

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

In the Matter of The Empire District Electric	)	
Company's Submission of its 2013 RES	)	Case No. EO-2013-____
Compliance Plan	)	

**REQUEST FOR WAIVER OR VARIANCE FROM 4 CSR 240-20.100(7)(B)1.F  
AND  
MOTION FOR EXPEDITED TREATMENT**

Under authority of 4 CSR 240-20.100(1) and 4 CSR 240-20.080(14) and for good cause shown, The Empire District Electric Company ("Empire" or "the Company"), through its undersigned counsel, hereby requests the Missouri Public Service Commission ("Commission") to (i) grant the Company a waiver of or variance from the requirements of 4 CSR 240-20.100(7)(B)1.F, if the Commission believes such action is necessary or desirable, and (ii) grant expedited consideration of this request. Empire states the following in support of its request and motion:

**REQUEST FOR WAIVER OR VARIANCE**

1. As required by the Commission's rules,<sup>1</sup> on April 15, 2013, Empire filed its *2013 Annual Renewable Energy Standard Compliance Plan* ("Compliance Plan"), which sets out the Company's plans for compliance with Missouri's Renewable Energy Standard ("RES")<sup>2</sup> for calendar years 2013 through 2015. Simultaneous with that filing, Empire also filed this request for waiver or variance and motion for expedited consideration.

2. At page 7 of the Compliance Plan, Empire addressed the requirements of 4 CSR 240-20.100(7)(B)1.F, which states, in relevant part, that a utility must include with each compliance plan filing "[a] detailed explanation of the calculation of the RES retail impact limit calculated in accordance with section (5) of this rule." Section (5) mentioned in the preceding quotation refers to 4 CSR 240-20.100(5), which, in summary, states that the retail rate impact – i.e., the costs of renewable energy

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<sup>1</sup> 4 CSR 240-20.100(7).

<sup>2</sup> §§393.1020-393.1030, RSMo.

resources incurred to comply with the RES that a utility can recover from customers through rates – may not exceed one percent of the result achieved by subtracting a ten-year revenue requirement projection based on a non-renewable generation and purchased power portfolio from a similar projection based on a RES-compliant portfolio. The aforementioned Section 5 then goes on to specify how those projected revenue requirements are to be calculated.

3. To satisfy the requirements of 4 CSR 240-20.100(7)(B)1.F, Empire has included in its Compliance Plan the following explanation of the projected retail rate impact of the Company's RES compliance efforts for the 2012 through 2015 time period:

EDE does not anticipate any retail rate impact for the Compliance Plan period. Very minimal cost is directly attributable to EDE's current or anticipated RES compliance and all those costs are associated with (1) the registration of assets and RECs [Renewable Energy Credits] in the North American Renewables Registry and (2) costs associated with the retirement of RECs. Costs incurred for 2012 compliance totaled \$77,293, and EDE does not anticipate filing for RES recovery associated with these costs as these costs already flow through EDE's fuel adjustment clause (FAC). EDE's current annual revenue requirement approved by the Commission in Case No. ER-2012-0345 is \$429,171,799. One percent of that number is approximately \$4.3 M, and EDE's expected cost of compliance is much less than that amount.

4. Two things are responsible for Empire's projection that its Compliance Plan will cause no retail rate impact to customers. First, unlike other investor-owned electric utilities in Missouri, Empire already has more than enough renewable energy resources – Company-owned generating assets and renewable energy-based purchased power agreements – to fully comply with the portfolio requirements of the RES through 2021.<sup>3</sup> But none of those renewable resources was developed or acquired to comply with the RES; instead, Empire acquired those resources prior to the effective date of the RES as part of the Company's normal Integrated Resource Planning process. Second with the exception of some relatively minor administrative costs associated with the registration and retirement of Renewable Energy Credits ("RECs"), Empire incurs no additional costs to comply with the RES.

