

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

In the Matter of the Application of Union Electric)	
Company d/b/a Ameren Missouri for Permission and)	
Approval and a Certificate of Public Convenience and)	File No. EA-2019-0021
Necessity Authorizing it to Construct a Wind Generation)	
Facility.)	

APPLICATION

COMES NOW Union Electric Company d/b/a Ameren Missouri ("Company," "Ameren Missouri," or "Applicant"), pursuant to 4 CSR 240-2.060, Section 393.170.1, RSMo.,¹ 4 CSR 240-3.105, and Section 393.190.1, and hereby submits to the Missouri Public Service Commission ("Commission") its Application requesting the following:

- A Certificate of Convenience and Necessity ("CCN") under subsection 1 of Section 393.170 (i.e., a "line certificate") authorizing Ameren Missouri to construct, install, own, operate, maintain, and otherwise control and manage a wind generation facility to be constructed in Atchison County, Missouri pursuant to a Build Transfer Agreement ("BTA") with EDF-RE US Development, LLC (the "Project"), a copy of which is included in the Direct Testimony of Ameren Missouri witness Ajay K. Arora and filed concurrently with this Application; and
- Authority to merge, pursuant to Section 393.190.1 and 4 CSR 240-3.115,² the special-purpose entity³ that will complete construction of the wind generation facility and then be immediately acquired by and merged into Ameren Missouri,

¹ All statutory references are to the Revised Statutes of Missouri (2016), unless otherwise stated.

² The merger shall also be governed by the procedures set forth in Section 347.710. RSMo., and Section 18-209 of the Delaware Limited Liability Company Act.

³ The special-purpose entity is Brickyard Hills Project, LLC ("Brickyard Hills"), which is a wholly owned subsidiary of EDF-RE US Development, LLC.

resulting in ownership of the facility by Ameren Missouri, as explained further below and in Mr. Arora's Direct Testimony;

In support of these requests, Applicant states as follows:

I. APPLICANT

1. Union Electric Company is a Missouri corporation doing business under the fictitious name of Ameren Missouri, in good standing in all respects, with its principal office and place of business located at One Ameren Plaza, 1901 Chouteau Ave., St. Louis, Missouri 63103. Applicant is engaged in providing electric and gas utility services in portions of Missouri as a public utility under the jurisdiction of the Commission. There is already on file with the Commission a certified copy of Applicant's Articles of Incorporation (See Case No. EA-87-105), and Applicant's Fictitious Name Registrations as filed with the Missouri Secretary of State's Office (See Case Nos. GN-2011-0070 and EN-2011-0069). Said documents are incorporated herein by reference and made a part hereof for all purposes. A Certificate of Corporate Good Standing for Applicant is attached as Schedule A.

2. Filings, notices, orders and other correspondence and communications concerning this Application should be addressed to undersigned counsel and to:

Thomas M. Byrne
Senior Director Regulatory Affairs
Ameren Missouri
1901 Chouteau Avenue
P.O. Box 66149
St. Louis, MO 63166-6149
314-554-2514
tbyrne@ameren.com

3. Ameren Missouri has no pending action or final unsatisfied judgment or decision against it from any state or federal agency or court which involves customer service or rates, which action, judgment, or decision has occurred within three years of the date of this Application.

4. Applicant has no overdue annual report or assessment fees.

5. A 60-day notice with respect to the authority sought under Section 393.170.1 was filed on July 25, 2018, and assigned the above-captioned file number.

II. REQUEST FOR CCN AND FOR AUTHORITY TO MERGE

A. Project Description.

6. Applicant requests a CCN for a wind generation facility in Atchison County, Missouri, to be acquired by Ameren Missouri under the BTA. This facility is the second of multiple wind projects needed by the Company to comply with the Missouri Renewable Energy Standard ("RES").⁴

7. As is explained in the Direct Testimony of Ameren Missouri witness Matt Michels, this wind generation facility furthers the Company's commitment to renewable energy generation in the state of Missouri and is an integral part of its strategy to comply with the RES. Specifically, the RES portfolio requirement increases from 10% to 15% of the Company's retail energy sales by 2021. This creates a significant need for additional non-solar renewable energy credits ("RECs") by 2021. This Project will provide a portion of the RECs required for RES compliance with the remainder of the portfolio to provide the rest. The Project is also consistent with Ameren Missouri's Integrated Resource Plan's ("IRP") Preferred Resource Plan and the Company's three-year Implementation Plan.⁵

8. As noted, the wind facility (referred to as the Brickyard Hills Wind Facility) will be constructed pursuant to the BTA, which is between Ameren Missouri and EDF-RE US Development, LLC ("EDF-RE"). Under a build-transfer-own structure, as reflected in the BTA, the facility is specifically constructed for the ultimate owner and to the ultimate owner's

⁴ The first such project is the subject of a pending CCN application in File No. EA-2018-0202.

⁵ Missouri Public Service Commission File No. EO-2018-0038.

specifications. Consequently, while it is true that Ameren Missouri is not literally the constructor, Ameren Missouri has elected to seek a line certificate for the facility's construction in accordance with the Section 393.170.1.

9. To complete the Project, EDF-RE has formed a special-purpose entity, Brickyard Hills Project, LLC, which will acquire all land rights, permits, and equipment; execute contracts with contractors for construction subject to significant input from Ameren Missouri; and take such other steps as necessary to complete the Project and render it operational in accordance with the terms of the BTA. Ameren Missouri will then purchase 100% of the ownership interest in Brickyard Hills and immediately merge Brickyard Hills into Ameren Missouri so that Brickyard Hills will cease to exist, resulting in Ameren Missouri's ownership of the Project assets at their actual cost.

10. The Brickyard Hills Wind Facility is an approximate 157 megawatt ("MW") facility. Construction is anticipated to be completed in 2020, but not later than *** _____
_____. Ameren Missouri anticipates that this facility, once constructed, will generate enough energy to provide approximately 713,000 RECs annually, after factoring in the 1.25 multiplier for wind produced in Missouri as provided for by the RES. This will provide approximately 16% of the additional non-solar RECs Ameren Missouri needs for RES compliance by 2021. As earlier noted, the Brickyard Hills Wind Facility is one of a portfolio of projects Ameren Missouri intends to construct or acquire to meet the RES requirements.

11. While the Project is expected to have a capacity of 157 MWs, the BTA provides that the purchase of the Brickyard Hills ownership interest will occur if the Project achieves a capacity of *** _____ *** or more by the Project completion deadline. In the event that occurs, the purchase price will be adjusted to reflect the lower level of capacity. In addition, the BTA gives

EDF-RE the opportunity (until *** _____ ***) to complete any remaining wind turbine generators ("WTGs") that were not completed by the Project completion deadline (the "Non-Compliant WTGs") in which case Ameren Missouri will also have ownership of those additional WTGs that are timely completed (the "Compliant WTGs")⁶ at a discounted price. The discounted price is essentially the base price per MW of capacity specified in the BTA, multiplied by the aggregate capacity of the Compliant WTGs, less the lost value of Production Tax Credits ("PTCs") and RECs with respect to the Non-Compliant WTGs. Ameren Missouri requests that the permission to construct reflected in the CCN requested herein also specifically authorize construction (by purchase according to the BTA's terms) of any Non-Compliant WTGs that become Compliant WTGs by the *** _____ *** deadline.

