Commission issue an order approving the terms and conditions of this Second Stipulation and Agreement, including

(in the case of all Signatories except MDC, which neither supports nor opposes issuance of the CCN) issuance of a CCN for the Project on the terms outlined herein.

Respectfully submitted,

/s/ James B. Lowery

**James B. Lowery**, Mo. Bar #40503  
SMITH LEWIS, LLP  
P. O. Box 918  
Columbia, MO 65205  
(T) 573-443-3141  
(F) 573-442-6686  
[lowery@smithlewis.com](mailto:lowery@smithlewis.com)

/s/ Nicole Mers

**Nicole Mers**, Mo. Bar #66766  
Staff Counsel  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102  
(T) 573-751-6651  
(F) 573-751-9285  
[Nicole.mers@psc.mo.gov](mailto:Nicole.mers@psc.mo.gov)

*Attorney for the Staff of  
Missouri Public Service Commission*

/s/ Wendy K. Tatro

**Wendy K. Tatro**, Mo. Bar No. 60261  
Director & Assistant General Counsel  
Ameren Missouri  
1901 Chouteau Avenue, MC 1301  
St. Louis, MO 63103  
(T) (314) 554-3484  
(F) (314) 554-4014  
[AmerenMOService@ameren.com](mailto:AmerenMOService@ameren.com)

/s/ Tim Opitz

**Tim Opitz**, Mo. Bar #65082  
409 Vandiver Dr., Bldg. 5, Ste. 205  
Columbia, MO 65202  
(T) 573-303-0394, Ext. 3  
(F) 573-303-5633  
[tim@renewmo.org](mailto:tim@renewmo.org)

*Attorney for Renew Missouri*

*Attorneys for Union Electric Company  
d/b/a Ameren Missouri*

/s/ Lewis Mills

**Lewis Mills**, Mo. Bar #35275  
221 Bolivar St., Ste. 101  
Jefferson City, MO 65102  
(T) 573-556-6627  
(F) 573-556-7447  
[Lewis.mills@bclplaw.com](mailto:Lewis.mills@bclplaw.com)

/s/ Henry B. Robertson

**Henry B. Robertson**, Mo Bar #29502  
319 N. Fourth St., Suite 800  
St. Louis, MO 63102  
(T) 314-231-4181  
(F) 314-231-4184  
[hrobertson@greatriverslaw.org](mailto:hrobertson@greatriverslaw.org)

*Attorney for Natural Resources  
Defense Council*

/s/ Diana M. Vuylsteke

**Diana M. Vuylsteke**, Mo. Bar #42419



221 N. Broadway, Ste. 3600  
St. Louis, MO 63012  
(T) 314-259-2543  
(F) 314-259-2020  
[dmvuyksteke@bclplaw.com](mailto:dmvuyksteke@bclplaw.com)

*Attorneys for Missouri Industrial  
Energy Consumers*

*/s/ Stephanie S. Bell*  
**Stephanie S. Bell**, Mo. Bar #61855  
308 E. High Street, Suite 300  
Jefferson City, MO 65101  
(T) 573-750-4100  
[sbell@ellingerlaw.com](mailto:sbell@ellingerlaw.com)

*Attorney for Missouri Department  
Of Conservation*

*/s/ Rochelle L. Reeves*  
**Rochelle L. Reeves**, Mo. Bar #51058  
PO Box 157  
Jefferson City, MO 65102  
(T) 573-526-2423  
*rreeves.deenergycases*

*Attorney for Missouri Division of Energy*

**CERTIFICATE OF SERVICE**

The undersigned certifies that true and correct copies of the foregoing have been e-mailed or mailed, via first-class United States Mail, postage pre-paid, to counsel of record this 20th day of February, 2019.

/s/ James B. Lowery  
James B. Lowery

**SETTLEMENT AND SERVICES AGREEMENT**

This Settlement and Services Agreement (“Agreement”) is entered to this \_\_\_ day of February, 2019, and is by and between Union Electric Company d/b/a Ameren Missouri (the “Company”) and Atchison County, Missouri (the “County”).

