

**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)

File No. EO-2018-0092

REPORT AND ORDER

Issue Date: July 11, 2018

Effective Date: August 10, 2018

CITY OF JOPLIN, MISSOURI:

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SIERRA CLUB:

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SENIOR REGULATORY LAW JUDGE: Michael Bushmann

REPORT AND ORDER

I. Procedural History

On October 31, 2017, The Empire District Electric Company (“Empire”) applied to the Commission for approval of its proposed plan to achieve customer savings through the development of wind generation using federal tax incentives in conjunction with a tax equity partner and the retirement of a coal-fired unit (the “Customer Savings Plan” or “CSP”).

The Commission granted requests to intervene filed by the Missouri Department of Economic Development – Division of Energy (“DE”); Midwest Energy Consumers Group (“MECG”); Renew Missouri Advocates d/b/a Renew Missouri (“Renew Missouri”); Sierra Club; City of Joplin, Missouri; Dogwood Energy, LLC; and Union Electric Company d/b/a Ameren Missouri. On April 24, 2018, Empire, Commission Staff, MECG, DE, and Renew Missouri signed and filed a non-unanimous stipulation and agreement in which those parties proposed to settle almost all of the issues related to the CSP.¹ An addendum to the stipulation and agreement was filed on May 7, 2018, which made a couple of minor language changes (collectively, the “Joint Position”). The Office of the Public Counsel (“OPC”) and the City of Joplin filed objections to the stipulation and agreement, so it became a joint position statement of the signatory parties.²

The Commission conducted a local public hearing on February 8, 2018, to provide an opportunity for the general public to comment on the CSP.³ The Commission held an

¹ The issue specifically not decided by the stipulation and agreement is the design of rates to flow back to customers due to a reduction in base rate revenue from the Tax Cuts and Jobs Act of 2017. This issue remains for a decision in File No. ER-2018-0228 or ER-2018-0366.

² Commission Rule 4 CSR 240-2.115(2)(D).

³ Transcript (“Tr.”), Vol. 1.

evidentiary hearing on May 9-11, 2018.⁴ During the evidentiary hearing, the parties presented evidence relating to the following unresolved issues previously identified by the parties:

1. Does the Commission have authority to grant Empire's requests?
2. Which of Empire's requests, if any, should the Commission grant?
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?

⁴ Tr., Vols. 3-8. The Commission admitted the testimony of 20 witnesses and 64 exhibits into evidence during the evidentiary hearing. In addition, the Commission took official notice of the following: Non-unanimous Stipulation and Agreement filed April 24, 2018 in EO-2018-0092; Addendum to Non-Unanimous Stipulation and Agreement filed May 7, 2018 in EO-2018-0092; Empire Tariff- Fuel & Purchase Power Adjustment Clause Rider-P.S.C. Mo. No. 5, Section 4, Original Sheet Nos. 17u-17ac; Mo. PSC Order Approving Stipulation and Agreement, and attached Stipulation and Agreement, in Case No. EO-2005-0263.

OPC and the City of Joplin contested each provision of the application and Joint Position at the evidentiary hearing.

Initial post-hearing briefs were filed on May 31, 2018. Reply briefs were filed on June 12, 2018, and the case was deemed submitted for the Commission's decision on that date when the Commission closed the record.⁵

II. Findings of Fact

Any finding of fact for which it appears that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.

1. Empire is an electrical corporation and public utility that provides electric service to the public through its tariffs in Missouri.⁶

2. The Staff of the Missouri Public Service Commission ("Staff") is a party in all Commission investigations, contested cases, and other proceedings, unless it files a notice of its intention not to participate in the proceeding within the intervention deadline set by the Commission.⁷ Staff participated in this proceeding.

3. The Office of the Public Counsel is a party to this case pursuant to Section 386.710(2), RSMo⁸, and by Commission Rule 4 CSR 240-2.010(10).

⁵ "The record of a case shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument." Commission Rule 4 CSR 240-2.150(1).

⁶ *Application of The Empire District Electric Company for Approval of its Customer Savings Plan and Applications for Variance, and Motion for Waiver*, p. 3, File No. EO-2018-0092, filed October 31, 2017, EFIS Item No. 2.

⁷ Commission Rules 4 CSR 240-2.010(10) and (21) and 2.040(1).

⁸ Unless otherwise stated, all statutory citations are to the Revised Statutes of Missouri, as codified in the year 2016.

