

**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.)	

EMPIRE'S REPLY TO STAFF RESPONSE

COMES NOW The Empire District Electric Company (Empire), and, in reply to the Staff Response to Commission Order Directing Staff to Investigate and File Recommendation, states as follows to the Missouri Public Service Commission (Commission):

BACKGROUND

1. On January 8, 2014 Dogwood filed a rulemaking petition with the Commission asking the Commission to amend Commission Rule 4 CSR 240-3.105, and suggesting that electric utilities must obtain advance approval from the Commission before acquiring electric plant built by others as a regulated asset in Missouri or another state; before undertaking major renovation projects of its existing electric plant in Missouri or another state; and, before constructing electric plant in another state, based on Dogwood's interpretation of Section 393.170 RSMo. There are no Missouri appellate decisions specifically discussing Section 393.170's applicability to the situations identified by Dogwood. Dogwood bases its proposed changes on its own interpretation of language found in *StopAquila.Org v. Aquila, Inc.*, 180 S.W.3d 24, 34 (Mo.App. W.D. 2005) (Aquila I) and *State ex rel. Cass County v. Public Service Comm'n*, 259 S.W.3d 544 (Mo.App. W.D. 2008) (Aquila II).

2. Later, on January 8, 2014, the Commission issued its Order Directing Staff To Investigate and File Recommendation in which it directed the Staff to file no later than February

14, 2014, a recommendation also whether the Commission should proceed with a formal rulemaking in response to the Dogwood petition.

3. On February 14, 2014, the Staff of the Commission filed its response. The Staff filed two primary documents – 1) a pleading which, at a high level, discusses the legal issues raised by Dogwood (Staff Pleading); and, 2) a Memorandum, which discusses the substantive issues raised by Dogwood in regard to Empire’s decision to pursue the Riverton 12 conversion instead of purchasing an interest in Dogwood’s generating plant.

4. Commission Rule 4 CSR 240-2.180(3) provides the Commission with the following options in response to a rulemaking petition such as that filed by Dogwood:

The commission shall either deny the petition in writing, stating the reasons for its decision, or shall initiate rulemaking in accordance with Chapter 536, RSMo.

5. Section 536.041 provides greater detail in regard to those options:

Within sixty days after the receipt of the petition, the agency shall submit a written response to the petitioner and copies of the response, in electronic format, to the joint committee on administrative rules and to the commissioner of administration, containing its determination whether such rule should be adopted, continued without change, amended, or rescinded, together with a concise summary of the state agency's specific facts and findings with respect to the criteria set forth in subsection 4 of section 536.175.

STAFF PLEADING

6. The Staff Pleading concludes as follows:

WHEREFORE, the Staff recommends to the Commission that pursuant to Commission Rule 4 CSR 240-2.180 Rulemaking it initiate the rulemaking as requested by Dogwood in its petition filed on January 8, 2014 in accordance with Section 536.041 RSMo (Supp. 2012), and structure the rulemaking so that there is a comment period and a reply comment period before the legislative type hearing that the Commission holds.

7. While an examination of, and an attempt to clarify, Commission Rule 4 CSR 240-2.180 may be appropriate in light of the Court of Appeals’ decisions in Aquila I and Aquila II,

Empire does not agree that granting the Dogwood petition is the best approach to pursuing this examination.

8. Staff's Pleading points out a variety of matters it believes need to be settled. On most of these matters, Staff does not necessarily offer its opinion, but rather provides the history of Commission decisions. Where it does offer its opinion of Dogwood's proposal, Staff indicates that it does not agree with much of the language proposed by Dogwood¹ and admits that further analysis needs to be done.² Given the problems with the Dogwood rule text that have already been identified, it would be a very inefficient use of the formal rulemaking process to publish the Dogwood proposal in the *Missouri Register* and initiate a formal rulemaking based on that proposal.

9. The Commission would be better served to follow the process it utilized recently in response to another petition for rulemaking. In File No. WX-2013-0267, Missouri-American Water Company (MAWC) proposed a rulemaking based upon the environmental cost recovery provisions of Section 386.266, RSMo. Instead of initiating a rulemaking based on MAWC's proposal, the Commission denied the petition for promulgation of a rule, established a working case to facilitate comments by interested parties and directed its Staff to prepare and submit a proposed rule.³ The result of that working case process was a proposed rule that was later used to initiate a formal rulemaking and ultimately promulgated by the Commission.

¹ "The Staff will take issue with much of the language that Dogwood proposes in Exhibit 1 to its petition but the Staff views it as a vehicle for amending Commission Rule 4 CSR 240-3.105 which needs amending." Staff Pleading, p. 3.

² "The Staff has made an attempt to address as much of Dogwood's petition in this filing, but believes that there is further analysis that can be done in the rulemaking itself." Staff Pleading, p. 4.

