BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of The Empire District Electric Company for Approval of its Customer Savings Plan.	)))	**Case No. EO-2018-0092**

STAFF'S REPLY BRIEF

Staff continues to urge the Commission to resolve all contested issues as provided in the *Stipulation.* The contested issues before the Commission are as follows:

1. Does the Commission have authority to grant Empire's requests?
2. Which of Empire's requests, if any, should the Commission grant?
   - o Operate the Wind Projects as described in *Stipulation*, including a finding that Empire's acquisition of the Wind Projects is reasonable;
   - o Continuation of Asbury operations as described in the *Stipulation*, including a finding that Empire's decision to keep Asbury operational is reasonable;
   - o Approval of depreciation rates as described in Empire Witness Watson's testimony, so that depreciation can begin as soon as the assets are placed in service;
   - o Approval of a limited variance from 4 CSR 240-20.015(2)(A) and 4 CSR 240-20.015(3) so Empire may enter into arrangements between Empire and affiliates to implement the Customer Savings Plan, (CSP), to the extent necessary;
3. What requirements should be applied to the Asbury regulatory asset?
4. Should Empire be required to make any additional filings in relation to the CSP? If so, what filings?

5. Should the Commission impose any requirements in regard to tax equity financing? If so, what requirements?
6. What conditions, if any, should be applied to the Asbury Employees?
7. Should the Commission require conditions related to any impacts on local property taxes? If so, what conditions?
8. Should there be any requirements associated with the Tax Cuts and Jobs Act of 2017? If so, what requirements?
9. Should there be any requirements associated with potential impacts of the Wind Projects on wildlife? If so, what requirements?
10. Should the Commission grant waivers of its affiliate transaction rules for the affiliate agreements associated with the CSP?

As Staff provided in its *Initial Brief,* the Commission should resolve each of the issues in the manner described in the *Stipulation*, as well as order the concessions negotiated by the parties as conditions. The resolutions put forth in the *Stipulation* are the most equitable solutions to the issues before the Commission, and are amply supported by substantial and competent evidence.

The purpose of a *Reply Brief* is to respond to the arguments made by parties' opponent. Rather than replying to every argument other parties make in their initial briefs, having presented and argued its positions in its initial brief, Staff is limiting its replies to where it views further explanation will most aid the Commission in its deliberations.

The Commission should approve the Non-Unanimous Stipulation and Agreement ("Stipulation") as a total resolution to all issues presented.

The Stipulation is in the public interest, as is the most appropriate solution to the issues presented before the Commission. As shown by the diverse group of parties (The Empire District Electric Company ("Empire"), Midwest Energy Consumers Group ("MECG"), the Missouri Department of Economic Development-Division of Energy ("DE"), Renew Missouri, and Staff, (collectively the "Signatories") that have signed the Stipulation, it is a well-rounded and robust document that supports the needs of consumers, the utility, economic development in Missouri, and renewable energy goals. The Stipulation contains several key provisions that protect Missouri ratepayers and promote these goals, including:

1) Wind generation assets that diversify and further green Empire's generation portfolio, have no ongoing fuel costs, and will have a substantial portion of the cost covered by a tax equity partner taking advantage of the production tax credits ("PTCs");[1]

2) A Market Price Protection mechanism that ensures ratepayers receive benefits during the initial 10 years by both capturing any risk that wind projects revenues do not cover the revenue requirement of the wind projects by returning up to $35 million of any revenue requirement shortfall as a regulatory offset, as well as passes through 100% of all benefits to customers via the fuel adjustment clause ("FAC");[2]

[1] ***In the Matter of the Application of The Empire District Electric Company,*** Case No. EO-2018-0092 (***Non-Unanimous Stipulation and Agreement,*** filed April 24, 2018) ("*Stipulation"*) page 4.
[2] *Id.* at page 8.

3) A rate reduction related to the Federal Tax Cuts and Jobs Act ("TCJA") that reduces rates by $17.8 million for an immediate benefit to customers, and a rate moratorium that gives customers a at least a guaranteed year and half of those reduced rates;[3]

4) Commission oversight by requiring Empire to apply for regulatory approval regarding a certificate of convenience and necessity and future financing arrangements, as well as allowing Signatories access to the books of Empire and its affiliates to ensure compliance with the Stipulation.[4]

The Stipulation is in the public interest as customers receive benefit, via the FAC, of off-system sales revenue ("OSSR") produced by the Wind Projects.

The results of the extensive modeling performed in this case show that customers will save $169 million by pursuing the Stipulation as opposed to continuing the status quo.[5] These benefits will be flowed to customers via the FAC and intervening rate cases.[6] The Office of Public Counsel ("OPC") seems to challenge the Signatories' statements that they designed the Stipulation to flow back the benefits via the FAC.[7] The Signatories are clear that 100% of the benefits flow to customers. The attachments to the Stipulation makes this clear, as do the statements by the Signatories at hearing.[8] Answers to questions about how the Stipulation works and the intent behind provisions

[3] *Id.* at page 9 and page 15.
[4] *Id.* at pages 6 through 7, and page 13.
[5] This is under the baseline conditions. Under a worst case scenario, customers still save $69 million, and a high market price scenario would result in $320 million in savings. *See* Ex. 8C, *MacMahon Affidavit,* page 5, figure 2.
[6] Ex 3, ***Surrebuttal Testimony of Christopher D. Krygier***, page 2, lines 20-23.
[7] "Despite the representations made that ratepayers would enjoy the benefits of excess wind sales revenues, nothing in the Stipulation and Agreement proposes such a mechanism." *Initial Brief of the Office of Public Counsel*, filed May 31, 2018, page 58.
[8] Tr. Vol. 5, page 598, lines 6-9.

in the Stipulation are more credibly answered by those who created the Stipulation, not those opposing it.

