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Witness:	James Owen
Sponsoring Party:	Renew Missouri Advocates
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MISSOURI PUBLIC SERVICE COMMISSION

FILE EO-2018-0092

REBUTTAL TESTIMONY

OF

JAMES OWEN

ON BEHALF OF

RENEW MISSOURI ADVOCATES

February 7, 2018

**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) File No. EO-2018-0092
Customer Savings Plan)

AFFIDAVIT OF JAMES OWEN

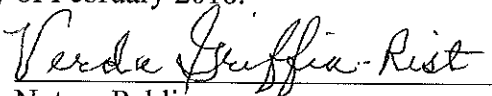
STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

COMES NOW James Owen, and on his oath states that he is of sound mind and lawful age; that he prepared the foregoing Rebuttal Testimony; and that the same is true and correct to the best of his knowledge and belief.

Further the Affiant sayeth not.


James Owen

Subscribed and sworn before me this 6th day of February 2018.


Notary Public



My commission expires: 09-5-2019

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1 **I. Introduction**

2 **Q: Please state your name, title, and business address.**

3 A: James Owen, Executive Director, Renew Missouri Advocates d/b/a Renew Missouri
4 (“Renew Missouri”), 409 Vandiver Dr. Building 5, Suite 205, Columbia, MO 65202.

5 **Q: Please describe your education and background.**

6 A: I obtained a law degree from the University of Kansas as well as a Bachelor of Arts in
7 Business and Political Science from Drury University in Springfield.

8 **Q: Please summarize your professional experience in the field of utility regulation.**

9 A: Before becoming Executive Director of Renew Missouri, I served as Missouri’s Public
10 Counsel, a position charged with representing the public in all matters involving utility
11 companies regulated by the State. While I was Public Counsel, I was involved in several
12 rate cases, CCN applications, mergers, and complaints as well as other filings. As Public
13 Counsel, I was also involved in answering legislators’ inquiries on legislation regarding
14 legislation impacting the regulation of public utilities. In my role as Executive Director at
15 Renew Missouri, I continue to provide information and testimony on pieces of proposed
16 legislation that may impact how Missouri approaches energy efficiency and renewable
17 energy.

18 **Q: Have you been a member of, or participant in, any workgroups, committees, or
19 other groups that have addressed electric utility regulation and policy issues?**

20 A: In May 2016 I attended the National Association of Regulatory Utility Commissioners
21 (“NARUC”) Utility Rate School. In the Fall of 2016, I attended Financial Research
22 Institute’s 2016 Public Utility Symposium on safety, affordability, and reliability. While I
23 was Public Counsel, I was also a member of the National Association of State Utility

1 Consumer Advocates (“NASUCA”) and, in November of 2017, the Consumer Council of
2 Missouri named me the 2017 Consumer Advocate of the Year.

3 **Q: Have you testified previously, participated in cases, or offered testimony before the**
4 **Missouri Public Service Commission (“Commission”)?**

5 A: In my prior role as Acting Public Counsel I participated in a number of PSC cases as an
6 attorney and director of the office. During that time period I also offered testimony in
7 rulemaking hearings before the Commission. Since becoming Executive Director of
8 Renew Missouri I contributed to Renew Missouri’s filed Comments on Distributed Energy
9 Resource Issues in EW-2017-0245.¹ On January 9, 2018, I participated in the panel
10 discussions on the “Indiana Model” and the value of a DER Study.²

11 **II. Purpose and summary of testimony**

12 **Q: What is the purpose of your testimony?**

13 A: The purpose of my testimony is to address aspects of The Empire District Electric
14 Company’s (“the Company” or “Empire”) application regarding the addition of wind
15 generation, the retirement of the Asbury facility, and the Company’s request for
16 authorization to record regulatory assets.