4. On October 31, 2017, Empire filed an application with the Commission requesting approval of its CSP, a variance from the Commission's Affiliate Transaction Rule, 4 CSR 240-20.015, and waiver of the 60-day notice requirement in Commission Rule 4 CSR 240-4.017(1).⁹

Original Customer Savings Plan

5. In general, the original CSP, as contemplated in Empire's application and the direct testimony of its witnesses, proposed that Empire acquire, in conjunction with tax equity partners, up to 800 megawatts ("MW") of wind generation strategically located in or near Empire's service territory, which would allow Empire to acquire renewable generation for approximately 40 cents on the dollar. At the same time, Empire proposed to retire its Asbury coal plant, asserting that customers would save millions of dollars in annual operating expenses and avoid tens of millions of dollars of capital investments needed by April 2019 to meet environmental regulations. Because Empire estimated that this proposal would result in up to \$325 million in savings to its customers over the next 20 years, it was referred to as the Customer Savings Plan.¹⁰

6. In order to accelerate economic growth and business investment, the United States federal government provides tax relief for wind generation projects in the form of Production Tax Credits ("PTCs") and accelerated tax depreciation. Wind projects generate PTCs for the first ten years of commercial operations in the amount of \$24 per MW-hour, which is adjusted annually for inflation, as reported by the Internal Revenue Service. The PTCs represent a dollar for dollar reduction of the tax liability of an owner of a qualifying

⁹ *Application of The Empire District Electric Company for Approval of its Customer Savings Plan and Applications for Variance, and Motion for Waiver*, p. 9-11, File No. EO-2018-0092, filed October 31, 2017, EFIS Item No. 2.

¹⁰ Ex. 16, Swain Direct, p. 5-6.

wind project.¹¹ These PTCs will be phased out by 2020, so in order to maximize these credits and realize the customer savings, Empire must act quickly to build or acquire eligible wind projects.¹²

7. In addition to qualifying for the tax benefits associated with the PTCs, wind projects also qualify for accelerated tax depreciation using the five-year Modified Accelerated Cost Recovery System (“MACRS”) schedule, pursuant to federal tax law. Depreciation is a deductible expense that reduces taxable income, decreasing income tax payable. Depreciating the assets of a wind project over a five year timeframe (compared to the approximately 30-year life of the project) creates income tax losses for the wind project in its first five years. These losses can also be used by its owner(s) to offset other sources of taxable income, realizing significant income tax savings.¹³

8. Empire proposed a tax equity structure in order to maximize customer savings by utilizing the value of the available tax incentives. Such a structure would enable Empire to reduce the capital investment it needs to construct the wind project by an amount that reflects the ability of a tax equity partner to utilize the tax savings provided by both PTCs and MACRS in the near term. This reduced capital investment would allow customers to realize the benefits of the full 10 years of PTCs and MACRS from day 1 through a reduced rate base. Given the time value of money, using a tax equity structure (as compared with direct ownership of a wind project by Empire without a partner) would result in between \$4.00 and \$7.00 per MW hour more savings for Empire customers.¹⁴

¹¹ Ex. 11, Mooney Direct, p. 5.

¹² Ex. 16, Swain Direct, p. 7.

¹³ Ex. 11 Mooney Direct, p. 7.

¹⁴ Ex. 11, Mooney Direct, p. 8.

9. A tax equity structure is a method of financing renewable energy projects (including wind projects and solar generation projects) to optimize the value in the near term of available tax incentives. In a tax equity structure, large tax-paying corporations (typically large banks and insurance companies) become equity partners in a wind project. In exchange for providing a significant portion of the capital investment of the partnership, which is used to develop the wind generation facility, a tax equity partner receives the tax incentives generated from the wind project during the first ten years of the project's life. In addition, the tax equity partner receives cash distributions in the latter years of the project (typically in years 6 to 10) as part of its return on and recovery of the capital it invested. On or before the end of the first ten years when the tax equity partner has received its return on and recovery of its investment, the ownership structure "flips" and the majority of the ongoing financial benefits of the wind project transfers over to the non-tax equity partner, with the tax equity partner retaining a nominal residual stake in the partnership (typically 5%). At this point, the non-tax equity investor also has an option to purchase the tax equity investor's interest in the partnership.¹⁵

10. As of the date of the evidentiary hearing, Empire had not entered into any definitive tax equity agreements with tax equity partners, although the company is in advanced discussions with potential partners.¹⁶

11. As part of the CSP, Empire developed a Request for Proposals to evaluate potential bidders for construction of wind generation facilities in or near Empire's service territory. After evaluating bids from 10 developers on 18 sites, Empire concluded that there

¹⁵ Ex. 11, Mooney Direct, p. 8-9.

