

**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**

EMPIRE’S STATEMENT OF POSITION

COMES NOW The Empire District Electric Company (“Empire” or “Company”), and states the following to the Missouri Public Service Commission (“Commission”) as its Statement of Position as to the issues identified in the *Joint List of Issues, List and Order of Witnesses, Order of Parties for Cross-Examination, and Order of Opening Statements*:

OVERVIEW

The origin of this case is Empire’s analysis of whether it can bring savings to its customers by taking advantage of the historically low cost of acquiring new wind generation using tax equity financing to maximize the use of federal tax incentives such as production Tax Credits (“PTCs”) and accelerated depreciation. This analysis, referred to as the “Generation Fleet Savings Analysis” (“GFSA”), is premised on Empire’s 2016 Integrated Resource Plan with an update to a few key factors:

(a) nodal market data to more precisely reflect the Southwest Power Pool (“SPP”) Integrated Marketplace (“SPP IM”) pricing versus zonal modeling data previously incorporated in Empire’s IRPs;

(b) tax equity financing to maximize the use of the PTCs and accelerated depreciation, and;

(c) improved performance of wind generation technology based upon the rapid improvements in wind turbine technology.

The modeling also considered the retirement of existing generation if there were increased customer savings and if the retired capacity should be replaced by any new capacity.

The results of the initial GFSA showed that if instead of maintaining the status quo (i.e., the preferred plan under the 2016 IRP), Empire were to acquire up to 800 MW of wind generation located in or near its service territory through a tax equity partnership and retire the Asbury generation unit in 2019, Empire's customers would save up to \$325 million in energy costs over the next 20 years and up to \$607 million over the next 30 years. On average, an Empire residential customer would save \$9.33 per month, or nearly \$112 per year in energy costs for the 20 year period compared to maintaining the status quo for its generation fleet.¹ Empire has referred to this proposal as its Customer Savings Plan.

In order to determine whether its assumptions in the GFSA regarding the cost of wind generation were indicative of market prices to acquire wind generation, Empire issued a Notice of Intent to potential bidders in October 2017, and thereafter issued a competitive Request for Proposal ("RFP") to identify potential wind projects up to 800 MW of nameplate capacity to be constructed and sold to Empire through a build, own, and transfer transaction. The RFP required that this capacity could be satisfied through one project or multiple projects, with each project having a minimum nameplate capacity of 100 MW and a maximum nameplate capacity of 800 MW, where each project must: (a) achieve commercial operation in time to qualify for the maximum amount of the PTC's, with full transfer of ownership to take place as set forth in the RFP Schedule; and, (b) each Project to be located within the SPP footprint with energy and capacity deliverable to the Empire service territory.

¹ Once the Generation Fleet Savings Analysis was complete, Empire retained Charles River Associates, a well-respected expert in resource modeling, to independently validate the analysis' findings. The CRA work is described in the Direct and Surrebuttal Testimonies of James McMahon.

Empire received a significant number of bids, and after evaluating them, has determined that it could acquire up to 800 MW of wind generation in or near its service territory at prices that meet or beat the GFSA assumptions. After receiving these bids, Empire updated its GFSA analysis with the bid results and has determined that the projected savings are even higher than originally modeled. Thus, Empire seeks approval to retire the Asbury plant and acquire wind generation so that it can deliver these savings to its customers for decades to come.

Empire's proposed Customer Savings Plan is consistent with Missouri's Comprehensive Energy Plan, which identified in "Our Vision for the Future," a number of guiding principles, including the following:

Ensuring Affordability: A focus on providing reliable energy at prices that are fair and reasonable for consumers and businesses will support Missouri's continued economic success. It is essential that the state's energy system meet the health, welfare, and economic needs of its citizens with particular emphasis on vulnerable populations.

Diversifying and Promoting Security in Supply: Missouri must identify and capitalize on opportunities to maximize in-state clean energy resources and decrease dependence on imported fossil fuel energy sources.