B. The Project is Necessary or Convenient for the Public Service ("Tartan Factors").⁷

12. The Tartan Factors are as follows:

- a. Need for the Project;
- b. Economic Feasibility of the Project;
- c. Ability of the Applicant to Finance the Project;
- d. Qualifications of the Applicant to Construct the Project; and
- e. Whether the Project is in the Public Interest.

An affirmative finding on the first four factors generally leads to the conclusion that the final factor, public interest, is satisfied.⁸

⁶ To become a Compliant WTG, the Non-Compliant WTG must be completed according to the Project specifications and meet the other operational requirements provided for in the BTA by *** _____ ***.

⁷ While a project is not required as a matter of law to meet the "Tartan Factors," the Commission has traditionally analyzed CCN applications using those factors. See *In Re Tartan Energy*, GA-94-127, 3 Mo.P.S.C.3d 173, 177 (1994).

⁸ *Id.* at 189 (citing *In re: Intercon Gas, Inc.*, 30 Mo. P.S.C. at 561).

13. There is a need for the Project and it is in the public interest due to the Project's role in meeting Ameren Missouri's RES compliance obligations as outlined above, and for the additional reasons outlined in the Direct Testimonies of Messrs. Arora and Michels.

14. The Project is also economically feasible and in the public interest. As outlined in greater detail in Mr. Arora's Direct Testimony, constructing the Project pursuant to the BTA allows Ameren Missouri to take advantage of the developer's expertise in developing and constructing wind projects, while ensuring that the Project is built to Ameren Missouri's specifications so that it can provide long-term service to Ameren Missouri's customers. Constructing the Project using the build-transfer-own approach reflected in the BTA allows the Company to take full advantage of federal PTCs (estimated to total approximately \$160 million). This is because EDF-RE and other developers in the business of wind development are at a stage of project development that the Company could not replicate in time to take full advantage of the PTCs.

15. Ameren Missouri has the financial ability to construct the Project through the BTA because it can access the equity and debt capital necessary to do so while maintaining strong financial metrics.

16. Ameren Missouri is qualified to construct the Project through the BTA, and to operate it upon acquiring ownership thereof, given the financial, technical, and management expertise Ameren Missouri has developed over the course of its long history as a large public utility operating in the state of Missouri.

C. 4 CSR 240-3.105(1)(B).

17. This Project will cross the regulated and non-regulated utilities, railroad tracks, and underground facilities listed in Schedule B.

18. The estimated total cost of the initial construction of the Project (without transmission interconnection costs) is approximately *** _____ ***⁹ (approximately *** _____ *** per kilowatt), with the final total price being subject to adjustments if the final capacity is less than 157 MW. In addition, the total cost will be adjusted for certain other allowable circumstances as set forth in the BTA. As provided for in the BTA, there are expected to be certain transmission interconnection costs not included in the estimate provided above. The interconnection costs cannot be determined until after the Midcontinent Independent System Operator, Inc. ("MISO") interconnection study process is complete, which would occur after a CCN is needed to meet the construction schedule necessary to take full advantage of federal PTCs.¹⁰

19. Project specifications can be found in Schedule 2 of Mr. Arora's Direct Testimony. Drawings for the Project can also be found in Schedule 2 of Mr. Arora's Direct Testimony.

20. Ameren Missouri intends to finance this purchase under the BTA in a manner consistent with its existing capital structure, using approximately 52% equity and 48% long-term debt. The long-term debt portion of the investment will be funded from proceeds of one or more Ameren Missouri long-term debt issuances, for which Ameren Missouri will seek authority from the Commission in a separate docket.

21. The Project is entirely located in unincorporated Atchison County, Missouri. No zoning approval is required from Atchison County. Other than the Commission, there are no governmental bodies that must issue permits authorizing the overall construction of the Project. There are routine permits (such as land disturbance permits or road crossing permits) that will need

⁹ This figure reflects the costs under the BTA. The Company is incurring some additional costs that will be capitalized on the Company's books for the Project.

¹⁰ If these interconnection costs exceed *** _____ ***, Ameren Missouri is not required to proceed with the Project and will determine at that time if the Project remains economical for RES compliance.

to be obtained as construction proceeds that are expected to be granted in a timely manner when they are needed. EDF-RE or Brickyard Hills has requested, or soon will request, all such routine permits and approvals and has already obtained an assent for road crossings from Atchison County, a copy of which is attached hereto as Schedule C. Schedule D contains a list of the agencies from which permits or some kind of approval may be required in order to complete construction of this facility. Ameren Missouri will file copies of any required permits received in this case, as they are granted. Because by the nature of some permits, the permits are not issued by the permitting agency until after construction has started, Ameren Missouri requests a waiver of 4 CSR 240-3.105(2) to the extent necessary to allow construction to start and proceed.

III. ACCOMPANYING MOTION TO ADOPT PROCEDURAL SCHEDULE

22. As explained in Mr. Arora's Direct Testimony and above, it is very important that the Project be constructed and placed in service in 2020 so that the full value of available PTCs (approximately \$160 million) can be realized for the benefit of customers. To meet that deadline, as well as other deadlines prescribed by the BTA, both Ameren Missouri and Brickyard Hills will be required sometime during 2019, to make non-refundable payments to MISO in order to maintain the Project's place in the MISO transmission interconnection study queue. Those non-refundable payments could be up to *** _____ *** for Ameren Missouri and *** _____ *** for Brickyard Hills (if the payments total more than *** _____ ***).

23. It is therefore critical for the Company to be able to understand any issues or concerns other parties to this docket may raise through their rebuttal testimony and for the parties to have the opportunity to work through any issues that may arise in this docket before those payments must be made. As noted, those payments must be made to maintain the Project's position

in the MISO queue, and doing so is critical to achieving a 2020 in-service date which, in turn, is an absolute requirement to capture the significant PTC value discussed above. That PTC value is important to the Project economics, and ultimately to the RES compliance costs customers will incur. These considerations therefore necessitate a somewhat expedited schedule while balancing the other parties' need to review the Company's filing and engage in discovery.

