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

APPLICATION OF THE EMPIRE DISTRICT ELECTRIC COMPANY FOR APPROVAL OF ITS CUSTOMER SAVINGS PLAN AND APPLICATION FOR VARIANCE, AND MOTION FOR WAIVER

COMES NOW The Empire District Electric Company ("Empire" or "Company"), pursuant to §386.250, RSMo; §393.140, RSMo; §393.240, RSMo; and Rules 4 CSR 240-2.060, 4 CSR 240-20.015, 4 CSR 240-20.030, and 4 CSR 240-4.017, to seek approval from the Missouri Public Service Commission ("Commission") of its proposed plan to achieve up to $325 million in savings for customers over the next twenty years ("Customer Savings Plan"). Under the Customer Savings Plan, Empire seeks to take advantage of a limited window of opportunity to develop up to 800 MW of strategically located wind generation in or near Empire's service territory (the "Wind Projects") using federal tax incentives in conjunction with a tax equity partner and retiring a coal-fired unit that will otherwise require significant capital investment by April 2019, in order to remain in compliance with environmental regulations and incurs on-going Operation and Maintenance (O&M) expenses. Empire is seeking regulatory validation of the Customer Savings Plan given the substantial expenditures involved and in light of the impact on the communities it serves, its customers, and its employees.

Simply put, if Empire can act quickly, it can achieve up to $325 million in customer savings through changes to the future supply, delivery, and pricing of electricity provided to its customers by taking advantage of the following: (1) federal Production Tax Credits ("PTCs") that can only be maximized for wind projects completed by December 31, 2020; (2) capital investment contributed by tax equity partners that, in exchange for receiving tax incentives from the wind projects, will defray as much as 60 cents on every dollar for the development of generating assets, thereby significantly reducing the acquisition costs of the Wind Projects for Empire and its customers; and, (3) the retirement of Empire's Asbury coal plant before making approximately $20 million in environmental compliance upgrades required by April 2019.

Through this Application, Empire seeks Commission approval of its Customer Savings Plan by establishing: (a) authorization to record its investment in, and the costs to operate, the Wind Projects as described in Empire Witness Mooney's Direct Testimony, including a finding that Empire's investment related to the Customer Savings Plan should not be excluded from Empire's rate base on the ground that that the decision to proceed with the Plan was not prudent; (b) authorization to create a regulatory asset for the undepreciated balance of the Asbury facility, as described in Empire Witness Sager's Direct Testimony, so that it may be considered for rate base treatment in subsequent rate cases; (c) approval of depreciation rates as described in Empire Witness Watson's testimony, so that depreciation can begin as soon as the assets are placed in service; (d) approval of the arrangements between Empire and affiliates necessary to implement the Customer Savings Plan, to the extent necessary; and, (e) issuance of an order that is effective by June 30, 2018, so that Empire can take advantage of a limited window of opportunity to bring these savings to customers. Empire is seeking similar approvals for its Customer Savings Plan from the regulatory commissions in the states of Kansas, Arkansas, and Oklahoma.

The looming deadline for the Asbury environmental capital improvements as well as the ramp down of the value of PTCs, creates a limited window of time to implement the Customer Savings Plan. Empire will work with the Commission and parties in order to establish a schedule in this case that will allow for the deadlines identified in the Customer Savings Plan to be met so that Empire's customers will receive the maximum amount of savings identified under the plan. In support of this Application, Empire states as follows:

I. INTRODUCTION

1. Empire is a corporation duly organized and existing under the laws of the State of Kansas and is duly qualified and engaged in doing business in the states of Missouri, Kansas, Arkansas and Oklahoma. Empire owns and operates an electric utility system located in contiguous portions of the above-mentioned four states, which is used to serve approximately 172,000 total electric customers. Empire is an "electric corporation" and a "public utility" as those terms are defined in RSMo. 386.020 and is subject to the jurisdiction and supervision of the Commission as provided by law.

2. A certified copy of Empire's Restated Articles of Incorporation, as amended, as filed in Case No. EF-94-39, is incorporated herein by reference in accordance with Commission Rule 4 CSR 240-2.060(1)(G). A certificate from the Missouri Secretary of State that Empire, a foreign corporation, is authorized to do business in Missouri was filed with the Commission in Case No. EM-2000-369 and is incorporated by reference in accordance with Commission Rule 4 CSR 240-2.060(1)(G). This information is current and correct. Empire has no pending actions or final unsatisfied judgments or decisions against it from any state or federal agency or court that involve customer service or rates. Empire's annual report and assessment fees are not overdue.

