

**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)
Necessity Authorizing it to Construct a Wind Generation)
Facility.)
File No. EA-2019-0181

STIPULATION AND AGREEMENT

COME NOW Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri" or the "Company"), the Staff of the Missouri Public Service Commission ("Staff"), Renew Missouri Advocates ("Renew Missouri"), the Missouri Department of Economic Development – Division of Energy ("DE"), and the Missouri Department of Conservation ("MDC"), (collectively, the "Signatories"¹), and submit this Stipulation and Agreement ("Agreement") and respectfully state as follows:

BACKGROUND

1. On May 15, 2019, Ameren Missouri filed its *Application*, which requested a Certificate of Convenience and Necessity ("CCN").
2. Renew Missouri, DE, National Resources Defense Council ("NRDC"), MDC, the Sierra Club, and the Western Missouri and Kansas Laborers District Council ("WMKLDC") applied for, and were granted, intervention. Staff and OPC are also parties to this docket.
3. After several discussions, the Signatories have reached a Stipulation and Agreement ("Agreement") resolving this case in its entirety, as is set forth below.

AGREEMENTS AMONG THE SIGNATORIES

¹ While the Sierra Club, NRDC, and OPC are not Signatories, they have authorized the undersigned counsel to indicate that they do not object to this Stipulation. OPC has indicated that it will file a separate statement respecting the Stipulation.

4. Ameren Missouri, Staff, Renew Missouri, and DE agree that, on the terms provided for herein, the Missouri Public Service Commission ("Commission") should grant Ameren Missouri's request for a CCN pursuant to Section 393.170.1 to construct and own a wind generation facility, which includes gen-tie facilities as described in the Company's *Application* and the Direct Testimony of Ajay K. Arora filed in this docket, under the Build Transfer Agreement ("BTA") with Enel Kansas, LLC (the "Project") as set forth in the Company's *Application*. This authority includes permission to acquire any "WTG-II's", as that term is defined in the *Application* and as defined by and according to the terms of the BTA. The Signatories agree the costs of this Project are Renewable Energy Standard compliance costs so long as the facility is certified by DE as a renewable energy resource under 4 CSR 340-8.010. MDC's principal interest in this case are the wildlife issues addressed in paragraph 6.D of this Agreement. Therefore, it neither supports nor opposes the grant of the CCN.

5. Authority to Merge: The Signatories agree the Commission should grant Ameren Missouri authority to merge the special purpose entity Outlaw Wind Project, LLC into Ameren Missouri with Ameren Missouri to be the surviving entity pursuant to § 393.190.1, as set forth in the Company's *Application*.

6. Conditions: The Signatories agree that the CCN should be granted subject to the following conditions:

A. Plans and Specifications: 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 earlier of the first day of the first calendar quarter beginning after the CCN is issued. The quarterly progress reports will also include the following: an update on all permits obtained, an update on project milestones achieved or missed and on significant delays or occurrences of force majeure events, and updates on cost

estimates including but not limited to transmission interconnection costs, construction costs, turbine costs, and overall project cost (\$/kW). Ameren Missouri shall also, as part of its quarterly progress reports, 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 prior to closing on the purchase of the project company.

C. Production Tax Credits (“PTCs”): 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.

D. Wildlife: The wildlife-related conditions set forth on Exhibit A hereto are incorporated herein by this reference. The Signatories agree that adoption of the conditions reflected in Exhibit A does not imply or suggest that adoption of any one or all of such conditions in any other case is necessary, appropriate, or required by the public

interest. The Signatories further agree that the conditions reflected on Exhibit A are specific to the evidence presented in the testimony pre-filed in this case and that they shall not argue or claim in a future Commission case or proceeding that the inclusion of such conditions in this case supports or does not support the inclusion of the same or similar conditions in that case or proceeding, and agree that violation of the proceeding sentence shall be cause for any Signatory to file an objection to or Motion to Strike such argument or claim in such future case or proceeding.

E. In-Service Criteria: The in-service criteria agreed upon in connection with File No. EA-2018-0202 and filed in that docket shall apply to the wind facility at issue in this case.

F. Depreciation: The Signatories agree that 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. The Signatories further agree 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. The Signatories agree that the direct testimony of Ameren Missouri supports a life of the wind assets of 30 years. The Signatories acknowledge that Ameren Missouri has submitted a depreciation study that proposes a new depreciation rate for wind facility investments recorded to FERC Account 344 in connection with its general electric rate case filing made on July 3, 2019, File No. ER-2019-0335.