24. Moreover, the project structure and most of the key terms of the Project are quite similar to the project structure and key terms of the High Prairie project for which a CCN request is currently pending before the Commission. The key terms of the Brickyard Hills project were discussed with the Staff and the Office of the Public Counsel earlier this month. Those parties and likely intervenors in this case are familiar with the Project's structure, including a build-transfer agreement for High Prairie which has many elements in common with the BTA submitted in this docket. Substantial discovery has occurred in the High Prairie docket which is relevant to this docket as well. Effectively, the filing of the High Prairie docket several months ago has provided Staff and OPC and other likely parties with a substantial "head start" on reviewing and processing this filing. As the Commission did in File No. EA-2018-0202, the Company requests that the Commission somewhat shorten the typical time frames for seeking intervention, that it shorten discovery deadlines, and that it require that rebuttal testimony be filed approximately 60 days from this filing.

25. To that end, the Company is filing concurrently with this Application a Motion for Adoption of Procedural Schedule, the key provisions of which are as follows:

- a. Intervention applications due by November 2, 2018;
- b. A prehearing conference to be scheduled immediately after the intervention deadline has passed (on either November 5 or 6, 2018);
- c. Accelerated deadlines for objections and responses to discovery;

- d. A series of technical/settlement conferences;
- e. Rebuttal testimony due approximately 60 days after this filing;
- f. A local public hearing; and
- g. A request for a Commission order in this docket by May 1, 2019.

26. Somewhat expediting certain steps in this proceeding as requested herein and in the Motion for Adoption of Procedural Schedule will serve to avoid the harm that could occur if the non-refundable payments must be made to MISO, but the Project is not ultimately approved.

27. As noted above, filed concurrently herewith are Ameren Missouri direct testimonies in support of the Application. Ameren Missouri will also be providing all its workpapers to Staff and Public Counsel in the next few business days to expedite their review.

IV. CONDITIONS

28. Given similarities between the Project and the wind generation project that is the subject of File No. EA-2018-0202, the Company agrees that the following conditions should be included in the CCN requested herein, all of which were agreed upon in the Third Stipulation and Agreement filed in File No. EA-2018-0202:

- a. Plans and Specifications; Progress Reports: Ameren Missouri shall file with the Commission quarterly progress reports on the plans and specifications for the Project, and the first report shall be due on the first day of the first calendar quarter beginning after the CCN is issued. Ameren Missouri shall also include an update on all permits obtained as part of its quarterly progress reports, and will file complete plans and specifications prior to commencement of construction.
- b. FERC Approval: Ameren Missouri must receive approval from the Federal Energy Regulatory Commission pursuant to § 203 of the Federal Power Act.

- c. Depreciation: Until such time as a different depreciation rate is approved by the Commission for wind facility investments recorded to FERC Account 344, the currently-approved depreciation rate of 6.81% shall be used. Until such time as a different net salvage percentage is approved by the Commission, a net salvage percentage of -17% shall be used and tracked on the Company's books. Prior to the in-service date for the Project, Ameren Missouri will provide a depreciation study potentially proposing a new depreciation rate for the wind facility investments recorded to FERC Account 344.
- d. Production Tax Credits: Ameren Missouri will provide the full grossed-up value of PTCs to customers through the Renewable Energy Standard Rate Adjustment Mechanism or in rates when earned (subject to normal billing lags), without any reduction and without a return on any deferred tax assets, regardless of Ameren Missouri's tax position (the "PTC Guarantee"). Notwithstanding the foregoing, this PTC Guarantee will not apply to the extent a change in law or a force majeure event results in a tax position for Ameren Missouri that prevents Ameren Missouri from utilizing the PTCs in the year earned. If the PTC Guarantee did not apply in a given year because of the immediately preceding sentence, the Company will provide to customers the grossed-up value of the PTCs that are earned in that year when and to the extent that those PTCs are actually utilized to reduce the Company's tax liability. For purposes of this agreement, a "force majeure event" is defined as an act of God such as an earthquake, tornado, or severe flood, or a war or act of terrorism.

- e. Wildlife: Ameren Missouri will provide reasonable advanced notice to the Missouri Department of Conservation ("MDC") of all scheduled meetings and conference calls (related to the Project), if any, with the United States Fish and Wildlife Service ("USFWS"). Ameren Missouri will provide MDC a copy of all documents and/or reports related to the Project, if any, that it provides to the USFWS at the same time as they are provided to the USFWS.

WHEREFORE, Ameren Missouri respectfully requests that the Commission issue a final order:

- Granting Ameren Missouri a Certificate of Public Convenience and Necessity under subsection 1 of Section 393.170 (line certificate) authorizing Ameren Missouri to construct, install, own, operate, maintain, and otherwise control and manage a wind generation facility to be located in Atchison County in Missouri pursuant to the BTA with EDF-RE, including permission to acquire Non-Compliant WTGs that become Compliant WTGs according to the terms of the BTA, with the conditions specified in Section IV of this Application;
- Authorizing Ameren Missouri to merge Brickyard Hills into Ameren Missouri with Ameren Missouri to be the surviving entity pursuant to Section 393.190.1;¹¹ and
- Approving a variance from the requirements of 4 CSR 240-3.105(2) to the extent necessary to allow construction to start and proceed.

¹¹ See also footnote 2.

Respectfully submitted,

/s/ Wendy K. Tatro

Wendy K. Tatro, Mo. Bar #60261
Director and Assistant General Counsel
Ameren Missouri
1901 Chouteau Avenue
St. Louis, MO 63103
Telephone: (314) 554-3484
Facsimile: (314) 554-4014
E-Mail: AmerenMOService@ameren.com

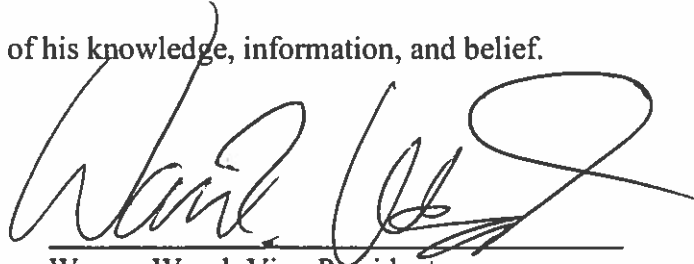
/s/ James B. Lowery

James B. Lowery, Mo. Bar #40503
SMITH LEWIS, LLP
P.O. Box 918
Columbia, MO 65205-0918
Telephone: (573) 443-3141
Facsimile: (573) 442-6686
E-Mail: lowery@smithlewis.com

**ATTORNEYS FOR UNION ELECTRIC
COMPANY d/b/a AMEREN MISSOURI**

VERIFICATION

The undersigned, being first duly sworn and upon his oath, hereby states that the foregoing *Application* is true and correct to the best of his knowledge, information, and belief.

A handwritten signature in black ink, appearing to read 'Warren Wood', written over a horizontal line.

Warren Wood, Vice-President
External Affairs & Communications
Union Electric Company d/b/a Ameren Missouri

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the public version of the foregoing Application has been e-mailed, this 22nd day of October, 2018, to the Missouri Public Service Commission Staff and to the Office of the Public Counsel.

