

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

In the Matter of the Application of The)
Empire District Electric Company for) File No. EO-2018-0092
Approval of Its Customer Savings Plan.)

**REPLY IN FURTHER SUPPORT OF
MOTION FOR PROTECTIVE ORDER**

COMES NOW The Empire District Electric Company (“Empire”) and, pursuant to Commission Rule 4 CSR 240-2.135(4), submits its Reply in Further Support of its Motion for Protective Order filed herein on December 4, 2017. In this regard, Empire respectfully states as follows to the Missouri Public Service Commission (“Commission”):

1. A protective order as requested by Empire regarding Dogwood Energy, LLC (“Dogwood”) is necessary in order to prevent the creation of a competitive advantage for Dogwood over non-party competitors, to protect against the improper disclosure of competitively sensitive market information, to protect the integrity of the wholesale marketplace, and to allow Empire to meet its obligations under SPP’s Market Protocols.

2. Competitively sensitive information and confidential information regarding potential competitors of Dogwood’s in wholesale electric markets will be filed and/or produced in the course of discovery or otherwise in this matter. Due to the nature of Dogwood’s business, the default “Confidential” designation under Commission Rule 4 CSR 240-2.135 will not provide adequate protection.

3. In its opposition to Empire’s request for a protective order, Dogwood asserts that its employee, Rob Janssen, should have access to all but “Empire’s Request for Proposal issued as part of its Customer Savings Plan, including responses,” referring to Mr. Janssen as an “internal expert.” Dogwood also asserts that its ability to participate in this docket will be

prejudiced unless Dogwood employees have access to “non-public information about wholesale electric markets.” Empire is amenable to producing market information to Dogwood’s counsel and its outside consultants who execute a Commission nondisclosure agreement on a “Highly Confidential” basis, but not to Dogwood’s employees.

4. In addition to Mr. Janssen’s leadership role at Dogwood, he is the key business lead, having been the lead salesperson and marketer when Dogwood offered capacity to Empire. The “non-public information about wholesale electric markets” that Empire seeks to protect is information that would reflect Empire’s or the Wind Project Co.’s participation or strategy around participation in the wholesale markets, including information relied upon to determine how to bid coal and wind generation units into the market. If Mr. Janssen has access to this highly competitive information, Dogwood will have direct access to Empire’s assumptions, providing Dogwood an unfair competitive advantage.

5. This case is a prime example of the need for a higher level of protection to be available pursuant to Commission Rule 4 CSR 240-2.135(4) and Missouri Supreme Court Rule 56.01(c) (protective orders may be issued “to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense including . . . that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way”). *See also In the Matter of the Application of Grain Belt Express Clean Line LLC*, Commission File No. EA-2014-0207, 2014 Mo.PSC Lexis 858, Opinion issued September 24, 2014.

6. Empire is requesting a protective order in this matter to allow for a “Highly Confidential” designation exactly as was allowed without motion or request under the Commission’s prior confidentiality rule and, prior to that, under the Commission’s standard

protective order. All “Highly Confidential” information will be made available to Dogwood’s attorneys and to such outside consultants of Dogwood who have executed a Commission Nondisclosure Agreement. Empire takes its obligation to properly designate information seriously. If an error is made, however, and Dogwood’s counsel or outside consultants disagree with the “Highly Confidential” designation of any information, the issue could be raised by Dogwood. If Empire does not voluntarily re-designate the information, the informal discovery dispute resolution procedures set forth in Commission Rule 4 CSR 240-2.090(8) would be available to Dogwood and, if necessary, Dogwood could file a motion challenging the designation.

7. Dogwood will be allowed full and fair participation in this matter, by its counsel and outside consultants having access to all information, including all “Highly Confidential” information. On the other hand, without the “Highly Confidential” designation for non-public information about wholesale electric markets and non-public information relating to Empire’s Request for Proposal issued as part of its Customer Savings Plan, including responses and related information, an unfair competitive advantage will be created for Dogwood, the integrity of the wholesale marketplace will be put in jeopardy, and Empire will not be able to meet its obligations under SPP’s Market Protocols.

WHEREFORE, Empire, pursuant to Commission Rule 4 CSR 240-2.135(4), respectfully requests the issuance of a protective order. Empire requests such other and further relief as is just and proper under the circumstances.

/s/ Diana C. Carter
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CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing document was filed in EFIS on this 11th day of December, 2017, with notice of the same being sent to all counsel of record.

/s/ Diana C. Carter_____