**Recitals**

WHEREAS, the Company filed Missouri Public Service Commission (“Commission”) Case No. EA-2019-0021 seeking a certificate of convenience and necessity under Section 393.170.1, RSMo. and the authority to merge Brickyard Hills Project, LLC (“Brickyard Hills”) into the Company (collectively, the “CCN Request”); and

WHEREAS, the CCN Request relates to an approximately 157 megawatt wind generation facility (the “Facility”) being developed in the unincorporated area of the County, which would be acquired by the Company upon its acquisition of 100% of the ownership interests in Brickyard Hills and the merger of Brickyard Hills into the Company, all as provided for in a Build Transfer Agreement between the current owner of Brickyard Hills and the Company dated October 5, 2018 (the “BTA”); and

WHEREAS, the County is a party to Case No. EA-2019-0021; and

WHEREAS, the County took a position in opposition to the Company’s CCN Request; and

WHEREAS, Brickyard Hills has entered into certain agreements with the County for the construction, operation, and maintenance of the Facility; and

WHEREAS, the County has disputed whether those agreements can be assigned to, or otherwise assumed by, the Company, and has disputed the sufficiency of whether those agreements would allow the Company to operate and maintain the Facility if the Company obtains ownership of the Facility pursuant to the terms of the BTA; and

WHEREAS, certain services are needed in order to safely and reliably operate and maintain the Facility, some of which the County is willing and able to provide; and

WHEREAS, the Company and the County have agreed upon the terms and conditions set forth in this Agreement that resolve the County’s opposition to the CCN Request, any disputes regarding whether the above-referenced agreements can be assigned to, or assumed by, the Company, and whether such agreements are sufficient for the Facility’s construction, operation, or maintenance, and

WHEREAS, the parties make no admissions as to the facts or conclusions of law raised by either party in Case No. EA-2019-0021; and

WHEREAS, the County and the Company have agreed on certain services to be provided by the County in exchange for compensation paid by the Company for those services.

## EXHIBIT A EA-2019-0021

NOW THEREFORE, for and in consideration of the agreements reflected herein, the Company and the County agree as follows:

1. Recitals. The Recitals set forth above are incorporated herein by this reference.
2. Support of the CCN Request. The County will withdraw its opposition to the CCN Request and support approval of the CCN Request by the Commission, subject only to the conditions set forth in the Second Stipulation and Agreement previously filed in Commission Case No. EA-2019-0021 on February 11, 2019.
3. Services. Commencing with the completion of the merger of Brickyard Hills into the Company (the “Merger Date”) and during each year of the Facility’s commercial operation, the County will provide the following services to Ameren Missouri in support of Ameren Missouri’s safe and reliable operation and maintenance of the Facility:
  - a. Necessary labor, equipment, and materials, at the County’s expense, to maintain and repair on a priority basis the County’s roads that lead to the Facility’s turbines, operations and maintenance building, substation, and transmission line structures and, if such roads and/or bridges are damaged by Ameren Missouri or by its agents and contractors due to heavy equipment operation above the roads’ weight limit, the County shall also, at its expense, provide labor and equipment necessary to repair such damage with Ameren Missouri to provide the materials needed to effect any such repairs at Company’s expense. Notwithstanding the foregoing, the Company shall not without a necessary permit operate or allow its agents or contractors to operate equipment above the posted weight limits on any bridge on a County road, provided, that damage to a bridge on a County road caused by the Company’s or its agents’ or contractors’ operation of equipment on such bridge in excess of posted weight limits for the bridge shall be repaired completely at the Company’s expense. The Road Use and Maintenance Agreement dated July 10, 2018 between the County and Brickyard Hills will be amended after the Merger Date occurs as necessary to reflect the provisions of this subparagraph 3.a. and the Brickyard Hills agreement shall remain in force and effect as to the Company after the Merger Date occurs until the parties amend it;
  - b. Priority snow removal (including de-icing application as needed) at the County’s expense of County roads that lead to the Facility’s turbines, operations and maintenance building, substation, and transmission line structures in coordination with the Company when a weather event requiring such removal occurs. It is agreed that priority snow removal will apply to the roads leading to the operations and maintenance building and the substation for all such weather events, and to such turbines or transmission line structures as may require attention as identified by Ameren Missouri;
  - c. All required permits no later than two (2) business days’ notice from the Company to permit the Company or its agents or contractors to use equipment that exceeds the