/s/ Wendy K. Tatro
Wendy K. Tatro

STATE OF MISSOURI



John R. Ashcroft
Secretary of State

CORPORATION DIVISION
CERTIFICATE OF GOOD STANDING

I, JOHN R. ASHCROFT, Secretary of State of the State of Missouri, do hereby certify that the records in my office and in my care and custody reveal that

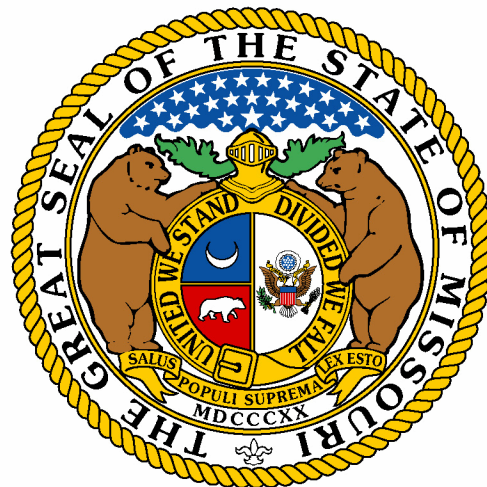
UNION ELECTRIC COMPANY
00040441

was created under the laws of this State on the 21st day of November, 1922, and is in good standing, having fully complied with all requirements of this office.

IN TESTIMONY WHEREOF, I hereunto set my hand and cause to be affixed the GREAT SEAL of the State of Missouri. Done at the City of Jefferson, this 17th day of October, 2018.


Secretary of State

Certification Number: CERT-10172018-0012



EDF

Utility Crossings: Atchison County	
#	NAME
1	Empire Gas
2	N.W. Electric Coop
3	United Telephone Co.
4	Associate Electric Coop
5	Atchison County Wholesale Water Commission
6	Rock Port Telephone Co.
7	Atchison-Holt Electric Coop
8	Public Water Supply District No. 1
9	St. Joseph Light & Power Co. (Aquila)
10	Missouri Service Co.

Note: List above includes all utilities crossed inside of the project area. There are no railroads in the project area.

ATCHISON COUNTY

COUNTY COMMISSION

ASSENT RESOLUTION 2018-02 FOR USE OF COUNTY ROADS

WHEREAS, the Atchison County, Missouri Commission ("Commission") is the government entity authorized by Atchison County, Missouri ("County") to be responsible for maintenance and upkeep of certain county public roads within the geographic territory of the County; and

WHEREAS, Commission and the Atchison County Special Road District ("District") have entered into a Right-of-Way Easement Agreement ("Easement Agreement") with Brickyard Hills Project, LLC, for the use of County right-of-way as more particularly described in the Easement Agreement, a copy of which is attached hereto as Exhibit A, and incorporated herein; and

WHEREAS, County and has entered into a Road Use/Maintenance Agreement ("Maintenance Agreement") with Brickyard Hills Project, LLC, for the use of certain Roads as more particularly described in the Maintenance Agreement, a copy of which is attached hereto as Exhibit B, and incorporated herein; and

WHEREAS, Brickyard Hills Project, LLC in order to facilitate its rights under the Easement Agreement, has a need to move equipment over certain county roads within the County; and

WHEREAS, a need has been demonstrated to the County Commission to provide access over certain County public roads and to protect such roads from damage; and

WHEREAS, the County is authorized under Section 70.220 RSMo to enter into contracts with other entities to advance County programs consistent with County authority; and

WHEREAS, the County is authorized under Section 49.270 RSMo to engage in all matter of transactions related to county property; and

WHEREAS, the County, and its Commission, desire to grant such approval and assent for the use of such right-of-way and roads by Brickyard Hills Project, LLC, as is necessary to facilitate the rights identified in the Easement Agreement and Maintenance Agreement.

NOW THEREFORE BE IT RESOLVED:

That Commission finds that it is necessary to grant access over certain of the County public roads and connected rights of way, in particular any and all roads used within the Atchison County Special Road District to advance the economic development and the rights of Brickyard Hills Project, LLC under the attached Easement Agreement and Maintenance Agreement.

That the Easement Agreement and Maintenance Agreement are in the best interests of the County.

That the terms and conditions of the Easement Agreement and Maintenance Agreement adequately protect County from damages to its right-of-way and roads to the extent caused by the activities of Brickyard Hills Project, LLC and its agents.

That the Easement Agreement and Maintenance Agreement attached to this Resolution are authorized by the County Commission and County to be executed on behalf of the County as the documents that encompass all of the terms and conditions associated with the grant of access to County right-of-way and certain of the county public roads, in particular any and all roads used within the Atchison County Special Road District for movement of the equipment and materials associated with of the Easement Agreement and Maintenance Agreement.

That the Easement Agreement and Maintenance Agreement comply with Section 229.100 of the revised statutes of Missouri. There are no other permissions, approvals necessary for the use of County right-of-way and roads from the County, Commission, District, or otherwise. This Assent Resolution upon passage and shall not be effected by the repeal of Section 229.100 of the revised statutes of Missouri.

That the Presiding Commissioner is directed to execute the attached Easement Agreement and Maintenance Agreement upon receipt of an executed copy of such agreements from Brickyard Hills Project, LLC.

Adopted this 10th day of July, 2018 by roll call vote as follows:

Curtis Livengood
Presiding Commissioner - YES

Richard Burke
South District Commissioner - YES

James Quimby
North District Commissioner - YES

ATTEST:



Atchison County Clerk
Svetlana M. Taylor



PUBLIC NOTICE OF ATCHISON COUNTY COMMISSION

Notice is hereby given that the Atchison County Commission **WILL MEET** on
July 10TH, 2018, from 9:00 a.m. – Noon in the Commission Room
First Floor – Atchison County Courthouse

This will be the 6th day of the July Term

TENTATIVE AGENDA –

- 1. Call to Order –**
- 2. Approval of Agenda and previous Meeting Minutes**
- 3. Financial Reports/Approve Bills**
- 4. Reports of appointed officials/elected officials & Department Heads**
- 5. Old Business –**
- 6. New Business & Miscellaneous concerns –**
 - A. 9:30 a.m. Vote to approve Assent Resolution 2081-02**
 - B. Vote to approve Brickyard Hill Project Road Use/Maintenance Agreement**
 - C. Vote to approve Brickyard Hill Project Right-of-Way Agreement**

REMINDERS:

The Agenda of the Atchison County Commission is posted in Accordance with Section 610.020 RSMo 1994.

Posted: July 5th, 2018
Time: 8:30 a.m..