OPC also takes issue with the statement that the benefits can flow through the FAC statutorily. OPC witness Lena Mantle states she has considerable experience with the FAC and does not believe Empire's revenues could flow through the FAC, mainly due to the FAC being for fuel and purchased power, not off system sales revenues.[9] OPC spent a considerable amount of time in testimony and in the hearing arguing the FAC would not allow Empire to flow OSSR benefits to customers. Yet, OPC puts forth no credible explanation on why Empire could not flow OSSR through its FAC. OPC's first claim that Empire could not flow OSSR through its FAC revolved around the statement that Section 386.266, RSMo. (the FAC statute) does not allow the pass through of revenues from a regional transmission organization, such as the Southwest Power Pool ("SPP").[10] However, this is inaccurate as Union Electric Company d/b/a Ameren Missouri ("Ameren") flows capacity payments, a type of revenue, received from the Midcontinent Independent System Operator's ("MISO") capacity market through its FAC.[11] OPC tries to distinguish Ameren as not analogous.[12] If one relies upon statements made at hearing, the major difference would be that Ameren has excess capacity because of reserve requirements and because it no longer serves a big customer, as opposed to Empire, who would be building excess capacity.[13] Although of questionable relevance, Ms. Mantle tries to draw a distinction

[9] Ex. 208, ***Affidavit of Lena M. Mantle in opposition to non-unanimous stipulation and agreement,*** page 4.
[10] *Id.*
[11] Tr. Vol 7, page 784, lines 3-14.
[12] *Initial Brief of the Office of Public Counsel*, filed May 31, 2018, page 58, ftn. 208.
[13] Tr. Vol. 7, page 784, lines 21-25.

between capacity built to serve load and capacity used for off systems sales, failing to show a distinction, legal or otherwise, that would prevent Empire's off system sales revenues from flowing through FAC.[14] This also ignores that all of Empire's load is sold "off-system" and then Empire purchases what it needs to meet its load back from SPP. The market's existence means native load is legal fiction.[15] Finally, Ms. Mantle admits that all four utilities do flow OSSR through their FACs, leaving the tribunal back at square one with no factual or legal justifications for the claim Empire cannot flow its OSSR through its FAC.[16] In fact, the entire argument that Empire cannot flow the OSSR from the wind projects through the FAC is so befuddling that the Commission asked for clarification to be provided by counsel for OPC in briefing.[17] Despite this request, OPC's *Initial Brief* contains a paltry footnote dedicated to the subject.[18] As OPC has not supported its claims regarding the FAC with substantial and competent evidence, the Commission can dismiss them summarily.

The Stipulation contains numerous safeguards to protect ratepayers.

Signatories negotiated a variety of safeguards to protect the interests of ratepayers that are memorialized in the Stipulation. At a high level, the safeguards are the market price protection mechanism, a rate reduction related to the TCJA, a rate moratorium, regulatory approval safeguards, a most favored nation provision, and non-residential access to renewable energy or what has been referred to as a green tariff.

[14] Tr. Vol 7, page 785, lines 1-10.
[15] Tr. Vol 5, page 399, lines 9-13.
[16] Tr. Vol 7, page 786, lines 2-4.
[17] **"Well, I will be intrigued to read your counsel's learned briefing on that topic because I don't understand that testimony at all. So, thank you."** Tr. Vol 7, page 786, lines 12-15.
[18] *Initial Brief of the Office of Public Counsel*, filed May 31, 2018, page 58, ftn. 208.

The Market Price Protection Mechanism

The Market Price Protection mechanism is most significant, as it not only protects ratepayers to the tune of $35 million if market prices are lower than modeled, it also incentivizes Empire to ensure the Wind Projects are completed in a manner that minimizes the costs and maximizes the revenues. Because the mechanism is simply, wind revenue requirement (or the cost of the project) as the sole numerical figure on the left side of the equation compared to wind revenues produced plus the value for the expired wind purchase power agreements ("PPAs") that the Wind Projects eliminate the need to replace. If the annual revenue requirement is greater than the figure on the right side of the equation by more than $2 million, the Market Price Protection mechanism is triggered, and Empire begins accruing 50% of the detriment, up to $35 million, as a regulatory liability to the benefit of customers in the next rate case. If the revenue requirement is less than the figure on the right side of the equation, the cost of wind farms is being covered by the revenues and ratepayers are held harmless. In fact, ratepayers are benefited, as excess revenues are flowed back via the FAC to reduce bills. The Market Price Protection mechanism incentivizes Empire to minimize capital costs and factors that would reduce production or result in lower OSSR (such as run wind in a manner that requires Empire to pay SPP for the generation).[19] For instance, the Market Price Protection mechanism would incentivize Empire to have the tax equity partner contribute as much as possible, as it lowers the capital cost, which lowers the risk the Wind Project revenues will be insufficient to cover the capital costs, which would result in Empire facing a penalty under the mechanism.

[19] Tr. Vol. 5, page 491, line 17 to page 492, line 5.

Green Tariff

Empire agrees to propose a "green tariff" in its next rate case to allow commercial and industrial customers to purchase renewable energy credits ("RECs"), which are an attribute of the wind projects. OPC initially tried to cast aversion on this provision by stating it was unlikely to accomplish its intended effect, as corporate customers, in particular, Wal-Mart, were not interested in such programs.[20] This statement was put forth to oppose the Stipulation in which MECG, the advocate for the commercial and industrial consumers, had agreed to on behalf of its clients. One would reasonably assume that the corporate clients saw enough benefit for their interests in the Stipulation to sign off on, and that was confirmed at hearing.[21] The assertions of the counsel representing the interest of Wal-Mart and other corporations are far more credible evidence regarding the interest in a green tariff than assumptions made by an individual unaffiliated with the parties in question.[22] The Stipulation requires a tariff to be filed in next rate case, so there is no waiting for a party to propose.[23]

** _____

_____ . **

OPC raises concern with ** _____ **, and its potential for a negative impact on ratepayers.[24] There are many benefits to ** _____

_____

_____

[20] Ex. 211, ***Affidavit of Geoff Marke (Public and Confidential)***, pages 18-19.
[21] Tr. Vol. 3, page 120, lines 1-25.
[22] Tr. Vol. 3, page 120, lines 4-6.
[23] *Stipulation,* page 13.
[24] *Initial Brief of the Office of Public Counsel*, filed May 31, 2018, page 47.

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_____ . [25]** Empire attests that the decision is not only viable, but also economically advantageous, based on the advances in technology, such as taller turbines and longer blades, as well as lower transmission costs.[26] This can be evidenced by the fact that the request for proposals included ** _____ ** from the beginning, and there was interest in utilizing it in proposals received.[27]

Compared to the Windcatcher Stipulation, the Stipulation is equally or more protective of ratepayers.

OPC attempts to argue that the Windcatcher Stipulation is a model stipulation, and the current Stipulation should be rejected for failing, in OPC's opinion, to meet that standard.[28] However, a close comparison of the two stipulations shows them to be quite comparable, and the Stipulation in this case edges out the Windcatcher Stipulation in certain regards. For instance, OPC cites positively that the Windcatcher Stipulation has customer assurances regarding the PTCs, which they seem to not believe is the case with the current Stipulation.[29] However, in the Windcatcher project, the utility owns the entire project, so all 4.5 billion dollars would go to ratepayers.[30]

[25] Tr. Vol 3, page 257, lines 13-16.
[26] Tr. Vol. 3, page 52, lines 1-5.
[27] Tr. Vol 5, page 496, lines 10-20.
[28] *Initial Brief of the Office of Public Counsel*, filed May 31, 2018, page 57.
[29] Ex. 211, ***Affidavit of Geoff Marke (Public and Confidential)***, page 8.
[30] *Id.* at Schedule GM-2.