3. Correspondence and other papers regarding this docket should be addressed to the undersigned counsel and the following:

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II. CUSTOMER SAVINGS PLAN

4. Empire has recently undertaken an analysis of whether it can bring savings to its customers by taking advantage of the historically low cost of acquiring new wind generation using tax equity financing to maximize the use of federal tax incentives such as the PTCs and accelerated depreciation. This analysis, referred to as the "Generation Fleet Savings Analysis," is premised on Empire's 2016 Integrated Resource Plan with an update to a few key factors. The Generation Fleet Savings Analysis demonstrates that customers can save up to $325 million if Empire acts quickly to acquire up to 800 MW of wind generation strategically located in or near its service territory, simultaneously retires its Asbury coal plant and establishes a regulatory asset to recover a return on and of the remaining net plant balances. Empire's Customer Savings Plan presents a unique opportunity to bring savings to Empire's customers over the next several decades.

5. The Generation Fleet Savings Analysis was able to identify these savings by updating some of the key assumptions in Empire's IRP modeling: (a) nodal market data to more precisely reflect the Southwest Power Pool ("SPP") Integrated Marketplace ("SPP IM") pricing versus zonal modeling data previously incorporated in Empire's IRPs; (b) tax equity financing to maximize the use of the PTCs and accelerated depreciation, and; (c) improved performance of wind generation technology based upon the rapid improvements in wind turbine technology. The modeling also considered the retirement of existing generation if there were increased customer savings and if the retired capacity should be replaced by any new capacity.

6. Once the Generation Fleet Savings Analysis was complete, Empire retained Charles River Associates, a well-respected expert in resource modeling, to independently validate the analysis' findings. The Direct Testimony of James McMahon, which is provided with this

filing, explains in detail the Generation Fleet Savings Analysis, including the reasonableness of Empire's key assumptions and drivers of the cost savings. Mr. McMahon confirms that the development of up to 800 MW of new strategically located utility-owned wind generation, in conjunction with tax equity partners to maximize currently available federal tax incentives, can save customers up to $325 million dollars over twenty years. In his Direct Testimony, Blake Mertens explains that this new capacity will replace Asbury's accredited capacity, and Empire can integrate the new wind generation and continue to provide reliable service to its customers.

7. Given the significant results of the Generation Fleet Savings Analysis, on October 16, 2017, Empire issued a Notice of Intent to potential bidders and thereafter issued a competitive Request for Proposal ("RFP") to identify potential wind projects up to 800 MW of nameplate capacity to be constructed and sold to Empire through a build, own, and transfer transaction (the "Wind Transaction"). The RFP, described in the Direct Testimony of Tim Wilson, explains that this capacity may be satisfied through one project or multiple projects, with each project having a minimum nameplate capacity of 100 MW and a maximum nameplate capacity of 800 MW, where each project must: (a) achieve commercial operation in time to qualify for the maximum amount of the PTC's, with full transfer of ownership to take place as set forth in the RFP Schedule; and, (b) each Project shall be located within the Southwest Power Pool ("SPP") footprint with energy and capacity deliverable to the Empire service territory. Empire disseminated the Notice of Intent to eleven renewable energy developers with prior successful experience developing wind generation.

8. Once finalists are selected, Empire will enter into Project Purchase and Sale Agreements with each developer. The Project Purchase and Sale Agreement will contain protections for Empire's customers, including that before Empire is obligated to purchase the Wind Projects, an Independent Engineer must confirm in a written report that the Wind Projects have

achieved mechanical completion, there is a reasonable likelihood the Wind Projects will be timely placed in service; and there is a reasonable likelihood the Wind Projects' tested capacity will exceed a certain guaranteed level.

9. A significant driver of the favorable economics associated with the Wind Transactions is the use of PTCs and accelerated depreciation in partnership with a tax equity partner. Empire Witness Todd Mooney explains in his Direct Testimony that through a tax equity partnership Empire can acquire up to 800 MW of wind generation for approximately 40 cents on the dollar. In a tax equity structure, large, tax-paying corporations (typically large banks and insurance companies) become partners in renewable generation projects. In exchange for providing a significant portion of the capital of the partnership (up to 60% typically), which is used to develop the renewable generation facility, the tax equity partner receives the tax incentives (PTCs and accelerated depreciation) and certain cash distributions generated during the first ten years of the project's life. In turn, Empire would contribute approximately 40% of the Wind Projects capital investment, which constitutes the investment for which Empire will ultimately seek rate recovery in the form of rate base investment, as described in the Direct Testimony of Christopher Krygier. Empire would receive all of the capacity from the Wind Projects. After approximately ten years of tax equity and Empire joint ownership of the Wind Projects, Empire has the right to purchase the tax equity partner's ownership interest, at which point it will wholly own the Wind Projects. In short, tax equity provides a low cost way for Empire's customers to acquire significant amounts of wind generation which will serve customers for decades to come.