Signed


Susette M. Taylor, Clerk of the County Commission
PO. Box 280, Rock Port, MO 64482
660-744-6214

(Space above reserved for Recorder of Deeds certification)

1. *Title of Document:* **RIGHT-OF-WAY EASEMENT AGREEMENT**
2. *Date of Document:* July 10th, 2018
3. *Grantor(s):* **ATCHISON COUNTY, MISSOURI COUNTY COMMISSION
& ATCHISON COUNTY SPECIAL ROAD DISTRICT**
4. *Grantee(s):* **BRICKYARD HILLS PROJECT, LLC**
5. *Grantee's Statutory Mailing Address(s):* **15445 Innovation Drive
San Diego, CA 92128**
6. *Legal Description:* **See Exhibit A**
7. *Reference Book and Page (s):*

(If there is not sufficient space on this page for the information required, state the page reference where it is contained within the document.)

RIGHT-OF-WAY
EASEMENT AGREEMENT

THIS RIGHT-OF-WAY EASEMENT AGREEMENT ("**Easement**") is made and entered into as of this 10th day of July, 2018 ("**Effective Date**") by and between the ATCHISON COUNTY, MISSOURI COUNTY COMMISSION (the "**Commission**") and the ATCHISON COUNTY SPECIAL ROAD DISTRICT (the "**District**") and BRICKYARD HILLS PROJECT, LLC, a Delaware limited liability company (the "**Grantee**"), whose address is 15445 Innovation Drive, San Diego, CA 92128.

WHEREAS, the Grantee desires authority from the Commission and District to perform certain work related to installation, operation, maintenance, upgrading and/or removal of electric power transmission, distribution, and communications lines and facilities, consisting of variable number and sizes of wires, and all necessary or desirable appurtenances, including overhead and underground transmission, distribution and collector lines, wires and cables, conduit, footings, foundations, towers, H-frames or poles made of wood, metal or other materials, props, guys and anchors, interconnection and/or switching facilities, circuit breakers and transformers, overhead and underground control, communications and radio relay systems and telecommunications equipment, including fiber, wires, cables, conduits and poles, fences gates and other safety and protection facilities (the "**Facilities**") in, upon, across, over, under and along that certain county right-of-way, together with the right of ingress and egress to and from the county right-of-way (the "**Right-of-Way**") described on Exhibit A attached hereto and generally depicted on the map to be mutually agreed by the parties and attached hereto at a future date as Exhibit B, (including, without limitation, the right to install facilities parallel along existing county roads).

NOW THEREFORE, in consideration of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

1. **Grant.** The Commission and the District hereby grant to Grantee a perpetual, non-exclusive easement to occupy and use the Right-of-Way for the purposes of developing, constructing, using, reconstructing, erecting, installing, improving, enlarging, re-powering, relocating, rebuilding, inspecting, patrolling, operating, maintaining, removing and replacing the aforesaid Facilities; subject, however to the covenants and conditions herein contained, TO HAVE AND HOLD the Easement, together with all and singular the rights and appurtenances thereto in any way belonging unto the Grantee, its successors and assigns, and the District does hereby bind the Commission and the District, its successors and assigns, TO WARRANT AND FOREVER DEFEND all and singular the Easement and rights appurtenant unto the Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof. It is understood and agreed that this Easement is an easement only and in no way grants or conveys any part of the underlying fee simple estates of any lands owned by the County or the District.

2. Plans. At least 30 days prior to constructing or installing any Facilities within the Right-of-Way, Grantee shall furnish to the County Clerk comprehensive plans and/or diagrams of the proposed Facilities. Such plans must include a description of the size, type and method of installation for the proposed Facilities to be located within the Right-of-Way, and adequate sketches to indicate the location of the proposed Facilities with respect to the location of any existing road improvements, the Right-of-Way boundaries, and the location of other utility lines within the Right-of-Way.

3. Material and Methods. All work performed by Grantee in, upon and along the Right-of-Way must be performed in a good and workmanlike manner.

(a) The Grantee shall furnish (or cause to be furnished) all material, perform (or cause to be performed) all labor and pay all costs for the Facilities installed within the Right-of-Way.

(b) All work within the Right-of-Way shall substantially comply with the conditions and requirements of the rules and regulations of the Board of County Commissioners and Atchison County Special Road District in effect at the time of commencement of such work; provided, however, that Grantee shall not be required to comply with any such conditions and requirements to the extent that the same (a) were not in effect as of the date first set forth above and (b) would have the effect of materially delaying, impairing or increasing the cost of the work within the Right-of-Way or denying Grantee the benefit of its rights hereunder.

4. Traffic Obstructions. Grantee agrees that highway traffic will be free of interference unless specifically permitted by the Commission and District; provided, however, that completion of the work on the Facilities in accordance with the plans and methods approved by the and District shall not constitute "interference" for purposes of this paragraph.

5. Right-Of-Way. To the extent Grantee performs any work on Facilities within the Right-of-Way, Grantee agrees to restore the Right-of-Way to the condition existing at the date such work is commenced, to the extent reasonably practicable. Any sod, shrubs or trees destroyed by the installation of or work on the Facilities shall be replaced as directed by the Commission and District. Except while working on the Facilities, the Right-of-Way shall be kept free from parking, advertising signs or any other commercial activity. The Grantee shall within one year of the commercial operation date of the Facilities restore the original configuration of all ditches, slopes, embankments and fills within the Right -of-Way, to the extent reasonably practicable.

6. Liability. The Grantee hereby assumes all risk for liability for damages to its Facilities that may occur during the installation of the Facilities; and the Grantee does hereby indemnify the County, Commission, and District from any and all costs, liabilities, expenses, suits, judgments or damages to persons or property or claims of any nature whatsoever (including reasonable attorney's fees) to the extent arising out of or in connection with Grantee's negligent or willful misconduct in the work performed within

the Right-of-Way. In no event shall Grantee bear responsibility for damages or claims, to the extent caused in whole or in part by the Commission or District or by an unaffiliated third party.

7. **Insurance.** During the construction of Facilities within the right-of-way, the Grantee shall procure and maintain general liability insurance and worker's compensation insurance, and provide the County and the District upon request with "**Certificates of Insurance**" or other satisfactory evidence to show that Grantee carries such insurance coverage in the minimum amount of Five Hundred Thousand Dollars (\$500,000.00). Insurance as herein required shall be maintained in force until final release of the Grantee by the County and District from all obligations under the terms of this Easement. Upon providing satisfactory evidence of its ability to self-insure, Grantee may self-insure this obligation.

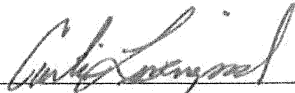
10. **Road Improvements.** Grantee recognizes that (a) the Commission or District may from time to time deem it necessary or proper to make alterations or improvements in and upon the Right-of-Way; (b) the Commission and District has reasonable discretion to determine the nature and extent of such alterations or improvements; and (c) such Commission or District works may require the alteration or relocation of the Facilities hereunder; provided, however, that (i) the Commission or District shall not take any action that would cause the Facilities to be relocated outside of the Right-of-Way or that would materially delay or impair work upon the Facilities or deny Grantee the benefit of its rights hereunder and (ii) so long as the Commission and District acts reasonably in determining the necessary alteration or relocation of the Facilities, such alteration or relocation of the Facilities shall be at the Grantee's sole cost and expense. Subject to the provisions in clauses (i) and (ii) of this Paragraph, Grantee therefore covenants and agrees that, within a reasonable time after written notice from the Commission or District, Grantee will alter, reconstruct and relocate the Facilities in a manner reasonably acceptable to the Commission and/or District.