In this Stipulation, in exchange for the value of the PTCs, the tax equity partner will cover a substantial portion of the wind project, leaving less for Empire customers to pay. Empire retaining the PTCs would not help Empire customers as quickly due to the lack of a tax appetite (a need for reduction in taxable income) for Empire.[31] Although not flowing directly to the customers, the use of the PTCs to attract a tax equity partner does give customers benefit. The Stipulation allows provides that any offset for the Wind Projects not receiving 100% of the value of the PTCs will flow back to customers, which is another PTC related assurance.[32]

OPC also positively remarks that the Windcatcher Stipulation has no presumption of prudency.[33] OPC does not draw attention to the fact that the utility behind Windcatcher is seeking a decisional prudency determination[34] nor to the fact that the current Stipulation specifically notes the Commission, and Signatories, will review the prudency of costs and other prudency related items in a future case, which would mean that this Stipulation also has no presumption of prudency.[35] The same double standard applies when OPC positively points out the most favored nation clause, the rate case timing provisions, and the ability for consumers to purchase RECs to offset costs,[36] while remaining silent on paragraph 23 of the Stipulation that contains the most favored nation clause, paragraph 17 (d) the rate case moratorium, and paragraph 20 which allows nonresidential consumers to purchase RECs to offset costs.[37]

[31] Ex. 12C, ***Surrebuttal Testimony of Todd Mooney***, page 8, lines 10-16.
[32] *Stipulation,* page 8.
[33] Ex. 211, ***Affidavit of Geoff Marke (Public and Confidential)***, page 7.
[34] *Id.* Schedule GM-1.
[35] *Stipulation,* page 5.
[36] Ex. 211, ***Affidavit of Geoff Marke (Public and Confidential)***, page 9.
[37] *Stipulation*.

And of course, OPC makes no mention of the provisions that are more protective of ratepayers in the current Stipulation. The Windcatcher Stipulation's benefit guarantee provision doesn't flow back benefits to customers until year 11, the current Stipulation does so immediately.[38] Furthermore, the Windcatcher stipulation allows the revenue requirement of the wind farms to be offset by carbon savings, REC value, and deferred and capacity value.[39] For the current Stipulation, if the wind projects' annual revenue requirement is more than the annual revenue plus PPA replacement value plus $2 million, customers get an annual credit, which could accumulate up to $35 million. Also, the current Stipulation has consumer safeguard provisions regarding debt and capital structure, the Windcatcher Stipulation does not.[40] Finally, the Market Price Protection mechanism also is an extra safeguard for many of the benefits already mentioned, as anything (such as a lower capacity) that reduces the revenues the wind project makes and would make it harder to cover the revenue requirement means Empire will face liability, so Empire is incentivized not to do those things.

Opposing parties' arguments regarding the wind modeling are contradictory and inconsistent, and opposing parties provide no evidence of their own to refute the modeling.

A good portion of the briefing from the opposing parties centered on claims regarding the "subpar" nature of the modeling that Signatories relied upon to validate Empire's claims of customer savings. However, in their zeal to attack both the modeling results and Empire's proposed plan, opposing parties contradict themselves. For instance, OPC witness Dr. Marke states, "If Empire's modeling suggests retiring

[38] Ex. 211, ***Affidavit of Geoff Marke (Public and Confidential)***, page 8.
[39] *Id.*
[40] *Id.*

significant amounts of base load generation prematurely is prudent, then **other SPP members modeling must show similar results**."[41] This statement comes only three pages after the witness also states "**Empire's modeling is opaque and flawed**."[42] Which is it? Is the modeling so flawed it cannot be relied upon, or are the modeling results the only outcome and so ubiquitous that every member of SPP is showing the same results? Or is OPC contending that every utility is modeling incorrectly? OPC cannot have it both ways. The City of Joplin ("Joplin") makes a similar inconsistent argument. Joplin scoffs at using three years of data to model future prices, but also contends that the one year of data presented in the 2017 SPP State of the Market is enough to predict a future filled with negative pricing.[43] Empire witness Mr. McMahon touches on this contradiction, stating:

> As noted above, Empire, through ABB, has been producing similar forecasts for use in its IRP proceedings since before the SPP integrated marketplace was in place, and such an approach is far more rigorous than relying on observed trends over a short-term time period as Ms. Mantle does.[44]

The opposing parties at time do not seem to understand the modeling results or processes, making incorrect assertions or producing work product that shows a fundamental misunderstanding of the inputs. For instance, Joplin states

> Finally, Empire's "model" did not use one of Empire's current wind generation facilities, but rather the Asbury node. Using the Asbury node to estimate future market prices is unreasonable as Asbury has not had negative pricing, and Asbury has had higher annual prices than Empire's wind generating node Elk River. There is no competent or substantial evidence to justify the market price assumptions made by Empire.[45]

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[41] *Id.* at page 6.
[42] *Id.* at page 3.
[43] ***Initial Post-Hearing Brief of the City of Joplin***, filed May 31, 2018, page 20.
[44] Ex. 7C, ***Surrebuttal of James McMahon,*** lines 7-10.
[45] *Id.* at page 21.

First, this assertion is incorrect. The Generational Fleet Savings Analysis ("GFSA") used the Elk River node to model low levelized cost of energy ("LCOE").[46] Furthermore, Empire explained why the Asbury node is a more reasonable node to use. ** _____ _____ _____ _____ . **[47] Empire provided competent and substantial evidence to justify their market assumptions, as opposed to the outcome orientated assumptions Joplin would have them make by choosing a node with negative prices and lower market prices to skew outcomes lower.