Undertaking Regulatory Improvements: Modifications to our state's energy laws and regulations are necessary to expand opportunities, deliver enhanced benefits to Missourians, and guide Missouri into our energy future.

Comprehensive Energy Plan at 211.

In many ways, the Customer Savings Plan is the perfect embodiment of these principles. Acquiring new wind generation reduces Empire's dependence on fossil fuels while capitalizing on clean energy resources, and results in more affordable rates for the Company's customers.

Empire is seeking the following approvals associated with its Customer Savings Plan:

(1) Authorization to record its investment in and the costs to operate and maintain any Wind Projects acquired as part of the CSP including a finding that Empire's investment related to the CSP should not be excluded from Empire's rate base on the ground that the decision to proceed with the CSP was not prudent,

provided that, the terms contained in any acquisition agreement and tax equity partnership agreement meet or exceed the parameters set forth in the GFSA.

(2) Authorization to create a regulatory asset for the un-depreciated balance of Asbury, *so it may be considered for rate base treatment in subsequent rate cases.*

(3) Approval of the agreements between Empire and its affiliates that are necessary to implement the Customer Savings Plan, provided that, the goods and services *provided under the agreement are priced in the same manner that they are currently priced between Empire and its affiliates.*

(4) Approval of depreciation rates (3.33%) for the Wind Projects so that Empire can begin depreciating those assets as soon as they are placed in service.

(5) Issuance of an order that is effective by June 30, 2018, so Empire will have time to implement its Customer Savings Plan.

Empire is not proposing any changes to customers' rates as part of this filing.

Empire understands that the timing of its filing has caused parties to react more quickly than they would have liked. However, the timing of this filing is driven by two major factors, both of which are outside the control of Empire:

- (1) Federal tax law that ramps down production tax credits on wind generation; and,
- (2) Federal environmental law relating to the disposal of coal combustion residuals.

Federal production tax credits, which would be used to reduce the cost of acquiring wind generation, have strict timing requirements. In order to gain the full value of the tax incentives, the wind generation must have begun “construction” by the end of 2016² and must have been completed construction by the end of 2020. Thus, Empire must move quickly to identify wind projects to acquire that meet these criteria in order to take full advantage of the production tax credits.

² The beginning of construction is typically achieved by incurring at least 5% of a wind projects costs before the applicable date. Empire plans to comply with this requirement by working with project developers who have already met this test. Mooney Dir., p. 5-6.

The second factor is the federal law relating to the disposal of coal combustion residuals that will require Empire to make a significant capital investment at its Asbury plant by April 2019 if the plant were to continue to operate. Empire must know by June 30, 2018, whether it needs to make these costly improvements in order to have them completed in time to meet the April 2019 compliance deadline.³ A final regulatory decision on the CSP by June 30, 2018 will provide sufficient lead time for Empire to meet both of these deadlines.

Such Commission action is warranted because Empire's Customer Savings Plan will produce significant benefit to customers. Empire's proposal to: (1) acquire wind generation at a significant discount using the tax equity partnership structure proposed in the plan to replace the accredited capacity at Asbury, and; (2) retire Asbury and recover its remaining investment in that plant over 30 years with a net additional savings to the customers due to the avoided costs if the plant is retired, will benefit customers through lower future energy costs without any negative impact to Empire's ability to provide those customers reliable service.

POSITION STATEMENTS

1. Does the Commission have authority to grant Empire's requests?

Empire Position: Yes. The Commission has the discretion to grant Empire's requests in this case. At a high level, the concept for which Empire seeks approval (essentially a regulatory plan) is not greatly different from the "Experimental Regulatory Plan" for Empire that was approved in Commission Case No. EO-2005-0263, and which provided Empire an opportunity to participate in the construction of Iatan II.

³ While new coal combustion residual rules have been proposed, those rules do not provide relief related to the requirements for Asbury.