11. **Running With Land.** This Easement and all of the terms, provisions and obligations hereof shall be covenants running with the land affected thereby and shall inure to the benefit of and be binding upon County, District and Grantee and their respective successors and assigns. Grantee's rights hereunder may also be exercised, at Grantee's option, by Grantee's lessees, contractors, agents, guests and invitees. Grantee may (a) assign or otherwise transfer this Easement to any entity that acquires all or a portion of any wind energy project that is benefited by this Easement or the Facilities and (b) collaterally assign this Easement to any person or entity that provides financing for or equity in any such wind energy project. This easement shall be governed by the laws of the state of Missouri. In no event shall any party be liable for consequential, punitive, special or exemplary damages.

12. **Governing Law.** This Easement Agreement shall be governed by Missouri law.

COMMISSION:

ATCHISON COUNTY, MISSOURI
COUNTY COMMISSION

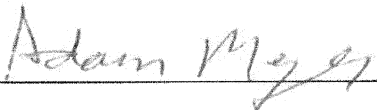
By: 

Name: Curtis Livengood

Title: Atchison County Presiding Commissioner

DISTRICT:

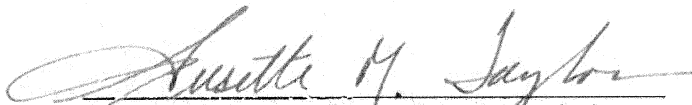
ATCHISON COUNTY SPECIAL ROAD DISTRICT

By: 


Name: Adam Meyer

Title: Atchison County Special Road Supervisor

ATTEST:


Susette M. Taylor, Clerk of the Commission

APPROVED AS TO FORM:

 County Attorney
Brett Hurst

NOTARY

STATE OF Missouri }
} ss.

COUNTY OF Atchison }

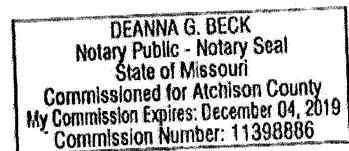
The forgoing instrument was acknowledged before me this 13th day of July, 2018.

By: Deanna G Beck

Notary Public for: Atchison County

My Commission Expires: 12/04/19

Commission No.: 11398886



GRANTEE:

Brickyard Hills Project, LLC

By: EDF-RE US Development, LLC, its sole Member

By: EDF Renewables Development, Inc., its Managing Member

By: [Signature]

Name: _____

NOTARY

STATE OF _____ }

} ss.

COUNTY OF _____ }

On this _____ day of _____, 2018, before me personally appeared _____, _____ (title), acting on behalf of EDF Renewable Development, Inc. as authorized agent for Brickyard Hills Project, LLC, known to me to be the person who executed this instrument and acknowledged to me that he executed the same on behalf of said limited liability company. (See attached certificate.)

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Steven Scott Jolson
Notary's Signature



Notary Public for: _____

My Commission Expires: _____

Commission No.: _____

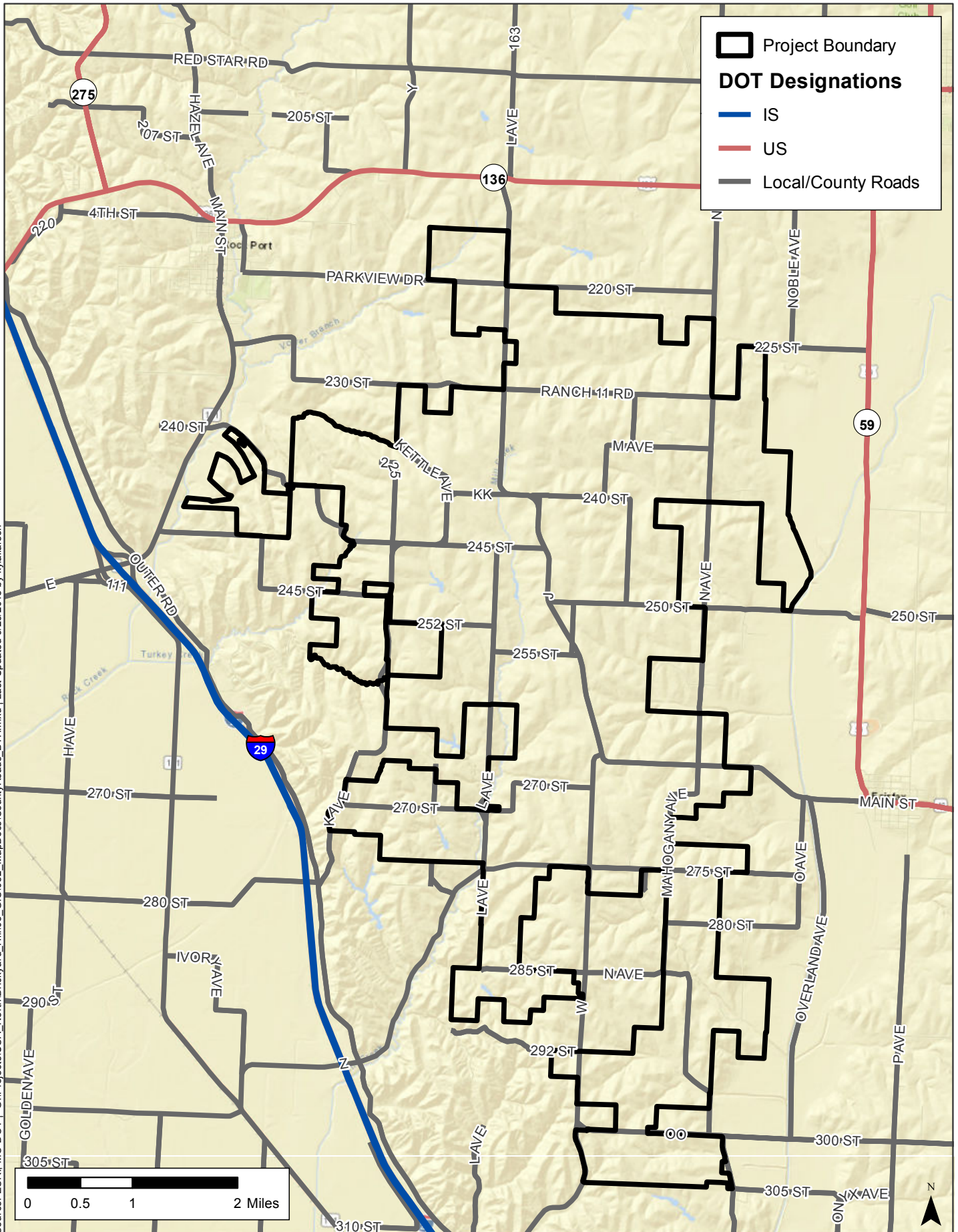
EXHIBIT A

DESCRIPTION OF RIGHT-OF-WAY

The Atchison County Right-of-Way is 40 feet total centered on the County Roads or Special Road District Roads, shown on Exhibit B, which is 20 feet from the center of the road in each direction.