**EXHIBIT A EA-2019-0021**

- posted weight limit on any County road and/or bridge to operate, maintain, or service the Facility;
- d. Security and monitoring services by County law enforcement personnel for each turbine, the substation, and the operations and maintenance building daily;
  - e. Emergency and safety dispatch as needed;
  - f. Installation and maintenance of emergency 911-signs to facilitate safety awareness; and;
  - g. Fire safety, ambulance, and EMT training and response using the respective District-based providers' equipment as reasonably necessary to promptly respond to fires or other emergencies at the substation, operations and maintenance building, at any turbine, or along the transmission line connecting the Facility to the regional transmission grid.
4. Full Resolution of Disputes Regarding County Permission Needed for Construction, Operation, and Maintenance. The County acknowledges and agrees (a) that it has validly given its assent for Brickyard Hills to lay and maintain facilities on, over, or under public roads or highways in the County for the construction, operation, and maintenance of the Facility pursuant to the Right-of-Way Easement Agreement between the County and Brickyard Hills dated July 10, 2018, which is recorded in Book 248 at Page 568 in the Office of the County Recorder and is also re-recorded in Book 248 at Page 682 in said Office, including an associated Affidavit recorded in Book 248 at Page 705 in said Office; (b) that the assent referred to in subparagraph (a) of this paragraph 4 is all the permission required from the County for the construction, operation, and maintenance of the Facility, under Section 229.100, RSMo, or otherwise; (c) that upon the merger of Brickyard Hills into the Company, the assent given by the County to Brickyard Hills, together with the rights under the above-referenced Right-of-Way Easement Agreement, will inure to the Company without the necessity of any further action by the County, Brickyard Hills, or the Company (the Company acknowledging that from and after such merger it will assume Brickyard Hill's obligations thereunder); and (d) that it will cooperate in defending the validity of the permissions it has given for the construction, operation, and maintenance of the Facility if the same was challenged by another person or entity.
5. Annual Payment. In consideration of the services to be provided by the County under paragraph 3 and the County's other agreements herein, the Company will make an annual payment to the County starting on December 31 of the first calendar year following the Merger Date, consisting of an initial annual payment of Three Hundred Thousand Dollars (\$300,000) and subsequent annual payments also due on December 31 of each succeeding year in an amount equal to one hundred and two percent (102%) of the prior year's payment. Such annual payments shall be due and payable for so long as the Facility remains in commercial operation.

**EXHIBIT A EA-2019-0021**

6. Legislation. In further consideration of the County's agreements hereunder, the Company will support the passage of legislation by the 100<sup>th</sup> and 101<sup>st</sup> Missouri General Assembly applicable solely to wind generation facilities owned by Commission-regulated utilities that go into service after the effective date of the legislation's enactment so that such wind generation facilities are locally assessed such that all the property taxes generated by such facilities are payable to the taxing authorities in the county where the facility is located. Notwithstanding anything to the contrary contained in this Agreement, the County's obligations under paragraph 3 and the Company's obligations under paragraph 5 shall become void concurrently with the effective date of legislation as described in this paragraph 6. If those obligations become void under immediately preceding sentence, the Company and the County will negotiate in good faith to reach agreement on the terms and conditions for services to be provided by the County.
7. Wind Technician Training Program. The Company and the local school districts and the County through the Atchison County Development Corporation will collaborate on developing a wind technician training program to be offered by a local college or other educational institution located in the County as a part of this agreement associated with the school districts in the County for their respective withdrawal of opposition to the CCN application.
8. Contingent Effectiveness of Certain Obligations. The agreements reflected in paragraphs 3, 5, and 7 of this Agreement shall not become effective until the effective date of a Commission order approving a stipulation and agreement among all the parties to Commission Case No. EA-2019-0021 that approves the CCN Request on the terms and conditions set forth in the Third Stipulation and Agreement to which this Agreement is attached.
9. Governing Law; Damages. This Agreement shall be governed by the laws of the State of Missouri without regard to its principles respecting conflicts of law. In no event will any party be liable for consequential, punitive, special, or exemplary damages arising from this Agreement.

**EXHIBIT A EA-2019-0021**

IN WITNESS WHEREOF, the parties have executed this Agreement, effective as of the day and year first written above.

**ATCHISON COUNTY MISSOURI  
COUNTY COMMISSION**

By: \_\_\_\_\_  
Curtis Livengood, Presiding Commissioner

STATE OF MISSOURI     )  
  ) ss.  
COUNTY OF ATCHISON    )

On this \_\_\_\_ day of \_\_\_\_\_, 2019, before me personally appeared Curtis Livengood, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same on behalf of Atchison County, Missouri pursuant to the approval of the Atchison County Commission as his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in Rock Port, Missouri, the day and year first above written.