17 Renew Missouri appreciates that Empire has put forward this customer savings plan
18 to take advantage of unique tax circumstances to add wind generation to its resource
19 portfolio and create savings for its customers. Furthermore, in the time since the Company
20 filed its application, changes to the federal tax code present an additional opportunity for
21 the Company to pursue the plan while increasing value to customers.

¹ EFIS File No. EW-2017-0245, Doc. No. 46.

² EFIS File No. EW-2017-0245, Doc. No. 79.

1 **Q: What is Renew Missouri’s interest in this application?**

2 A: Renew Missouri advocates for energy efficiency and renewable energy policy. As a state-
3 wide advocate, Renew Missouri has an interest in Empire’s planned wind investments,
4 coal retirement, and approaches to pursuing renewable energy generation included in its
5 Plan.

6 **Q: Please summarize your recommendations to the Commission.**

7 A: Renew Missouri’s recommendations are as follows:

8 1) The Commission should encourage Empire’s planned investments in wind generation
9 by authorizing Empire to record its investment in, and the costs to operate, the Wind
10 Projects in an account so that those costs may be considered in a future rate case;

11 2) The Commission should encourage Empire to retire the Asbury generating unit by
12 authorizing Empire to record the undepreciated balance of the Asbury facility so that it
13 may be considered in subsequent rate cases; and

14 3) The Commission should order Empire to track and record the cost savings from the
15 federal tax changes so that those savings may be considered in a future rate case.

16 **III. Empire’s customer savings plan**

17 **Q: What is your understanding of the company’s Customer Savings Plan?**

18 A: Empire proposes to expand its wind resources by developing an additional 800 MW of
19 wind generation while at the same time retiring its Asbury coal facility. Empire estimates
20 its plan will create \$325 million in customer savings over a 20-year period. According to
21 Empire witness Mr. Krygier, the average Empire residential customer will save \$9.33 per
22 month for the twenty-year period.³ While wind development is becoming increasingly

³ Direct testimony of Krygier p. 5.

1 economic, the benefits of Empire’s plan are enhanced by the company’s proposal to take
2 advantage of (1) federal Production Tax Credits (“PTCs”); (2) capital investment
3 contributed by tax equity partners that will defray a significant portion of the cost thereby
4 reducing the acquisition costs of the Wind Projects for Empire and its customers; and, (3)
5 the retirement of Empire’s Asbury coal plant before making required environmental
6 compliance upgrades.

7 **Q: Does Renew Missouri support Empire’s Proposal?**

8 A: Yes. Empire’s plan is a reasonable and creative proposal that will develop clean energy
9 resources and save customers money. This project is good for the environment, good for
10 business, and good for customers.

11 **IV. The Commission should encourage Empire’s planned investments in wind generation**

12 **Q: Renew Missouri’s first recommendation is that the Commission encourage**
13 **investment in wind generation. Why should the Commission encourage Empire’s**
14 **proposed investment?**

15 A: At the outset, I note that certain specifics of Empire’s plan to develop 800 MW of wind
16 generation are still in development including the location of the projects. It is my
17 understanding that Empire is currently in the process of evaluating responses to its request
18 for proposal and will update the parties as the site selection continues to progress.

19 Regardless of the ultimate location, Renew Missouri supports the addition of wind
20 generation for a variety of reasons including customer demand for renewable energy,
21 improved economics of wind, and lower costs for customers. In addition to the general
22 benefits of wind generation including lower fuel costs, lower operation and maintenance

1 (“O &M”) expenses, and lower emissions, the benefits to Empire and its customers are
2 heightened due to the company’s location in a robust wind region.⁴

3 Besides lower costs for energy, there are further public interest considerations
4 advanced by developing wind generation. If the project is built, Empire estimates 40 to 45
5 regional employees will be required to operate and maintain 800 MW of wind turbines.⁵
6 Increased employment opportunities associated with wind energy development is a
7 significant benefit and consistent with the findings in a recent American Wind Energy
8 Association (“AWEA”) report that the role of wind turbine technician is the fastest growing
9 occupation in the country.⁶