¹⁶ Tr., Vol. 5, p. 469-470.

were multiple viable bids that fall within the range of the cost scenarios contemplated by the CSP, although no final bids have yet been awarded.¹⁷

12. As part of the relief requested from the Commission, Empire requested 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.¹⁸

13. Empire has not directly owned its own wind assets to date, but rather has entered into purchase power agreements with wind farm generators.¹⁹ Empire's existing purchase agreements with wind farms will expire in 2025 and 2028.²⁰ When those agreements expire, Empire will need to replace that energy with some sort of renewable generation or to purchase renewable energy credits to meet the requirements of the Missouri Renewable Energy Standard.²¹

14. Also as part of the original CSP, Empire proposed to retire the Asbury coal-fired generation plant and create a regulatory asset for the net book value of that plant, which would allow Empire to remove the Asbury plant assets from "property, plant, and equipment" when those assets are retired, and record the net remaining unrecovered balance as a regulatory asset on Empire's balance sheet.²²

15. Empire has requested authority to record its capital investment to acquire the wind assets as utility plant in service subject to audit in Empire's next general rate case. If Empire's capital investment is so recorded, it will need a depreciation rate.²³

¹⁷ Ex. 20, Wilson Surrebuttal, p. 2, 4, 8-10.

¹⁸ Ex. 2, Krygier Direct, p. 6-7.

¹⁹ Tr., Vol. 5, p. 322.

²⁰ Tr., Vol. 3, p. 192; Vol. 5, p. 376.

²¹ Tr., Vol. 5, p. 494-495, 502.

²² Ex. 14, Sager Direct, p. 2-3.

²³ Ex. 103, Staff Affidavit, p. 4.

16. Because Empire does not have wind depreciation rates in place, it will need to have a depreciation rate for these assets effective as of the date that they are placed in-service. This rate would remain in effect until Empire's next rate case is completed and a full depreciation study can be completed for the wind projects. Empire requested that the Commission establish a 30-year life for the wind assets, resulting in a 3.33% depreciation rate.²⁴

17. Empire will indirectly own the wind generation assets. The tax equity structure requires the creation of a separate wind project company to own and operate each wind project. Thus, Empire and the tax equity partner will create a new legal entity in the form of a limited liability company that will own each wind project. Each wind project company will be wholly owned by a holding company, which in turn will be wholly owned by Empire and the tax equity partner.²⁵

18. Based on an analysis of nearly 70 different wind farms in the U.S., Empire presented credible evidence that the appropriate projected life of the wind assets is 30 years, and, using a zero percent net salvage rate, the annual accrual rate is 3.33%. Once the company obtains more information regarding the specific sites, manufacturer, design, and type of construction, Empire will update and adjust these estimates in a future depreciation study.²⁶

19. Empire also requested that the Commission grant a variance from its affiliate transaction rule relating to contracts between Empire, Liberty Utilities Service Corp, and Empire's subsidiary, the wind project company, in order to implement the CSP.²⁷

²⁴ Ex. 2, Krygier Direct, p. 9; Ex. 18, Watson Direct, p. 5.

²⁵ Ex. 11, Mooney Direct, p. 10-12.

²⁶ Ex. 18, Watson Direct, p. 8-10.

²⁷ Ex. 2, Krygier Direct, p. 8-9.

20. The signatories to the Joint Position recommend that Empire be granted a variance, pursuant to Commission Rule 4 CSR 240-20.015(10), from Commission Rule 4 CSR 240-20.015(2)(A), and (3), as to the following arrangements between Empire and affiliates necessary to own and operate the wind projects so that goods and services provided under these contracts may be priced in the same manner that they are currently priced by Liberty Utilities Service Corp. ("Service Corp."), to include both direct and indirect costs:

a. Asset Management Agreement: Under this agreement, employees of Service Corp. that provide services to Empire will provide all asset management services to the wind project company, including (a) management of all agreements for the wind project company; (b) management of energy/financial reporting; (c) management of all banking/financing agreements; (d) management of all landowner/local tax/municipal issues; (e) management of all government permits/regulatory issues including NERC/FERC; (f) management of all reporting for lenders/investors; (g) project management services; (h) optimization of performance of the wind farm; (i) obtaining insurance and other professional services necessary for the wind farm, and; (j) state/federal regulatory management/reporting services for the wind project company.

b. Balance of Plant Operations and Maintenance Agreement: Under this agreement, employees of Service Corp. that provide services to Empire will provide the balance of plant O&M services to the wind project company including operations and maintenance services for the main substation and collection system and access for road maintenance.

c. Energy Services Agreement: Under this agreement, employees of Service Corp., which provide services to Empire, will provide energy management services to the wind project company including: (a) acting as the market participant; (b) daily/periodic scheduling services for the wind farm; (c) managing all hedge agreements, and; (d) representing the wind farm in SPP activities.

