

August 27, 2019

Missouri Public Service Commission
200 Madison Street, PO Box 360
Jefferson City, MO 65102-0360

RE: DOCKET NO. EA-2019-0010, APPLICATION OF THE EMPIRE DISTRICT ELECTRIC COMPANY FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY

Dear Chairman Silvey and Honorable Commissioners:

We are writing in regard to the above reference matter. We understand the Commission has granted Empire District Electric Company ("Empire") authorization to acquire an interest in the construction, installation, and operation of the North Fork and Kings Point wind energy facilities ("Projects") to be situated in Barton, Dade, Jasper, and Lawrence Counties. The Projects will collectively include approximately 140 turbines for an installed capacity of 300 megawatts

The Commission's June 29, 2019 order states that the Projects will promote the public interest by meeting state policy goals regarding renewable energy and fuel diversity and by delivering local and state economic benefits. The Commission also incorporates conditions aimed at protecting wildlife and assuring Empire ratepayers will "ultimately end up paying only just and reasonable rates." (*Order at 43, 44 June 29, 2019*)

There is no information in the order that suggests the Commission examined details about the Projects' configuration beyond the number of turbines and installed capacity.

The undersigned represent dozens of residents who will be living within the footprints of the Projects. We ask that you consider the following facts.

- a) Empire intends to erect turbines with a 'total tip height' of 604-feet. (Total tip height is defined as the tower height plus blade length in the vertical position and measured from the top of the turbine foundation);
- b) Agreements signed by David Swain, president of Empire, allow for turbines in Barton and Jasper Counties to be located as close as 500-feet to the nearest property lines of non-participating landowners and 110% of total tip height to occupied residential homes.

To our knowledge, no other wind projects in the United States allow setbacks that are shorter than the turbines' overall height. The risks of ice throw, blade shear, tower collapse, and fire on any property or roadway are real and cannot be overstated. Since January of this year, dangerous catastrophic failures occurred at numerous operating wind energy facilities in the United States alone. The below is only a sampling.

1. Wisconsin: Glacier Hills Wind Park, turbine fire (August 2019)
2. Washington State: Juniper Wind Farm, 39 homes threatened; 242 acres burned (July 2019)
3. Oklahoma, New Mexico, Nebraska: 3 GE turbine collapses (February, May, July 2019)
4. California: Palm Springs turbine spinning out of control, caught fire (June 2019)

5. Michigan: Heritage Wind Farm, blade break (May 2019)
6. Iowa: Worth County Wind Farm, fire (April 2019)
7. Michigan: Exelon Huron County Wind Farm, fire (April 2019)

In 2018, numerous other failures occurred in the U.S., including a turbine fire in Oregon that burned 2,000 acres and a turbine in Texas that spun out of control forcing the evacuation of at least one residential home. We can provide you with public information documenting each of these incidents.

As you are likely aware, other concerns including turbine noise and shadow flicker impact residents living within 1+ miles of an operating turbine facility. Our concern herein has to do with a fundamental expectation of safety for our families, ourselves, and our properties. Turbines standing over 600-feet tall that are as close as 500-feet to our properties will render large portions of our properties unsafe for general use or further development.

There is no reasonable justification for Missouri citizens and property to be placed at risk. Empire's setbacks are not even representative of what the wind industry considers 'standard.'

Empire's behavior to date has been evasive and not forthcoming with information regarding the Projects. We were only made aware in July of the setback distances. Thus far, no maps are available from Empire showing the locations of the turbines. We contacted the Federal Aviation Administration directly and were surprised to learn that Empire has filed plans to erect over 220 turbines as part of North Fork and Kings Point, not 140 turbines. (See attached map produced from the FAA data submitted by Empire)

We note that many of those who will be impacted by the turbines are not Empire customers. This fact does not excuse Empire's lack of transparency.

Missouri law Section 393.170.3, RSMo 2000 provides for the Commission, through its order, to impose "conditions as it may deem reasonable and necessary." We respectfully ask that the Commission reopen the adjudicative portion of this Docket and take testimony relative to turbine siting. The Projects may address some of the policy goals of the State, however, there are no circumstances at any time where satisfying a public goal means exposing citizens to the high risks we are facing with turbines so close to our homes.

Time is of the essence. Thank you for your attention to this critically important matter.