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<sup>3</sup> The portfolio requirements of the RES are set out in §393.1030.1, RSMo.

5. Because the Company developed or acquired its portfolio of renewable resources without regard to the RES, none of the costs associated with those resources is directly attributable to the RES. Therefore, as noted on page 7 of the Compliance Report, the only costs Empire incurs just to comply with the RES are (i) relatively insignificant administrative fees paid to the North American Renewables Registry for registration of Renewable Energy Credits (“REC’s”),<sup>4</sup> and (ii) similarly insignificant costs associated with the retirement of RECs. For 2011, those fees and costs totaled just \$63,170,<sup>5</sup> and for 2012 the total increased slightly to \$77,293.<sup>6</sup> The Company currently recovers all of those fees and costs from customers through its fuel adjustment clause.<sup>7</sup>

6. The *Staff Report on Company’s RES Compliance Plan* (“Staff Report”), which was filed in Case No. EO-2012-0336, considered Empire’s *2012 Annual Renewable Energy Standard Compliance Plan*. Commenting on the explanation of the retail rate impact contained in that plan, which is virtually identical in all material respects to the discussion found in Empire’s current Compliance Plan, Staff noted that “[w]hile the Company did 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.”<sup>8</sup> The Staff Report went on to state that ” because “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.”<sup>9</sup> The Staff Report therefore concluded that Staff did not view Empire’s explanation of the retail rate impact in prior report to be a deficiency.<sup>10</sup>

7. Because Staff concluded that a more extensive discussion of the retail rate impact would serve no purpose, the Staff Report noted that 4 CSR 240-20.100(10) allows the Commission, upon a showing of good cause, to grant Empire a waiver or variance from compliance with rules relating to the

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<sup>4</sup> 4 CSR 240-20.100(1)(J) requires that all RECs used for compliance must be “certified by an entity approved as an acceptable authority by the commission . . .”

<sup>5</sup> *2012 Annual Renewable Energy Standard Compliance Plan*, Case No. EO-2012-0336, p. 7.

<sup>6</sup> Compliance Plan, p. 7.

<sup>7</sup> *Id.*

<sup>8</sup> Staff Report at ¶6.

<sup>9</sup> *Id.* at ¶ 8.

<sup>10</sup> *Id.*

RES,<sup>11</sup> and further stated Staff's belief that the Company would qualify for, and should therefore be granted, a waiver from the requirements of 4 CSR 240-20.100(7)(B)1.F if the Commission deemed it necessary to do so.<sup>12</sup>

8. Although Empire believes the Staff erred when it stated that the Company's explanation of the retail rate impact in the compliance plan submitted in Case No. EO-2012-0336 did not comply with the requirements of 4 CSR 240-20.100(7)(B)1.F, Empire agrees that a longer explanation would serve no purpose. In both its filing in Case No. EO-2012-0336 as well as in the current Compliance Report, Empire stated that its RES compliance activities would result in no retail rate impact to customers, and explained why that would be the case. In addition, the Company provided a reasonable estimate of the one percent retail rate cap, which was based on the annual revenue requirement recently approved by the Commission in Case No. ER-2012-0345, and showed that the compliance costs it had incurred were but a small fraction of that cap – less than two percent of the cap amounts for each of the compliance periods covered by Empire's filings.

9. The information included in the Company's current Compliance Plan is more than sufficient to explain the ultimate fact that Empire's RES compliance activities will have no retail rate impact on customers. And because a longer and more detailed explanation won't change that ultimate fact, it is hard to imagine how anyone could conclude that the explanation Empire provides in its Compliance Plan does not satisfy the purposes for which 4 CSR 240-20.100(7)(B)1.F was adopted.