10. Empire will operate the Wind Projects, scheduling and dispatching the Wind Projects into the Southwest Power Pool ("SPP"), and they will be Empire's Network Resources in accordance with the SPP tariff. The Wind Project Co., which will own the Wind Projects and will

be an affiliate of Empire, will make sales of the power into the SPP Integrated Marketplace, and will receive the revenues from those sales. During the period of the tax equity partner's participation, Empire and each Wind Project Co. will execute a ten-year hedging agreement pursuant to which Empire will pay the Wind Project Co. the difference between the market price and a "hedge" price during the first ten years of the Wind Project's operation. Empire will also receive all Renewable Energy Credits from the Wind Project Co. The payments Empire will make to the Wind Project Co. under the Wind Project "hedge" will constitute the revenue of each Wind Project Co. in addition to those revenues received from SPP. Empire and the tax equity partner will also enter into an agreement in which the parties will agree that the Wind Project Co. will use the revenues paid by Empire in accordance with the Wind Project "hedge" to pay Operations and Maintenance ("O&M") expenses, Administrative and General ("A&G") expenses, and property taxes (collectively, "Wind Project Operating Expenses"). In the first five years of the hedging agreement, any net cash flows of the Wind Project Co. that remain after payment of Wind Project Operating Expenses will be paid back to Empire in the form of a cash distribution. Those revenues would be passed through to Empire's customers and would offset operating and maintenance cost associated with the Wind Project that would be recovered from customers. In years 6 through 10 of the hedging agreement, any net cash flows of the Wind Project Co. that remain after payment of Wind Project Operating Expenses will be paid to both the tax equity partner and Empire in an agreed upon percentage so that the tax equity partner can achieve an agreed upon return on its investment. As explained by Empire Witness Christopher Krygier, Empire is seeking authority to record its capital investment to acquire the Wind Projects, as well as all payments under the hedging agreement (some of which will be repaid to Empire for the benefits of customers) and the costs it incurs to operate and maintain the Wind Projects such that they may be considered for recovery in future rate cases.

11. Customers benefit from this ownership structure because Empire can provide lower cost generation to customers through the acquisition of Wind Projects for approximately 40% of their cost. More importantly, when the acquisition of the Wind Projects is coupled with the retirement of the Asbury plant and the establishment of a regulatory asset for recovery on and of its remaining plant balances, customers will save up to $325 million over the next two decades. As Mr. Mooney explains, customers cannot capture all of the savings without using a tax equity partnership. Empire is uniquely poised to take advantage of this opportunity given its new affiliation with Algonquin Power & Utilities Corp., which has partnered with tax equity on renewable generation projects that represent over 900 MW of capacity.

12. The Customer Savings Plan is further consistent with Missouri's Energy Policy. In 2015, Missouri adopted a Comprehensive Energy Plan, which identified in "Our Vision for the Future" a number of guiding principles, including the following:

> **Ensuring Affordability**: A focus on providing reliable energy at prices that are fair and reasonable for consumers and businesses will support Missouri's continued economic success. It is essential that the state's energy system meet the health, welfare, and economic needs of its citizens with particular emphasis on vulnerable populations.
>
> **Diversifying and Promoting Security in Supply:** Missouri must identify and capitalize on opportunities to maximize in-state clean energy resources and decrease dependence on imported fossil fuel energy sources.
>
> **Undertaking Regulatory Improvements**: Modifications to our state's energy laws and regulations are necessary to expand opportunities, deliver enhanced benefits to Missourians, and guide Missouri into our energy future.

Comprehensive Energy Plan at 211.

13. In many ways, the Customer Savings Plan is the perfect embodiment of these principles. Acquiring new wind generation reduces Empire's dependence on fossil fuels while capitalizing on clean energy resources, and results in more affordable rates for the Company's

customers. The Commission should be guided by these principles as it considers Empire's proposal.

14. More recently, Commissioners Hall, Kenney, Rupp, and Coleman included the following statement in their concurring opinion in the Grain Belt transmission line case, File No. EA-2016-0358:

> There can be no debate that our energy future will require more diversity in energy resources, particularly renewable resources. We are witnessing a worldwide, long-term and comprehensive movement towards renewable energy in general and wind energy specifically. **Wind energy provides great promise as a source for affordable, reliable, safe, and environmentally-friendly energy.**

(emphasis added). While the Grain Belt certificate of convenience and necessity was denied by the Commission because county consents had not yet been obtained, the public policy principles identified in the concurring opinion certainly are germane to the project Empire is proposing

15. Lastly, the Comprehensive Energy Plan recognized that for Missourians to benefit from new opportunities like this there would need to be regulatory flexibility. To that end, a key component of Empire's Customer Savings Plan is special accounting treatment that will allow it to move forward with the proposed projects.