Respectfully,

Jennifer Ryan
Barton County

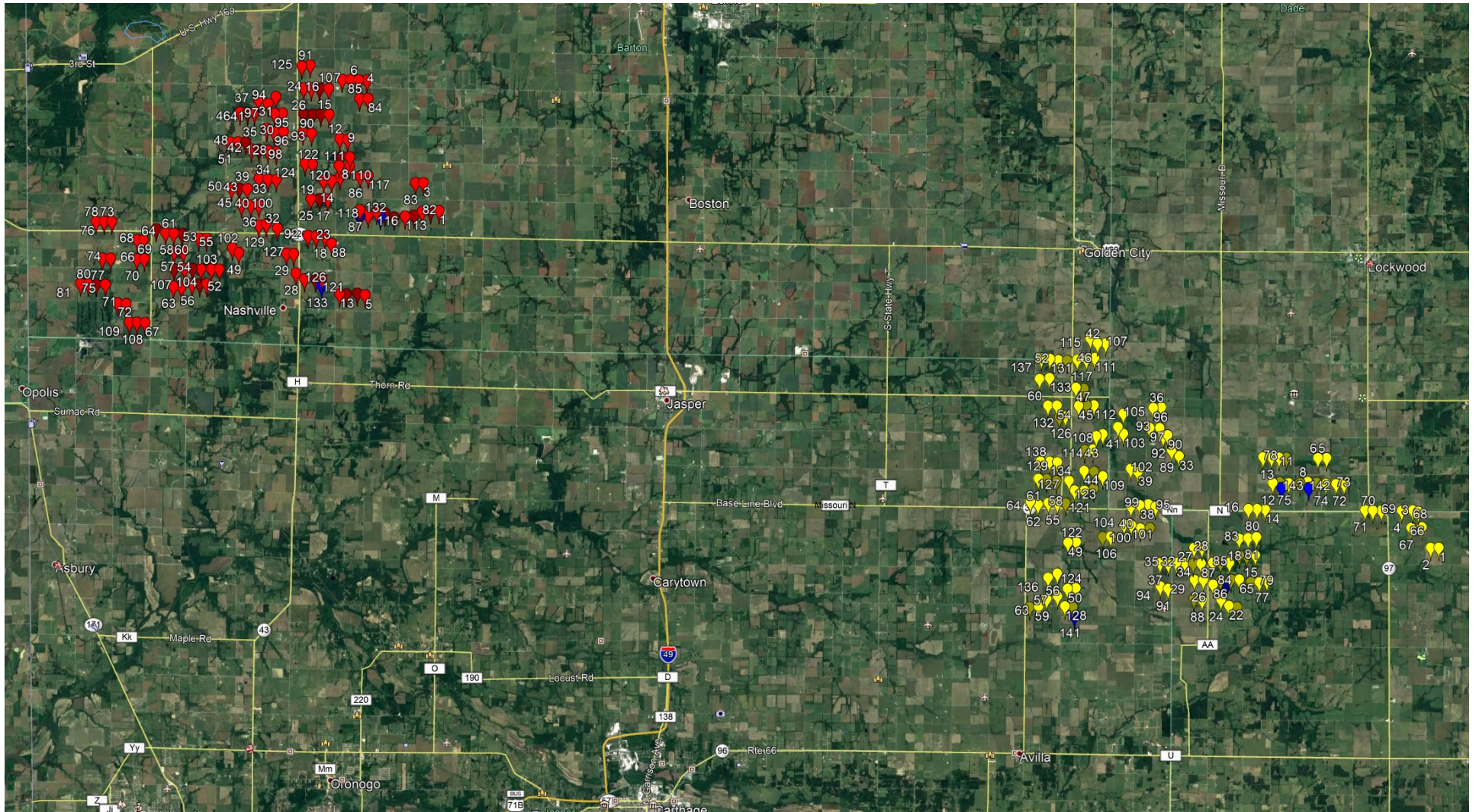
Jeanne Anne Hensley
Jasper County

On behalf of Concerned Citizens of Barton/Jasper County

attachments

cc: Geoff Marke, Missouri Office of the Public Counsel
David Swain, President, Empire District Electric Company

FAA locations for North Fork - 130 turbines (red)
FAA locations for Kings Point - 139 turbines (yellow)
Blue markers indicate met towers



COMMERCIAL WIND ENERGY PROJECT IMPLEMENTATION AGREEMENT

This Commercial Wind Energy Project Implementation Agreement (“**Agreement**”) made and entered into the 28th day of January, 2019, by and between Barton County, Missouri (“**County**”) and The Empire District Electric Company (“**Developer**”)

