

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

In the Matter of the Application of Evergy )  
Missouri West, Inc. d/b/a Evergy Missouri )  
West for Permission and Approval of a )  
Certificate of Public Convenience and ) File No. EA-2022-0328  
Necessity Authorizing It to Purchase, Own, )  
Operate, Maintain and Otherwise Control and )  
Manage an Existing Wind Generation Facility )  
in Oklahoma )

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**RENEW MISSOURI'S POST-HEARING BRIEF**

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COMES NOW Renew Missouri Advocates d/b/a Renew Missouri (“Renew Missouri”), and presents its post-hearing brief to the Missouri Public Service Commission (“PSC” or the “Commission”):

**I. Introduction**

The Commission’s approval is sought to grant an Operating Certificate of Convenience and Necessity (“CCN”) for a 198.6 MW wind farm – known as Persimmon Creek – located near Vici, Oklahoma. Persimmon Creek has been commercially operational since August of 2018, providing Evergy Missouri West (“Evergy” or the “Company”) with real, historical data to support the Company’s determination that this asset is the best fit to serve the needs of its customers.

While the Company has chosen a path that mitigates risk and leverages the certainty of an already-built asset in times of challenges involving the supply chain, inflation, and interconnection, its application has been met with staunch opposition from Staff of the Missouri Public Service Commission (“Staff”) and the Office of Public Counsel (“OPC”). These parties allege, amongst other things, that Evergy has manipulated its integrated resource planning (“IRP”) process to achieve a predetermined outcome, is pursuing resource acquisitions to the financial detriment of

its customers, and has chosen a renewable asset that will not provide the tangible benefits of clean energy to customers or the state more generally.

Concerningly, Staff seeks to apply a standard – unsupported by Commission precedent or Missouri public policy – to evaluate whether the CCN serves the public interest. More broadly, Staff and OPC’s arguments represent an emerging trend towards anti-renewable sentiment that can be found as a consistent thread running throughout their testimony. This includes the refusal to acknowledge the benefits that renewables provide to customers, utilities, and the public, as well as the idea that customers who are interested in being served by more renewable resources are simply not intelligent enough to understand the complexities that go along with a transition of energy sources. Moreover, Staff and OPC refuse to recognize wind energy as a resource that can provide reliable energy to customers.

These arguments largely ignore the clear policy direction established by this Commission over the past ten years, which has consistently recognized that renewable resources provide economic, health, and environmental benefits to Missouri residents and businesses. Further, Staff’s position devalues the importance of renewable energy in meeting the needs of large corporate customers for the benefit of Missouri’s economic development. These factors have historically been considered by the Commission in determining whether the public interest is served, and Renew Missouri believes these factors should continue to be part of this evaluation as they help to develop a holistic picture of how the state benefits from the use of renewable energy.

## **II. Discussion**

***Issue A(5): The Commission should find that approval of the Certificate of Convenience and Necessity is in the public interest.***

The Commission has broad discretion to determine that the environmental, health, and economic benefits of Persimmon Creek promote the public interest. In fact, precedent is clear that,

“(t)he Commission’s powers to regulate in the public interest ‘are broad and comprehensive’ and include the authority ‘to order improvements[,]” (*In the Matter of Application of KCP&L Greater Missouri Operations Company*, 515 S.W.3d 754, 760 (Mo. App. W.D. 2016) (citing *Stopaquila.Org v. Aquila, Inc.*, 180 S.W.3d 24, 34-35 (Mo. App. W.D. 2005)), and that the public interest is a matter of policy to be determined by the Commission. *State ex rel. Public Water Supply District v. Public Service Commission*, 600 S.W.2d 147, 154 (Mo. App. 1980). Moreover, “It is within the discretion of the (Commission) to determine when the evidence indicates the public interest would be served.” (Case No. EA-2016-0208, *Report and Order* pp. 18-19)(citing *State ex rel. Intercon Gas, Inc. v. Public Service Com’n of Missouri*, 848 S.W.2d 593, 597-598 (Mo. App. 1993)). Finally, the Commission has held that determining the public interest is a balancing process, and that the total interests of the public served must be assessed. *In the Matter of Sho-Me Power Electric Cooperative’s Conversion from a Chapter 351 Corporation to a Chapter 394 Rural Electric Cooperative*, EFIS File No. EO-93-0259, 1993 WL 719871 (Mo. P.S.C.).

