

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

In the Matter of The Empire District Electric)
Company’s Submission of its 2014 Renewable) File No. EO-2014-0285
Energy Standard (RES) Compliance Plan)

RESPONSE TO COMMENTS OF RENEW MISSOURI

The Empire District Electric Company (“Empire” or “the Company”) hereby responds to comments filed July 2, 2014, by Earth Island Institute d/b/a Renew Missouri (“Renew Missouri”). As the following discussion will show, each of Renew Missouri’s criticisms of Empire’s 2013 Renewable Energy Standard Compliance Report (“Report”) and 2014-2016 Renewable Energy Standard Compliance Plan (“Plan”) are meritless. Indeed, with but one exception, each of Renew Missouri’s criticisms have been raised and rejected in several previous cases.

A. Empire’s Ozark Beach Hydroelectric Facility Is A Certified Renewable Energy Resource.

1. In paragraphs 3 through 5 of its Comments, Renew Missouri contends that it “believes” renewable energy credits (“REC”) produced by Empire’s Ozark Beach hydroelectric generating facility do not qualify for compliance with Missouri’s Renewable Energy Standard (“RES”). As it has done many times before, Renew Missouri bases this claim on an argument that is contrary to the language of the RES itself as well as to rules adopted by the Department of Natural Resources (“DNR”) in accordance with the RES.

2. Section 393.1025(5), RSMo, defines “renewable energy resources” to include “hydropower (not including pumped storage) that does not require a new diversion or impoundment of water and that has a nameplate rating of ten megawatts or less.”

3. Sections 393.1025(5) and 393.1030.4, RSMo, vest DNR with exclusive authority to adopt rules governing the certification of renewable energy resources that comply with the RES. In accordance with that authority, DNR adopted 10 CSR 140-8.010, which defines the various types of “Eligible Renewable Energy Resources” that can be certified for RES compliance. DNR’s definition of “hydropower,” found in subsection (2)(A)8 of the rule, states:

Hydropower, not including pumped storage, that does not require a new diversion or impoundment of water and that *each generator has a nameplate rating of ten megawatts (10 MW) or less*. If an improvement to an existing hydropower facility does not require a new diversion or impoundment of water and incrementally increases *the nameplate rating of each generator*, up to ten megawatts (10 MW) per generator, the improvement qualifies as an eligible renewable energy resource. (emphasis added)

4. The Commission’s rulemaking authority under the RES, found in Section 393.1030(1), RSMo, is limited to adopting rules governing the structure and process for complying with the RES’s portfolio standards. Because it lacks independent authority to certify renewable resources, in determining whether utilities subject to its jurisdiction have complied with the RES’s portfolio standards the Commission must certify renewable resources in accordance with DNR’s rules.

5. Although Renew Missouri states at paragraph 5 of its Comments that it has requested DNR, the Department of Economic Development, and the Governor to change DNR’s definition to impose the RES’s 10 MW limitation on hydroelectric facilities instead of individual hydroelectric generators, such a change would not constitute a “clarification,” as Renew Missouri claims. As Empire has pointed out on numerous occasions, unlike individual generators, hydroelectric facilities – like Ozark Beach – do not have a “nameplate rating.” Consequently, even if DNR were to change its rule in the future to satisfy Renew Missouri, that change would be contrary to the plain language of Section 393.1025(5).

6. But regardless of what DNR may do in the future, its current rules define a qualifying hydroelectric resource as one where “each generator has a nameplate rating of ten megawatts (10 MW) or less.” Each of the hydroelectric generators at the Company’s Ozark Beach facility fully satisfies this definition because each generator has a nameplate rating of 10 MW or less. And that is the only standard by which the Commission can judge Empire’s 2013 Report.

B. Empire Is Exempt from The Solar Energy Provisions of The RES.

7. In paragraphs 6 and 7 of its Comments, Renew Missouri criticizes Empire’s Report for failing to provide any information regarding the retirement of solar RECs or the payment of solar rebates. But the Commission is well aware why such information is not in the Report: Section 393.1050, RSMo, exempts Empire from all provisions of the RES that relate to solar energy. Renew Missouri’s arguments that the exemption was unlawfully passed and is otherwise unconstitutional are of no consequence, because unless and until the statute is invalidated Empire is entitled to claim the exemption and to exclude from its annual compliance filings any information related to the solar energy requirements of the RES.

C. Empire Is Not Required To Provide Information Regarding Its Plans To Comply with The RES in The Event Section 393.1050 Is Invalidated by The Supreme Court.

8. In paragraphs 8 through 10 of its Comments, Renew Missouri criticizes Empire’s Plan for stating what the Company intends to do if the Missouri Supreme Court invalidates Section 393.1050, RSMo, in a pending appeal involving the Commission’s final order in File No. EC-2013-0378. Empire does not believe the Missouri Supreme Court will invalidate the statute exempting the Company from complying with the solar energy requirements of the RES, but if that happens the effect of the court’s action will be prospective only. And there will be ample time and opportunity for Empire to address issues related to such action in future RES

compliance plan filings. But regardless of what may happen in the future, Renew Missouri's criticism is meritless because the Commission's rules do not require the kinds of contingency plan information that Renew Missouri the Company should be required to provide.

WHEREFORE, for all the reasons stated above, the Commission should reject Renew Missouri's criticisms of Empire's Report and Plan and its requests that the Company be required to revise each of those filings to address Renew Missouri's criticisms.

Respectfully submitted,

/s/ L. Russell Mitten
L. Russell Mitten MBE #27881
BRYDON, SWEARENGEN &
ENGLAND P.C.
312 E. Capitol Avenue
P. O. Box 456
Jefferson City, MO65102
(573) 635-7166 (Telephone)
(573) 634-7431 (Facsimile)
rmitten@brydonlaw.com

**ATTORNEYS FOR THE EMPIRE DISTRICT
ELECTRIC COMPANY**

CERTIFICATE OF SERVICE

This certifies that on July 7, 2014, a copy of the attached pleading was served via electronic mail on each party of record in File No. EO-2014-0285.

/s/ L. Russell Mitten