The signatories recommend that Empire also be granted a variance, to the extent necessary pursuant to Commission Rule 4 CSR 240-20.015(10), from Commission Rule 4 CSR 240-20.015(2)(A), and (3), as to the fixed price hedging agreement(s) with the wind project company.²⁸

21. Granting the variance would permit the Service Corp. to provide goods and services to the new wind project company in the same manner that Service Corp. now provides such goods and services to Empire.²⁹

22. The hedging agreement is a necessary component of the tax equity financing structure and the benefits that flow from using that structure.³⁰

CSP revised by the Joint Position

23. After extensive negotiations among the parties, some of the parties signed and filed the Joint Position, which made substantial changes to the original CSP.³¹ Some of the key provisions of the Joint Position are as follows:³²

a) In contrast to its initial request to add 800 MWs of wind capacity, the signatories agreed that Empire's addition of 600 MWs of wind capacity is reasonable.

²⁸ Joint Position, p. 13-14.

²⁹ Ex. 9, Mertens Direct, p. 20.

³⁰ Ex. 11, Mooney Direct, p. 15.

³¹ Joint Position, p. 3-15.

³² Ex. 351, Meyer Affidavit, p. 2-3.

b) The signatories agreed that, despite the upcoming need for capital expenditures associated with the Coal Combustion Residual rule, the Asbury generating unit should remain operable pending future integrated resource planning analysis. Given this, issues surrounding the quantification and recovery of a regulatory asset resulting from the retirement of Asbury are no longer of concern.

c) The signatories agreed to the implementation of certain customer protections, including, but not limited to:

- (1) a market price protection agreement;
- (2) certain provisions related to the timing of rate cases focused on the inclusion of wind project capital costs in Empire rates as well as provisions designed to ensure no customer detriments resulting from a change in Empire's regulatory capitalization or a downgrade in Empire credit rating / increase in Empire debt cost;
- (3) a rate reduction associated with recent enactment of the Tax Cuts and Jobs Act of 2017;
- (4) the implementation of a rate moratorium;
- (5) the future proposal of a program designed to provide for non-residential access to renewable energy including renewable energy credits; and
- (6) a most favored nation provision that protects Missouri ratepayers in the event that either Kansas, Oklahoma or Arkansas provide for an enhanced level of customer protections.

24. The Joint Position also included the following three provisions, which were not altered from the original CSP: 1) Empire should be authorized to record its capital investment to acquire the wind assets as utility plant in service subject to audit in its next rate case; 2) Empire should record its depreciable wind assets in FERC Account 341 through 346 and utilize a composite 3.33% depreciation rate; and 3) Empire should be granted a variance from the Commission's affiliate transaction rule, 4 CSR 240-20.015.³³

25. Empire witness James McMahon testified credibly³⁴ that adding up to 600 MW of wind to Empire's portfolio as contemplated by the Joint Position is expected to generate customer savings because the levelized cost of the wind is significantly lower than the forecast price paid for energy in the Southwest Power Pool. The levelized cost reflects the average all-in per megawatt hour cost of acquiring, owning, and operating the turbines. Empire's credible analysis of the Joint Position indicates that a plan with up to 600 MW of wind will generate customer savings in the approximate amount of \$169 million over 20 years and \$295 million over 30 years, relative to Empire's current resource plan.³⁵

26. Adding wind generation to Empire's portfolio significantly reduces financial risk for Empire customers. Wind in the portfolio mitigates the impact that rising fuel and market prices have on Empire's retail rates. In a rising market price environment, Empire would be able to sell wind output at higher prices without any incremental fuel costs. Empire's credible analysis shows that adding up to 600 MW of wind to its portfolio would

³³ Joint Position, p. 5, 13-14; Ex. 4, Krygier Affidavit, p. 5-6.

³⁴ With regard to mathematical modeling, the Commission finds Empire's witnesses to be more credible than OPC's witnesses based on differences in their professional experience and the greater consistency and clarity of the testimony of Empire's witnesses at the hearing. The testimony of OPC witness Riley and any exhibits that are based on that testimony are not reliable or credible because his testimony at the hearing demonstrated that his initial and revised analyses contain material errors. See also, Tr., Vol. 5, p. 565-571, Vol. 7, p. 890-892.

