

**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) Docket No. 21-EPDE-276-CON
Fork Ridge Wind, L.L.C. and Kings Point)
Wind, L.L.C.)

NOTICE OF FILING OF STAFF'S REPORT AND RECOMMENDATION

COMES NOW, the Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively), and files its Report and Recommendation regarding the Application of The Empire District Electric Company (Liberty-Empire). In its Application, Empire filed eight different Affiliated Interest Agreements. Liberty-Empire filed these Agreements pursuant to K.S.A. 66-1402, which states that contracts made with affiliated interests may not be effective unless they have first been filed with the Commission; the Commission has the power, after investigation and hearing, to disapprove such contract if it finds that is not in the public interest.

Staff has reviewed Liberty-Empire's Application and recommends the Commission allow the Agreements to take effect, and to not take any action to disapprove the contracts.

WHEREFORE, Staff submits its Report and Recommendation for Commission review and consideration and for such other relief as the Commission deems just and reasonable.

Respectfully submitted,

/s/ Carly R. Masenthin

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REPORT AND RECOMMENDATION UTILITIES DIVISION

TO: Andrew J. French, Chairperson
Dwight D. Keen, Commissioner
Susan K. Duffy, Commissioner

FROM: Justin Prentiss, Senior Rate Analyst
Justin Grady, Chief of Revenue Requirements, Cost of Service and Finance
Jeff McClanahan, Director of Utilities

DATE: April 30, 2021

SUBJECT: **21-EPDE-276-CON**--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

EXECUTIVE SUMMARY:

On January 27, 2021, The Empire District Electric Company (Liberty-Empire) filed eight different Agreements in this Docket: The first Agreement is an Asset Management and Administrative Services Agreement between Liberty-Empire, Empire Wind Holdings, North Fork Ridge Wind, LLC (North Fork Ridge Wind), and Kings Point Wind, LLC (Kings Point Wind); the next Agreement is the Affiliate Service Agreement with Algonquin Power Fund (America) Inc. between Liberty-Empire and Algonquin Power Fund (America) Inc.; the next two Agreements are Hedge Agreements, one between Liberty-Empire and North Fork Ridge Wind, and one between Liberty-Empire and Kings Point Wind; the next two Agreements are Non-Energy Products Agreements, again one between Liberty-Empire and North Fork Ridge Wind and one between Liberty-Empire and Kings Point Wind; and the final two Agreements are Operation and Maintenance Agreements, once again with one between Liberty-Empire and North Fork Ridge Wind and one between Liberty-Empire and Kings Point Wind. Liberty-Empire is filing these Agreements due to one of the parties in these agreements being an “affiliated interest” as defined in K.S.A. 66-1402. Based upon our review, Staff recommends the Commission not take action to disapprove the contract pursuant to K.S.A. 66-1402, thereby allowing these Agreements to take effect.

BACKGROUND:

On September 8, 2020, in Docket No. 21-EPDE-107-CON (21-107 Docket), Liberty-Empire filed Energy Management Service Agreements with two wind farms: One with North Fork Ridge Wind, LLC, and the other with Kings Point Wind, LLC.

On January 27, 2021, in Docket No. 21-EPDE-276-CON (21-276 Docket), Liberty-Empire filed eight additional Agreements: The first Agreement is an Asset Management and Administrative

Services Agreement between Liberty-Empire, Empire Wind Holdings, North Fork Ridge Wind, LLC (North Fork Ridge Wind), and Kings Point Wind, LLC (Kings Point Wind); the next Agreement is the Affiliate Service Agreement with Algonquin Power Fund (America) Inc. between Liberty-Empire and Algonquin Power Fund (America) Inc.; the next two Agreements are Hedge Agreements, one between Liberty-Empire and North Fork Ridge Wind, and one between Liberty-Empire and Kings Point Wind; the next two Agreements are Non-Energy Products Agreements, again one between Liberty-Empire and North Fork Ridge Wind and one between Liberty-Empire and Kings Point Wind; and the final two Agreements are Operation and Maintenance Agreements, once again with one between Liberty-Empire and North Fork Ridge Wind and one between Liberty-Empire and Kings Point Wind.

Liberty-Empire's parent company (Liberty Utilities Co) has an ownership interest in both wind farms. This parental ownership constitutes an "affiliated interest" for Empire in each windfarm as defined in K.S.A. 66-1402. Furthermore, because of the "affiliated interest" and K.S.A. 66-1402, Empire must submit the Agreements to the Commission, which will become effective unless the Commission takes formal action to disapprove them.