10 Beyond adding jobs, developing wind generation will bring benefits to rural and
11 low-income areas. More than 99% of wind power capacity is located in rural areas, with
12 71% located in low-income counties.⁷ This installed capacity is often associated with lease
13 payments including more than \$245 million annually in landowner lease payments to local
14 farmers and ranchers in areas of development.⁸ Additional local economic benefits include
15 property tax payments, payments in lieu of taxes, and increased local spending and
16 economic development.⁹

17 **Q: How can the Commission encourage Empire to make the planned investments in wind**
18 **generation?**

⁴ Empire Response to Staff Data Request 2-17.

⁵ Empire Response to OPC Data Request 8522.

⁶ Report available at <http://awea.files.cms-plus.com/AWEA%20Economic%20Development%20Impacts%20of%20Wind%20Energy%20FINAL.pdf>; See also <https://www.bls.gov/ooh/fastest-growing.htm>

⁷ See U.S. Wind Industry 2016 Annual Market Update available at <http://awea.files.cms-plus.com/FileDownloads/pdfs/Economic%20Benefits.pdf>

⁸ *Id.*

⁹ <http://awea.files.cms-plus.com/FileDownloads/pdfs/Economic%20Benefits.pdf>

1 A: The Commission can issue an Accounting Authority Order (“AAO”) authorizing Empire
2 to record its investment in, and the costs to operate, the Wind Projects in an account so that
3 those costs may be considered in a future rate case. In response to OPC Data Request 8502,
4 the company states:

5 Commission approval is not legally required for Empire to record a
6 regulatory asset; however, any such decision will be reviewed by Empire’s
7 auditors and could be considered a practical necessity. As such, under the
8 set of facts and circumstances related to this Application, it is in the
9 Company’s and customers’ best interest for Empire to seek such
10 Commission approval.

11 Under Section 393.140(8), RSMo and the adopted Uniform System of
12 Accounts (USOA), commissions have the authority to grant such deferral
13 treatment. Empire acknowledges that the grant of regulatory asset treatment
14 is not a guarantee of future recovery.¹⁰

15 While approval may not be required for the company to record a regulatory asset, to the
16 extent Empire believes such an order would help justify its decisions to external auditors
17 and facilitate its efforts to pursue the unique and non-recurring opportunity to finance 800
18 MW of wind generation before the expiration of production tax credits, such an order
19 would be a reasonable way to encourage and endorse the Company’s attempt to save
20 customers money over the long term.¹¹

21 **V. The Commission should encourage Empire to retire the Asbury generating unit**

22 **Q: What considerations do you rely on in recommending that the Commission encourage**
23 **Empire to retire its Asbury facility as a part of its customer savings plan?**

24 A: The first consideration is that, with the addition of 800 MW of low-cost wind generation,
25 Empire will no longer need the Asbury facility to serve its customer’s energy needs or meet

¹⁰ Empire Response to OPC Data Request 8502.

¹¹ See Empire response to Staff’s Data Request 2-17.

1 its Southwest Power Pool (“SPP”) capacity requirements.¹² Improving wind turbine
 2 production efficiency and wind turbine economics, combined with the federal production
 3 tax credits, make the concept of replacing coal generators with wind investments a viable
 4 way for utilities to reduce costs for customers.¹³ Second, Empire has committed that “[n]o
 5 incremental expenses will be incurred as a result of retiring Asbury early.”¹⁴ Third, Empire
 6 has committed that “[a]ll employees currently at the Asbury facility will be given an
 7 opportunity to continue employment at Empire post-retirement of the facility.”¹⁵

8 Moreover, in addition to the foregoing, retiring Asbury allows the company to save
 9 O & M costs and avoid spending millions of dollars to complete additional required
 10 environmental compliance costs necessary to keep Asbury open. In response to Sierra Club
 11 Data Request 1-03, Empire provided the estimated capital costs for compliance with the
 12 current CCR Rules shown in the table below:

