

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

In the Matter of the Application of The Empire       )  
District Electric Company's Submission of its       )  
Affiliated Interest Agreements with North Fork       )  
Ridge Wind, LLC and Kings Point Wind, LLC       )  
Docket No. 21-EPDE- 276 -CON

**APPLICATION**

The Empire District Electric Company ("Liberty-Empire" or "Empire") pursuant to K.S.A. 66-1402, submits to the Kansas Corporation Commission ("Commission") additional Affiliated Interest Agreements with North Fork Ridge Wind, LLC and Kings Point Wind, LLC (individually, "Project Company" and collectively, "Project Companies"), affiliated companies of Liberty-Empire.<sup>1</sup>

In support of this Application, Liberty-Empire represents the following to the Commission:

**A. NOTICES AND COMMUNICATIONS**

1. Liberty-Empire requests electronic service of all pleadings, orders, and other documents in the above-entitled proceeding and agrees to receive all service, pleadings, testimony, briefs, and orders by electronic service without hard copy follow up as required by K.A.R. 82-1-216(a)(6) at the following email addresses: James G. Flaherty, [jflaherty@andersonbyrd.com](mailto:jflaherty@andersonbyrd.com); Diana C. Carter, [Diana.Carter@libertyutilities.com](mailto:Diana.Carter@libertyutilities.com); Sarah B. Knowlton, [sarah.knowlton@libertyutilities.com](mailto:sarah.knowlton@libertyutilities.com); Sheri Richard, [Sheri.Richard@libertyutilities.com](mailto:Sheri.Richard@libertyutilities.com) and Angela Cloven, [Angela.Cloven@libertyutilities.com](mailto:Angela.Cloven@libertyutilities.com).

**B. DESCRIPTION OF THE PARTIES**

2. Liberty-Empire is a corporation duly organized and existing under the laws of Kansas

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<sup>1</sup>Liberty-Empire previously submitted its Energy Management Services Agreements with North Fork Ridge Wind, LLC and Kings Point Wind, LLC in Docket No. 21-EPDE-107-CON, September 8, 2020. The additional affiliated interest agreements relating to the North Folk Ridge Wind Project and the Kings Point Wind Project are submitted as part of this Application.

and is engaged in doing business in said state and has been duly qualified and is doing business in the States of Missouri, Arkansas and Oklahoma. Liberty-Empire owns and operates an electric utility system located in contiguous portions of the States of Kansas, Missouri, Arkansas and Oklahoma with its executive offices at 602 S. Joplin Street, Joplin, Missouri 64801. Liberty-Empire is the holder of a certificate from the State of Kansas confirming its right to conduct business of an electric utility pursuant to K.S.A. 66-101, *et seq.* and by reason thereof, has the duty and responsibility to provide and maintain adequate supply of electric services for its existing and prospective customers located within its defined service area in Cherokee and Labette Counties, Kansas. Liberty-Empire is also a market participant within the Southwest Power Pool ("SPP").

3. Project Companies own wind power generation facilities in Jasper, Barton, Dade and Lawrence Counties, Missouri ("Wind Projects"). Liberty-Empire's parent company, Liberty Utilities Co., owns membership shares in the holding companies which own the Project Companies, and therefore, Liberty-Empire has an "affiliated interest" in the Project Companies as that term is defined in K.S.A. 66-1401.

#### **C. AFFILIATED INTEREST AGREEMENTS**

4. The agreements hereinafter described are collectively referred to as the "Affiliated Interest Agreements." Liberty-Empire submits the following Affiliated Interest Agreements to the Commission relating to the Wind Projects.<sup>2</sup> A description of each of the Affiliated Interest Agreements is included below:

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<sup>2</sup>The **Affiliate Service Agreement with Liberty Utilities (Canada) Corp.**: This agreement between Empire and Liberty Utilities (Canada) Corp. has been in effect since Empire's acquisition by APUC in 2017. Under this agreement, Liberty Utilities (Canada) Corp. will provide technical services to Empire regarding the operation and maintenance of the Wind Projects on an as-needed basis and charged under the APUC Cost Allocation Manual. A copy of this agreement was previously filed with the Commission in Docket No. 16-EPDE-410-ACQ on January 30, 2017.

