

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

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

**THE OFFICE OF THE PUBLIC COUNSEL’S OBJECTION TO THE NON-
UNANIMOUS STIPULATION AND AGREEMENT FILED APRIL 5, 2019**

COMES NOW the Office of the Public Counsel and, within the seven days allotted by rule 4 CSR 240-2.115(2)(B), hereby objects to the Non-Unanimous Stipulation and Agreement of The Empire District Electric Company, Midwest Energy Consumers Group, Staff of the Missouri Public Service Commission, Renew Missouri Advocates, and the Missouri Department of Economic Development – Division of Energy filed on April 5, 2019.¹ The Office of the Public Counsel objects to and opposes the Non-Unanimous Stipulation and Agreement primarily on the following grounds:

1) Like Empire’s application, the Non-Unanimous Stipulation and Agreement (“Agreement”) is premised on Empire and its tax equity partner(s) recovering their investment in the Kings Point, North Fork Ridge and Neosho Ridge 600 MWs of wind projects plus their return on that investment through a combination of federal income tax benefits (production tax credits and accelerated depreciation) and the future electric utility rates of Empire’s captive retail customers. The purported benefits to Empire’s captive retail customers are future revenues from the Southwest Power Pool (“SPP”) energy market. Without these 600 MWs of wind projects, Empire already has hundreds of megawatts of excess supply-side resources with which to

¹ The Office of the Public Counsel does not join, but does not object to the Stipulation and Agreement Concerning Wildlife Issues between The Empire District Electric Company and the Missouri Department of Conservation also filed on April 5, 2019.

provide electric service to its customers now, and for the next decade. But, § 393.135, RSMo., passed by voter initiative, provides:

Any charge made or demanded by an electrical corporation for service, or in connection therewith, which is based on the costs of construction in progress upon any existing or new facility of the electrical corporation, or any other cost associated with owning, operating, maintaining, or financing any property before it is fully operational and *used for service*, is unjust and unreasonable, and is prohibited. (Emphasis added).

Additionally, the separate, but distinct and similar, regulatory concept of “used and useful” requires that for a utility to recover its investment in plant through rates, the utility must be using that plant to serve its customers. Building new generating resources to generate more SPP revenues is not using those resources to provide electric service to Empire’s customers.

2) Although better than Empire’s application, the Non-Unanimous Stipulation and Agreement does not provide sufficient captive retail customer protections for the many risks of these \$1.1 billion investments that will increase Empire’s rate base by about 40%. In the Non-Unanimous Stipulation and Agreement Empire only agrees to share equally with its captive retail customers the SPP downside market risk for ten years up to \$52.5 million, but leave unresolved until the end of those ten years any downside that exceeds the \$105 million shared. Those unknowns include all the following:

- a) How much Empire will invest in the wind projects;
- b) How much Empire’s tax equity partner(s) will invest in the wind projects;
- c) The identity(ies) of the tax equity partner(s);
- d) The terms and conditions of the tax equity partnership(s);
- e) The hedge price;
- f) The costs of generation interconnection;
- g) The accuracy of Empire’s projections of future SPP market prices;
- h) When Empire will have generation interconnection agreements with SPP for any of the wind projects;

- i) SPP market wind saturation;
- j) SPP market rule changes;
- k) The future demand/usage by Empire's customers, which recently has been leveling off or declining;
- l) Natural gas price forecasts;
- m) The potential for cost-effective energy storage;
- n) The poor wind profiles at Kings Point and North Fork Ridge;
- o) Transmission congestion constraints;
- p) Rate case timings and rate shock;
- q) Excused events (circumstances where the costs of the projects to be borne by Empire's customers increase; and
- r) The inherent variability of wind.

3) It is not the wind projects that Public Counsel opposes; instead, it is the risk to which the Agreement would expose Empire's retail customers, a risk that far exceeds the risk which Empire and its tax equity partner(s) would bear. Rather than Empire and its tax equity partner(s) building these wind projects and relying on sales in the SPP market to recoup their investment and profit not obtained through tax benefits, both Empire's application and the Agreement are based on Empire's captive retail customers replacing the SPP market as the source of funds used to recoup Empire's and its tax equity partner(s)' investment and for their profit on that investment. This leaves Empire's captive retail customers totally dependent on the SPP market for revenues from these projects, their benefit from the projects. Only to the extent those SPP revenues exceed what Empire's captive retail customers pay to Empire and its tax equity partner(s) do those customers benefit economically. Both Empire's application and this Agreement would leave Empire's retail customers almost entirely exposed to all downside risk. Should Empire's overly optimistic SPP revenues projections prove too high, Empire's relatively small Missouri customer base of approximately 153,000 customers will be required to pay for

the shortfall in this \$1.1 billion investment, while Empire and its tax equity partner(s) anticipate their profits, regardless of the economic success or failure of these investments.

4) In circumstances such as these where Empire has an excess of supply-side resources, rather than foisting payment for resources it does not need upon its captive retail customers, it is more appropriate for Empire to enter into this risky venture as an unregulated independent power producer, where Empire and its partners bear the risks from freely selling the wind energy into the SPP market. If Empire believes its projections, Empire and its tax equity partner should be willing to go forward with these projects as independent power producers.

5) Unlike Empire's application, the Agreement does expose Empire to some SPP market risk, but it does not shift enough of that risk away from Empire's captive retail customers for this office not to oppose the Agreement. At a *minimum*, Public Counsel believes any risk sharing should provide more protections for Empire's retail customers than for Empire and its tax equity partner(s), as Public Counsel addressed in its Position Statement. Even a *middle-ground* outcome, wherein risk exposure is divided evenly between customers and shareholders, similar to that proposed by the Staff's witnesses in pre-filed testimony, would do more to promote the public interest than the Agreement, which exposes Empire to no more than \$52.5 million of a \$1.1 billion investment.

6) One fact that should cause the Commission to have significant concerns with Empire's modeling projections (projections the other parties accept without independent analysis) is that Empire's modeling uses outdated 2016 data that Empire did not update, for investments that will not be operational until 2021, and that need to be "in the money" for the next thirty years. Facing such criticism of outdated data, one would expect Empire to update its modeling to prove that the most recent data supports the projects. No reasonable investor would

invest \$550 million based upon three-year old projections. However, that is exactly what the Agreement requests from Empire's customers.

7) In conclusion, Public Counsel objects to the Agreement because it does not properly protect the approximately 153,000 homes and businesses in Southwest Missouri from exposure to significant rate increases if Empire and its tax equity partner(s) are allowed to rely on those customers for obtaining their return of and on their \$1.1 billion investment in the wind projects, with no reasonable assurance the projects will be successful, and with no comparable sharing of risk by Empire or its tax equity partner(s).

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 12th day of April 2019.

/s/ Nathan Williams