G. Resource Planning: As part of its 2020 triennial resource plan filing under Chapter 22 of the Commission's rules, Ameren Missouri will describe and document its consideration of the impacts of the following factors on the potential economics of wind resources:

- Changes in PTC value associated with qualification deadlines in federal tax law (e.g., 80% PTC vs. 100% PTC);
- Differences in PTC value associated with different levels of production in different states or areas (e.g., Western Kansas, Northeast Missouri, etc....);
- Potential variability in required transmission system network upgrades;
- Impacts on capacity position and deferral of other resources with wind capacity included or excluded from resource adequacy;
- Differences in hourly pricing, including the possibility of negative hourly pricing;
- Differences in interconnection in MISO or SPP;
- Trade-offs between higher out-of-state capacity factors and qualification for the 1.25 multiplier provided for by the Missouri Renewable Energy Standard for Missouri renewable resources; and
- Potential variability in wind production (i.e., differences in capacity factor).

H. Transmission Interconnection: Ameren Missouri shall file with the Commission an analysis, prior to a Generation Interconnection Agreement² being signed, if the total designated Network Upgrade costs and costs allocated or assigned from other upgrades or projects, exceed the amounts listed in the Staff Rebuttal Report submitted in this docket (at page 29, line 12 for each of the SPP or MISO connection options), as applicable. Such an analysis should compare the increased total designated Network Upgrade costs including potential costs allocated or assigned from other upgrades or projects, with the benefits of continuing the project.

7. Prudence: The Signatories agree that they shall not challenge the prudence of the decision to construct the facility for RES compliance purposes under Section 393.1030, RSMo., and to merge Outlaw Wind Project, LLC into Ameren Missouri upon acquisition of the facility. Nothing in this Stipulation limits the ability of any Signatory or other party from challenging the prudence of the design, construction costs, interconnection costs, and all other project related costs, including costs impacted by construction duration.

GENERAL PROVISIONS OF AGREEMENT

² The phrases “Generator Interconnection Agreement” and “Network Upgrades” have the meanings given them in the BTA.

8. This Agreement is being entered into solely for the purpose of settling the issues in this case explicitly set forth above. Unless otherwise explicitly provided herein, none of the Signatories to this Agreement shall be deemed to have approved or acquiesced in any ratemaking or procedural principle, including, without limitation, any cost of service methodology or determination, depreciation principle or method, method of cost determination or cost allocation or revenue-related methodology.

9. This Agreement is a negotiated settlement. Except as specified herein, the Signatories to this Agreement shall not be prejudiced, bound by, or in any way affected by the terms of this Agreement: (a) in any future proceeding; (b) in any proceeding currently pending under a separate docket; and/or (c) in this proceeding should the Commission decide not to approve this Agreement, or in any way condition its approval of same. This Agreement has resulted from extensive negotiations among the Signatories, and the terms hereof are interdependent. If the Commission has questions for the Signatories' witnesses or Signatories, the Signatories will make available, at any on-the-record session, their witnesses (if any) and attorneys on the issues resolved by this Stipulation, so long as all Signatories have had adequate notice of that session. The Signatories agree to cooperate in presenting this Stipulation to the Commission for approval, and will take no action, direct or indirect, in opposition to the request for approval of this Stipulation.

10. If the Commission does not approve this Agreement unconditionally and without modification, then this Agreement shall be void and no Signatory shall be bound by any of the agreements or provisions hereof.

11. If approved and adopted by the Commission, this Agreement shall constitute a binding agreement among the Signatories. The Signatories shall cooperate in defending the validity and enforceability of this Agreement and the operation of this Agreement according to its terms.

12. If the Commission does not approve this Agreement without condition or modification, and notwithstanding the provision herein that it shall become void, (a) neither this Agreement nor any matters associated with its consideration by the Commission shall be considered or argued to be a waiver of the rights that any Signatory has for a decision in accordance with RSMo. §536.080 or Article V, Section 18 of the Missouri Constitution, and (b) the Signatories shall retain all procedural and due process rights as fully as though this Agreement had not been presented for approval, and any suggestions, memoranda, testimony, or exhibits that have been offered or received in support of this Agreement shall become privileged as reflecting the substantive content of settlement discussions and shall be stricken from and not be considered as part of the administrative or evidentiary record before the Commission for any purpose whatsoever.

13. If the Commission accepts the specific terms of this Agreement without condition or modification, only as to the settled issues in this case explicitly set forth above, the Signatories each waive their respective rights to present oral argument and written briefs pursuant to RSMo. §536.080.1, their respective rights to the reading of the transcript by the Commission pursuant to §536.080.2, their respective rights to seek rehearing pursuant to §536.500, and their respective rights to judicial review pursuant to §386.510. This waiver applies only to a Commission order approving this Agreement without condition or modification issued in this proceeding and only to the issues that are resolved hereby. It does not apply to any matters raised in any prior or subsequent Commission proceeding nor any matters not explicitly addressed by this Agreement.