OPC makes a mistaken claim as well, stating "This equates to the retirement of 279 MW of power that were not modeled as part of Empire's thirty year plan. Additionally, no addition of generation was modeled to offset these projected retirements described in the depreciation study."[48] This is incorrect; Empire witness Mr. McMahon explained his schedule was a build schedule, not a retirement schedule, and that the additions needs were modeled.[49]

Another mistaken omission occurs when OPC states, "Based on Empire's 20-year modeling, a 5% to 7% decline in its forecasted average SPP market prices reduces revenues in its plan by 14%, or $44 million."[50] OPC mistakenly neglects to mention that, even after the cost of wind projects is factored in, a $44 million reduction

[46] Tr. Vol 3, page 264, lines 7-12.
[47] Tr. Vol 4, page 211, lines 3-18.
[48] ***Initial Brief of the Office of Public Counsel***, filed May 31, 2018, page 38.
[49] Tr. Vol 3, page 182, line 13 to page 184, line 21.
[50] ***Initial Brief of the Office of Public Counsel***, filed May 31, 2018, page 40.

in revenue still saves the customers $125 million over the status quo.[51] Signatories were also aware of the impact reduced SPP market prices had on the customer savings; in fact, the low market price modeling performed assumed a drop of 24% in market prices.[52] The lower market price condition still results in expected ratepayers saving $69 million over the status quo.[53]

Staff performed an independent analysis.

OPC states, "It is critical to note that while Staff and MECG filed affidavits in favor of the Stipulation and Agreement, no party performed an independent analysis of Empire's numbers."[54] It is unclear what OPC means by independent analysis. Staff, as well as the other parties, requested extensive modeling be performed, sat through numerous explanations of results and modeling as part of settlement negotiations, and independently evaluated the work papers and results attached to the Stipulation. MECG's witness Greg Meyer provided a prepared table on page 10 of his affidavit; this table is his own work product and analysis.[55] Staff Director Ms. Natelle Dietrich testified that Staff analyzed information and data to prepare affidavits.

> **Q: Okay. Is it your understanding – did Staff conduct any independent analysis with respect to the calculations of the wind revenue requirement?**
>
> A Staff received many data and information from Empire, but then used that information to perform its own analysis modifying various inputs, calculations and changing some things around to determine the appropriate number, the appropriate structure of, for instance, the customer savings plan.[56]

She again repeated, during cross examination by OPC:

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[51] Ex. 8C, ***Affidavit of James McMahon***, page 5, figure 2.
[52] Ex. 7P, ***Surrebuttal Testimony of James McMahon***, page 27, lines 1-2.
[53] Ex. 8C, ***Affidavit of James McMahon***, page 5, figure 2.
[54] ***Initial Brief of the Office of Public Counsel***, filed May 31, 2018, page 35.
[55] Ex. 351, ***Supporting Affidavit of Greg R. Meyer.***
[56] Tr. Vol 5, page 617 lines 12 -22.

Q: Well, where I'm really wanting to go with this, did Staff review what Empire did and, I guess, reach a comfort level? Or did Staff do a completely independent analysis of -- let's limit it to the stipulated plan?

A: To the extent that we had information available, we did an independent analysis by nature of the type of project and the -- the information -- some of the information had to come from Empire, but it was in a form that we were able to manipulate it to look at different calculations, different structures as far as the customer savings plan. It had -- as you know, it has the high, medium and low probabilities, and so we were able to go in and - -and change numbers related to that, to -- to view and get an idea of where the proper structure should be.[57]

This is no different from a typical rate case where most information is provided by the company; and Staff and other parties independently evaluate and verify.[58]

If OPC's contention is that no party independently ran scenarios through the GFSA without Empire, that is correct because Empire and Charles River Associates are the only parties with access and the capability to perform modeling of that scale. Furthermore, if this is OPC's contention, they have also not done independent analysis, and have no third party refutation of Empire's data.[59] OPC's reliance on Empire's data is illustrated in following exchange between Ms. Mantle and counsel for MECG:

Q. Yesterday there was some questions of Staff about them conducting an audit and relying upon Company information. Were you here for that?

A. Yes.

Q. And you were asked whether you had prepared Exhibits 503 through 508 and I think you said that you had; is that correct?

A. That is correct.

Q. And in conducting that information, did you rely upon information provided by the Company?

A. Yes.

[57] Tr Vol 5, page 621, line 8 to page 622, line 1.
[58] Tr. vol 5, page 629, lines 1-5.

Q. You didn't independently contact SPP for any of this information?

A. It's probably on their, their web page somewhere, but trying to find it would be – is nearly impossible.

Q. But you didn't do it?

A. No, I did not do it.

Q. You didn't independently contract with ABB for market prices?

A. No, sir.

Q. You relied entirely on information provided by the Company?

A. Because I wanted what they used in their model…[60]

OPC requested a lot of the modeling performed, it would be inappropriate for OPC to request modeling and rely upon it to form its conclusions, positive or not, yet criticize other parties for utilizing the same source of information.[61]

The claims of OPC and Joplin regarding the modeling, if believed, would raise some serious questions as to the sufficiency of information provided by all the utilities during resource planning. OPC states, "If the Commission believes that Empire's modeling is insufficient to a 50.1% certainty, then the Commission cannot find in favor of the Application."[62] If modeling in this case is wrong, then we can't trust that the revenue requirement for the status quo is accurate as "ABB provides all the price forecasts and modeling that goes behind the scenes in terms of price formation for Empire and has been doing that for quite some time through the IRP process."[63] In fact, all four electric utilities use ABB and similar modeling for their integrated resource planning ("IRP").[64]

[60] Tr. Vol 7, page 765, lines 2- 25.
[61] *See* Ex. 6P, ***Direct Testimony of James McMahon*** and Ex. 7P, ***Surrebuttal Testimony of James McMahon***.
[62] ***Initial Brief of the Office of Public Counsel***, filed May 31, 2018, page 34.
[63] Tr. Vol 3, page 203, lines 11-15.
[64] *See* Ex. 7C, ***Surrebuttal of James McMahon***, page 30, lines 1-2 and Tr. Vol. 7, page 779, lines 16-17.

Joplin states "The model is flawed because Empire's inputs regarding capacity factors, capital investment, and market prices are not supported by competent and substantial evidence."[65] It is unclear, under Joplin's standard, what a utility could ever put forth that qualified as competent and substantial evidence, if modeling, averaging, and assumptions about future conditions are not competent. OPC and Joplin can disparage the modeling provided, but as neither party has produced any alternatives, modeling, or results that are competent, the Commission should give little weight to their claims and analysis. As Empire witness Mr. James McMahon summarized:

Q. DOES EVERY INTEGRATED RESOURCE PLAN USE SOME TYPE OF FORECAST?

A. Yes.

Q. DOES MS. MANTLE PRODUCE ANY MODELING TO SUGGEST THAT EMPIRE'S LONG-TERM FORECAST IS WRONG?

A. No.

Q. ARE THESE SIMILAR, IF NOT IDENTICAL, TYPES OF FORECASTS THAT EMPIRE HISTORICALLY USED IN ALL OF ITS RESOURCE PLAN MODELING?

