

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

In the Matter of the Third Prudence Review of)
Costs Subject to the Commission-Approved Fuel) Case No. EO-2013-0114
Adjustment Clause of The Empire District Electric)
Company.)

**STAFF'S RECOMMENDATION
ON DOGWOOD'S APPLICATION TO INTERVENE**

COMES NOW the Staff of the Missouri Public Service Commission ("Staff") and, for its recommendation to the Commission on Dogwood's application to intervene, states:

1. On February 20, 2013, the Commission ordered Dogwood Energy, LLC, ("Dogwood") to file by noon of February 22, 2013, additional argument for why the Commission should allow it to intervene in this case, and for The Empire District Electric Company ("Empire") and Staff to respond to Dogwood's argument by February 25, 2013. The Commission ordered Staff to include in its response Staff's recommendation on whether the Commission should allow Dogwood to intervene.

2. In its application to intervene, Dogwood stated, in paragraphs five and six, the following:

5. Dogwood seeks to intervene in this proceeding because the Commission's decision could adversely affect Dogwood's interests as a potential supply side resource to Empire, which are different than the general public. As an owner of a generating facility in western Missouri, Dogwood must ensure robust access for power supplies in the region. Dogwood has been an active participant in many cases before the Commission regarding such matters, including but not limited to proceedings regarding changes to the Commission's IRP rules and industry planning practices. Both Dogwood and Empire are members of the Southwest Power Pool. Dogwood has been an active participant in Empire's recent IRP proceedings. Dogwood takes no position at this time pending further investigation.

6. Granting Dogwood's Application to Intervene will also be in the public interest because Dogwood will bring to this proceeding its expertise in the areas being investigated and its experience as a wholesale electric power provider.

3. Empire responded to Dogwood's application asserting the application fails to comply with any of the requirements of Commission Rule 4 CSR 240-2.075(2)-(4) on interventions.¹ In particular, Empire states Dogwood failed to show Dogwood's interests in the issues in this case, how Dogwood's interests could be adversely affected by a Commission order in this case, how allowing Dogwood to intervene would serve the public interest and that Dogwood's assertions in its application are conclusory. However, Empire acknowledges "(i) that Dogwood is a Delaware limited liability company that owns a majority interest in a 650 MW combined-cycle generating facility located in Pleasant Hill, Missouri, and (ii) that it is a potential provider of supply-side energy resources." But, Empire asserts these facts "do not establish interest(s) or expertise of Dogwood that are sufficient to justify its participation in this case as an intervenor." Empire argues that "Dogwood's status as a *potential* provider of supply-side energy resources to Empire has nothing whatsoever to do with the historical, FAC-related costs that are the subject of Staff's prudence audit; that "Dogwood could not possibly be adversely affected by any final order of the Commission in this case" unless it was a retail customer of Empire during the audit period, which it has not alleged it was; and "whatever expertise Dogwood may have as part owner of a combined-cycle energy plant, that expertise has no bearing on, or relevance to, any of the historical cost or accounting issues that are the subject of Staff's audit."

4. On February 12, 2013, Dogwood responded to Empire asserting that Empire's characterization that only its customers could be adversely affected by Commission orders in this case is wrong. Dogwood argues that "[i]f the Commission was not fully informed in its review of the prudence of Empire's decisions regarding purchases of fuel to operate its own plant and purchases of power from alternative providers, and as a result, approved imprudent purchases,

¹ Empire also, as a notation and without explanation, states Dogwood's application does not comply with Commission Rule 4 CSR 240-2.060(1) regarding applications.

then Empire would receive improper encouragement to continue to make such imprudent purchasing decisions. Dogwood reiterates it is seeking to intervene “to ‘ensure robust access for power supplies in the region’ and to protect its ‘interests as a potential supply side resource to Empire.’”

5. In response to the Commission’s order to file by noon of February 22, 2013, additional argument for why the Commission should allow it to intervene in this case, Dogwood argues it could bring benefit to this case—the perspective of a wholesale market participant supplier of electricity in western Missouri seeking to assure a fair opportunity to provide capacity and energy to monopoly electric utilities, as well as the need to avoid imprudent, unnecessary and inefficient additions of sources of supply that would glut and distort the market. Dogwood acknowledges that “the retrospective nature of a prudence review does not afford any immediate relief to Dogwood” but argues that “such a review can nonetheless have a significant prospective impact,” as follows: “For example, if the Commission found imprudence in certain purchase power decisions made by Empire that involved Empire not selecting Dogwood as a provider when it arguably should have, then presumably Empire would have an incentive to give more complete consideration to bids from Dogwood in the future. And an imprudent decision could improperly support the participation of an inefficient supply source in the market. On the other hand, purchases by the electric utilities from Dogwood could also be the subject of such a prudence review, and of course Dogwood has a direct interest in defending against any assertion of imprudence relative to such a transaction which might impact future transactions with it.”²

