

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

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

STAFF REPORT ON COMPANY'S RES COMPLIANCE REPORT

COMES NOW Staff of the Missouri Public Service Commission (Staff), by and through the undersigned counsel, and submits this *Staff Report On Company's RES Compliance Report* (Staff Report) to the Missouri Public Service Commission (Commission). In support of the Staff Report, Staff respectfully states the following:

1. On April 11, 2012, The Empire District Electric Company (Company) filed its 2012 Annual Renewable Energy Standard (RES) Compliance Report (Compliance Report) for calendar year 2011.

2. Commission rule 4 CSR 240-20.100(7) states:

...Each electric utility shall file an RES compliance report no later than April 15 to report on the status of the utility's compliance with the renewable energy standard and the electric utility's compliance plan as described in this section for the most recently completed calendar year. The initial annual RES compliance report shall be filed by April 15, 2012, for the purpose of providing the necessary information for the first RES compliance year (2011)....

3. 4 CSR 240-20.100(7)(A) specifies what information the RES Compliance Report shall provide.

4. 4 CSR 240-20.100(7)(D) provides that:

The staff of the commission shall examine each electric utility's annual RES compliance report and RES compliance plan and file a report of its review with the commission within forty-five (45) days of the filing of the annual RES compliance report and RES compliance plan with the commission. The staff's report shall identify any deficiencies in the electric utility's compliance with the RES.

5. In its *Memorandum*, attached hereto and labeled as Attachment A, Staff reports on its review of the Company's Annual RES Compliance Report.

6. At this time, the Staff has identified no deficiencies within the Company's filing. As discussed in the attached *Memorandum*, 4 CSR 240-20.100(7)(A)1.D. requires the Company to provide in the Compliance Report the value of the energy created by renewable energy resources owned by the Company. While the Company did not provide the value, in this situation the exclusion of the value of this energy is not significant.

7. Rule 4 CSR 240-20.100(10) allows the Commission to waive or grant a variance from a provision of this rule for good cause shown. Although the term "good cause" is frequently used in the law¹, the rule does not define it. Good cause "...generally means a substantial reason amounting in law to a legal excuse for failing to perform an act required by law²." To constitute good cause, the reason or legal excuse given "...must be real not imaginary, substantial not trifling, and reasonable not whimsical..."³ Moreover, some legitimate factual showing is required, not just the mere conclusion of a party or his attorney.⁴

8. Although the Company did not file for a waiver from 4 CSR 240-20.100(7)(A)1.D., compliance with the requirements of the rule would be a meaningless exercise for this filing. Since the energy was generated at a hydroelectric facility that has been included in the utility's rate base for a number of years, Staff does not

¹ *State v. Davis*, 469 S.W.2d 1, 5 (Mo. 1971).

² *Black's Law Dictionary*, p. 692 (6th ed. 1990).

³ *Belle State Bank v. Indus. Comm'n*, 547 S.W.2d 841, 846 (Mo. App. S.D. 1977). See also *Barclay White Co. v. Unemployment Compensation Bd.*, 50 A.2d 336, 339 (Pa. 1947) (to show good cause, reason given must be real, substantial, and reasonable).

⁴ See generally *Haynes v. Williams*, 522 S.W.2d 623, 627 (Mo. App. E.D. 1975)

consider this an item that requires correction. As such, this instance meets the good cause requirement and Staff recommends that the Commission grant the Company a waiver from 4 CSR 240-20.100(7)(A)1.D., if the Commission deems it necessary to do so.

9. The Company filed an amended calendar year 2011 annual report on May 16, 2012. The Company is current on its fiscal year 2012 assessment.

10. The Staff is unaware of any other case currently pending before the Commission that a decision in this file will directly affect, or be affected by.

WHEREFORE, the Staff submits this *Staff Report* for the Commission's information and consideration, and recommends the Commission grant The Empire District Electric Company a waiver from 4 CSR 240-20.100(7)(A)1.D., if the Commission deems it necessary to do so.

Respectfully submitted,

/s/ Jennifer Hernandez

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by United States Postal Mail, first class postage prepaid to The Empire District Electric Company, c/o Legal Department, P.O. Box 127, 602 S. Joplin Avenue, Joplin, MO 64802; and via electronic mail to Lewis Mills, attorney for the Office of the Public Counsel at opcservice@ded.mo.gov this 29th day of May 2012.

/s/ Jennifer Hernandez