A. Yes.

Q. DO OTHER UTILITIES USE THE SAME OR A SIMILAR FORECASTING PROCESS?

A. Yes. Ameren has used power price forecasts 1 from ABB/Ventyx in the past, including in its most recent IRP.

[65] ***Initial Post-Hearing Brief of the City of Joplin***, filed May 31, 2018, page 15.

Q. DOES MS. MANTLE PRODUCE AN ALTERNATIVE FORECAST USING AN ALTERNATIVE APPROACH?

A. No.

Q. DOES MS. MANTLE SUGGEST AN ALTERNATIVE APPROACH TO FORECASTING MARKET PRICES?

A. No.[66]

Joplin's claims about capacity factors are based on outdated information.

On page 16 of its *Initial Brief*, Joplin states "First, one of the Kansas wind farms Empire currently purchases power from, Elk River, only has a capacity factor of 43%."[67] Elk River is an inappropriate comparison, as it was built in 2005.[68] As Empire's witness Mr. Blake Mertens explains;

A: New wind farms out in Kansas are in the upper 40s, and I've seen reports of even 50 percent or higher capacity factors for wind farms in Kansas.

Q Okay. And that's improved technology to a large degree, is it not?

A: Improved technology, higher – higher turbines, higher head heights. Yes.[69]

He goes on to explain why Meridian Way and Elk River are not good proxies for new wind generation. **"**Several things have changed. Not only the technology of wind turbines today to make that -- as Mr. McMahon explained yesterday to make the profile wind turbine is much different than when these were installed back in 2005 and 2008."[70]

[66] Ex. 7C, ***Surrebuttal Testimony of James McMahon*****,** page 29, line 7 to page 30, line 10.
[67] ***Initial Post-Hearing Brief of the City of Joplin***, filed May 31, 2018, page 16.
[68] Tr. Vol. 5, page 319, line 4.
[69] Tr. Vol 5 page 319, lines 14-21.
[70] Tr. Vol 5, page 303, lines 16-24.

Opposing parties' fears of negative pricing are overblown.

According to the opposing parties, negative pricing will gut any potential savings from the plan outlined in the Stipulation, leaving ratepayers on the hook for millions. OPC even goes as far as to claim that Empire did not model negative pricing.[71] This is untrue. Empire modeled negative pricing.[72] Empire, even its initial application, had planned for the possibility of negative pricing. First, Empire will bid wind in day ahead market, negative prices are overwhelmingly in the real time market.[73] Second, the wind will be closer to Empire's load, reducing negative price conditions due to less congestion.[74] Third, Empire will get transmission congestion rights ("TCR") to hedge against negative pricing.[75] Finally, negative pricing, if it occurs, would reduce the wind revenues that offset the wind revenue requirement, triggering the Market Price Protection Mechanism.

OPC's claim of a $318 million detriment is based on a faulty analysis refuted by substantial competent evidence.

OPC produced two analyses, one attached to the affidavit in opposition of John Riley, and another updated version of that analysis offered as an exhibit in the hearing. OPC uses that analysis to claim that ratepayers will lose $318 million;[76] however, the credibility of this document has been refuted by competent evidence. An exhibit entered by Joplin and marked as Ex. 511C, which was, oddly, an exhibit prepared by OPC's witness Mr. John Riley, was also discredited. Empire witness

[71] ***Initial Brief of the Office of Public Counsel***, filed May 31, 2018, page 42.
[72] Ex. 7C, ***Surrebuttal Testimony of James McMahon*****,** page 35, lines 7-16.
[73] *Id.* at page 33, lines 1-8.
[74] *Id.* at page 34, lines 8-15.
[75] *Id.* at page 36, lines 2-5.
[76] Ex. 210, ***Affidavit of John S. Riley in Opposition of the Non-Unanimous Stipulation and Agreement***, Schedule JR-1 and Ex. 218, JSR-1 Corrected.

Mr. Todd Mooney walked through the document, noting mistakes in how the hedge was modeled[77] and a double counting of distributions to the tax equity partner,[78] (made notable by the fact the OPC witness who performed the analysis admits that he does not understand the "contributions from TE" and "distributions to TE" inputs[79]) which leads to a material and significant overstatement of the costs.[80] Empire witness Mr. David Holmes walked through the initial JR-1 schedule and noted the mistakes, stating he did not agree with the analysis performed.[81] The first mistake is minor, a difference the rate base number between the accumulated depreciation of the product investment in year 2030.[82] The income tax rate was also modeled incorrectly.[83] A higher interest rate was used inexplicably, resulting in a multi-million dollar per year error.[84] Depreciation is modeled differently, and property taxes were modeled at a higher rate.[85] The operating costs modeled were not accurate as compared to the ones modeled as part of the Stipulation.[86] All of these errors added up to overstate the impact to ratepayers significantly. OPC later produced a purportedly corrected version of this spreadsheet, assumedly prepared to change or correct the positions stated in the initial Schedule JR-1 based on the discussion at hearing. Mr. Holmes again walked through the document. The errors surrounding the tax equity partner still existed, which still

[77] Tr. Vol. , page 432, lines 1-20,
[78] Tr. Vol. 5, page 433, lines 7-17.
[79] Ex. 210, ***Affidavit of John S. Riley in Opposition of the Non-Unanimous Stipulation and Agreement***, page 6.
[80] Tr. Vol. 5, page 434, lines 9-11.
[81] Tr. Vol. 5, page 564, lines 17-19.
[82] Tr. Vol. 5, page 566, lines 10-18.
[83] Tr. Vol. 5, page 567, lines 4-10.
[84] Tr. Vol. 5, page 567, lines 11-23.
[85] Tr. Vol. 5, page 568, lines 1-11.
[86] Tr. Vol. 5, page 570, line 23 to page 571, line 1.

created a significant and material overstatement.[87] Mr. Holmes testified that the same errors presented in Schedule JR-1 were presented in Ex. 218, JSR-1 Corrected.[88] Ex. 511C suffers from the same defects.[89] Additionally, Ex. 511C changed the tax equity percentages, but did not carry down those changes to the PTCs, the contributions from TE and the add back distributions from TE lines.[90] Also, without explanation, Ex. 511C had a higher equity percentage modeled in the capital structure, increased to 60% from 51%.[91] The Stipulation has requirements regarding the range of capital structure that to be used in rate cases, which must be between 47% - 53%, much lower than what OPC witness Mr. Riley modeled in Joplin's Ex. 511C.[92]

OPC mistakes the legal standard for necessity as absolutely essential, contrary to case law.