EXHIBIT B
MAP OF RIGHT-OF-WAY

Source: ESRI, MO DOT | G:\Projects\USA_North\Brickyard_Hill\05_GIS\052_MapDocs\CountyRoads_BYH.mxd | Last Updated 9/26/2018 by kyla.larson



ROAD USE/MAINTENANCE AGREEMENT

This Road Use/Maintenance Agreement (this "**Agreement**") is entered between **Brickyard Hills Project, LLC** (hereafter referred to as "**Brickyard Hills**") and Atchison County (hereafter referred to as "**County**") pursuant to Section 70.220 RSMo to grant Brickyard Hills permission to move heavy equipment and materials, which exceeds the posted weight limit, over selected county roads and connected rights of way (hereafter referred to as "**Road Use**"), in Atchison County, Missouri, to be identified in the Road Use Map to be agreed by the parties pursuant to Section 1 and attached hereto at a future date as **Exhibit "A"** (the "**Planned Route**") in connection with, and during the period of, Brickyard Hills' construction of its Brickyard Hills Wind Project (as defined below).

Section 1. County grants Brickyard Hills permission for Road Use over the Planned Route. The Planned Route shall be finalized in the following manner: At least 30 days prior to any oversize or overweight equipment operating within the County for project construction, Brickyard Hills shall provide the County with a map of the Planned Route, details related to any bridge or structure restrictions, and a video survey of road conditions within the Planned Route as they exist prior to construction. Within 5 days of the County's receipt of such materials, the County shall inform Brickyard Hills whether it approves of such Planned Route and such consent shall not be unreasonably withheld. In the event that County does not respond within such 5 day period, County shall be deemed to have approved such Planned Route. Upon agreement of the Planned Route, **Exhibit A** shall be updated accordingly.

Section 2. County shall have no responsibility for the repair and maintenance of damages of the roads over which the equipment and materials are moved to the extent such damage is caused by Road Use by Brickyard Hills. Whether damage has been caused by Brickyard Hills shall be determined by comparing conditions prior to Road Use as reflected in the video survey conducted by Brickyard Hills pursuant to Section 1 above with conditions existing after Brickyard Hills' completion of Road Use.

Section 3. Brickyard Hills shall provide County 5 days' advance notice of any Road Use on the Planned Route, except in emergent situations whereupon notice shall be provided as soon as practicable. Prior to commencement of the Brickyard Hills Wind Project, Brickyard Hills shall provide County with a schedule identifying the approximate areas in which construction activity will be conducted during each week of the construction period. Brickyard Hills shall provide a schedule update to County at the beginning of each week during the construction

period.

Section 4. Brickyard Hills agrees to hold County harmless from any and all damages to the extent resulting from Brickyard Hills's Road Use over the Planned Route, including the payment of attorney fees, costs of litigation, the payment for any judgments entered against the County and all other costs and expenses related to the enforcement of this Agreement. Counsel for County shall be selected by County.

Section 5. Brickyard Hills shall have the right to improve County roads along the Planned Route, including without limitation, widening, installing driveways or turn radius, as may be necessary for Brickyard Hills' construction, operation, or maintenance of its wind energy project (the "**Brickyard Hills Wind Project**"). Brickyard Hills agrees that it will restore or repair any damage to the Planned Route caused by Brickyard Hills' Road Use to the level of such roads at the time such damage occurs as determined by a pre- and post-road condition survey. All improvements, repairs, and maintenance to County roads by Brickyard Hills shall be completed substantially in compliance with the specifications and standards attached hereto as **Exhibit "B"** and the crossing standards attached hereto as **Exhibit C** (collectively, the "**County Road Standards**").

Section 6. In addition to the County Road Standards, Brickyard Hills agrees to comply with any and all federal and state laws and applicable regulations relating to the construction, improvement, or Brickyard Hills' obligations under this Agreement with regard to upkeep, maintenance and repair of county roads along the Planned Route as they now exist or may exist during the life of the activity covered by this Agreement.

Section 7. Brickyard Hills agrees to maintain during construction and replace the road bed and road surfaces and rights of way to the standard and condition, as reasonably required by County, of such at the time that Brickyard Hills construction activity is commenced, provided that such obligation shall only apply with respect to any such deficiency in road condition of which the County notifies Brickyard Hills within six (6) months of the date on which the Brickyard Hills Wind Project achieves commercial operation. Brickyard Hills agrees to pay for the reasonable costs incurred by the County for any road work within the Planned Route performed by County to insure the quality of the road bed and rights of way are returned to their pre-construction or pre-Road Use condition if Brickyard Hills fails to properly perform the work to the reasonable satisfaction of County, provided, however, that any such individual repair effort in excess of ten thousand dollars (\$10,000) or cumulative costs in excess of fifty thousand dollars (\$50,000) shall require the prior written consent of Brickyard Hills. Upon Brickyard Hills'

completion of the road restoration obligations required pursuant to this Section 7, County shall deliver to Brickyard Hills a certificate indicating acceptance of such road restoration.

Section 8. Prior to commencement of construction of Brickyard Hills Wind Project and during the construction of Brickyard Hills Wind Project, Brickyard Hills agrees to provide (or cause Contractor (defined below) to provide) a performance bond in the amount of \$500,000.00 for the benefit of the County as damages for any violation of this Agreement (the "**Bond**"). Such performance bond shall be released upon the later of (i) the date on which the Brickyard Hills Wind Project achieves commercial operation and (ii) the date on which County delivers a road restoration acceptance certificate pursuant to Section 7 above.

Section 9. County acknowledges and agrees that Brickyard Hills will select the contractor responsible for constructing the Brickyard Hills Wind Project ("the **Contractor**") in Brickyard Hills's sole discretion. Upon selection of the Contractor, Brickyard Hills will provide to County the contact information for the Contractor. The County agrees that the Contractor may provide the Bond on behalf of, and in place of, Brickyard Hills. Proof of the Bond shall be presented by the Contractor to the County before any on-site work is commenced by Contractor for Brickyard Hills. In the event Contractor is unable to provide the Bond, Brickyard Hills agrees to provide the Bond.

Section 10. Within thirty (30) days after Brickyard Hills Wind Project achieves full commercial operations, Brickyard Hills shall pay to County a one-time, lump sum construction impact fee in the amount of \$1,000 per megawatt of nameplate capacity of the Brickyard Hills Wind Project as actually constructed.