RECITALS

- A. County is vested with the authority to determine its local affairs and to perform all powers of local legislation and administration as it deems appropriate to protect and preserve the interests of the citizens of Barton County, Missouri.
- B. There are no zoning regulations presently in effect regulating the use of land in unincorporated areas of Barton County, Missouri.
- C. Developer desires to develop, construct and operate Commercial Wind Energy Projects in Barton County, Missouri, to be known as the Kings Point Wind Energy Project and North Fork Ridge Wind Energy Project (each, the “**Project**”; collectively, the “**Projects**”).
- D. It is the intent and purpose of County to support an orderly development of Commercial Wind Energy Projects within appropriate geographical areas of County and to define the terms and conditions of the County’s support.
- F. County has agreed to support the development, construction and operation of the Project in accordance with the terms and conditions set forth herein.

AGREEMENT

In consideration of the mutual promises and covenants in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

Section 1. **Definitions.**

1.1 **Collector Lines** shall mean any electrical power lines carrying electric energy from any Wind Turbine to the Project substation.

1.2 **Commercial Wind Energy Project, or CWEP** shall mean an electrical generating facility that operates by converting the kinetic energy of wind into electrical energy and is comprised of one or more wind turbines and accessory facilities, including but not limited to associated meteorological towers, overhead and underground electric and communication feeder transmission lines, transformers, substations, roads, administrative and operations buildings, and associated facilities.

1.3 **Non-Participating Landowner** shall mean any Person not a party to or subject to any lease, easement, waiver or other contractual arrangement with the Developer or an affiliate of the Developer related to the development, construction or operation of the Projects.

1.4 **Participating Landowner** shall mean any Person who is a party to or subject to a lease, easement, waiver or other contractual arrangement with the Developer or an affiliate of the Developer related to the development, construction or operation of the Projects. The Developer shall be deemed to be a Participating Landowner.

1.5 **Person** shall mean any person, corporation, partnership, trust or other legal entity.

1.6 **Project Boundaries** shall mean the exterior Property Line of all property owned or held by Participating Landowners.

1.7 **Project Facilities** shall mean all of the following: (a) Wind Turbines; (b) Transmission Lines and other overhead and underground electrical distribution, collection, transmission and communications lines, towers and related appurtenances, electric transformers, electric substations, switch stations, junction boxes, energy storage facilities, telecommunications equipment, and other related power generation and transmission facilities; (c) temporary and permanent roads, crane travel paths, fences and gates; (d) meteorological towers, sonic detection and ranging equipment, or other wind or meteorological measurement devices or any equipment related thereto; and, (e) control buildings, maintenance buildings, maintenance yards, septic systems, laydown and staging areas, and related facilities and equipment.

1.8 **Property Line** shall mean the boundary line of the area over which the Developer has legal control for the purposes of installation of the Project Facilities. This control may be attained through fee title ownership, lease, easement, or other contractual relationship between the Developer and any landowner.

1.9 **Total Tip Height** shall mean the Tower height plus blade length in vertical position measured from the top of the foundation of the Tower.

1.10 **Tower** shall mean the conical tubular steel towers upon which the electrical generator, rotor blades and/or meteorological equipment will be installed.

1.11 **Transmission Lines** shall mean any electrical power lines that are part of the Projects carrying electric energy from the Projects' substations to the points of interconnection of the Projects with the electric power grid.

1.12 **Wind Turbine** shall mean any piece of electrical generating equipment that converts the kinetic energy of wind into electrical energy through the use of airfoils or similar devices to capture the wind, including the Tower upon which it is incorporated.

Section 2. **Design Standards.**

2.1 No Wind Turbines shall be located closer than five hundred (500) feet to any public road right-of-way.

2.2 No Wind Turbines shall be constructed in any dedicated public easement or dedicated public road right-of-way without prior authorization from the landowner, township and/or county.

2.3 No Wind Turbines shall be located or constructed in conflict with requirements of the Federal Aviation Administration or Federal Emergency Management Agency without first obtaining an officially authorized waiver.

2.4 No Wind Turbines shall be located closer than five hundred (500) feet to the property line of any adjoining property which, on the Commercial Operation Date, is owned by Non-Participating Landowner.

2.5 No Wind Turbines shall be located closer than 110% of the Total Tip Height of the Wind Turbine from any occupied residential structure.

2.6 For purposes of this Section 2, all distances shall be measured from the center of the Wind Turbine base to the nearest property line, nearest road right-of-way or nearest point on the foundation of any residence.