Beginning on page 48 of its *Initial Brief*, OPC argues that Empire does not need the projects therefore; the Commission must deny the application and the Stipulation. In doing so, OPC ignores a long line of Commission and Court case law that expends the definition of necessary from absolutely indispensable, to a broader, more public interest view of need. The seminal case invoking this proposition is State ex rel. Intercon Gas, Inc. v. Pub. Serv. Comm'n of Missouri.[93] There, the court found

> The PSC has authority to grant certificates of convenience and necessity when it is determined after due hearing that construction is "necessary or convenient for the public service." § 393.170.3. The term "necessity" does not mean "essential" or "absolutely indispensable", but that an additional service would be an improvement justifying its cost. State ex rel. Beaufort Transfer Co. v. Clark, 504 S.W.2d at 219…Furthermore, it is within the discretion of the Public Service

[87] Tr. Vol. 7, page 890, lines 18-24.
[88] *Id.*
[89] Tr. Vol. 7, page 891, lines 7-11.
[90] Tr. Vol. 7, page 891, lines 12-20.
[91] Tr. Vol. 7, page 891, line 21 to page 892, line 2.
[92] *Stipulation,* page 6.
[93] 848 S.W.2d 593, 597–98 (Mo. Ct. App. 1993)848 S.W.2d 593, 597–98 (Mo. Ct. App. 1993).

> Commission to determine when the evidence indicates the public interest would be served in the award of the certificate.[94]

The Court has also stated "Necessity or need means the service is "highly important to the public convenience and desirable for the public welfare."[95] The public interest is served by additional renewable generation, as seen by the RES compliance standards codified at CSR 240-20.100. Aside from mandatory regulations, Missouri's Comprehensive State Energy Plan and the United States Code, 16 U.S.C. 46, Public Utility Regulation Policies ("PURPA") encourages state officials and utilities to integrate more renewable resources in producing energy. The existence of these statutes and regulations is evidence that the public interest would be served by Empire building wind generation.

OPC has lost the battle to narrowly defined need before, twice in front of the Commission in applications for certificates of convenience and necessity ("CCNs") for solar facilities that were not needed for RES compliance or capacity.[96] OPC went on to appeal the cases, and lost before the Court as well. The Court upheld the Commission's grant of a CCN to Kansas City Power and Light Company-Greater Missouri Operations ("GMO") to build a solar generation facility. OPC made the same argument it made in front of the Commission to the Court regarding GMO's need for the project as it was not needed for capacity or RES compliance. The Court stated:

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[94] State ex rel. Intercon Gas, Inc. v. Pub. Serv. Comm'n of Missouri, 848 S.W.2d 593, 597–98 (Mo. Ct. App. 1993)848 S.W.2d 593, 597–98 (Mo. Ct. App. 1993).

[95] State ex rel. Missouri Kansas and Oklahoma Coach Lines, Inc., et al. v Public Service Commission, 179 S.W.2d 132, 136 (Mo. App. 1944).

[96] ***In Matter of Application of KCP&L Greater Missouri Operations Co. for Permission & Approval of a Certificate of Pub. Convenience & Necessity Authorizing It to Construct, Install, Own, Operate, Maintain & Otherwise Control & Manage Solar Generation Facilities in W. Missouri,*** Case No. EA-2015-0256, ***Report and Order*** issued March 2, 2016 and ***In the Matter of the Application of Union Electric Company d/b/a Ameren Missouri for Permission and Approval of a Certificate of Public Convenience and Necessity Authorizing it to Offer a Pilot Distributed Solar Program and File Associated Tariff***, File No. EA-2016-0208, ***Report and Order*** issued December 21, 2016.

> Moreover, Appellants fail to acknowledge that the same cases they generally rely on also emphasize "a necessity for the conservation of energy and of natural resources." *Pub. Water Supply*, 600 S.W.2d at 154 (citing *Atkinson*, 204 S.W. at 898–99) (inner quotation marks omitted). The public policy of the state to conserve natural resources and pursue renewable energy sources is reflected in Missouri's RES. *See Moorshead v. United Rys. Co.*, 119 Mo.App. 541, 96 S.W. 261, 271 (1906) ("[T]he very highest evidence of the public policy of any state is its statutory law").[97]

Finally, Elk River and Meridian Way will expire and Empire will need resources to replace it for RES compliance to meet the 15% in 2021 for 4 CSR 240-20.100 (1)(R)(4).[98]

The Commission should order the depreciation as outlined in the Stipulation.

The Commission should approve the depreciation rates as described in Empire witness Watson's testimony, so that depreciation can begin as soon as the assets are placed in service. The Commission should ignore OPC's creative argument regarding ownership that would deprive Empire of what it is lawfully allowed a return of. OPC tries to argue Empire will not own the wind assets, so depreciation is not appropriate.[99] However, several companies operate in a similar structure and still are allowed depreciation. For instance, Hillcrest is a wholly owned subsidiary of Hillcrest Utility Holding Company, Inc., which is wholly owned by First Round CSWR, LLC ("First Round"), which, in turn, is managed by Central States Water Resources, Inc.[100] No arguments have been made that Hillcrest, by working in a holding company structure, does not own its assets and should not recover its return of, or that

[97] Matter of Application of KCP&L Greater Missouri Operations Co. for Permission & Approval of a Certificate of Pub. Convenience & Necessity Authorizing It to Construct, Install, Own, Operate, Maintain & Otherwise Control & Manage Solar Generation Facilities in W. Missouri, 515 S.W.3d 754, 763 (Mo. Ct. App. 2016), reh'g and/or transfer denied (Jan. 24, 2017), transfer denied (May 2, 2017)
[98] Tr. Vol. 5, page 495, lines 4-7.
[99] ***Initial Brief of the Office of Public Counsel***, filed May 31, 2018, page 31.
[100] Matter of Water Rate Request of Hillcrest Util. Operating Co., Inc., 523 S.W.3d 14, 16 (Mo. Ct. App. 2017), reh'g and/or transfer denied (Apr. 27, 2017), transfer denied (June 27, 2017).

