

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 5th day of
March, 2014.

In the Matter of The Empire District Electric)
Company's Submission of its 2013 Renewable)
Energy Standard (RES) Compliance Plan)

File No. EO-2013-0458

**ORDER REGARDING 2013 RES COMPLIANCE PLAN, 2012 RES
COMPLIANCE REPORT, AND REQUEST FOR WAIVER**

Issue Date: March 5, 2014

Effective Date: March 15, 2014

On April 15, 2013, The Empire District Electric Company ("Empire") filed with the Missouri Public Service Commission ("Commission") its 2013 Annual Renewable Energy Standard Compliance Plan ("Plan") and 2012 Annual Renewable Energy Standard Compliance Report ("Report") pursuant to Commission Rule 4 CSR 240-20.100. On the same date, Empire also filed a *Request for Waiver or Variance from 4 CSR 240-20.100(7)(B)1.F and Motion for Expedited Treatment* (respectively, "Request for Waiver" and "Motion"). The Request for Waiver requested a variance from the requirement of Commission Rule 4 CSR 240-20.100(7)(B)1F, that Empire provide as part of its Plan "a detailed explanation of the calculation of the RES retail impact limit calculated in accordance with section (5) of this rule".

The Commission's rule requires the Staff of the Commission to review the Plan and Report and file a report about its review within 45 days.¹ Staff complied with that

¹ 4 CSR 240-20.100(7)(D).

requirement by filing reports on May 30, 2013 regarding the Plan and the Report. Staff also filed a recommendation regarding the Request for Waiver. Under Commission rules, the Office of Public Counsel and other interested person or entities may also file comments based on their review of the Plan and Report within 45 days.² Both the Missouri Department of Natural Resources³ (“MDNR”) and Earth Island Institute d/b/a Renew Missouri (“Renew Missouri”) filed timely comments to the Report. Renew Missouri also filed comments opposing the Request for Waiver.

On May 22, 2013, the Commission issued an order denying the Motion that requested expedited treatment and holding the Request for Waiver in abeyance until the resolution of File No. EC-2013-0379. That proceeding was a complaint brought by Renew Missouri and other organizations against four electric utilities, including Empire, alleging that the utilities violated Commission Rule 4 CSR 240-20.100(7)(B)1.F in the same manner as alleged in this proceeding. The issues and allegations in the complaint case and this matter are the same, except that the complaint case involved the RES compliance plan from a prior calendar year. That complaint was resolved when the Commission issued an order effective October 13, 2013, granting Empire’s motion for summary determination and finding that Empire was exempt from the obligation to provide a detailed explanation of the calculation of the RES retail impact limit for its 2012 RES compliance plan.

² 4 CSR 240-20.100(7)(E).

³ Subsequent to this filing, the Division of Energy in that department was transferred to the Missouri Department of Economic Development.

2013 RES Compliance Plan and Request for Waiver

Staff's report on Empire's Plan found no deficiencies with the revised Plan. The only remaining issue concerns Empire's Request for Waiver under Commission rules regarding the requirement for a detailed explanation of the calculation of the RES retail impact limit.

Empire asserts that its Plan sufficiently explains the calculation of the RES retail rate impact as required by Commission Rule 4 CSR 240-20.100(7)(B)1.F, but Empire has submitted a Request for Waiver of that requirement in case the Commission determines otherwise. Renew Missouri states that the Plan does not meet the requirements of 4 CSR 240-20.100(7)(B)1.F because it does not provide specific, detailed information about its calculation of the RES retail rate impact. Renew Missouri argues that requiring utilities to provide this information about the RES retail rate impact serves several valuable purposes and that Empire has failed to demonstrate good cause to grant the Request for Waiver.

Staff filed a *Staff Recommendation on Empire's Request for Waiver or Variance from 4 CSR 240-20.100(7)(B)1.F*. Staff recommends that the Commission determine that Empire does not need the waiver or variance it requests because the calculation is only required when an electric utility proposes to add incremental renewable energy resource generation directly attributable to RES compliance through the procurement or development of renewable energy resources, which Empire did not do during the period of time in question. The Commission order in File No. EC-2013-0379 concluded that Staff was correct on this issue regarding Empire's 2012 compliance plan. Therefore, the Commission concludes that Empire does not need a waiver or variance from the rule for its 2013 Plan.

The Commission's regulation does not specify what, if any, action the Commission is to take regarding the Plan and any alleged deficiencies therein, except to allow the Commission to "establish a procedural schedule if necessary".⁴ After considering the submitted reports and comments, the Commission concludes that no further action from the Commission is appropriate at this time regarding Empire's Plan or the Request for Waiver.

2012 RES Compliance Report

In response to Empire's Report, MDNR submitted comments confirming that it has certified all renewable energy generation facilities referred to in the Report. Renew Missouri commented by stating its opinion that Empire is not in compliance with RES requirements in general. Staff's review of the Report indicated that the following required information was missing: (1) the total retail electric sales supplied by Elk River Wind Farm ("Elk River"), which is a renewable energy resource as defined by section 393.1025 (5), RSMo; (2) the quantity of Elk River 2011 renewable energy credits sold; (3) the gains or losses from the sale of 2011 renewable energy credits produced by Elk River; (4) affidavits required to certify the energy and attributes of Elk River and Meridian Way Wind Farm ("Meridian Way"); (5) the dates and amounts of payments to Elk River and Meridian Way; and (6) the meter readings for Elk River and Meridian Way.

Empire stated that it could not obtain an affidavit from Elk River and believes an affidavit to be redundant for renewable energy credits already certified by the North American Renewable Registry. Staff informed Empire that attestation documentation was an acceptable substitute if an affidavit was not available from the owner of generation. Empire subsequently supplemented its Report to provide all of the missing information

⁴ 4 CSR 240-20.100(7)(F).

except for the generator affidavits. Empire did provide as a substitute for the affidavits a Green-E Energy Renewable Generator Registration Form and Attestation for both Elk River and Meridian Way.

Commission Rule 4 CSR 240-20.100(7)(A)1.I(II) requires that an annual RES compliance report contain “[a]n affidavit from the owner of the facility certifying that the energy was derived from an eligible renewable energy technology and that the renewable attributes of the energy have not been used to meet the requirements of any other local or state mandate”. Commission Rule 4 CSR 240-20.100(10) provides, in part, that “[u]pon written application, and after notice and an opportunity for hearing, the commission may waive or grant a variance from a provision of this rule for good cause shown”. Good cause means a good faith request for reasonable relief.⁵ Staff suggests that unavailability of the required affidavit constitutes good cause for providing attestation documentation as an alternative to filing an affidavit and requests that the Commission grant a variance from the requirements of the rule provision. No party objected to Staff’s recommendation.

Based upon its independent and impartial review of Staff’s verified memorandum and recommendation and other pleadings, the Commission finds that Empire has demonstrated good cause for a limited variance from Commission Rule 4 CSR 240-20.100(7)(A)1.I(II). The Commission will grant the request.

THE COMMISSION ORDERS THAT:

1. The Empire District Electric Company is granted a limited variance from Commission Rule 4 CSR 240-20.100(7)(A)1.I(II) as described in the body of this order.

⁵ *American Family Ins. Co. v. Hilden*, 936 S.W.2d 207 (Mo. App. W.D. 1996).

2. This order shall become effective on March 15, 2014.
3. This file shall be closed on March 16, 2014.



BY THE COMMISSION

Morris L. Woodruff

Morris L. Woodruff
Secretary

R. Kenney, Chm., Stoll, W. Kenney,
and Hall, CC., concur.

Bushmann, Regulatory Law Judge