Budget	Scope	2018	2019	2020	2021
PA0034	Ash Landfill	5,783,000			
PA0035	Ash Conveyance System	13,018,000			
PA0038R	Ash Impoundment Closure (Retirement Dollars)	5,102,000			12,810,000

13 Empire would be able to avoid the costs in lines PA0034 and PA0035 entirely with the early
 14 retirement of Asbury.¹⁶ Considered together, all of these factors eliminate the detriments
 15 to retiring the facility and create the benefit of additional cost savings to customers.

¹² Empire Response to Staff Data Request 8-34.

¹³ Empire Response to Staff Data Request 2-17. In addition to the examples cited in Empire’s Response, Xcel Energy in Colorado is another utility proposing to build low-cost wind generation and retire coal generation. *See* <https://www.nytimes.com/2018/02/06/opinion/utility-embracing-wind-solar.html?smprod=nytcare-ipad&smid=nytcare-ipad-share>

¹⁴ Empire Response to Staff Data Request 3-20.

¹⁵ Empire Response to OPC Data Request 8519.

¹⁶ Empire Response to Sierra Club Data Request 1-03.

1 **Q: How can the Commission encourage Empire to retire the Asbury facility?**

2 A: For the same reasons I described above relating to an AAO for the cost to construct the
3 wind turbines, the Commission can issue an AAO authorizing Empire to record the
4 undepreciated balance of the Asbury facility so that it may be considered in subsequent
5 rate cases. Recording and deferring the undepreciated balance will permit the Company to
6 “recover its investment over a longer period of time” without causing a “spike” to
7 customer’s rates that could occur if the company sought accelerated depreciation of the
8 plant balances.¹⁷ Treating the plant balance in this way is a creative, and authorized way,
9 to create savings for customers.

10 **VI. The Commission should order Empire to track and record the cost savings from the**
11 **federal tax changes so that those savings may be considered in a future rate case.**

12 **Q: What are the cost savings you propose the Commission order Empire to track and**
13 **record?**

14 A: In December 2017, the federal government passed the Tax Cuts and Jobs Act of 2017. On
15 January 3, 2018, the Commission issued its *Order Opening a Working Proceeding*
16 *Regarding the Effects Upon Missouri Utilities of the Tax Cuts of 2017 and Directing*
17 *Response*.¹⁸ In its *Response* to the Commission’s Order, Empire noted that the “cost savings
18 from the Act should, and ultimately will, be passed on to utility customers, but there are
19 noteworthy challenges facing all parties and the Commission.”¹⁹ In response to the
20 Commission’s question “[w]hat is the appropriate avenue for effectuating change to utility
21 rates as a result of the federal income tax reductions?”, Empire asserted “[t]he only methods

¹⁷ Direct testimony of Swain p. 15.

¹⁸ EFIS Case No. AW-2018-0174, Doc. No. 5.

¹⁹ EFIS File No. AW-2018-0174, Doc. No. 8, pp. 1-2.

1 of effectuating a change to utility rates in Missouri are a rate case and a complaint case.
2 *See* Sections 386.390 and 393.150, RSMo.”²⁰

3 **Q: What is your proposal to address the tax impact?**

4 A: Fortunately for Empire, there is a way to preserve the tax savings, if any²¹, for consideration
5 in the Company’s next rate case so that it can fulfill its intent to pass on these cost savings
6 to customers. To do so, the Company should amend its application to include a request for
7 an accounting authority order to record and defer the dollars associated with changes to the
8 federal tax law until the effective date of rates for its next rate case.

9 **Q: Does this conclude your testimony?**

10 A: Yes.

²⁰ *Id* at 3.

²¹ In its *Response*, Empire noted it is still evaluating the full implications of the tax changes and could only provide a preliminary estimate to the Commission.