³ *Order Denying Petition for Promulgation of a Rule to Establish an Environmental Cost Adjustment Mechanism for Water Utilities*, MoPSC File No. WX-2013-0267 (January 3, 2013).

10. In light of the many issues raised by Dogwood's position and the variety of opinions concerning those issues, publication of Dogwood's proposed rule without the opportunity for further discussion and Commission guidance would serve little purpose other than to start the Commission and interested parties on a path toward litigation and appeals.

MEMORANDUM

11. The Staff Memorandum, after discussing Empire's decision-making process, reaches the following conclusion:

As a result of its limited review of certain of the assertions made by Dogwood in its Petition, Staff concludes that Dogwood's assertions reviewed above are not well-founded and should not be considered to be justification – in and of themselves – for going forward with a rulemaking proceeding although there are other bases addressed in Staff's accompanying response for going forward with a rulemaking respecting Commission Rule 4 CSR 240-3.105.

12. Not surprisingly, Empire agrees with Staff's conclusion. Dogwood's assertion that a partial ownership share in its existing facility is a less-costly supply-side alternative for Empire based on the estimated up-front capital costs is not correct and does not present an accurate analysis of the overall cost associated with each option. While each option (Riverton Unit 12 conversion and the Dogwood partial interest) adds about 100 MW of capacity, the options differ in the type of generation being added. More specifically, Empire's Riverton conversion adds 250 MW of new combined cycle capacity and eliminates the existing Riverton 12 simple cycle capacity. By comparison, the Dogwood option adds 100 MW of combined cycle capacity from an existing combined cycle and retains 142 MW of the Riverton 12 simple cycle capacity. In simple terms, the Dogwood option has lower up front capital costs while the Riverton 12 conversion option has lower long run operating costs. In addition, there are other factors such as unit efficiency, unit age, transmission costs, potential transmission congestion risk and other operational factors to consider.

13. The Riverton 12 conversion has been carefully considered over a long period of time. In the 2010 IRP filed with the Missouri Commission in September, 2010 (EO-2011-0066), the Riverton 12 conversion to a combined cycle unit (CC) was selected as the first supply-side resource in the IRP preferred plan and in all sixteen alternate plans. The timing of the IRP process in Missouri, which is based on three year cycles, and the need to move forward with the 2016 resource acquisition process, precluded the evaluation of Empire's 2016 resource need as a side study in the 2013 IRP filing. However, outside of the IRP process, as was mentioned by Staff, Empire agreed to further evaluate the supply-side resource proposed by Dogwood Energy, LLC (Dogwood) with the help of an outside consultant. Ventyx, an ABB Company (Ventyx) performed this additional supply-side resource evaluation. This additional study used the 2013 IRP assumptions that Empire had developed to date and these assumptions and the methodology used in the study were included in a scope of work document reviewed by the interested Stakeholder Group. Following stakeholder comments, the initial scope of work was amended. All assumptions were contained in the Statement of Work dated March 7, 2013, and the Amendment to the Scope of Work Statement dated March 20, 2013. Dogwood and all interested parties had the opportunity to review and comment on the study assumptions. Dogwood also had the ability to review and revise inputs for its generating unit. Based on the results of this study, Empire indicated that it planned to follow the Company's existing Compliance Plan, which calls for the completion of the Riverton 12 project in 2016. A meeting among the interested parties to discuss this study was held on April 23, 2013. Empire continued to examine these options as more facts became known.

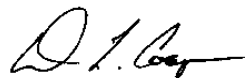
14. After the Riverton conversion project was released for bid to various construction contractors and it became apparent the cost associated with the project had increased, Empire

disclosed this to the stakeholders. As a result, Empire/Ventyx reevaluated the Dogwood proposal versus the Riverton conversion and presented the findings to Staff and OPC at a meeting in June 2013, prior to entering into a contract to proceed with the Riverton 12 conversion.⁴

15. Empire has already conducted an RFP process with respect to the conversion of the Riverton 12 unit, conducted a special study to evaluate Dogwood's proposal and entered into a contract to proceed with the Riverton 12 conversion project. The project is currently on track to be completed by 2016. Nothing about management's approach to this decision suggests, requires, or would justify a rule change.

WHEREFORE, Empire respectfully requests that the Commission deny the subject petition, establish a working case to facilitate comments by interested parties and direct its Staff to prepare and submit a proposed rule.

Respectfully submitted,



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ATTORNEYS FOR THE EMPIRE DISTRICT
ELECTRIC COMPANY

⁴ It should be noted that this additional Dogwood study used a price for the Dogwood unit based on Dogwood's initial proposal that assumed a closing date of January 1, 2014. That price was to be adjusted upward for later closing dates, such as the 2016 period when Empire was attempted to bring the additional capacity on line.

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail, on February 24, 2014, to the following:

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