i. **Asset Management and Administrative Services Agreement:** This single agreement is between Empire, Empire Wind Holdings, and the Project Companies. Under this agreement, Empire will provide asset management and administrative services such as the following: (a) contract administration, (b) financial reporting; (c) administration of banking and financing agreements; (d) management of landowner, local tax, and municipal issues; (e) permit administration and regulatory compliance and reporting; (f) lender and investor reporting; (g) project management services; (h) insurance services; and (i) professional services management. The majority of the Services will be charged at an annual fixed fee per Wind Project, subject to an annual escalation provision. A portion of the Services will be charged at cost plus a mark-up of 10%. A copy of this agreement is attached to this Application as **Exhibit A** and is incorporated herein by reference.

ii. **Affiliate Service Agreement with Algonquin Power Fund (America) Inc.:** This affiliate service agreement between Empire and Algonquin Power Fund (America) Inc. provides for Algonquin Power Fund (America) Inc. employees that operate and maintain wind farms in the U.S. to provide training to the employees of Liberty Utilities Service Corp. who will be operating and maintaining the three newly acquired wind farms on Empire's behalf. These services will be provided at the lower of market price or fully allocated cost. A copy of this agreement is attached as **Exhibit B** and is incorporated herein by reference.

iii. **Hedge Agreements:** These two agreements (one for each Wind Project) are between Empire and each Project Company. They memorialize financially settled fixed-for-floating swap transactions for each Wind Project for a period of 10 years, commencing on July 1, 2021, and provide a predictable revenue stream to the Project Companies (which is a requirement of the Tax Equity Partners). The fixed price per megawatt-hour under each agreement represents market price based on a methodology approved by the Tax Equity Partners. Copies of these agreements are attached hereto as **Exhibit C-1** and **Exhibit C-2** and are incorporated herein by reference.

iv. **Non-Energy Products Agreements:** These two agreements (one for each Wind Project) are between Empire and each Project Company. Under them, Empire will purchase all renewable energy credits ("RECs"), capacity, and other non-energy attributes attributable to the electricity generated at each Wind Project, for a fixed price per megawatt-hour. The prices for RECs under these agreements were set based on an estimate of current market prices in SPP, while the prices for all other non-energy products will be at all actual and documented third party costs incurred by Seller. Copies of these agreements are attached hereto as **Exhibit D-1** and **Exhibit D-2** and are incorporated herein by reference.

v. **Operations and Maintenance Agreements:** These two agreements (one for each Wind Project) are between Empire and each Project Company. Under these agreements, Empire will provide operations and maintenance services, including data collection, performance monitoring, diagnostic and performance and reporting services. The majority of the services will be charged at an annual fixed fee subject to an annual escalation provision.

A portion of the services will be charged at cost less a ten percent (10%) mark-up. Copies of these agreements are attached to this Application as **Exhibit E-1** and **Exhibit E-2** and are incorporated herein by reference.

**D. SUBMISSION OF THE AFFILIATED INTEREST AGREEMENTS TO THE COMMISSION**

5. The Affiliated Interest Agreements are being submitted to this Commission under K.S.A. 66-1402. This section provides:

**66-1402.** Submission of contracts with affiliated interests to commission. No management, construction, engineering or similar contract, hereafter made, with any affiliated interest, as defined in K.S.A. 66-1401 and amendments thereto, shall be effective unless it shall first have been filed with the Commission. If it be found that any such contract is not in the public interest, the Commission, after investigation and a hearing in accordance with the provisions of the Kansas Administrative Procedure Act, is hereby authorized to disapprove such contract.