My commission expires:

\_\_\_\_\_  
Notary Public  
Printed Name: \_\_\_\_\_

\_\_\_\_\_  
Susette Taylor, County Clerk

**EXHIBIT A EA-2019-0021**

**UNION ELECTRIC COMPANY  
d/b/a AMEREN MISSOURI**

By: \_\_\_\_\_  
Michael Moehn, President

STATE OF MISSOURI     )  
  ) ss.  
CITY OF ST. LOUIS     )

On this \_\_\_\_ day of \_\_\_\_\_, 2019, before me personally appeared Michael Moehn, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same on behalf of Union Electric Company as his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in St. Louis, Missouri, the day and year first above written.

My commission expires:

\_\_\_\_\_  
Notary Public  
Printed Name: \_\_\_\_\_



**SETTLEMENT AGREEMENT**

This Settlement Agreement (“Agreement”) is entered to this \_\_\_ day of February, 2019, and is by and between Union Electric Company d/b/a Ameren Missouri (the “Company”) and DeKalb County, Missouri (the “County”).

**Recitals**

WHEREAS, the Company filed Missouri Public Service Commission (“Commission”) Case No. EA-2019-0021 seeking a certificate of convenience and necessity under Section 393.170.1, RSMo and the authority to merge Brickyard Hills Project, LLC (“Brickyard Hills”) into the Company (collectively, the “CCN Request”); and

WHEREAS, the CCN Request relates to an approximately 157 megawatt wind generation facility (the “Facility”) being developed in the unincorporated area of Atchison County, which would be acquired by the Company upon its acquisition of 100% of the ownership interests in Brickyard Hills and the merger of Brickyard Hills into the Company, all as provided for in a Build Transfer Agreement between the current owner of Brickyard Hills and the Company dated October 5, 2018 (the “BTA”); and

WHEREAS, the County is an intervenor in Case No. EA-2019-0021; and

WHEREAS, the County took a position in opposition to the Company’s CCN Request; and

WHEREAS, the Company and the County have agreed upon the terms and conditions set forth in this Agreement that resolve the County’s opposition to the CCN Request, and

WHEREAS, the parties make no admissions as to the facts or conclusions of law raised by either party in Case No. EA-2019-0021 and any decisions or orders will have no precedent in any matters arising between the Company and the County; and

NOW THEREFORE, for and in consideration of the agreements reflected herein, the Company and the County agree as follows:

1. Recitals. The Recitals set forth above are incorporated herein by this reference.
2. Support of the CCN Request. The County will withdraw its opposition to the CCN Request.
3. No Precedent. The parties agree that any decision or order granted in the pending CCN in Atchison County shall have no binding effect on any matter that may arise in DeKalb County between the County and the Company.
4. Legislation. In further consideration of the County’s agreements hereunder, the Company will support the passage of legislation by the 100<sup>th</sup> and 101<sup>st</sup> Missouri General Assembly applicable solely to wind generation facilities owned by Commission-regulated



**EXHIBIT B EA-2019-0021**

**UNION ELECTRIC COMPANY  
d/b/a AMEREN MISSOURI**

By: \_\_\_\_\_  
Michael Moehn, President

STATE OF MISSOURI     )  
  ) ss.  
CITY OF ST. LOUIS     )

On this \_\_\_\_ day of \_\_\_\_\_, 2019, before me personally appeared Michael Moehn, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same on behalf of Union Electric Company as his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in St. Louis, Missouri, the day and year first above written.

My commission expires:

\_\_\_\_\_  
Notary Public  
Printed Name: \_\_\_\_\_

EXHIBIT C TO THIRD STIPULATION

EA-2019-0021

The Company<sup>1</sup> agrees that the below-listed conditions 1 to 8 should be imposed on the CCN to be issued in this case (and in consideration of that agreement MDC agrees to Item 9):

1. The Company will not clear known active (in-use) or inactive (alternate) eagle nest trees.
2. The Company will not construct a turbine within one mile of known active (in-use) or inactive (alternate) eagle nest trees if the nest is known at the time notice to proceed under the BTA is given.
3. The Company will use its best efforts to obtain an Eagle Take Permit (ETP) (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 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 not construct a turbine within three miles of the boundary of adjacent conservation areas (Brickyard Hill and Corning Conservation Areas).
5. If an ETP is not received for the Project, for the first two years of the Project, the Company will report to MDC observed mortalities of all bird and bat “Species of Conservation Concern” (SOCC) on the MDC SOCC list by December 31 of each year, identifying the date, turbine location (UTM), species, and reproductive status (if available), and sex of each individual animal. That reporting will be provided to MDC under Item 7 below.
6. 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.
7. 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. Any data provided to MDC pursuant to this Item

