

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

In the Matter of the Application of The)
Empire District Electric Company for) Case No. EO-2018-0092
Approval of Its Customer Savings Plan

**REPLY BRIEF OF THE
MISSOURI DIVISION OF ENERGY**

The Missouri Division of Energy (“DE”) respectfully offers the Public Service Commission (“Commission”) this reply brief in response to the May 31, 2018 initial briefs.

1. Approving the Agreement is not an Advisory Opinion

Commission approval of the Non-Unanimous Stipulation and Agreement (“Agreement”) does not constitute an unlawful advisory opinion. According to the Missouri Supreme Court, advisory opinions are unlawful because petitions “must present a ‘real, substantial, presently existing controversy admitting of specific relief as distinguished from an advisory or hypothetical situation.’ ” *Akin v. Dir. of Revenue*, 934 S.W.2d 295, 298 (Mo. banc 1996). The present case involves an actual plan for the Empire District Electric Company (“Empire” or “Company”) to build 600 MW of wind generation, not a hypothetical plan. Construction is to begin no later than next year. There is also a real, substantial, and presently existing controversy over the 600 MW plan, as presented during the three-day hearing. These attributes distinguish the Agreement from an unlawful advisory opinion as determined by the Supreme Court.

2. Approving the Agreement is not Pre-Approval of Costs

Opponents of the Agreement are incorrect when they assert the Agreement seeks “pre-approval for the treatment of costs not yet incurred.”¹ Section 14(3) on page 5 of the Agreement

¹ OPC Initial Brief, p. 10.

explains, “this Stipulation does not preclude the Commission and the Signatories from reviewing the reasonableness of the costs of the Wind Projects in a general rate proceeding;” and Section 9 on page 3 states that “nothing in this Stipulation is intended to impinge or restrict in any manner the exercise by the Commission of any statutory right,” which includes the authority to determine what costs to allow in rates during a general rate proceeding under § 393.150 RSMo.

3. Approving the Agreement Does Not Alter the Requirement for a CCN

An order from the Commission approving the Agreement will not allow Empire to avoid filing for a Certificate of Convenience and Necessity (“CCN”) as required by § 393.170 RSMo. In addition, the Agreement includes the following requirement at Section 16(a) on page 6:

EDE agrees that for any of the Wind Projects physically located in the state of Missouri, and for any Wind Projects which are located outside of the state of Missouri for which a Certificate of Convenience and Necessity (“CCN”) is required by Commission regulations, EDE shall file a request for a CCN with respect to its interest in the Wind Projects, consistent with Commission Rule 4 CSR 240-3.105, before authorizing construction of the facilities.

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_____. *** The Commission maintains its full statutory authority to study the Wind Project costs, wind farm locations, and any other concerns that may arise in regard to the Commission’s § 393.170

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RSMo authority and obligation to grant CCNs when necessary and convenient for the public service.

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5. Conclusion

The ultimate decision to be made by the Commission is whether the Agreement would benefit the public. During the evidentiary hearing, OPC’s witness acknowledged that renewable energy has public interest benefits, explaining that: 1) wind energy is cleaner energy because it does not burn a fossil fuel; 2) adding renewable energy is responsive to the demand from corporations for renewable energy; and 3) renewable energy creates fuel savings.⁸ OPC’s witness also acknowledged the corporate demand for renewable energy is increasing, and retaining Missouri’s businesses and attracting more businesses to Missouri is in the public interest.⁹ DE respectfully urges the Commission to approve the Agreement and order its terms be followed.

Respectfully submitted,

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⁸ Tr., Vol. 7, p. 883.

⁹ *Id.*, pp. 883-884.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been served electronically on all counsel of record this 12th day of June 2018.

Marc Poston