³⁵ Ex. 8C, McMahon Affidavit, p. 3-4.

result in lower risk to that portfolio under three different market scenarios, relative to Empire's current resource plan.³⁶

27. Keeping the Asbury coal plant in service may require Empire to invest approximately \$20-30 million by 2019 to comply with the federal Coal Combustion Residual rule and the Effluent Limitation Guidelines by installing a dry bottom ash conveyor and a new ash landfill. Although these capital investments will cause an increase in annual revenue requirement for about 2-3 years, keeping Asbury open may have value in the Southwest Power Pool and result in a lower annual revenue requirement in every year from 2026 to 2047. This will also provide Empire with another reliable and dispatchable generating resource as a hedge against any uncertainty in the performance of the 600 MW of new wind resources and will avoid creating a stranded asset by retiring Asbury earlier than currently planned.³⁷

28. Since retiring Asbury would require Empire to expend \$24 million in dismantlement costs,³⁸ closing Asbury now could cost as much or more than leaving it open, even after expending the funds necessary to comply with the federal Coal Combustion Residual rule and the Effluent Limitation Guidelines.³⁹

29. Empire has made reasonable decisions to acquire up to 600 MW of wind projects employing the financial measures set forth in the Joint Position, including use of a tax equity partner.⁴⁰

³⁶ Ex. 8C, McMahon Affidavit, p. 4-5.

³⁷ Ex. 103, Staff Affidavit, p. 6-8.

³⁸ Tr., Vol. 5, p. 406-407.

³⁹ Tr., Vol. 5, p. 636-637.

⁴⁰ Ex. 4C, Krygier Affidavit, p. 3-4, 6-9; Ex. 8C, McMahon Affidavit, p. 3-9; Ex. 351, Meyer Affidavit, p. 7-8; Ex. 103, Staff Affidavit, p. 1-3.

30. The Joint Position contains several provisions designed to address the risk to customer savings during the first ten years of the CSP, including:

- a) a process for the signatories and Empire to agree on in-service criteria for wind projects which are under contract for construction;
- b) an agreement that any offset received by Empire due to a decreased purchase price for the new wind projects will flow back to customers;
- c) a market price protection mechanism which calls for the possibility of Empire paying Missouri customers, through the form of reduced revenue requirements in a rate case, as much as \$35 million over the first ten years of the Customer Savings Plan. The \$35 million cap provides customer protections above the worst case modeled by Empire for the addition of 600 MWs of wind.;
- d) an agreement that Empire will not file its next general rate case until on or after April 1, 2019; and
- e) a “most favored nation” clause which requires Empire, within 10 days of receiving a final order from the public utility commissions in Arkansas, Kansas, and Oklahoma, to submit copies of those orders to the signatories. The Joint Position further provides that upon agreement of the signatories, or as ordered by the Commission, any concessions or conditions in those other states related to the CSP that are favorable to customers shall be appended to the Joint Position in this case, with certain exceptions.⁴¹

31. Regarding the reduction in the federal corporate income tax rate from the Tax Cuts and Jobs Act of 2017, the Joint Position requires Empire to file revised tariff sheets to

⁴¹ Ex. 103, Staff Affidavit, p. 4-6, 8; Ex. 351, Meyer Affidavit, p. 4-5.

reduce its base electric rates by \$17,837,022 effective October 1, 2018. The rate decrease amount represents Empire's current quantification of the electric cost of service reduction associated with the lowered federal tax rate. For excess Accumulated Deferred Income Taxes (EADIT), the signatories have agreed that Empire will defer on its books and records an estimation of the amount of the EADIT flow-back starting January 1, 2018, with such deferral to be included in Empire's base rates at the time of its next general rate case.⁴²

32. In the Joint Position, Empire agrees to submit to the Commission any applications for a certificate of convenience and necessity or financing approval that may be required by law or Commission rule to proceed with the CSP. The signatories to the Joint Position agree not to contest the need for the wind projects and to make a good faith effort to process the applications expeditiously and to request a Commission order within 120 days of filing.⁴³

33. The Joint Position also requires the signatories to recommend that the true-up period in Empire's next general rate proceeding end no later than five months prior to the operation-of-law date in that case; that the capital structure and debt rate values to be used in Empire's next general rate proceeding must remain within reasonable parameters; and that capital provided by outside entities (the tax equity partner(s)) in relation to the CSP will not be imputed into Empire's debt or equity capital structure components for purposes of setting customer rates.⁴⁴

⁴² Ex. 103, Staff Affidavit, p. 8-9.