6. As with other applications filed under K.S.A. 66-1402, in submitting the Affiliated Interest Agreements to the Commission so they can become effective under K.S.A. 66-1402 and so Liberty-Empire can begin to perform the services for the Project Companies as these Wind Projects become operational, Liberty-Empire is not seeking any decision from the Commission at this time in this docket as to the reasonableness of any cost incurred or revenues received under the Affiliated Interest Agreements.<sup>3</sup> The costs and revenues associated with the Affiliated Interest Agreements as they relate to the Wind Projects and Liberty-Empire's ability to recover the costs relating to the Wind

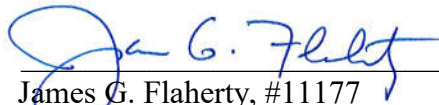
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<sup>3</sup>See Docket No. 04-ATMG-984-CON, Order dated February 21, 2005 (where the Commission found that acceptance of affiliated interest agreement filed under K.S.A. 66-1402 was subject to future determination of the appropriateness of the costs associated with the agreement in any subsequent rate proceeding in which recovery of any costs under the agreement is requested). See also Docket No. 18-KGSG-392-CON, Staff Report filed August 31, 2018, (where Staff recommended that the Commission's acceptance of affiliated interest agreements relating to insurance coverage for the utility under K.S.A. 66-1402 so those agreements could become effective, Staff expressed that it was not providing any opinion about the ultimate ratemaking treatment of the costs incurred under the agreements and specifically reserved judgment on that issue until such time as the utility sought to recover those costs in rates. See also Docket No. 19-SPEE-158-TAR, Staff Report filed April 11, 2019.

Projects in rates, including any costs incurred by the Wind Projects under these Affiliated Interest Agreements, will be the subject matter of Liberty-Empire's abbreviated rate case, which is currently scheduled to be filed on or before June 1, 2021.<sup>4</sup>

7. Liberty-Empire has designated the Affiliated Interest Agreements as ***confidential*** pursuant to K.S.A. 66-1220a and K.A.R. 82-1-221a in that the agreements contain ***confidential*** commercial information that has not been disclosed to the public and because of the competitive nature of the SPP marketplace, disclosure to the public of such information could harm the parties to the agreements.

WHEREFORE, Liberty-Empire submits its Affiliated Interest Agreements to the Commission pursuant to K.S.A. 66-1402.



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<sup>4</sup>As the Wind Projects begin to be energized, Liberty-Empire will need to begin providing services to the Project Companies under the Affiliated Interest Agreements and for those agreements to become effective they must be filed with the Commission under K.S.A. 66-1402.

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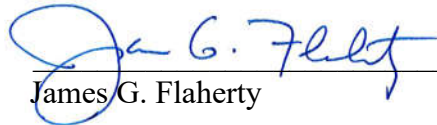
Attorneys for The Empire District Electric Company

**VERIFICATION**

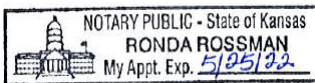
STATE OF KANSAS  
COUNTY OF FRANKLIN, ss:

James G. Flaherty, of lawful age, being first duly sworn on oath, states:

That he is the attorney for The Empire District Electric Company named in the foregoing Application and is duly authorized to make this affidavit; that he has read the foregoing and knows the contents thereof; and that the facts set forth therein are true and correct.

  
James G. Flaherty

SUBSCRIBED AND SWORN to before me this 27<sup>th</sup> day of January, 2021.



  
Ronda Rossman

Notary Public

Appointment/Commission Expires:

# Exhibit A

**CONFIDENTIAL**

Asset Management and  
Administrative Services  
Agreement

# Exhibit B

**CONFIDENTIAL**

Affiliate Service Agreement  
with Algonquin Power Fund  
(America) Inc.



# Exhibit C-1

**CONFIDENTIAL**

Hedge Agreement  
North Fork Ridge Wind, LLC

# Exhibit C-2

**CONFIDENTIAL**

Hedge Agreement  
Kings Point Wind, LLC

# Exhibit D-1

**CONFIDENTIAL**

Non-Energy Products

Agreement

North Fork Ridge Wind, LLC

# Exhibit D-2

**CONFIDENTIAL**

Non-Energy Products  
Agreement  
Kings Point Wind, LLC

# Exhibit E-1

**CONFIDENTIAL**

Operations and Maintenance

Agreement

North Fork Ridge Wind, LLC

# Exhibit E-2

**CONFIDENTIAL**

Operations and Maintenance

Agreement

Kings Point Wind, LLC