2.7 The setback distances set forth in Section 2.1 through Section 2.5, above, may be modified through existing or future written leases, easements or other agreements between the Developer and the affected landowner.

2.8 If lubricants and/or hazardous materials are required to be located within the Project Boundaries, said material shall be kept and transported in accordance with all applicable Environmental Laws.

2.9 There shall be no lights on the Wind Turbines other than those required by the Federal Aviation Administration. This restriction shall not apply to infrared heating devices used to protect wind monitoring equipment installed on the Wind Turbines.

2.10 Wind Turbines and Towers shall be self-supporting and painted a neutral color such as white or pale gray. No lattice towers may be used except for installation of meteorological instrumentation or telecommunication equipment. Developer logos or advertisements will be allowed on these structures, but no other advertising will be allowed. Each Wind Turbine shall be marked with visible identification numbers located no higher than fifteen (15) feet above ground level.

Section 3. **Project Development Plan.** Prior to the Developer's notice to County of the commencement of construction, Developer shall provide the following information to the County.

3.1 Relevant background information on the Project, including a general overview of the Project location, construction timeframe and the Project's anticipated useful life, phases of development of the Project, and planned future expansion.

3.2 A preliminary site plan of the Project with the following specifications shall be submitted by the Developer to the County:

- (a) Scale of 1" = 2000';
- (b) Scale and north point (up);
- (c) All properties of Participating Landowners, including Property Lines;
- (d) All public roads within the Project Boundary;
- (e) All residences and within the Project Boundary;
- (f) Schematic location of all Wind Turbines, Collector Lines, Transmission Lines, substations, permanent maintenance and access roads, operation and maintenance buildings and other permanent structures used by the Developer in conjunction with the Project; and,
- (g) Location of any underground pipelines used by the Developer in connection with the Project and other utility easements held by the Developer in connection with the Project.

Section 4. **Project Construction.**

4.1 **Cleanup.** Developer shall remove all waste and scrap that is the product of construction, operation, restoration, and maintenance of the Projects and properly dispose of it on a regular basis.

4.2 **Ground Water.** Developer will demonstrate that the Projects are consistent with the objectives and requirements of all County ground water management policies applicable to the area in which the Projects are located.

4.3 **Air Quality.** Developer shall submit a plan to control dust on turbine access roads during construction.

4.4 **Electromagnetic Interference.** Developer shall take commercially reasonable measures to minimize any interference with electromagnetic communications, such as radio, telephone, microwaves or television signals caused by the Projects. The Projects shall be operated in conformance with applicable Federal Communications Commission regulations relating to the use and operation of CWEPs then in effect.

Section 5. Project Completion.

5.1 Final Site Plan. Within ninety (90) days following the Commercial Operation Date, Developer shall provide a final site plan to the County that conforms to the standards set forth in Section 3.4, updated to show the as-built location of all Project improvements shown thereon.

5.2 Decommissioning/Restoration/Abandonment.

(a) Within twelve (12) months following completion of construction of the Projects, Developer shall submit a Decommissioning Plan describing the manner in which the Projects will be dismantled and removed at the end of their useful lives. All above ground components of the Projects shall be removed. All foundations shall be removed to a depth four (4) feet below ground level. Access roads shall be removed and the ground shall be reseeded in native grasses. The requirement to remove access roads shall not apply to roads in existence before the County issues the Approval.

(b) At the end of the Projects' useful lives, or if the Projects are abandoned, the site shall be restored in accordance with the requirements of this Section 5.2 within eighteen (18) months.

Section 6. Remedies and Enforcement. The Parties acknowledge that money damages would not be an adequate remedy for a breach or threatened breach of this Agreement. Each of the Parties covenant and agree that in the event of a default of any of the terms, provisions or conditions of this Agreement by any Party ("Defaulting Party"), which default is not caused by the Party seeking to enforce such provisions ("Non-Defaulting Party") and after notice and reasonable opportunity to cure has been provided to the Defaulting Party, then in such an event, the Non-Defaulting Party shall have the right to seek specific performance and/or injunctive relief to remedy or prevent any breach or threatened breach of this Agreement. The absence of a notice of default from the County to the Developer shall constitute evidence that this Agreement is in full force and effect and that the Developer is in material compliance with the terms of this Agreement.

Section 7. Due Authorization. The Parties represent and warrant that this Agreement has been duly authorized, executed and delivered and constitutes a valid and binding obligation against the Parties. No consent or authorization of any other person or governmental authority is required to make this Agreement effective.