⁴³ Ex. 103, Staff Affidavit, p. 4.

⁴⁴ Ex. 103, Staff Affidavit, p. 4.

34. In the Joint Position, Empire agreed, as part of its next rate case, to propose tariffs to implement a program whereby non-residential customers can access renewable energy including the renewable energy credits.⁴⁵

III. Conclusions of Law and Discussion

Empire is an “electrical corporation”⁴⁶ and “public utility”⁴⁷ and, thus, subject to the supervision of the Commission.⁴⁸ In its application, as modified by the Joint Position, Empire has requested 1) approval of its accounting treatment, depreciation rate, and variances from the affiliate transaction rules; 2) a Commission determination that Empire’s decisions to acquire wind generation using a tax equity partner and to keep Asbury open at this time are reasonable; and 3) approval of a number of customer protections and other provisions that were included in the Joint Position, such as the market price protection mechanism, rate case moratorium, and a “most favored nation” provision.

Accounting treatment and depreciation

The Commission has the statutory authority to determine Empire’s accounting treatment for its investment in the proposed wind generation⁴⁹ and establish a depreciation rate for the wind assets.⁵⁰ Because Empire does not have wind depreciation rates in place and will indirectly own the wind assets it acquires under the CSP, it will need to have a

⁴⁵ Ex. 351, Meyer Affidavit, p. 6-7.

⁴⁶ Section 386.020(15), RSMo.

⁴⁷ Section 386.020(43), RSMo.

⁴⁸ Sections 393.140(1) and 386.250(1), RSMo.

⁴⁹ Section 393.140(8), RSMo, states that the Commission will “[h]ave power to examine the accounts, books, contracts, records, documents and papers of any such corporation or person, and have power, after hearing, to prescribe by order the accounts in which particular outlays and receipts shall be entered, charged or credited.”

⁵⁰ Section 393.240, RSMo, states, in pertinent part, “1. The commission shall have power, after hearing, to require any or all gas corporations, electrical corporations, water corporations and sewer corporations to carry a proper and adequate depreciation account in accordance with such rules, regulations and forms of account as the commission may prescribe. 2. The commission may, from time to time, ascertain and determine and by order fix the proper and adequate rates of depreciation of the several classes of property of such corporation, person or public utility...”

depreciation rate for these assets effective as of the date that they are placed in-service. This rate would remain in effect until Empire's next rate case is completed and a full depreciation study can be completed for the wind projects. Empire presented credible evidence that the appropriate projected life of the wind assets is 30 years and that the depreciation rate is 3.33%. The Commission will authorize Empire to record its capital investment to acquire the wind assets as utility plant in service subject to audit in Empire's next general rate case and record its depreciable wind assets in FERC Account 341 through 346 utilizing a 3.33% depreciation rate. Once the company obtains more information regarding the specific sites, manufacturer, design, and type of construction, Empire shall update and adjust these estimates in a future depreciation study.

Affiliate Transaction Rule Variance

The Commission has the statutory authority to grant a variance to the Commission's affiliate transaction rule to effectuate the ownership and operation of the wind generation.⁵¹ In order to qualify for the variance, Empire must demonstrate good cause for its request.⁵² Empire requests such a variance as to the asset management, balance of plant operations and maintenance, and energy services agreements described in Finding of Fact 20 above between Empire and affiliates necessary to own and operate the wind projects so that goods and services provided under these contracts may be priced in the same manner that they are currently priced by Liberty Utilities Service Corp. Empire also requests a variance as to the fixed price hedging agreement(s) with the wind project company.

The purpose clause of the affiliate transaction rule, 4 CSR 240-20.015, states the "rule is intended to prevent regulated utilities from subsidizing their non-regulated

⁵¹ Commission Rules 4 CSR 240-20.015(10) and 4 CSR 240-2.060(4); Sections 386.250, 386.410, and 393.140, RSMo.

⁵² Commission Rule 4 CSR 240-2.060(4)(B).

operations”. If Empire implements the CSP and acquires new wind assets with a tax equity partner, Liberty Utilities Service Corp will begin providing goods and services to the wind project company, which may constitute an “affiliate transaction” under the rule. As a result, the asymmetric pricing standards in 4 CSR 24-20.015(2), which prohibit a regulated electrical corporation from providing a financial advantage to an affiliated entity, may apply unless a variance is granted by the Commission. Without that variance, the CSP could not be implemented, and Empire could not achieve the millions of dollars in customer savings that will ultimately benefit its customers. The Commission finds that Empire has demonstrated good cause to grant the variance. The Commission will grant the variance as described above and in the Joint Position.