First, Empire seeks decisional pre-approval, as described in the Rebuttal Testimony of Staff witness Dietrich. This approach will provide Empire some assurance of recovery while maintaining the Commission's authority to review the implementation details in a future proceeding.

Second, Empire seeks orders regarding the accounting related to its Customer Savings Plan. Section 393.140(8), RSMo, provides that the Commission shall have the power "to prescribe by order the accounts in which particular outlays and receipts shall be entered, charged or credited." Section 393.140(8), does not contain any express standard for the exercise of this authority and therefore, it is within the Commission's discretion. Moreover, the courts have recognized the Commission's authority to issue such orders, and there is nothing in the Public Service Commission Law or the Commission's regulations that would limit the grant of such orders to any particular set of circumstances. *State ex rel. Aquila, Inc. v. Public Service Comm'n of State*, 326 S.W.3d 20, 27 (Mo. App. 2010).

Lastly, the Commission has the authority to grant the waiver/variance from its affiliate transactions rules, as requested by Empire. Commission Rule 4 CSR 240-20.015(10) provides that variances from the standards in the affiliate transaction rule may be granted by the Commission.

2. Which of Empire's requests, if any, should the Commission grant?

Empire Position: The Commission should approve the Customer Savings Plan in total. The Customer Savings Plan presents a unique opportunity to bring savings to Empire's customers over the next several decades for the following reasons:

- a. Wind on a levelized cost basis is approximately \$14 per MWh cheaper for customers (Asbury: \$37.78 per MWh vs. Wind: \$23.97 per MWh);

b. The Customer Savings Plan will avoid ongoing capital requirements and fixed operating costs at Asbury;

c. Participation of a tax equity partner in the transaction will result in between \$4 and \$7 per MW h savings for Empire's customers; and,

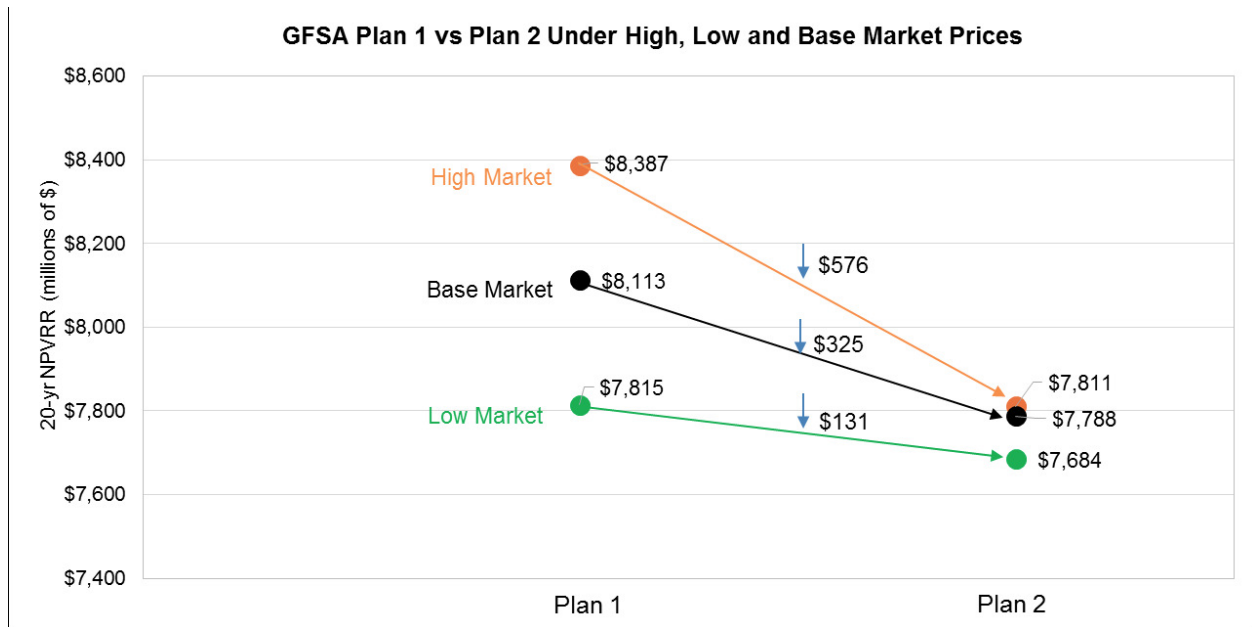
d. Accounting for new tax law changes, Empire can acquire new wind projects using tax equity partnership financing for what amounts to about \$0.47 on the \$1.00.