Section 8. Severability. If any provision of this Agreement is found to be illegal, invalid, or unenforceable, the remainder of this Agreement will not be affected and shall remain in full force and effect.

Section 9. Amendments. This Agreement constitutes the entire agreement and understanding of the Parties. No waiver, modification or amendment to this Agreement is effective unless made in writing and duly executed by the Parties. Waiver by either Party of any breach or failure to comply with any provision or term of this Agreement by the other Party shall not be construed as, or constitute a waiver of any other provision.

Section 10. Notices. All notices shall be in writing and sent to the Parties at their respective addresses set forth below by certified mail, or to such other address as either Party shall designate in writing to the other Party at any time.

County:

County Clerk
1004 Gulf Street
Lamar, MO 64759

Developer:

Blake Mertens, Vice President -- Electric Operations
602 S. Joplin Ave.
Joplin, MO 64801

Section 11. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and together shall constitute one agreement.

Section 12. Legal Matters. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Missouri, without respect for any conflict of law provisions. In the event of litigation, Developer and the County hereby agree to waive any right to trial by jury.

Section 13. Successors and Assigns. This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns.

Signature pages follow.

IN WITNESS WHEREOF, the Parties have caused this Commercial Wind Energy Project Implementation Agreement to be executed as of the Effective Date.

COUNTY:

[BARTON]

By: Mike Davis
Name: Mike Davis
Title: Presiding Commissioner

By: Ben Reed
Name: Ben Reed
Title: District One Commissioner

By: Jeff Tucker
Name: Jeff Tucker
Title: District Two Commissioner

Attest: Kristina Crockett
Name: Kristina Crockett
Title: County Clerk


IN WITNESS WHEREOF, the Parties have caused this Commercial Wind Energy Project Implementation Agreement to be executed as of the Effective Date.

DEVELOPER:

By:

Name:

Title:


DAVID SWAIN
PRESIDENT

The general session for the Jasper County Commission was called to order at 9:00 a. m. on January 8th, 2019 in room 101 at the Jasper County Courthouse.

The meeting was opened with the Pledge of Allegiance and prayer by Keith Stammer.

Roll Call:

Commissioners Bartosh and Flanigan are present.

Approval of minutes:

Commissioner Flanigan made the motion to approve the minutes of December 18, 2018. Commissioner Bartosh seconded. The minutes are approved.

Presentation by MJ Surveying to Request New Plat. No motion was made in order to study the proposal.

Courtney Wegman with L J Hart called in and Discussed Ballot Language for proposed ¼ Cent Improvement Sales Tax extension.

A motion to approve the ballot language for the proposed ¼ Cent Improvement Sales Tax ballot measure was made by Commissioner Flanigan and seconded by Commissioner Bartosh. The motion passes.

A motion to place the ¼ Cent Improvement Sales Tax on the April 2nd ballot was made by Commissioner Flanigan and seconded by Commissioner Bartosh. The motion passes.

New Business:

A motion to approve the Implementation Agreement for the Empire Wind Energy Project was made by Commissioner Flanigan and seconded by Commissioner Bartosh. The motion passes.

A motion was made by Commissioner Flanigan and seconded by Commissioner Bartosh to approve the sale of 1.1 acres of Right-of-Way on Prigmor Road to Skyline Travel Plaza, LLC. The selling price was \$53,666.00. The motion passes.

With no further business the meeting was adjourned.

Respectfully submitted,

Charlie Davis

Jasper County Clerk

COMMERCIAL WIND ENERGY PROJECT IMPLEMENTATION AGREEMENT

This Commercial Wind Energy Project Implementation Agreement ("**Agreement**") made and entered into the 8th day of January, 2019, by and between Jasper County ("**County**") and The Empire District Electric Company ("**Developer**")

RECITALS

- A. County is vested with the authority to determine its local affairs and to perform all powers of local legislation and administration as it deems appropriate to protect and preserve the interests of the citizens of Jasper County, Missouri.
- B. There are no zoning regulations presently in effect regulating the use of land in unincorporated areas of Jasper County, Missouri.
- C. Developer desires to develop, construct and operate Commercial Wind Energy Projects in Jasper County, Missouri, to be known as the Kings Point Wind Energy Project and the North Fork Ridge Wind Energy Project (the "**Projects**").
- D. It is the intent and purpose of County to support an orderly development of Commercial Wind Energy Projects within appropriate geographical areas of County and to define the terms and conditions of the County's support.
- F. County has agreed to support the development, construction and operation of the Projects in accordance with the terms and conditions set forth herein.

