

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of Dogwood Energy, LLC's     )  
Petition for Revision of Commission Rule     )     File No. EX-2014-0205  
4 CSR 240-3.105.                                 )

**Ameren Missouri's Comments in Opposition  
to Dogwood Energy's Rulemaking Petition**

COMES NOW Union Electric Company d/b/a Ameren Missouri (Ameren Missouri or Company) and in response to the Missouri Public Service Commission's (Commission) *Order Directing Staff to Investigate and File Recommendation (Order)*, states as follows:

1.       On January 8, 2014 Dogwood Energy, LLC (Dogwood Energy), a Maryland-based merchant generating company not subject to the Commission's jurisdiction, filed a petition asking the Commission, among other things, to amend 4 CSR 240-3.105 to "clarify" that electric utilities must obtain advance approval from the Commission before acquiring electric plant built by others as a regulated asset and before undertaking major renovation projects regarding their existing electric plants. If the Commission decided to grant Dogwood's petition, it would then undertake the formal rulemaking process mandated by Chapter 536 RSMo. The Commission's *Order* required the Commission Staff to investigate the petition and recommend whether the Commission should proceed with a rulemaking by February 14, 2014, and it stated that any other person or entity wishing to provide a recommendation should file written comments by that same date.

2.       Ameren Missouri opposes Dogwood Energy's rulemaking petition for three principal reasons. First, the proposed amendment to the rule, if adopted, would be unlawful because it exceeds the authority delegated to the Commission by the Missouri General Assembly. Second, the proposed amendment inappropriately and unlawfully puts the

Commission (or perhaps even a third party appointed by the Commission) in the position of making decisions for and managing electric utilities rather than reviewing the prudence of management decisions made in the first instance by the electric utility. Third, the proposed rule, even if it were lawful, is completely unnecessary given the significant role the Commission already has under existing statutes and rules in reviewing resource decisions of electric utilities before the associated costs can be passed on to customers. Each of these reasons will be explained more thoroughly below.

3. Missouri courts have often held that the Commission is a body of limited jurisdiction, and "has only such powers as are expressly conferred upon it by the Statutes and powers reasonably incidental thereto." *State ex rel. and to Use of Kansas City Power & Light Co. v. Buzard*, 168 S.W.2d 1044, 1046 (Mo. 1943). Moreover neither convenience, expediency nor necessity can support an act of the Commission that is not authorized by statute. *State ex rel. Kansas City v. Public Service Commission of Missouri*, 257 S.W. 462 (Mo. 1923).

4. The Missouri Public Service Commission Law includes a statute which clearly specifies the circumstances in which electric utilities must seek pre-approval from the Commission in connection with a new electric plant. Section 393.170.1 provides:

No gas corporation, electrical corporation, water corporation or sewer corporation shall ***begin construction*** of a gas plant, electric plant, water system or sewer system without first having obtained the permission and approval of the commission. (emphasis added).

In its rulemaking petition, Dogwood Energy seeks to expand the scope of this statute to require Commission pre-approval of electric generating plants that have already been constructed and are being acquired by electric utilities from others, and renovations of electric plants that have also already been constructed. Although it would have been possible for the Missouri General Assembly to delegate to the Commission the power to require pre-approval of such projects, the

General Assembly did not do so and the Commission is simply not empowered to expand its jurisdiction through a rulemaking proceeding. Moreover, it is important to point out that the Commission has the power to ensure that imprudent costs of generating facilities are not included in customers' rates. It is through this mechanism that the Commission ensures that customers are protected from the consequences of imprudent utility decisions associated with generating plants.

5. Missouri courts have also consistently held that the Commission has no authority to manage the utilities that it regulates. "The Commission's authority to regulate does not include the right to dictate the manner in which the company shall conduct its business." *State ex rel. Kansas City Transit, Inc. v. Public Service Commission*, 406 S.W.2d 5, 11 (Mo. 1966). The cases make clear that this means that the Commission is not to dictate to the utility how it obtains the resources it needs to provide service to the public. "The customers of a public utility have a right to demand efficient service at a reasonable rate, but they have no right to dictate the methods which the utility must employ in the rendition of that service. It is no concern of either the customers of the water company or the Commission, if the water company obtains necessary material, labor, supplies, etc., from the holding company so long as the quality and price of the service rendered by the water company are what the law says they should be." *State ex rel. City of St. Joseph v. Public Service Commission*, 30 S.W.2d 8, 36 (Mo. 1930). The Commission ensures that the "quality and price" are what they should be through its authority to set rates, which includes the authority to exclude from rates imprudent costs, including imprudent resource costs. But as the Missouri Supreme Court made clear, the Commission isn't to take over utility management in advance and dictate to the utility what the resource decisions should be;

otherwise, the Commission would be unlawfully “dictat[ing] . . . the methods which the utility must employ in the rendition of [its] . . . service.”

6. In this proposed rulemaking, Dogwood Energy is clearly attempting to place the Commission, or a third party appointed by the Commission, in the position of making resource decisions for the electric utility. Under the proposed amendment, the Commission or its appointee would make decisions up-front about which resources are the best for an electric utility to build, buy or renovate. The law indicates that this is an inappropriate role for the Commission to play. The Commission should be reviewing the prudence of decisions which electric utilities under its jurisdiction make—not making those decisions for the utilities.

7. In addition, even if the proposed amendments to the Commission's rule were lawful, they are completely unnecessary. The Commission already plays a significant role in reviewing resource decisions of electric utilities and, under the existing statutes and rules it has the tools it needs to fully protect customers against bearing the consequences of imprudent decisions by electric utilities. The Commission has the authority to pre-approve the construction of new electric plants under Section 393.170.1, in which it requires a showing that the public convenience and necessity is served by the construction of a new generating plant. In addition, the Commission conducts comprehensive reviews of each electric utility's resource planning process under its Integrated Resource Planning rules found at 4 CSR 240, Chapter 22. These rules require utilities to submit long-term and near term resource plans to the Commission every three years, and notify the Commission of any material changes in its plans in between filings. Finally, the Commission has the power to disallow any imprudent expenditures of any kind when a utility seeks to recover those costs in rates. Taken together, these procedures fully protect

electric utility customers from bearing unreasonable or imprudent costs, and as a consequence the amendments proposed by Dogwood Energy are unnecessary.

8. Finally, another key point bears noting. Dogwood Energy has presented its petition as a means to protect electric customers. In reality, it is a proposal designed to protect the economic interests of Dogwood Energy and other unregulated power producers, who have made decisions to invest in merchant generating facilities that have not been as successful as they had hoped.

WHEREFORE, Ameren Missouri respectfully requests that the Commission deny Dogwood Energy's petition to initiate a rulemaking proceeding.

Respectfully Submitted,

/s/ Thomas M. Byrne

**Thomas M. Byrne, #33340**

Director & Assistant General Counsel

1901 Chouteau Avenue, MC 1310

P.O. Box 66149

St. Louis, MO 63166-6149

Phone (314) 554-2514

Facsimile (314) 554-4014

amerenmoservice@ameren.com

**ATTORNEYS FOR UNION ELECTRIC  
COMPANY d/b/a AMEREN MISSOURI**