Acquisition of wind generation and Asbury

Empire requests a Commission determination that Empire’s decisions to acquire wind generation using a tax equity partner and to keep Asbury open at this time are reasonable. It is the public policy of this state to diversify the energy supply through the support of renewable and alternative energy sources.⁵³ In past decisions, the Commission has stated its support in general for renewable energy generation, which provides benefits to the public.⁵⁴ Empire’s proposed acquisition of 600 MW of additional wind generation assets is clearly aligned with the public policy of the Commission and this state.

⁵³ *Missouri Comprehensive State Energy Plan*, Department of Economic Development – Division of Energy, October 2015; Sections 393.1025 and 393.1030, RSMo 2016, the Renewable Energy Standard.

⁵⁴ Report and Order, *In the Matter of Union Electric Company d/b/a Ameren Missouri’s Voluntary Green Program/Pure Power Program Tariff Filing*, File No. EO-2013-0307, April 24, 2013, p. 14-15; Report and Order, *In the Matter of the Application of KCP&L Greater Missouri Operations Company for Permission and Approval of a Certificate of Convenience and Necessity Authorizing it to Construct, Install, Own, Operate, Maintain and Otherwise Control and Manage Solar Generation Facilities in Western Missouri*, File No. EA-2015-0256, March 2, 2016, p. 15-16; Report and Order, *In the Matter of the Application of Union Electric Company d/b/a Ameren Missouri for Permission and Approval and a Certificate of Convenience and Necessity Authorizing it to Offer a Pilot Distributed Solar Program and File Associated Tariff*, File No. EA-2016-0208, December 21, 2016, p. 19-20.

However, it is premature for this Commission to make a legal conclusion that Empire's decision to acquire wind generation using a tax equity partner is reasonable. Since Empire has not yet identified sites for the wind farms, contractors to build the wind generation assets, or tax equity partners to provide financing, there will likely be additional proceedings at the Commission related to the CSP, such as certificate cases for the wind farms⁵⁵, financing approval cases⁵⁶, or rate cases to consider adding the wind assets into rate base and including prudently-incurred costs into rates.⁵⁷ Since the Commission may be presented with these requests in the future, making a legal conclusion on reasonableness now could constitute an improper advisory opinion.⁵⁸

In addition, no party is recommending that Asbury be retired at this time. Retirement of Asbury is an issue the Commission could consider in future integrated resource planning cases.⁵⁹ However, the timing of such a retirement could ultimately be a management decision for the utility, subject to review by the Commission in a subsequent rate case.

Empire presented credible and persuasive evidence that the CSP, if implemented as contemplated in the Joint Position, would generate customer savings in the approximate

⁵⁵ The Commission applies five criteria in evaluating a CCN: 1) there must be a need for the service; 2) the applicant must be qualified to provide the proposed service; 3) the applicant must have the financial ability to provide the service; 4) the applicant's proposal must be economically feasible; and 5) the service must promote the public interest. *In re Tartan Energy*, Report and Order, 3 Mo.P.S.C. 3d 173, Case No. GA-94-127, 1994 WL 762882 (September 16, 1994).

⁵⁶ Section 393.200, RSMo, requires the Commission to find that the proposed issuance of debt securities is or will be reasonably required for the purposes specified in the application and that such purposes are not in whole, or in part, reasonably chargeable to operating expenses or to income. (emphasis added)

⁵⁷ Section 393.270.2, RSMo provides that "[a]fter a hearing and after such investigation as shall have been made by the commission...the commission within lawful limits may, by order, fix the maximum price of ...electricity...for the service to be furnished; and may order such improvement in the ...in the manufacture, transmission or supply of electricity...or in the methods employed by such persons or corporation as will in its judgment be adequate, just and reasonable. (emphasis added)

⁵⁸ *State ex rel. Laclede Gas Co. v. Pub. Serv. Comm'n of State*, 392 S.W.3d 24, 38 (Mo. App. 2012), citing *State ex rel. Mo. Parks Assoc. v. Mo. Dept. of Natural Res.*, 316 S.W.3d 375, 384 (Mo.App.2010), "The Commission was restricted to determining the complaint before it, and it should not be issuing decisions with 'no practical effect and that are only advisory as to future, hypothetical situations'".