Section 11. This Agreement shall be interpreted under Missouri law and only subject to state court jurisdiction.

Section 12. The parties agree that if any litigation arises between them related to the terms or enforcement of this Agreement, venue is only proper in Atchison County and in no other place in Missouri.

Section 13. The parties to this Agreement represent that they have the authority to enter into this Agreement and that the signatories hereto are authorized to sign for the respective party.

Section 14. The terms of this Agreement and any liability that may arise

under it are not a waiver of any defenses or immunities that County possesses by virtue of the fact that it is a governmental entity in Missouri. No defense raised or action taken to advance this Agreement by Brickyard Hills on behalf of County shall be considered as or act as a waiver of any immunities or defenses available to County as to any person, including, but not limited to, Brickyard Hills.

Section 15. Brickyard Hills' rights hereunder may also be exercised, at Brickyard Hills' option, by Brickyard Hills' lessees, contractors, agents, guests and invitees. This Agreement may not be assigned by Brickyard Hills without the prior consent from the County, with such consent not to be unreasonably withheld or delayed. This Agreement shall inure to the benefit of, and be binding upon, Brickyard Hills and County, and their respective successors and assigns.

(Signature Page to Follow)

Entered into this 10th day of July, 2018, by and among the following:

For Brickyard Hills, by:

Brickyard Hills Project, LLC

By: EDF-RE US Development, LLC, its sole Member


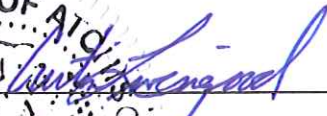
By: EDF Renewables Development, Inc., its Managing Member

By: 

Name: Ryan Pfaff

Title: EVP, Grid-Scale Power

For Atchison County, Missouri, by:

 By: 

Name: Curtis Livengood

Title: Presiding Commissioner

Exhibit A

Planned Route

[To be agreed and attached]

Exhibit B

County Road Standards

The 2011 Missouri Standard Specifications for Highway Construction as adopted by Atchison County, to the extent applicable to the type of road (i.e., gravel) being improved, repaired, or maintained by Brickyard Hills, it being understood that Brickyard Hills shall have no obligation to upgrade existing roads to a higher standard than their current state.

EXHIBIT C

CROSSING STANDARDS

SPECIFICATIONS FOR PLACEMENT OF UTILITIES WITHIN COUNTY RIGHT-OF-WAY

Intent:

It is the intent of these specifications to describe the uniform manner in which public utilities will be located, placed and maintained with Atchison County road rights-of-way.

Stake Out:

It will be the responsibility of the utility company requesting permission, to stake out, or provide a map of the work, so that it can be readily seen what effect this proposed work will have on the existing county road, road way drainage, and the adjacent property owners.

Request for Permission:

Permission to plow, bore or to open trenches in any county maintained right-of-ways shall be requested at least 7 working days in advance of starting work. Emergency type work, which is for the restoration of interrupted service, may begin immediately with verbal approval of the County Supervisor or his authorized representative.

General Requirements:

The contractor shall plan and schedule his work to cause a minimum interference with other work being done in the area. Equipment and excavated materials shall be placed not to obstruct traffic or drainage. All driveways disturbed or damaged shall be replaced. Access shall be maintained to all driveways during non-work periods. All excavation shall be backfilled or plated prior to the end of any work period. Two-way traffic shall be maintained at all times. At least one-half of the roadway (pavement and shoulder) shall be available for traffic at all times. It is the responsibility of the utility to make his agent, or contractor familiar with the terms of these specifications.

The utility will hold Atchison County harmless from claims resulting from its activities.

The placement of utility lines and/or cables may be made by either of four methods: (1) boring (2) open cut (3) plowing (4) overhead.

1. All work pertaining to the right-of-way, including roadway, is subject to the inspection of the Atchison County Roads Department.

2. All electrical underground utilities and gas lines will be buried a minimum depth of 48" below lowest point within all of County Road Right-of-Ways. All other underground utilities, including, but not limited to water, phone, fiber optic, etc., will be buried a minimum depth of 42" below lowest point within all of County Road Right-of-Ways. Utilities will be either routed around culvert or bored a minimum of 24" below culvert, in which, all electrical and gas lines shall be incased in conduit.

3. Ditch line, shoulders, and roadway surface must be restored to its original condition or

better. This shall be done in accordance with the Missouri Standard Specifications for highway construction

4. Vertical clearance for overhead power and communication lines above the County Road shall be no less than: (a) from 0 to 750 volts – 18 ft. (b) from 750 volts to 15,000 volts – 20 ft. (c) from 15,000 volts – 22 ft.

5. Poles or related facilities are to be placed as close to the edge of the County road right-of-way line as is practicable.

6. No poles, stubs for guys or anchors should be located in such a manner as to interfere with the ordinary highway maintenance.

7. Traffic will be maintained at all times.

8. Work area signage must be installed.

9. Contractor is responsible for notifying Missouri Dig Rite.

10. The utility accepts full responsibility for any accidents involving the public, caused by the Utility's failure to utilize proper construction methods or proper signage in accordance with this Exhibit C.

11. The utility will be responsible for maintenance of all work for a period of 1 year after completion of project construction.

Other Utilities

The Utility Company is responsible for:

1. Insuring that their proposed installation and construction activities will not interfere with the maintenance or functioning of existing utility facilities already located within the right-of-way.

2. Any damage caused by the Utility to existing utility facilities already within the right-of-way.

Improperly Installed Facilities

The owner of facilities located within county right-of-way which have been installed in violation of this Exhibit C shall be liable for any damage to the county maintained roadway and appurtenances resulting from such improperly installed facilities. Additionally, the owner of any such facilities shall also be liable for any damage to county equipment or injuries to county staff resulting from such improperly installed facilities. If the county becomes aware that the utilities facilities were not installed at the agreed to location or depth, the county will notify the utility and the utility shall proposed corrective action within two weeks of notification. The utility shall bear all financial responsibility with any such relocation. Additionally, failure by the utility to respond within the two week period and/or to proceed with corrective action within a reasonable period of time shall result in the county suspending review of all current and future agreements by the utility in question, and suspension of all approved agreements held by the utility. This shall remain in effect until the utility complies with the requirement of this section of the agreement.

Utility Relocations

By locating utility facilities within county right-of-way, the utility or his assignees, agrees to relocate these facilities at no cost to the county, should the county request such relocation. The county could request relocation because of, but not limited to, roadway improvements and/or drainage improvements. The utility or assignees shall be notified no less than 6 months prior to any relocation request to minimize any business interruption.

List of Permits:

Federal
U.S. Army Corps of Engineers
U.S. Department of Agriculture
Federal Aviation Administration
National Telecommunications and Information Administration – Consultation
State
Missouri Department of Natural Resources (MDNR)
Missouri State Historic Preservation Office (SHPO) – Consultation
Missouri Department of Transportation
County
Atchison County Emergency Management Office