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3.1 ~~Relevant background information on the Projects, including a general overview of the Project location, construction timeframe and the Projects' anticipated useful life, phases of development of the Projects, and planned future expansion.~~

3.2 A preliminary site plan of the Projects with the following specifications shall be submitted by the Developer to the County:

- (a) Scale of 1" = 2000';
- (b) Scale and north point (up);
- (c) All properties of Participating Landowners, including Property Lines;
- (d) All public roads within the Project Boundary;
- (e) All residences and within the Project Boundary;
- (f) Schematic location of all Wind Turbines, Collector Lines, Transmission Lines, substations, permanent maintenance and access roads, operation and maintenance buildings and other permanent structures used by the Developer in conjunction with the Projects; and,
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Section 4. **Project Construction.**

4.1 **Cleanup.** Developer shall remove all waste and scrap that is the product of construction, operation, restoration, and maintenance of the Projects and properly dispose of it on a regular basis.

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4.4 **Electromagnetic Interference.** Developer shall take commercially reasonable measures to minimize any interference with electromagnetic communications, such as radio, telephone, microwaves or television signals caused by the Projects. The Projects shall be operated in conformance with applicable Federal Communications Commission regulations relating to the use and operation of CWEPs then in effect.

Section 5. Project Completion.

5.1 Final Site Plan. Within ninety (90) days following the Commercial Operation Date, Developer shall provide a final site plan to the County that conforms to the standards set forth in Section 3.4, updated to show the as-built location of all Project improvements shown thereon.

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(b) At the end of the Projects' useful life, or if the Projects are abandoned, the site shall be restored in accordance with the requirements of this Section 5.2 within eighteen (18) months.

Section 6. Remedies and Enforcement. The Parties acknowledge that money damages would not be an adequate remedy for a breach or threatened breach of this Agreement. Each of the Parties covenant and agree that in the event of a default of any of the terms, provisions or conditions of this Agreement by any Party ("**Defaulting Party**"), which default is not caused by the Party seeking to enforce such provisions ("**Non-Defaulting Party**") and after notice and reasonable opportunity to cure has been provided to the Defaulting Party, then in such an event, the Non-Defaulting Party shall have the right to seek specific performance and/or injunctive relief to remedy or prevent any breach or threatened breach of this Agreement. The absence of a notice of default from the County to the Developer shall constitute evidence that this Agreement is in full force and effect and that the Developer is in material compliance with the terms of this Agreement.

Section 7. Due Authorization. The Parties represent and warrant that this Agreement has been duly authorized, executed and delivered and constitutes a valid and binding obligation against the Parties. No consent or authorization of any other person or governmental authority is required to make this Agreement effective.

Section 8. Severability. If any provision of this Agreement is found to be illegal, invalid, or unenforceable, the remainder of this Agreement will not be affected and shall remain in full force and effect.

Section 9. Amendments. This Agreement constitutes the entire agreement and understanding of the Parties. No waiver, modification or amendment to this Agreement is effective unless made in writing and duly executed by the Parties. Waiver by either Party of any breach or failure to comply with any provision or term of this Agreement by the other Party shall not be construed as, or constitute a waiver of any other provision.

Section 10. Notices. All notices shall be in writing and sent to the Parties at their respective addresses set forth below by certified mail, or to such other address as either Party shall designate in writing to the other Party at any time.

County:

County Clerk

[] Marilyn Baugh, County Clerk
[] 302 S. Main St. Room 103
[] Carthage, MO 64836

Developer:

[] Blake Mertens, Vice President Electric Operations
[] 602 S. Joplin Ave.
[] Joplin, MO 64801

Section 11. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and together shall constitute one agreement.

Section 12. Legal Matters. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Missouri, without respect for any conflict of law provisions. In the event of litigation, Developer and the County hereby agree to waive any right to trial by jury.

Section 13. Successors and Assigns. This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns.

Signature pages follow.

IN WITNESS WHEREOF, the Parties have caused this Commercial Wind Energy Project Implementation Agreement to be executed as of the Effective Date.

COUNTY:
JASPER COUNTY, MISSOURI

By: _____
Name: John Burdick
Title: presiding commissioner

IN WITNESS WHEREOF, the Parties have caused this Commercial Wind Energy Project Implementation Agreement to be executed as of the Effective Date.

DEVELOPER:

By:



Name:

DAVID SWAIN

Title:

PRESIDENT