In addition to existing case law articulating the substantial discretion the Commission has to regulate in the public interest, prior Commission findings and clear policy guidance from the Legislature indicate the Commission may exercise its well-established and broad discretion to evaluate the public interest by considering factors outside the narrow scope proposed by Staff. In previous dockets, the Commission has concluded that, “... customers and the general public have a strong interest in the development of economical renewable energy sources to provide safe, reliable, and affordable service while improving the environment and reducing the amount of carbon dioxide released into the atmosphere.”<sup>1</sup> Similarly, the Commission has previously concluded, “[i]t is the public policy of this state to diversify the energy supply through the support

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<sup>1</sup> EFIS File No. EA-2016-0208, Doc. No. 126; EFIS File No. EA-2015-0256, Doc. No. 84.

of renewable and alternative energy sources. The Commission has also previously expressed its general support for renewable energy generation because it provides benefits to the public.”<sup>2</sup>

In File No. EO-2018-0092, the Commission recognized that, “Empire’s proposed acquisition of 600 MW of additional wind generation assets is clearly aligned with the public policy of the Commission and this state.”<sup>3</sup> Further, the Commission has stated,

“[t]here can be no debate that our energy future will require more diversity in energy resources, particularly renewable resources. We are witnessing a worldwide, long-term and comprehensive movement towards renewable energy in general and wind energy specifically. Wind energy provides great promise as a source of affordable, reliable, safe, and environmentally-friendly energy.”<sup>4</sup>

The Commission has also recognized the economic development benefits wind delivers to the state, finding that, “[w]ind generation also helps corporations in Missouri to perform more competitively, as there is an emergence of corporate customer interest in renewable energy and corporations are seeking increased options for purchasing renewable power.”<sup>5</sup>

Moreover, the Missouri Legislature has created clear policy guidance encouraging renewable energy investments through the Renewable Energy Standard,<sup>6</sup> the Plant-In-Service Accounting statute,<sup>7</sup> and the Securitization statute.<sup>8</sup> Finally, as noted by Renew Missouri witness James Owen, public policy set at the federal level unambiguously indicates support for investment in renewable energy to pave the way for the clean energy future.<sup>9</sup>

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<sup>2</sup> EFIS File No. EA-2019-0010, Doc. No. 168 *Report and Order*, p. 32 (citing Sections 393.1025 and 393.1030 [Renewable Energy Standard]; and Section 393.1075 [Missouri Energy Efficiency Investment Act]).

<sup>3</sup> EFIS File No. EO-2018-0092, Doc. No. 228 *Report and Order*, p. 20.

<sup>4</sup> EFIS File No. EA-2016-0358, Doc. No. 758, *Report and Order on Remand*, p. 47.

<sup>5</sup> EFIS File No. EA-2019-0010, Doc. No. 168 *Report and Order*, p. 21.

<sup>6</sup> Sections 393.1025 and 393.1030, RSMo.

<sup>7</sup> Section 393.1400, RSMo. *See also* EFIS File No. EA-2022-0328, Transcript Vol. 1 Page 93-44 Lines 17-25 and 1-4 in which Company witness Jason Humphrey discusses PISA being particularly applicable to Persimmon Creek.

<sup>8</sup> Section 393.1700 RSMo.

<sup>9</sup> EFIS File No. EA-2022-0328, Exhibit 300: *Surrebuttal Testimony of James Owen*.

In contrast to the clear legal and policy guidance otherwise, Staff has adopted the narrowly constrained position that, “[w]hen additions of generating assets are tied to the physical needs of ratepayers, and the economic efficiency of fulfilling the identified ratepayer need is demonstrated, the public interest is promoted.”<sup>10</sup> This approach would severely constrict the discretion of the Commission and is entirely unsupported by case law and Commission precedent. Moreover, such a narrow view limits the Commission’s ability to properly evaluate and weigh the environmental and economic development benefits that renewables provide. Such a result is demonstrated by Staff’s testimony, which fails to analyze the public interest beyond the limited scope proposed by Mr. Luebbert.

Concerningly, Staff either refuses to recognize or seeks to replace unambiguous policy guidance with its own qualifications on what state policy should be. At hearing, Staff witness Brad Fortson testified:

“Q. Given the adoption of the legislative incentives for renewables and the expressions of support for the construction of renewables by the Commission, including wind facilities, would you agree that the state policy in Missouri is to encourage the development of renewable energy resources?

A. I don't know if I can generally agree with that. I feel like there's probably more to that ***or should be***. [emphasis added]”<sup>11</sup>

Mr. Fortson further testified:

“Q. And you'd agree that the state policy is along that line to encourage the development of renewables?

A. I would -- I would still, trying to think how I want to word that, ***it seems to me like it should*** still read a reasonable transition to renewables, not just any renewables for any reason. [emphasis added]”<sup>12</sup>

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<sup>10</sup> EFIS File No. EA-2022-0328, Exhibit 104: *Rebuttal Testimony of J Luebbert*.

<sup>11</sup> EFIS File No. EA-2022-0328, Transcript Vol. 3, Page 393, Lines 6-15.

