

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

In the Matter of the Application of the Empire)
District Electric Company for a Certificate of)
Convenience and Necessity Related to its) Case No. EA-2019-0010
Customer Savings Plan)

BRIEF OF THE MISSOURI DEPARTMENT OF CONSERVATION

COMES NOW the Missouri Department of Conservation (“MDC”) and for its post-hearing brief states as follows:

MDC respectfully requests that the Commission adopt the Stipulation and Agreement Concerning Wildlife Issues (“Wildlife Stipulation”) (Exhibit 12) filed on April 5, 2019 and require Empire to comply with various provisions therein intended to mitigate the impact of the Missouri projects on the environment and Missouri wildlife.

Commission Rule 4 CSR 240-2.115 provides that if no party objects to a nonunanimous stipulation and agreement within seven days of its filing, the Commission can treat it as unanimous. More than seven days have passed since the stipulation and agreement was filed, and no party has objected to it. MDC respectfully requests the Commission treat the Wildlife Stipulation as unanimous. The Wildlife Stipulation should be approved by the Commission because it evidences a reasonable resolution of the issues it addresses.

In considering Empire’s Application, the Commission should evaluate evidence using the “tartan criteria” “(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.”¹

In considering the fifth and final factor – whether the service promotes the public interest – the Commission can and should consider environmental, agricultural, wildlife, and conservation concerns in its analysis.² The rebuttal testimony of MDC Witnesses Jennifer Campbell, Dr. Kathryn Bulliner, and Dr. Janet Haslerig establish there are significant conservation concerns surrounding the Kings Point and North Fork Ridge projects. Missouri citizens invest millions of dollars annually through a constitutionally imposed and voter approved sales tax that is dedicated to the management, restoration and

¹ Report and Order, *In re Application of Tartan Energy Company, L.C. d/b/a Southern Missouri Gas Company for a Certificate of Convenience and Necessity*, File No. GA-94-127, 3 Mo. P.S.C. 3d 173 (September 16, 1994) 1994 WL 762882, *3.

² See EA-2016-0358, Report and Order on Remand, *In the Matter of the Application of Grain Belt Express Clean Line LLC for a Certificate of Convenience and Necessity Authorizing It to Construct, Own, Operate, Control, Manage, and Maintain a High Voltage, Direct Current Transmission Line and an Associated Converter Station Providing an Interconnection on the Maywood-Montgomery 345kV Transmission Line* (March 20, 2019), pp. 30-35; see also EA-2015-0146, Report and Order, *In the Matter of the Application of Ameren Transmission Company of Illinois for Other Relief or, in the Alternative, a Certificate of Public Convenience and Necessity Authorizing it to Construct, Install, Own, Operate, Maintain and Otherwise Control and Manage a 345,000-volt Electric Transmission Line from Palmyra, Missouri, to the Iowa Border and Associated Substation Near Kirksville, Missouri* (April 27, 2016), pp. 26-27.

conservation of Missouri wildlife, which includes wildlife potentially impacted in this case. The public has an interest in ensuring that their conservation investments in wildlife are preserved and not harmed or jeopardized by the Kings Point and North Fork Ridge projects.

If the Commission approves the Company's application, the Commission should impose the conditions in the Wildlife Stipulation and supported by the rebuttal testimony of MDC Witnesses Jennifer Campbell,³ Dr. Kathryn Bulliner,⁴ and Dr. Janet Haslerig.⁵ Given the specific evidence in this case, the Wildlife Stipulation presents a reasonable resolution of the issues it addresses.

Because the evidence in the case suggests the projects will affect both eagles and bats,⁶ many of the provisions are similar to the provisions found in the Third Stipulation and Agreement in EA-2019-0202. Three other provisions warrant additional discussion.

³ Exs. 600 and 601.

⁴ Exs. 602 and 603.

⁵ Exs. 604-606.

⁶ Ex. 600, Campbell Rebuttal, 11:1-4.

First, the projects in this case, unlike EA-2019-0202, are close in proximity to Conservation Areas.⁷ MDC Witness Campbell explained the importance of conservation areas, particularly native prairies, and the potential negative impact of a wind projects on the same.⁸ For these reasons, MDC recommended a setback (or buffer) as well as traffic count study to measure the impact of the projects on Conservation Areas.⁹ Following extensive negotiation among the parties with respect to such recommendations, the parties arrived at provisions related to Conservations Areas – Appendix A, Paragraphs 8 and 9.

Second, Paragraph 5 contains an operational commitment by Empire related to the gray bat. MDC Witness Dr. Bulliner explained that gray bats forage along riparian corridors during the active season, making turbines along riparian corridors a concerning threat to the gray bat.¹⁰ Dr. Bulliner recommended a riparian corridor set back of one half mile to protect the species.¹¹ Following extensive negotiation among the parties with respect to such recommendations, the parties arrived a provision related to designated riparian corridors during the active season – Appendix A, Paragraph 5.

⁷ Ex. 600, Campbell Rebuttal, 11:5-15:3.

⁸ Ex. 600, Campbell Rebuttal, 18-24.

⁹ Ex. 600, Campbell Rebuttal, 24:11-25:7.

¹⁰ Ex. 602, Bulliner Rebuttal, 12:7-12; 30:1-31:10.

¹¹ Ex.602, Bulliner Rebuttal, 33:11-13.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served upon all of the parties of record or their counsel, pursuant to the Service List maintained by the Data Center of the Missouri Public Service Commission, on April 29, 2019.

/s/ Stephanie S. Bell
Stephanie S. Bell