⁵⁹ Pursuant to Commission Rule 4 CSR 240-22.080(16)(A), the Commission makes findings whether the utility's triennial compliance filing is in substantial compliance with the requirements of Chapter 22 and whether the utility's resource acquisition strategy meets the requirements stated in 4 CSR 240-22.

amount of \$169 million over 20 years and \$295 million over 30 years, relative to Empire's current resource plan, and significantly reduce financial risk for those customers. Empire has stated that it is looking for an indication from the Commission that it is "headed in the right direction".⁶⁰ While the Commission cannot make the legal conclusion that Empire requests, the Commission finds that the millions of dollars in customer savings and the addition of renewable wind energy resulting from the CSP and the Joint Position could be of considerable benefit to Empire's customers and the entire state.

Customer protection provisions of the Joint Position

Empire and the other signatories to the Joint Position have requested approval of a number of customer protections and other provisions that were included in the Joint Position, such as the market price protection mechanism, rate case moratorium, and a "most favored nation" provision. These provisions are valuable additions to the CSP that would protect Empire's customers from risk should the CSP be implemented. However, Empire is no longer obligated to incorporate these provisions in the CSP project plans because the Joint Position was objected to, and the Commission cannot order Empire to implement these provisions without its consent. Therefore, the Commission will not require Empire to incorporate these provisions into the CSP, but may take that into consideration in future CSP proceedings.

Remaining unresolved issues

The parties identified a number of additional issues for the Commission's determination, including the federal Tax Cuts and Jobs Act of 2017 and the necessity of requirements for additional filings, tax equity financing, conditions on the closing of Asbury, and impacts on wildlife.

⁶⁰ Tr., Vol. 3, p. 24, lines 17-18.

With regard to the reduction in federal taxes, the Joint Position calls for Empire to make a tariff filing proposing new electric rates to be effective October 1, 2018, reflecting a reduction in base rate revenue associated with the Tax Cuts and Jobs Act of 2017. The Commission will decline the opportunity to order a change in rates in this case, and will consider that issue in one of two proceedings where Empire's taxes are at issue, File No. ER-2018-0228 or File No. ER-2018-0366.

As a result of the Commission's conclusions stated in this Report and Order, the Commission finds that the remaining unresolved issues identified by the parties are moot and need not be addressed further.

Empire has also requested a waiver of Commission Rule 4 CSR 240-4.017(1), which requires that any person intending to file a case before the Commission file a notice of their intent at least 60 days before filing the case. The required notice must describe the type of case to be filed and the issues likely to be brought before the Commission. It must also summarize any contacts between the filing party and the office of the Commission within the previous 90 days. Section 4 CSR 240-4.017(4) allows the Commission to waive the 60-day notice requirement for good cause. Empire asserts that good cause for its failure to comply with the 60-day notice requirement exists because it has provided a verified declaration that it has not had any communications with the office of the Commission about any substantive issue regarding its application in the preceding 150 days. The Commission concludes that Empire has demonstrated good cause for its failure to file a 60-day notice, and the Commission will grant the requested waiver.

IV. Decision

In making this decision, the Commission has considered the positions and arguments of all of the parties. After applying the facts to the law to reach its conclusions, the Commission determines that Empire has shown by a preponderance of the evidence that certain provisions of the Customer Savings Plan as described above should be approved. Therefore, the Commission will grant some of Empire's requests that were included in the application and Joint Position.

THE COMMISSION ORDERS THAT:

1. The Empire District Electric Company's request for waiver of the 60-day notice requirement of 4 CSR 240-4.017(1) is granted.
2. The Empire District Electric Company is authorized to record its capital investment to acquire wind generation assets as utility plant in service subject to audit in Empire's next general rate case.
3. The Empire District Electric Company shall record its depreciable wind assets in FERC Account 341 through 346 and utilize a composite 3.33% depreciation rate for all wind project asset accounts, beginning when the assets are placed in-service and continuing until such time as depreciation rates may be changed by order of the Commission.
4. The Empire District Electric Company is granted a variance from the Commission's affiliate transaction rule, 4 CSR 240-20.015, as described in the body of this order and in the Joint Position.

5. This order shall become effective on August 10, 2018.

BY THE COMMISSION



Morris L. Woodruff

Morris L. Woodruff
Secretary

Hall, Chm., Kenney, Rupp, Coleman, and
Silvey, CC., concur.

Bushmann, Senior Regulatory Law Judge

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission,
at Jefferson City, Missouri, this 11th day of July 2018.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

July 11, 2018

File/Case No. EO-2018-0092

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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,

A handwritten signature in black ink that reads "Morris L. Woodruff". The signature is written in a cursive style with a large, prominent "M" and "W".

**Morris L. Woodruff
Secretary**

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.