Further, the results of Empire's RFP process affirm and exceed the cost savings assumptions included in GFSAs. If the actual RFP responses are taken into account, the 10 year savings goes from \$71 million to \$164 million, 20 year savings goes from \$325 million to \$396 million, and 30 year savings goes from \$607 million to \$615 million. (McMahon Sur., p. 11)

As part of its proposal to deliver savings to customers, Empire is seeking Commission approval to create a regulatory asset for Asbury and to recover the undepreciated investment in Asbury. This proposal is appropriate because the GFSAs demonstrate that by retiring Asbury, while providing a return on and of the investment in conjunction with the acquisition of 800 MW of wind, produces significant savings to customers. Further, it would be difficult for Empire to both finance the new wind projects to generate the \$325 million in customer savings and not be able to recover its investment in Asbury, which was determined to be a reasonable/prudent decision based on the information known at the time the decision was made.

As explained in the Company's testimony cited below, the savings in retiring Asbury included in the GFSAs is derived from avoiding expected capital and fixed operating costs in an environment where Asbury is delivering little margin in the SPP market. The \$325 million in energy cost savings over 20 years is net of recovering return on and of the retired Asbury. Retiring Asbury and replacing it with a more economic generating resource will provide more material savings to Empire's customers.

Moreover, this projected savings comes with less risk than the status quo (i.e., the preferred plan under the 2016 IRP). The Company compared the 2016 preferred plan to the Customer Savings Plan under the Base Market price, Low Market price, and High Market price scenarios. The following table summarizing that comparison is provided in the Surrebuttal Testimony of Empire witness McMahon (p. 6) where “Plan 1” is the 2016 preferred plan; and, “Plan 2” is the Customer Savings Plan:



(McMahon Sur., p. 6)

Not only is the net present value revenue requirement (“NPVRR”) lower in all three scenarios for the Customer Savings Plan, but the spread between the NPVRRs in the three scenarios is much less for the Customer Savings Plan, therefore indicating less risk for customers.

It is for this reason that it can be said that the Customer Savings Plan does not create a greater risk for Empire’s customers – the greater risk for Empire’s customers comes from maintaining the status quo.

Swain Dir., all; Sur., all.

McMahon Dir., all; Sur., all.
Mertens Dir., all; Sur., all.
Mooney Dir., all; Sur., all.
*Sager Dir., all.*⁴
Krygier Dir., all; Sur., all.
Wilson Dir., all; Sur., all.
Macias Dir., all.
Watson Dir., all.

3. What requirements should be applied to the Asbury regulatory asset?

Empire Position: The Company should be granted approval to record a regulatory asset for the net book value of the Asbury generation plant as of its retirement. The accounting entries associated with this treatment are depicted in Revised Direct Attachment RWS-1 of the Direct Testimony of Robert W. Sager (filed February 7, 2018). Further accounting entries may be required in regard to the remaining coal inventory and taxes.

The accounting proposed would allow these items to be considered in subsequent rate cases.

Mooney Sur., p. 9-10.
*Sager Dir., all.*⁵

4. Should Empire be required to make any additional filings in relation to the Customer Savings Plan? If so, what filings?