First Round should not recover its cost relating to Hillcrest as it doesn't own the assets. Instead of pointing to analogous holding company situations, OPC cites to a KCPL case in which "the utility sought a depreciation rate related to expenses arising from the construction of new highway overpass owned by the State of Missouri. Staff argued that "[t]he expense relates to real property belonging to someone other than applicants."[101] Empire will operate and control the wind assets, as seen in the diagrams outlined in the direct testimony of Empire witness Mr. Mooney,[102] making the wind assets completely incomparable to an overpass owned by the State of Missouri. Empire has clearly laid out the ownership structure of, and Empire's direct involvement in, operation of the wind assets, and eventually Empire's 100% ownership entitle it to a return of its investment.

OPC also tries to argue against the ordering of depreciation rates without in service criteria being met,[103] failing to realize the Stipulation mandates in-service criteria being met and shown to the parties,[104] and that depreciation will not go into effect until in service criteria is met.[105]

OPC, as a last ditch argument against setting depreciation rates, states "Without having the benefit of knowing what wind assets will be installed, such as a contract with the developer, the Commission cannot know in fact what assets are being constructed."[106] This statement is illogical, and seems to imply the Empire would request a wind depreciation rate but instead build solar assets, or any other asset than the wind described.

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[101] ***Initial Brief of the Office of Public Counsel***, filed May 31, 2018, page 32.
[102] Ex. 11, ***Direct Testimony of Todd Mooney*****,** pages 12-13.
[103] ***Initial Brief of the Office of Public Counsel***, filed May 31, 2018, page 32.
[104] *Stipulation*, pages 7-8.
[105] Empire will be able to book a return of, but not on, after in-service criteria is met. Tr. Vol. 3, page 117, lines 1-10.
[106] ***Initial Brief of the Office of Public Counsel***, filed May 31, 2018, page 33.

The Commission should find the financial components of the plan reasonable.

Allowing the tax equity partnership allows Empire to acquire up to 600 MWs of wind generation for as little as 40 cents on the dollar.[107] Such a relationship is in the best interest of the ratepayers. OPC tries to argue against the tax equity partnership by misconstruing Section 393.180, RSMo.[108] OPC seems to argue that since tax equity financing is not listed in Section 393.180, RSMo. the Commission is unauthorized to allow Empire to engage in it. "These statutes do not address the type of public utility co-investment that Empire presents here, which involves holding companies that own companies with wind farms to take advantage of tax equity financing."[109] Section 393.180, RSMo. requires utilities to receive regulatory approval before issuing stocks, bonds or notes.[110] OPC misinterprets the effect of this law, however. Section 393.180, RSMo. obligates the utilities to seek approval for stocks, bonds, and notes. However, it does not prohibit the utility from seeking approval for other financing options; in fact, Empire is trying to be transparent in its actions. Furthermore, there is a significant difference between indebtedness, which encumbers the used and useful property of a utility, and the financing arrangements at issue here, which implicate in what the utility can invest.

The Commission's authority to find the financial arrangements reasonable stems from Section 386.040, RSMo., which provides that the Commission "shall be vested

[107] Ex. 11, ***Direct Testimony of Todd Mooney*****,** page 4, lines 11-13.
[108] ***Initial Brief of the Office of Public Counsel***, filed May 31, 2018, page 7.
[109] *Id.* at page 26.
[110] RSMo. 393.180-Right to issue stocks, bonds, notes subject to regulation. — The power of gas corporations, electrical corporations, water corporations, or sewer corporations to issue stocks, bonds, notes and other evidences of indebtedness and to create liens upon their property situated in this state is a special privilege, the right of supervision, regulation, restriction and control of which is and shall continue to be vested in the state, and such power shall be exercised as provided by law and under such rules and regulations as the commission may prescribe.

with and possessed of the powers and duties in this chapter specified, and also all powers necessary or proper to enable it to carry out fully and effectually all the purposes of [the Public Service Commission Law]." Furthermore, Empire has properly invoked the Commission's authority under Section 386.250(1) and (7), which states the Commission's jurisdiction, supervision, powers and duties extend to:

> the manufacture, sale or distribution of . . . electricity for light, heat and power, within the state, and to persons or corporations owning, leasing, operating or controlling the same; . . . to . . . electric plants, and to persons or corporations owning, leasing, operating or controlling the same" and "[t]o such other and further extent, and to all such other and additional matters and things, and in such further respects as may herein appear, either expressly or impliedly.

The Commission can supervise and has jurisdiction over owning, operating, and controlling electric plant. Empire, along with the wind holdco(s) and subsidiary partners, would fall under the Commission's authority, via their role in operating the wind farm. Again, Empire seeks to be transparent in front of the Commission and not skirt its jurisdiction by maintaining the legal fiction of the holdco(s) to allow Empire to operate the wind farms on behalf of ratepayers but escape the Commission's jurisdiction.

The use of subsidiaries and holding companies is not unique to Empire, and has not rendered the Commission powerless to approve transactions or the utilities unable to enter into such agreements. Kansas City Power and Light Company ("KCPL") operates Wolf Creek Nuclear Unit in an analogous fashion. Wolf Creek has an operating company that provides services to Wolf Creek ("WCNOC") and that service company is in turn serviced by KCPL.[111] KCPL also received Commission approval of a unique and

[111] Applicants make these requests: (1) KCPL to provide office space and personal property to GPES; (2) KCPL to continue to provide, under existing agreements, services to WCNOC; and (3) WCNOC to continue to provide, under existing agreements, goods and services to KCPL and the other owners of the Wolf Creek Generating Station. In Re Great Plains Energy Inc., Release No. 27662 (Mar. 31, 2003).

somewhat analogous (in the sense it is not a note, stock, or bond that OPC argues utility financing is limited to) financial arrangement to pay for nuclear fuel.

> Under the proposed lease transaction, the applicant will transfer title to its nuclear fuel to Continental Illinois National Bank and Trust Company of Chicago, as trustee of the KCPL fuel trust (hereinafter referred to as the 'trust'). A draft of the proposed trust agreement is attached as Exh 6 to the application herein. Upon the transfer, the trust shall pay to the applicant a sum of money equal to the book value of the nuclear fuel, exclusive of any associated credits. Simultaneous with said transfer, the applicant and the KCPL fuel trust will enter into a nuclear fuel lease (hereinafter referred to as the 'lease'). A draft copy of the proposed lease is attached as Exh 7 to said application. Under the lease, the trust will *299 lease to the applicant all of the nuclear fuel required by the applicant during the testing, start-up, and commercial operation of Wolf Creek. The initial term of the lease is five years.[112]

This leasing arrangement lowered costs for consumers,[113] so although not the traditional financing method under Section 393.180, RSMo., the Commission approved the agreement. Since the tax equity financing would result in lower costs for consumers, the Commission should find the financing agreement reasonable.