ANALYSIS:

Jurisdiction

Liberty-Empire is an electric public utility operating in the State of Kansas pursuant to certificates of convenience and necessity issued by the Commission. Pursuant to K.S.A. 66-104 and 66-101 *et seq.*, the Commission is given full power, authority, and jurisdiction to supervise and control the electric public utilities, as defined in K.S.A. 66-101a, doing business in Kansas, and is empowered to do all things necessary and convenient for the exercise of such power, authority, and jurisdiction.¹ As applied to regulation of electric public utilities, all grants of power, authority and jurisdiction made to the commission shall be liberally construed, and all incidental powers necessary to use those grants of power, authority, and jurisdiction, are expressly granted to and conferred upon the commission.²

K.S.A. 66-101b mandates that every jurisdictional electric public utility is required to establish just and reasonable charges, and to make just and reasonable rules, classifications, and regulations. Every unjust or unreasonably discriminatory or unduly preferential rule, regulation, classification, rate, charge, or exaction is prohibited, unlawful, and void.³ If it is found that any rule and regulation, practice or act, relating to any service performed or to be performed by such electric public utility for the public is in any respect unreasonable, unjust, unfair, unreasonably inefficient or insufficient, unjustly discriminatory or unduly preferential, or otherwise in violation of this act

¹ See K.S.A. 66-101.

² See K.S.A. 66-101g.

or of any of the laws of the state of Kansas, the Commission may substitute therefor such other regulations, practice, service or act as it determines to be just, reasonable and necessary.⁴

Requirement for Commission Submission of Contracts with Affiliated Interests

K.S.A 66-1402 states:

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.

Staff's Analysis

The first of Liberty-Empire's Agreements, the Asset Management and Administrative Services Agreement between Liberty-Empire, Empire Wind Holdings, North Fork Ridge Wind, and Kings Point Wind, is for Liberty-Empire to provide various forms of assistance, including asset management, administrative services, finance and accounting services, and legal services to each wind farm.

The next Agreement is the Affiliate Service Agreement with Algonquin Power Fund (America) Inc. (Algonquin Power Fund) between Liberty-Empire and Algonquin Power Fund. Through this Agreement, Algonquin Power Fund employees will train employees of Liberty Utilities Service Corporation in operating the newly acquired wind farms.

The next two Agreements are Hedge Agreements, one between Liberty-Empire and North Fork Ridge Wind, and one between Liberty-Empire and Kings Point Wind. The purpose of these Agreements is to memorialize financially settled fixed-for-floating swap transactions for each of North Fork Ridge and Kings Point Wind. These Agreements have a ten year duration starting July 1, 2021. Furthermore, these Agreements also provide a predictable revenue stream to each of North Fork Ridge Wind and Kings Point Wind.

The next two Agreements are Non-Energy Products Agreements, again one between Liberty-Empire and North Fork Ridge Wind and one between Liberty-Empire and Kings Point Wind. These Agreements stipulate that Liberty-Empire will purchase all renewable energy credits and any other non-energy attributes related to the production at each wind farm.

The final two Agreements are Operation and Maintenance Agreements, once again with one between Liberty-Empire and North Fork Ridge Wind and one between Liberty-Empire and Kings

Point Wind. Under these Agreements, Liberty-Empire will, for each North Fork Ridge Wind and Kings Point Wind, provide services including data collection, performance monitoring, and diagnostic, performance, and reporting services.

Empire is not seeking to have the fees associated with these services approved in this Docket, as the fees will be reviewed as part of its next abbreviated rate case. Staff has reviewed the contracts and has not identified any harm to the public interest associated with these agreements. As such, Staff recommends that the Commission not take action to disapprove these contracts.

RECOMMENDATION:

Staff recommends that all eight of Liberty-Empire's Agreements be allowed to take effect without the Commission taking action to disapprove these contracts. The reasonableness of the fees associated with these agreements will be reviewed in Empire's next abbreviated rate case. No further Commission action is needed at this time.

CERTIFICATE OF SERVICE

21-EPDE-276-CON

I, the undersigned, certify that a true and correct copy of the above and foregoing Notice of Filing of Staff's Report and Recommendation was served electronically this 24th day of May, 2021, to the following:

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