Empire Position: Empire, along with the Wind Project Co. that would own the wind projects, would expect, in appropriate circumstances, to file applications for certificates of convenience and necessity, if the wind generation assets will be located in Missouri; and, financing matters where required. Empire has proposed, or agreed to, the following conditions in this regard:

a. If the Wind Projects are physically located in the state of Missouri, Empire shall file or cause the Wind Projects to file a request for a Certificate of Convenience and Necessity (“CCN”) consistent with Commission Rule 4 CSR 240-3.105 before constructing the facilities;

⁴ Empire witness Sager’s testimony will be adopted by Empire witness Mooney.

⁵ Empire witness Sager’s testimony will be adopted by Empire witness Mooney.

b. If the Wind Projects are physically located in the state of Missouri, Empire shall file or cause the Wind Projects to file a request for a Certificate of Convenience and Necessity (“CCN”) consistent with Commission Rule 4 CSR 240-3.105 before constructing the facilities; and,

c. That the Commission “issue a finding that the Commission has not relinquished its responsibilities as arbiter in disputes regarding issues such as the prudence of cost expenditures, the siting of the wind projects, the management of the construction of the wind projects, and whether the wind project is ‘fully operational and used for service.’” (Dietrich Reb., p. 4)

Krygier Sur., p. 8-11.

5. Should the Commission impose any requirements in regard to tax equity financing? If so, what requirements?

Empire Position: Empire should be required to meet or exceed the parameters included in its GFSA with respect to the acquisition of Wind Projects and obtaining tax equity partners.

Mooney Dir, all; Sur., p. 3-8.

6. What conditions, if any, should be applied to the Asbury Employees?

Empire Position: No additional conditions are necessary. Empire currently estimates that 800 megawatts of wind turbines will require approximately 40 jobs for their ongoing operation and maintenance (there were approximately 57 employees at the time this case was filed). Empire has already committed to offer affected employees at Asbury other employment opportunities within the Company if they have not been able to bid to another job within the Company by the time the Asbury facility ceases operation. Empire will also provide training opportunities to these employees so they can transition to new jobs within the Company. This process is further supported by a supplemental agreement to the existing union contract that details the transition plan for union workers.

Mertens Sur., p. 2-6.

7. Should the Commission require conditions related to any impacts on local property taxes? If so, what conditions?

Empire Position: No. Any property taxes impacted by the retirement of Asbury would likely be offset by Missouri located projects, which would have a benefit for local communities.

Mertens Sur., p. 5.

8. Should there be any requirements associated with the Tax Cuts and Jobs Act of 2017? If so, what requirements?

Empire Position: Empire is open to discussing how to address rate issues raised by the Tax Cuts and Jobs Act of 2017, whether in a general rate or complaint case, the newly opened Commission Case No. ER-2018-0228, or, even, in this case.

Krygier Sur., p. 11.

9. Should there be any requirements associated with potential impacts of the Wind Projects on wildlife? If so, what requirements?

Empire Position: No additional requirements related to conservation impacts are necessary. Impacts, if any, are taken into account during the extensive environmental and biological studies that will be completed before placement of turbines is finalized and construction is allowed to begin. Empire intends to follow the U.S. Fish and Wildlife Service's Land-Based Wind Energy Guidelines and other siting guidelines as applicable.

Mertens Sur., p. 12-13.

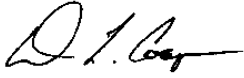
10. Should the Commission grant waivers of its affiliate transaction rules for the affiliate agreements associated with the CSP?

Empire Position: Yes. The three affiliate agreements described on page 20 of Empire witness Mertens' Direct Testimony are necessary for the operation of the new wind generation. The services to be provided by Liberty Utilities Service Corp. to the Wind Project Co. on the same basis that Liberty Utilities Service Corp. provides services to Empire.

Mertens Dir., p. 19-21.

WHEREFORE, Empire respectfully requests that the Commission consider this Statement of Positions.

Respectfully submitted,



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ATTORNEYS FOR THE EMPIRE DISTRICT ELECTRIC COMPANY

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail or by U.S. Mail, postage prepaid, on April 4, 2018, to the following:

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