BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Petition of The Empire District Electric Company for Approval of Its Customer Savings Plan	)))	Docket No. 18-EPDE-184-PRE

PETITION OF THE EMPIRE DISTRICT ELECTRIC COMPANY FOR APPROVAL OF ITS CUSTOMER SAVINGS PLAN

The Empire District Electric Company ("Empire" or "Company") is seeking approval from the Kansas Corporation Commission ("Commission") of its proposed plan to achieve up to $325 million in savings for customers over the next 20 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 require significant capital investment by April 2019 in order to remain in compliance with environmental regulations and that incurs on-going 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-$30 million in environmental compliance upgrades required by April 2019.

Through this petition, which is being filed pursuant to K.S.A. 66-1239, and any other applicable statutes, rules and regulations, and previous orders issued by the Commission regarding petitions filed under K.S.A. 66-1239, including the Commission's general powers of authority, 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 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 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 15, 2018, so approval would become final by June 30, 2018, if no petition for reconsideration is filed in the docket, and so Empire can take advantage of a limited window of opportunity to bring these savings to customers, and; (f) authorization for Empire to retain a portion of the savings generated under the Customer Savings Plan under K.S.A. 66-1245 as set forth in more detail in Empire Witness Krygier's Direct Testimony. Empire is seeking similar approvals for its Customer Savings Plan from the regulatory commissions in the states of Missouri, 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 Petition, 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 engaged in doing business in said state and has heretofore duly qualified to do and is also doing business in the states of Missouri, 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 the holder of a certificate from the State of Kansas confirming its right to conduct business as 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 an adequate supply of electricity for its existing and prospective customers located within its defined service territory in Cherokee and Labette Counties, Kansas. Empire provides electric service to approximately 10,000 customers in southeastern Kansas.

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

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II. CUSTOMER SAVINGS PLAN

3. 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 ("IRP") 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, and simultaneously retires its Asbury coal plant and establishes a regulatory asset to recover 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.

4. The Generation Fleet Savings Analysis was able to achieve 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.

5. 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 Empire Witness McMahon, which is attached to this filing, explains in detail the Generation Fleet Savings Analysis, including the reasonableness of Empire's key assumptions and drivers of the cost savings. Empire Witness McMahon confirms that the development of up to 800 MW of strategically located new 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 20 years. In his Direct Testimony, Empire Witness 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.

6. 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 Empire Witness Wilson, explains that this capacity may be satisfied through one project or multiple projects, with each Wind Project having a minimum nameplate capacity of 100 MW and a maximum nameplate capacity of 800 MW, where each Wind 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 Wind Project shall be located within the 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.

7. Once finalists are selected, Empire will enter into Project Purchase and Sale Agreements with each developer of a Wind Project. 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.

8. 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. As Empire

Witness Mooney explains in his Direct Testimony, through a tax equity partnership, Empire can acquire up to 800 MW of strategically located 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 10 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 seek rate recovery in the form of rate base investment, as described in the Direct Testimony of Empire Witness Krygier. Empire would receive all of the capacity from the Wind Projects. After approximately 10 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.

9. Empire will operate the Wind Projects, scheduling and dispatching the Wind Projects into the SPP, and they will be Empire's Network Resources in accordance with the SPP tariff. The Wind Project Co., which will own the Wind Project and will be an affiliate of Empire, will make sales of the power into the SPP IM, 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 10-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 10 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 Krygier, Empire is seeking authority to recover in its rates 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.

10. 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 Empire Witness 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 which represent over 900 MW of capacity.