<sup>12</sup> *Id.* at 393-394, Lines 23-25 and 1-3.

While Mr. Fortson testified that Staff generally tries to follow the policy direction articulated by the Commission when preparing cases,<sup>13</sup> it is unclear how Staff has interpreted the long line of unambiguous<sup>14</sup> Commission precedent and guidance from the Legislature discussed above as anything other than clear support for renewable development or, in the alternative, why Staff has chosen to ignore this guidance altogether. Likewise, Staff has provided no reasoning or basis for which its overly narrow interpretation of the public interest should supplant years of Commission precedent and legislative policy guidance. In fact, the record indicates that Staff is formulating its recommendations based simply on its witnesses' feelings about how things "should" be.

It is equally unclear why Staff and OPC focus on corporate sustainability goals and ratepayer opinions on renewables rather than evaluating the actual, quantifiable economic development benefits delivered to the state through the addition of wind energy. Staff witness J Luebbert provides this testimony to illuminate his point:

"Q. Are there customers that would prefer to be served exclusively by fossil-fueled resources that are dispatchable to meet market prices and system needs?

A. **Probably.** However, it would also not be appropriate for Ameren Missouri to justify the addition of a large coal-fired plant, to be paid by all ratepayers, based primarily on that subset of ratepayers' desires [emphasis added]."<sup>15</sup>

Staff simply asserts this unsubstantiated straw-man conjecture as fact for the Commission to consider. Tellingly, Mr. Luebbert makes no attempt to even support this argument with an example of an actual customer who is publicly seeking to be served exclusively by fossil fuel generation.

Perhaps even more concerning, Staff states:

"It is likely that a subset of Ameren Missouri ratepayers would like to be served by more renewable generation and less fossil-fueled generating resources. However, I expect that it is unlikely for most of those ratepayers to understand the implications of Ameren Missouri's MISO participation on the generation fleet serving their load,

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<sup>13</sup> *Id.* at 394, Lines 16-19.

<sup>14</sup> See EFIS File No. EA-2019-0010, Doc. No. 168 *Report and Order*, p. 32, stating "It is the public policy of this state to diversify the energy supply through the support of renewable and alternative energy sources."

<sup>15</sup> EFIS File No. EA-2022-0328, Exhibit 104: *Rebuttal Testimony of J Luebbert*.



the dispatchability of resource types, or the cost implications of adding substantial investments in renewables to rate base without offsetting retirements.”<sup>16</sup>

Additionally, OPC witness Lena Mantle contributes a short anecdote about a woman she met who did not understand how wind turbines deliver energy to the grid.<sup>17</sup> It is unclear how this anecdote assists the Commission in deciding this case other than to suggest that OPC has a disdainful view of the opinions of the public it represents.

In addition to being patronizing and dismissive, the notion commercial and residential ratepayers seeking access to renewable resources cannot understand the implications of the addition of these resources is patently untrue. While Evergy is not relying on customer demands specifically as a basis to support its application, Renew Missouri believes that the economic development implications of large commercial customer needs should be evaluated when looking at the public interest. As can be seen throughout the state, and specifically within Evergy’s service territory, commercial customers in Missouri care where their energy comes from. Many of these large corporate customers have teams dedicated to evaluating and planning for their organizations’ energy needs and it would be incorrect to dismiss these companies’ desire to be served by more renewables as uninformed. As a recent example – Meta, the parent company of Facebook, announced in 2022 that it had selected Kansas City, Missouri as the location for a new data center that it claims will be one of the most sustainable in the world.<sup>18</sup> In determining where to site this facility, Meta, “...chose the Kansas City location in part because of the region’s competitive energy prices and more options to power the facility with renewable energy options. Evergy, which is the electric utility serving most of the Kansas City region, produces about half of its energy from

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<sup>16</sup> *Id.*

<sup>17</sup> EFIS File No. EA-2022-0328, Exhibit 201: *Surrebuttal Testimony of Lena Mantle*, Footnote 30.

<sup>18</sup> “Governor Parson Announces Meta Selects Kansas City for New \$800 Million Data Center,” Office of Governor Michael L. Parson (March 24, 2022). Accessed at: <https://governor.mo.gov/press-releases/archive/governor-parson-announces-meta-selects-kansas-city-new-800-million-data>.

clean energy sources, it says.”<sup>19</sup> At the Kansas City Area Development Council’s 2022 annual meeting, Meta’s Community Development Director, Matt Sexton, described access to renewable energy and the presence of great energy partners as key considerations in Meta’s decision to locate the new data center in Kansas City.<sup>20</sup> To imply that commercial customers in Evergy’s service territory are incapable of understanding the implications of being served by renewables is simply misguided and factually unsupported by anything Staff or OPC has put forward.