10. But, for whatever reason, in its final order in Case No. EO-2012-0336 the Commission made no findings or conclusions regarding Staff's claim that Empire's filing in that case failed to strictly comply with 4 CSR 240-20.100(7)(B)1.F. The Commission also expressed no opinion regarding the question of whether a formal waiver from the requirements of that rule was necessary or desirable. One possible explanation for the Commission's silence is the fact that no interested party who filed written comments or otherwise participated in Case No. EO-2012-0336 expressed any concern the retail rate

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<sup>11</sup> *Id.* at ¶ 7.

<sup>12</sup> *Id.* at ¶ 8.

impact explanation Empire provided in that case failed to comply with the Commission's rules or otherwise was inadequate.<sup>13</sup>

11. Because, as previously stated, the Company believes the explanation of the retail rate impact that is included in its Compliance Plan filing fully satisfies the purpose of 4 CSR 240-20.100(7)(B)1.F, Empire does not believe a formal waiver or variance is necessary or should be required. But to avoid any further question regarding the sufficiency of the Company's filing in this case, Empire has opted to make this filing to formally place before the Commission for decision two issues. First, does the Company's explanation of the retail rate impact of its compliance efforts for the 2013 through 2015 compliance plan period satisfy the requirements of 4 CSR 240-20.100(7)(B)1.F? And second, if the Commission believes a formal waiver or variance of that rule is necessary or desirable, has Empire demonstrated just cause for such relief, as required by 4 CSR 240-20.100(10)?

#### **MOTION FOR EXPEDITED TREATMENT**

12. Under the Commission's rules governing the filing and review of annual RES compliance plans, the Staff must examine a utility's filing and issue a report within forty-five days of the filing.<sup>14</sup> The Office of the Public Counsel and other interested parties then have an additional forty-five days to file their comments on the compliance plan.<sup>15</sup> To satisfy this schedule, Empire believes expedited treatment of its request for a waiver or variance is necessary. If the Commission determines that the explanation of the retail rate impact that the Company has provided in the Compliance Report satisfies the Commission's rules or that a waiver of or variance from those rules is not necessary or desirable, Staff and other interested parties can perform their respective analyses and file their respective comments based on Empire's filing as it currently exists. If, on the other hand, the Commission determines that applicable rules require a more extensive explanation of the retail rate impact and that a waiver or variance should

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<sup>13</sup> After Case No. EO-2012-0336, several interested parties who participated in that case filed a formal complaint alleging that Empire's explanation of the retail rate impact violates the Commission's rules and seeking sanctions for that violation. In response, the Company filed a request for a waiver or variance in the prior case, but the Commission has deferred that request for consideration with the complaint.

<sup>14</sup> 4 CSR 240-20.100(7)(D).

<sup>15</sup> 4 CSR 240-20.100(7)(E).

not be granted, expedited treatment will enable Empire to promptly amend its Compliance Plan in time for Staff and other interested parties to analyze the Company's filing and file their respective reports or comments within the timeframes prescribed by the rule.

13. By filing this pleading simultaneously with the Compliance Plan, Empire's request for expedited treatment was filed as soon as it could have been. Filing the request prior to the filing of the Compliance Plan would not have provided the context necessary for the Commission to evaluate the Company's request.

WHEREFORE, for all of the reasons stated above, Empire asks the Commission to (i) determine that the retail rate impact explanation contained in Empire's Compliance Plan fully satisfies the purpose and requirements of 4 CSR 240-20.100(7)(B)1.F, or (ii) that although the Compliance Plan does not satisfy the strict requirements of that rule, just cause exists to grant Empire a waiver or variance from the rule and to accept the explanation of the retail rate impact that the Company has included in its Compliance Plan.

Respectfully submitted,

/s/ L. Russell Mitten  
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ATTORNEYS FOR  
THE EMPIRE DISTRICT ELECTRIC COMPANY

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served, via e-mail, the 15<sup>th</sup> day of April, 2013, on counsel for the Commission Staff, the Office of the Public Counsel, and each of interested parties who filed written comments in Case No. EO-2012-0336.

/s/ L. Russell Mitten