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

11. 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:

1. Authorization to record its investment in and the costs to operate the Wind Projects as described in Empire Witness Mooney's 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 the decision to proceed with the Plan was not prudent;

2. 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;

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

4. 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;

5. Issuance of an order that is effective by June 15, 2018, so approval would become final by June 30, 2018, if no petition for reconsideration is filed in the docket, and so Empire can take advantage of a limited window of opportunity to bring these savings to customers;

6. That Empire be allowed to retain a portion of the savings generated under the Customer Savings Plan under K.S.A. 66-1245 as set forth in more detail in Empire Witness Krygier's testimony; and

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

12. K.S.A. 66-1239 permits an electric public utility to ask the Commission to determine ratemaking principles and treatment that will apply to recovery of costs related to its participation in

a new generation facility before beginning construction of that facility.[1] The predetermined ratemaking principles set by the Commission will be used in all ratemaking proceedings after the generation facility is placed in service and will continue to be used in all future proceedings that consider the cost of the public utility's participation in the generating facility. These principles will be used "during the expected useful life of the generating facility."[2] An electric utility seeking a ruling from the Commission is required to provide in its petition for a determination: (a) a description of its conservation measures; (b) a description of its demand side management efforts; (c) its 10-year generation and load forecasts; and (d) a description of all power supply alternatives considered to meet load requirements.[3] In evaluating the ten-year plan, the Commission may consider "if the public utility issued a request for proposal from a wide audience of participants willing and able to meet the needs identified under the public utility's generation supply plan, and if the plan selected by the public utility is reasonable reliable and efficient."[4] The Commission shall rely upon its general and specific statutory authority under other provisions of the Kansas Public Utility Act in determining the ratemaking principles that should apply to Empire's request under K.S.A. 66-1239. Those include the Commission's authority to determine whether the property acquired will be used and useful and to evaluate the efficiency and prudence of the investment under K.S.A. 66-128; K.S.A. 66-128a and 66-128c and its authority to require Empire to establish and maintain just and reasonable rates under K.S.A. 66-101b.[5]

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[1] In the Matter of the Petition of Westar Energy, Inc., for Determination of the Ratemaking Principles and Treatment that will Apply to the Recovery in Rates of the Cost to be Incurred by Westar for Certain Electric Generation Facilities under K.S.A. 2003 Supp. 66-1239, Docket No. 08-WSEE-309-PRE, ("08-309 Docket"), Final Order, issued December 27, 2007, page 5, paragraph 11.C.

[2] 08-309 Docket, Final Order, issued December 27, 2007, page 6, paragraph 11.C.

[3] 08-309 Docket, Final Order, issued December 27, 2007, page 6, paragraph 11. D.

[4] 08-309 Docket, Final Order, issued December 27, 2007, page 6, paragraph 11.D.

[5] 08-309 Docket, Final Order, issued December 27, 2007, pages 6-7, paragraphs 11.E. through 11.H.

13. Based upon the filing requirements set forth in K.S.A. 66-1239, the testimony and exhibits filed with Empire's Petition, which are incorporated herein by reference, provide the following information:

a. Description of proposed generation facilities and selection process.

b. Empire's conservation measures and demand side management efforts.

c. Empire's 10-year generation and load forecast.

d. Power supply alternatives considered by Empire.

14. Empire also seeks a determination from the Commission that it will be entitled to the adjustment in its rates as allowed under K.S.A. 66-1245 for any of the Wind Projects that qualify under said statute.

WHEREFORE, Empire requests that the Commission issue an order approving its Petition and for all other proper relief.

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<u>VERIFICATION</u>

STATE OF KANSAS, COUNTY OF FRANKLIN, ss:

James G. Flaherty, of lawful age, being duly sworn upon oath, deposes and says that he is attorney for The Empire District Electric Company, above named, that he has read the above and foregoing Petition of The Empire District Electric Company for Approval of its Customer Savings Plan, and the statements contained therein are true.

James G. Flaherty

SUBSCRIBED AND SWORN to before me this 31st day of October, 2017.

NOTARY PUBLIC - State of Kansas
RONDA ROSSMAN
My Appt. Exp. 5/25/2018

Notary Public

Appointment/Commission Expires:

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was sent via U. S. Mail, postage prepaid, hand-delivery, or electronically, this 31st day of October, 2017, addressed to:

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