BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of The Empire District Electric Company's Submission of its 2012 RES Compliance Plan	)))	File No. EO-2012-0336

REQUEST FOR WAIVER OR VARIANCE

Under authority of 4 CSR 240-20.100(1) and for good cause shown, The Empire District Electric Company ("Empire" or "the Company"), through its undersigned counsel, hereby requests that the Missouri Public Service Commission ("Commission") grant the Company a waiver or variance from the requirements of 4 CSR 240-20.100(7)(B)1.F. In support of its request, Empire states as follows:

1. As required by the Commission's rules,[1] on April 11, 2012, Empire filed its *2012 Annual Renewable Energy Standard Compliance Plan* ("Plan"), which sets out the Company's plans for compliance with Missouri's Renewable Energy Standard[2] for the calendar years 2012 through 2014.

2. At page 7 of the Plan, Empire explained how it intended to comply with 4 CSR 240-20.100(7)(B)1.F, which requires a utility to include with its compliance plan "a detailed explanation of the calculation of the RES retail impact limit calculated in accordance with section (5) of this rule." Addressing that requirement, the Plan states:

> EDE does not anticipate a retail rate impact for the Compliance Plan period. Very minimal cost is directly attributable to EDE's current or anticipated RES compliance. Said costs are associated with the registration of assets and RECs in the North American Renewables Registry as well as costs associated with the retirement of RECs. Fees charged for 2011 compliance totaled $63,170 and EDE does not anticipate filing for RES recovery associated with these costs as these costs already flow through Empire's fuel adjustment clause (FAC). EDE's current annual revenue requirement approved by the Public Service Commission in ER-2011-0004 is $415.878,855. One percent of that number is approximately $4.0M. The expected cost of compliance is well under this number.

3. In its analysis of Empire's Plan, the *Staff Report on Company's RES Compliance Plan* ("Staff Report"), which the Commission Staff filed on May 29, 2011, noted that "[w]hile the Company did

[1] 4 CSR 240-20.100(7).
[2] §§393.1020-1030, RSMo.

include a RES retail impact limit calculation as required by 4 CSR 240-20.100(7)(B)1.F., it was not at the level of detail contemplated by the rule."[3] But the Staff Report went on to state that including the detailed rate impact limit calculation required by the rule "would serve no purpose in this instance."[4] Staff explained that "[s]ince the Company's costs for these compliance periods are significantly below the one percent (1%) retail rate impact limit, performing the detailed netting calculation literally serves no purpose. Staff does not view this as a deficiency"[5]

4. Because Staff concluded that no purpose would be served by requiring Empire to strictly comply with the requirements of 4 CSR 240-20.100(7)(B)1.F., the Staff Report also notes that 4 CSR 240-20.100(10) allows the Commission, upon a showing of good cause, to grant utilities such as Empire a waiver or variance from compliance with rules relating to the Renewable Energy Standard.[6] The Staff Report further stated that because making the detailed calculation required by 4 CSR 240-20.100(7)(B)1.F would serve no useful purpose, Staff believes Empire qualifies for, and should be granted, a waiver from the requirements of that rule if the Commission deems it necessary to do so.[7]

5. In addition to the Staff, several other interested parties – including the Missouri Department of Natural Resources, Wind on the Wires, and Earth Island Institute, d/b/a Renew Missouri[8] – also filed written comments regarding Empire's Plan on or about the same date as the Staff Report. None of those comments expressed any concern about the fact that the Plan did not include a detailed calculation of the RES retail impact limitation, as specified in 4 CSR 240-20.100(7)(B)1.F. In addition, none of those other interested parties filed comments contesting the conclusion stated in the Staff Report

[3] Staff Report at ¶6.
[4] *Id*. at ¶ 8.
[5] *Id*.
[6] *Id.* at ¶ 7.
[7] *Id.* at ¶ 8.
[8] The comments filed by Earth Island Institute, d/b/a Renew Missouri, also were filed on behalf of the Missouri Chapter of the Sierra Club; Missouri Coalition for the Environment; Missouri Nuclear Weapons Education Fund, d/b/a Missourians for Safe Energy; The Missouri Solar Energy Industries Association; StraightUp Solar; The Alternative Energy Co.; Certified Energy Solutions; Missouri Solar Applications, LLC; Mid America Solar; CMO Solar LLC; Good Energy Solutions; Microgrid Energy; Power Source Solar; Butterfly Energy Works; Free Energy; Heartland Alternative Energy; Lake Ozark Solar; and Tech Power Systems.

that such a calculation would serve no purpose or taking issue with Staff's recommendation that the Commission could – and should – grant a waiver of that rule if it deemed such action necessary.

6. Although Empire did not previously request a waiver or variance from 4 CSR 240-20.100(7)(B)1.F because it did not believe such a request was necessary, subsequent developments – specifically, the filing of a formal complaint by one or more of the interested parties to this case alleging that the omission of the calculation called for by that rule renders the Plan non-compliant[9] – Empire believes such a request is now required. No party to this case disputes the fact that Empire's annual costs of complying with the Renewable Energy Standard are small – substantially less than one-tenth of one percent of the revenue requirement determined by the Commission in Case No. ER-2011-0004. Indeed, the Staff Report correctly concluded that requiring the Company to include the detailed calculation contemplated by 4 CSR 240-20.100(7)(B)1.F would serve no real or substantive purpose. The Staff Report further concluded that Empire's decision to omit the calculation from its Plan should not be considered a "deficiency." At worst, the omission should be viewed as nothing more than a technicality. Based on these considerations, there is no rational basis for the Commission to conclude – or for any party to argue – that Empire's Plan does not comply with the Commission's rules simply because the Plan does not include a technical calculation (i) that served no purpose, and (ii) that related to a question not in dispute among the parties. Good cause, therefore, exists for granting the waiver or variance that Empire now requests. Furthermore, the Company's delay in making this request is fully justified by the fact that the request is made necessary by the tactics or strategy of certain parties to this case who, at the appropriate time, failed to make their alleged concerns known, but who now use those concerns, and the lack of a waiver or variance, as the basis for a formal complaint against Empire.

WHEREFORE, for all of the reasons stated above, Empire asks the Commission to grant for the Company's *2012 Annual Renewable Energy Standard Compliance Plan* a waiver or variance from the requirements of 4 CSR 240-20.100(7)(B)1.F. Instead of requiring the Company to include in its Plan the

[9] *Earth Island Institute d/b/a Renew Missouri, et. al. v. The Empire District Electric Company*, Case No. EC-2013-0382 (January 30, 2013).

detailed calculation required by that rule, the Commission should allow Empire to simply explain that the costs the Company will incur to comply with the Renewable Energy Standard will be less than one percent of the revenue requirement approved by the Commission in Case No. ER-2011-0004.

Respectfully submitted,

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ATTORNEYS FOR
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served, via e-mail, on counsel for each of parties of record on the 1st day of March, 2013.

/s/ L. Russell Mitten