Additionally, it is highly concerning that Staff, and especially OPC, would disparage the ability of residential ratepayers to understand market dynamics in an attempt to downplay the importance of public input. This attitude is at odds with Commission policy, which places significant value on the input of the public by allowing for public comments and participation at public hearings in nearly all Commission dockets of substantive importance – regardless of whether a ratepayer has the technical expertise of Mr. Luebbert or Ms. Mantle. Moreover, this mindset conflicts with OPC’s own stance on public input, which has consistently been embodied by a push for more public hearings in order to hear everyone who wants to be heard.<sup>21</sup> It is truly surprising that OPC would offer this one-off encounter in an attempt to discredit the ability of the public to develop informed opinions on renewable energy while spending so much time and effort advocating for more public hearings in other dockets.

Finally, Staff notes that its witnesses are not generally opposed to renewable energy and recognizes that, “...the electric utilities that provide service in Missouri should be *evaluating* the move to more renewables as generation needs are identified... [emphasis added]”<sup>22</sup> However, the

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<sup>19</sup> Worford, David, “Facebook Parent Meta Building Sustainable Data Center in Kansas City,” Environment + Energy Leader (March 25, 2022). Accessed at: <https://www.environmentalleader.com/2022/03/facebook-parent-meta-building-sustainable-data-center-in-kansas-city/>.

<sup>20</sup> Steinmetz, Channa, “How did KC land Meta, Panasonic megaprojects? Infrastructure, energy and enthusiasm, companies say,” Startland News (November 10, 2022).

<sup>21</sup> For a recent example of OPC’s advocacy for more public hearings, see EFIS File ER-2022-0337, Doc. No. 57.

<sup>22</sup> EFIS File No. EA-2022-0328, Exhibit 104: *Rebuttal Testimony of J Luebbert*.

time for *evaluating* the transition to renewable energy has long passed. It is an irrefutable reality that the clean energy transition has been set in motion, and Missouri will be left in the dust if its largest utilities are not able to compete. The lack of urgency demonstrated by Staff ignores years of clear policy guidance directing investments like Persimmon Creek, as well as the sworn testimony of Evergy’s experts stating that the opportunity to procure such an attractive renewable asset is becoming more and more competitive. With a clearly identified need, as well as the IRA making renewable investments more cost effective than ever, one message is clear: *now is the time for action.*

Overall, evidence presented through written testimony and at hearing demonstrates that Persimmon Creek will deliver benefits to Evergy customers and Missouri generally through long-term low-cost energy and capacity,<sup>23</sup> the environmental benefits associated with wind generation,<sup>24</sup> the economic development benefits of Evergy remaining competitive in attracting and keeping sustainability-minded businesses,<sup>25</sup> and the reliability benefits of a diversified generation mix.<sup>26</sup> Finally, Evergy’s acquisition of Persimmon Creek is consistent with well-established policy guidance set forth by the Commission and the Legislature that acknowledges the need for Missouri utilities to invest in renewable energy for the benefit of all Missourians.

### **III. Conclusion**

The Persimmon Creek wind farm will deliver a range of benefits to Evergy customers – and to the public generally – in a manner that mitigates risk, lowers cost to customers long-term, supports economic development, and delivers environmental benefits through the addition of a

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<sup>23</sup> EFIS File No. EA-2022-0328, Exhibit No. 1: *Direct Testimony of Matthew W. Dority*; Exhibit 6P: *Supplemental Direct Testimony of Kayla Messamore*; Transcript Vol. 1, Page 94 Lines 5-20.

<sup>24</sup> EFIS File No. EA-2022-0328, Exhibit 7: *Surrebuttal Testimony of Matthew W. Dority*.

<sup>25</sup> EFIS File No. EA-2022-0328, Exhibit 300: *Surrebuttal Testimony of James Owen*.

<sup>26</sup> EFIS File No. EA-2022-0328, Exhibit 7: *Surrebuttal Testimony of Matthew W. Dority*; Transcript Vol. 1, Page 213-214 Lines 16-25 and 1-7; Transcript Vol. 1 Page 148 Lines 9-20.

generation resource that will provide needed clean energy. While Staff applies an overly narrow analysis in arguing that Persimmon Creek does not serve the public interest, the overwhelming weight of the evidence presented demonstrates that the Company, its ratepayers, and the state of Missouri will benefit from approval of Evergy's application. The Commission should, under its broad discretion to determine and regulate in the public interest, reject Staff and OPC's narrow and short-sighted arguments and approve the CCN.

WHEREFORE, Renew Missouri submits its *post-hearing brief*.

Respectfully,

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Certificate of Service

I hereby certify that copies of the foregoing have been emailed to all counsel of record this 9<sup>th</sup> day of March 2023:

/s/ Alissa Greenwald