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<sup>1</sup> References to the Company during that period of time prior to the Company taking ownership of the facility shall be deemed to be references to EDF-RE.

which is requested by third parties, except the USFWS, pursuant to a data sharing request will be provided as follows: a) using at least a 2.5-mile radius polygon that contains the sites at which bats were present, and b) eagle nest locations are buffered (at least 1.0-mile).

8. The Company will provide reasonable advanced notice to MDC of all scheduled meetings and conference calls (related to the Project) with the USFWS.
9. No citations for violation of Chapter 252, RSMo, or related state regulations (collectively, the “Wildlife Code”) shall be issued by MDC or at MDC’s suggestion for the incidental take of species at the facility authorized by a federal permit or reported on as part of the monitoring described in Item 5.

## **EXHIBIT D EA-2019-0021**

### Wind Turbine In-Service Criteria

1. For each wind turbine to be considered for inclusion in rate base, the criteria in part 2, 3, 4, 5, and 6 shall be met.
2. Mechanical completion has been achieved, meaning:
  - a. The turbine and its support tower are assembled, erected, and installed in accordance with the turbine supplier's technical specifications and quality assurance procedures;
  - b. Utility has installed, or caused to be installed, all necessary communication facilities needed to achieve SCADA functionality; and
  - c. Each item on the Mechanical Completion Checklist has been satisfied and the turbine is ready to commence commissioning.
3. The turbine has been commissioned and a Commissioning Completion Certificate has been completed.
4. An operational test of the turbine as outlined in this part 4 has been successfully completed on at least ten percent of the total number of turbines in a Wind Farm for which a Commissioning Completion Certificate has been issued for each such turbine. The operational test shall be completed using the plant SCADA and turbine-mounted sensing and monitoring equipment. Each tested turbine shall have sustained for two consecutive hours a power output of at least 90% of the turbine supplier's guaranteed output as determined by wind speed observed at or above the Predicted Mean Turbine Hub-height Wind Speed and the Air Density, subject to the following:
  - a. Failure of any turbine to achieve the operational test provided for by this part 4 shall mean that the turbine shall be repaired, if needed, and retested. In addition, the test population size shall be increased from ten percent to twenty percent and each of the tested turbines shall comply with this part 4.
5. Sufficient Interconnection Facilities exist to carry the Wind Farm energy output at the nameplate capacity from the completed turbines into the distribution/transmission system at the point of interconnection, the turbines have been synchronized to the grid, and conditional energy resource interconnection service (ERIS) is available on the transmission system.

## **EXHIBIT D EA-2019-0021**

6. Review of operating Data. The Company will provide Operating Data for each commissioned turbine and its review of such data. The Company's review will be certified by a Professional Engineer licensed in the State of Missouri.
7. Definitions:
  - a. "Air Density" shall mean the average air density at average hub elevation as determined by the wind resource assessment report or by field measurement equipment.
  - b. "Commissioning Completion Certificate" has the meaning given it in the Turbine Supply Agreement.
  - c. "ERIS" means conditional Energy Resource Interconnection Service as defined in Attachment X, Appendix 6, of the Midcontinent Independent System Operator, Inc.'s FERC Electric Tariff (Generator Interconnection Agreement).
  - d. "Interconnection Facilities" shall mean those facilities that interconnect the Wind Farm generator step-up transformer high voltage terminals to the point of interconnection to the grid.
  - e. "Mechanical Completion Checklist" has the meaning given it in the Turbine Supply Agreement.
  - f. "Operating Data" shall mean the quantity of electricity produced by each Turbine, the average wind speed at each Turbine, and the output voltage at each Turbine, in each case on an hourly interval.
  - g. "Predicted Mean Turbine Hub-height Wind Speed" shall mean the mean wind speed at the turbine's hub height as predicted in the pre-construction wind resource assessment.
  - h. "Wind Farm" shall mean a collection of completed wind turbine generators aggregated into one point of interconnection to the grid.