6. Empire correctly cites the rules that govern the parties in fuel adjustment clause prudence review cases—Rule 4 CSR 240-3.161(10). Subpart (A) of that rule dictates that

² For example, Staff referenced transactions between KCPL and Dogwood in its testimony regarding potential changes to GMO’s FAC during the last rate case (ER-2012-0175), thereby raising the prospect that such transactions could be discussed in GMO’s pending prudence review case (EO-2013-0325), in which Dogwood is a party.

anyone granted intervention in the general rate proceeding where the Commission authorizes a fuel adjustment clause for a utility is, by operation of the rule, a party in subsequent fuel adjustment clause proceedings, including prudence reviews. No one disputes that Dogwood does not enjoy that status here. However, the effect of that rule is that an entity need only have had sufficient interest to be granted intervention in Empire's general rate case that led to this prudence review to be a party in this case. In other words, such an entity may have been granted intervention on some basis having no bearing on Empire's fuel adjustment clause. This indicates an intention that intervention in prudence reviews should err on the side of inclusion, rather than exclusion. Subpart (B) of Rule 4 CSR 240-3.161(10) incorporates Rule 4 CSR 240-2.075(2)-(4) by reference and seems to support an inclusive point of view as well. The text of subpart (3) of that rule follows:

- (3) The commission may grant a motion to intervene or add new member(s) if—
 - (A) The proposed intervenor or new member(s) has an interest which is different from that of the general public and which may be adversely affected by a final order arising from the case; or
 - (B) Granting the proposed intervention would serve the public interest.

7. Dogwood and Empire have focused on subpart (A), which requires both an interest different from the general public and that this interest may be adversely affected by a final order in this case. Staff agrees that, as a seller in the wholesale electricity market in western Missouri, Dogwood's interests in this case may be different than those of the general public; however, Dogwood has not alleged it offered energy or capacity to Empire or even to the wholesale market during or for any part of the prudence audit review period of March 1, 2011, through August 31, 2012. Therefore, it is unclear to Staff that Dogwood has an interest different from the general public for purposes of this case. Staff notes Dogwood has alleged both it and Empire are members of the Southwest Power Pool ("SPP") and, as market participants in the

SPP markets, Staff understands it would be SPP, not Empire, that decides at what cost Empire buys energy, *i.e.*, Dogwood's example of Empire not selecting Dogwood as a provider of purchased power should not occur, at least not due to imprudence by Empire. While Staff has no issue with a third party such as Dogwood reviewing its report and work, Staff sees no reason why Dogwood should be allowed to intervene as a party in this case on the basis of subpart (A) at this time.

8. On the current state of the record, Staff believes the intervention standard of whether granting the proposed intervention would serve the public interest (subpart (B)) to be the most relevant. However, because Empire is a member of the SPP and because of how Staff understands the SPP markets work, Staff is unable to conclude whether allowing Dogwood intervention would serve the public interest at this time.

9. In its February 22, 2013, filing, Dogwood states, "At this time, in the absence of the Staff's report, Dogwood cannot say with certainty that there will be issues in this proceeding that concern it. But without intervention, Dogwood's counsel will not be able to examine the confidential aspects of Staff's upcoming report to make an assessment of the potential impacts of the case on Dogwood. Denial of intervention to Dogwood not only precludes it from protecting its interests, but also precludes it from even being able to fully assess the potential impacts of the proceeding on it." This observation is meritorious. Given that Staff will file its report Tuesday, February 26, 2013, Staff recommends the Commission allow Dogwood until Tuesday March 5, 2013, to further plead why it should be allowed to intervene as a party in this case.

WHEREFORE, the Staff of the Missouri Public Service Commission hereby provides the foregoing response to Dogwood Energy, LLC's, pleadings to intervene in this case and recommends the Commission give Dogwood until Tuesday March 5, 2013, to further plead as to

why it should be allowed to intervene as a party in this case. Staff also recommends the Commission deny intervention unless that further pleading shows why Dogwood has an interest which is different from that of the general public that may be adversely affected by a final order arising from the case or that shows granting Dogwood intervention would serve the public interest.

Respectfully submitted,

/s/ Amy E. Moore

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 25th day of February, 2013.

/s/ Amy E. Moore