OPC seems to imply that Empire is overstating the interest in the financing arrangements.[114] However, testimony from Empire witness Mr. Mooney should assuage those fears. Mr. Mooney testified that conversations were ongoing, and in fact, advancing with tax equity partners.[115] He also states that Empire has enough leverage,

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[112] Re Kansas City Power & Light Co., 45 P.U.R.4th 297, 298–99 (Jan. 2, 1982)

[113] "It is the contention of the company that based on its own economic analysis, operating lease treatment is the least cost method of financing its proportionate share of the nuclear fuel. The company's economic analysis entailed a comparison of conventional financing, capital lease treatment, and operating lease treatment. Its findings were that the cost of conventional financing of the nuclear fuel would be about 27.05 per cent on investment, the cost of capital lease treatment of the nuclear fuel would be about 25.46 per cent, and the cost of operating lease treatment of the nuclear fuel would be about 15.81 per cent." Re Kansas City Power & Light Co., 45 P.U.R.4th 297, 301 (Jan. 2, 1982).

[114] "Empire witness Todd Mooney provides confidential letters from JP Morgan, Wells Fargo and MUFG Union Bank expressing interest, but nothing more." ***Initial Brief of the Office of Public Counsel***, filed May 31, 2018, page 26.

[115] Tr. Vol 5, page 420 line 19 to page 421, line 1.

and there is enough interest from tax equity partners, for the participation to remain in the parameters outlined in his direct testimony, and codified in the Stipulation.[116]

OPC then goes on to attack the use of a tax equity partner by making statements that they "will invest in the construction of the wind farms to reap a profit on that investment through production tax credits, accelerated depreciation and cash."[117] Empire witness Mr. Mooney explains the cash portion of the tax equity partnership. "The cash is a requirement to meet the IRS guidelines that a portion of the tax equity partners return on and of it's[sic] capital be in the form of cash items."[118] Mr. Mooney also refutes OPC's belief that a tax equity partner is guaranteed a return on its investment. He states

> Their perception is incorrect. While the tax equity partnership is structured in a way that plans for the tax equity partner to earn a targeted return, this return is not guaranteed. In fact, the return cannot be guaranteed: the tax equity partner must bear risks and enjoy rewards commensurate with an equity holder, a detailed in IRS Revenue Procedure 2007-651 7 (which outlines the criteria that must be in place for a tax equity structure to be respected by the IRS). As an equity partner, by definition, they take more risk than would a lender in a traditional utility financing arrangement.[119]

He further explains the return on the investment is similar to how a utility ROE works, in which it is a target but not a guarantee.[120] All investments made, by tax equity partners, utilities, corporations, even personal investments by members of the public, such as OPC employees, are made with the expectation of a return on that investment.[121] An expectation of a return on investment is not outrageous,[122] nor should it be derided.

The Courts have held such an expectation is reasonable, and a corporation's interest is legitimate.

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[116] Ex. 12C, ***Surrebuttal Testimony of Todd Mooney***, page 6, lines 6-9.
[117] ***Initial Brief of the Office of Public Counsel***, filed May 31, 2018, page 26.
[118] Tr. Vol. 5, page 429, lines 2-5.
[119] Ex. 12C, ***Surrebuttal Testimony of Todd Mooney***, page 3, line 20 to page 4, line 9.
[120] Tr. Vol 5, page 420, lines 2-9.
[121] Tr. Vol. 5, page 420, lines 14-18.
[122] Tr. Vol. 5, page 420, lines 10-13.

> But such considerations aside, the investor interest has a legitimate concern with the financial integrity of the company whose rates are being regulated. From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on the debt and dividends on the stock. *Cf.* ***Chicago & Grand Trunk R. Co. v. Wellman,*** 143 U.S. 339, 345, 346, 12 S.Ct. 400, 402, 36 L.Ed. 176. By that standard the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.[123]

Most alarmingly, OPC makes the above arguments in its *Initial Brief*, in the current case, while simultaneously arguing the exact opposite in an open case. OPC's witness Dr. Marke also provided testimony in Case No. ET-2018-0063, where he states "if a tax equity partnership for procuring wind generation results in a utility procuring wind assets at a reduced cost to it, then this financing method should be utilized by all wind projects."[124] OPC cannot in good conscience make the arguments it has put forth in the current case while making the above statements in another docket. OPC seems to say whatever it can grasp as a reason to say no, regardless of if that reason is consistent with other statements made by OPC, or even has internal logic. For instance, OPC makes the statement "Similar to not having authorization from its Board of Directors to enter into contracts to build wind farms, Empire does not have the required authorization from its Board of Directors to enter into the contemplated investor tax equity financing arrangements."[125] But such a statement does not survive even the briefest of contemplation. It is hard to envision that Empire's Board of Directors would let its employees, including its President, proceed down negotiations and spend

[123] ***Federal Power Commission v. Hope Natural Gas Co.,*** 320 U.S. 591, 602-603, 64 S.Ct. 281, 287 - 288 (1944).
[124] *In the matter of the application of union electric Company d/b/a Ameren Missouri for Approval of 2017 Green Tariff*, Case No. ET-2018-0063, ***Rebuttal Testimony of Geoff Marke***, page 22, lines 10-12.
[125] ***Initial Brief of the Office of Public Counsel***, filed May 31, 2018, page 27.

valuable time, effort, and money pursuing the wind farms and tax equity financing, and expend the cost of litigating the issue in four states, to turn around and not authorize either. No credible argument has been made that the tax equity financing is inappropriate or harmful to ratepayers.

Conclusion

The *Stipulation* outlines resolutions to the contested issues that are in the public interest and will provide benefits for Empire ratepayers. Opposing parties have not presented compelling evidence to support resolving any issue in their favor.

The Commission has the authority to provide for regulatory flexibility to create a constructive regulatory environment that allows utilities and stakeholders to work together to bring substantial savings and innovative large scale beneficial projects to the public. Deviations from the typical case procedures are not always appropriate. Nonetheless, much like accounting authority order procedures exist for utilities to utilize in extraordinary accounting situations, extraordinary requests related to large scale plant investment may require deviations in procedure to ensure balanced outcomes that are in the public interest. On the basis of all the foregoing, Staff prays that the Commission will resolve all contested issues, and impose such conditions, as recommended herein by Staff; and grant such other and further relief as the Commission deems just in the circumstances.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served upon all of the parties of record or their counsel, pursuant to the Service List maintained by the Data Center of the Missouri Public Service Commission, on this 12th day of June, 2018.

/s/ Nicole Mers