III. REQUEST FOR APPROVAL OF EMPIRE'S CUSTOMER SAVINGS PLAN AND DETERMINATION OF RATEMAKING PRINCIPLES AND TREATMENT

16. Given the compelling savings that can be achieved for Empire's customers, Empire is requesting that the Commission expeditiously consider Empire's Customer Savings Plan and the particular relief described below:

a. Authorization to record its investment in, and the costs to operate, the Wind Projects as described in Empire Witness Mooney's Direct Testimony, including a finding that Empire's investment related to the Customer Savings Plan should not be excluded from Empire's rate base on the ground that that the decision to proceed with the Plan was not prudent;

b. Authorization to create a regulatory asset for the undepreciated balance of the Asbury facility, as described in Empire Witness Sager's Direct Testimony, so that it may be considered for rate base treatment in subsequent rate cases;

c. Approval of depreciation rates as described in Empire Witness Watson's testimony, so that depreciation can begin as soon as the assets are placed in service;

d. Approval of the arrangements between Empire and affiliates necessary to implement the Customer Savings Plan, to the extent necessary;

e. Issuance of an order that is effective by June 30, 2018, so that Empire can take advantage of a limited window of opportunity to bring these savings to customers; and

f. For such other and further relief as may be appropriate.

17. Section 393.140(8), RSMo, provides that the Commission shall have the power "to prescribe by order the accounts in which particular outlays and receipts shall be entered, charged or credited." The statute does not contain any express standard for the exercise of this authority, and, therefore, it is within the Commission's discretion. Moreover, the courts have recognized the Commission's authority to issue such an accounting order, and there is nothing in the Public Service Commission law or the Commission's regulations that would limit the grant of such order to any particular circumstance. *See State ex rel. Aquila, Inc. v. Public Service Commission*, 326 S.W.3d 20, 27 (Mo.App. 2010).

IV. APPLICATION FOR VARIANCE - AFFILIATE TRANSACTIONS

18. Based on the corporate structure to be utilized in the Customer Savings Plan, there are a number of agreements with affiliates relating to the operation of the new wind generation. Those agreements are identified in Mr. Mertens' Direct Testimony.

19. Commission Rule 4 CSR 240-20.015 contains standards for affiliate transactions. The goods and services addressed by the above affiliate contracts will be priced to the Wind Project Co. in the same manner that they are currently priced to Empire by Liberty Utilities Service Corp.

Commission Rule 4 CSR 240-20.015(10) provides that variances from the standards in the affiliate transaction rule may be granted by the Commission. To the extent the above described affiliated transactions may otherwise violate those standards, Empire is requesting a variance as these transactions are a necessary part of the Customer Savings Plan.

V. MOTION FOR WAIVER

20. Commission Rule 4 CSR 240-4.017(1) provides that "(a)ny person that intends to file a case shall file a notice with the secretary of the commission a minimum of sixty (60) days prior to filing such case." A notice was not filed 60 days prior to the filing of this Application, but was filed 26 days in advance. As such, Empire seeks a partial waiver of the 60-day notice requirement.

21. Commission Rule 4 CSR 240-4.017(1)(D) provides that a waiver may be granted for good cause. In this regard, Empire declares (as verified below) that it has had no communication with the Office of the Commission (as defined in Commission Rule 4 CSR 240-4.015(10)) within the prior 150 days regarding any substantive issue likely to be in this case. Further, Empire notes that it is coordinating its filings and requests for relief in four states. It would serve no purpose to further delay the filing of this Application.

22. For the good cause shown, Empire moves for a partial waiver of the 60-day notice requirement of Rule 4 CSR 240-4.017(1) and acceptance of this Application at this time.

WHEREFORE, Empire respectfully requests that the Commission issue is order granting the relief identified herein, and issue such further orders as the Commission should find reasonable and just.

Respectfully submitted,

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ATTORNEYS FOR THE EMPIRE DISTRICT ELECTRIC COMPANY

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail or by U.S. Mail, postage prepaid, on October 31, 2017, to the following:

Office of the General Counsel
Governor Office Building
Jefferson City, MO 65101
staffcounselservice@psc.mo.gov

Office of the Public Counsel
Governor Office Building
Jefferson City, MO 65101
opcservice@ded.mo.gov

VERIFICATION

State of Missouri)
) ss
County of Jasper)

I, David Swain, having been duly sworn upon my oath, state that I am the President of The Empire District Electric Company (Empire), that I am duly authorized to make this affidavit on behalf of Empire, and that to the best of my information, knowledge and belief the matters and things stated in the foregoing Application are true and correct, and that no one representing Empire has had any communication with the Office of the Commission (as defined in Rule 4 CSR 240-4.015(10)) within the one hundred fifty (150) days prior to the filing of the Application regarding any substantive issue likely to be addressed in this case.

Subscribed and sworn before me this 30th day of October, 2017.

Notary Public

ANGELA M. CLOVEN
Notary Public - Notary Seal
State of Missouri
Commissioned for Jasper County
My Commission Expires: November 01, 2019
Commission Number: 15262659