14. This Agreement embodies the entirety of the agreements between the Signatories in this case on the issues addressed herein and may be modified by the Signatories only by a written

amendment executed by all of the Signatories.

15. Contingent upon Commission approval of this Stipulation without modification, the Signatories hereby stipulate to the admission into the evidentiary record of the testimony of their witnesses.

WHEREFORE, the Signatories request the Missouri Public Service Commission issue an order approving the terms and conditions of this Stipulation and Agreement, including (in the case of all Signatories except MDC, which neither supports nor opposes issuance of the CCN) issuance of a CCN for the Project on the terms outlined herein.

Respectfully submitted,

/s/ James B. Lowery

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CERTIFICATE OF SERVICE

The undersigned certifies that true and correct copies of the foregoing have been e-mailed or mailed, via first-class United States Mail, postage pre-paid, to counsel of record this 31st day of July, 2019.

/s/ James B. Lowery

James B. Lowery

EXHIBIT A
Stipulation and Agreement, File No. EA-2019-0181

The Company¹ agrees that the below-listed conditions 1 to 9 should be imposed on the CCN to be issued in this case (and in consideration of that agreement MDC agrees to Item 10):

1. The Company will not clear known active (in-use) or inactive (alternate) eagle nest trees.
2. The Company will not construct a turbine within one mile of known active (in-use) or inactive (alternate) eagle nest trees if the nest is known at the time notice to proceed under the BTA is given.
3. The Company will use its best efforts to obtain an Eagle Take Permit (ETP) (pursuant to an approved Eagle Conservation Plan (ECP) from the United States Fish and Wildlife Service (USFWS)). For purposes of this paragraph, “best efforts” means diligent pursuit of an Eagle Take Permit but not an absolute obligation to obtain the same if the terms required by USFWS are such that operation without such permit would be in the interest of the Company’s customers.
4. If an ETP is not received for the Project, for the first two years of the Project, the Company will report to MDC observed mortalities of all bird and bat “Species of Conservation Concern” (SOCC) on the MDC SOCC list by December 31 of each year, identifying the date, turbine location (UTM), species, and reproductive status (if available), and sex of each individual animal. That reporting will be provided to MDC under Item 8 below.
5. Except as allowed below, the Company will not construct a turbine within three miles of the boundary of the adjacent Brickyard Hills conservation area, provided, that turbine nos. T7 and T9 as depicted on Attachment 1 (Confidential) may be located in the locations depicted on Attachment 1 notwithstanding the fact that those two turbines are located less than three miles from the conservation area boundary.
6. Within nine months of the issuance of a Certificate of Convenience and Necessity in this case, the Company and MDC will work in good faith to reach agreement on a pilot

¹ References to the Company during that period of time prior to the Company taking ownership of the facility shall be deemed to be references to developer of the Project.

study to evaluate the effectiveness of informed curtailment technology to minimize raptor collisions using some of the Project's turbines. The study will finish within the first six years of the Project's operation. The study would include providing MDC or its contractors access to the Project area as reasonably needed to conduct the study.² The study would likely involve a camera-based detection system to facilitate turbine shutdown in the presence of raptors and/or it may involve tracking raptor movement and behavior with GPS-telemetered birds in or near the Project area. The study will likely compare "treatment" turbines that use the informed curtailment technology with turbines that do not use the technology. The pilot study is subject to MDC securing the necessary funds for such study.

7. The Company will provide MDC a copy of all documents and/or reports related to the Project that it provides to the USFWS at the same time as they are provided to the USFWS.
8. Copies of reports sent to USFWS and MDC shall be submitted as business confidential information to MDC. MDC may include information from such submittals in MDC's Natural Heritage Database. Any data provided to MDC pursuant to this Item which is requested by third parties, except the USFWS, pursuant to a data sharing request will be provided as follows: a) using at least a 2.5-mile radius polygon that contains the sites at which bats were present, and b) eagle nest locations are buffered (at least 1.0-mile).
9. The Company will provide reasonable advanced notice to MDC of all scheduled meetings and conference calls (related to the Project) with the USFWS.
10. No citations for violation of Chapter 252, RSMo, or related state regulations (collectively, the "Wildlife Code") shall be issued by MDC or at MDC's suggestion for the incidental take of species at the facility authorized by a federal permit or reported on as part of the monitoring described in Item 4.

² MDC or MDC contractor personnel will have to complete the Company's standard requirements for third parties to access Company property.

ATTACHMENT 1 TO EXHIBIT A
IS
CONFIDENTIAL