

**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 2013 Renewable    | ) | <b><u>File No. EO-2013-0458</u></b> |
| Energy Standard (RES) Compliance Plan         | ) |                                     |

**STAFF'S RESPONSE TO ORDER DIRECTING FILING**

**COMES NOW** Staff of the Missouri Public Service Commission ("Staff"), by and through the undersigned counsel, and submits this Response to the Missouri Public Service Commission ("Commission"). In support, Staff respectfully states the following:

Background

1. On April 15, 2013,<sup>1</sup> The Empire District Electric Company ("Empire") filed its *2013 Annual Renewable Energy Standard Compliance Plan* ("*Compliance Plan*"), as well as its *2012 Annual Renewable Energy Standard Compliance Report* ("*Compliance Report*").

2. During its review of the *Compliance Report*, Staff contacted Empire personnel to inquire about the deficiencies that Staff found. Empire personnel agreed to supplement the *Compliance Report*, but did not do so prior to the date Staff filed its report on its review of the *Compliance Report*. Staff identified the following deficiencies in its May 30 *Staff Report on Company's Calendar Year 2012 RES Compliance Report*: 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.; the quantity of Elk River 2011 Renewable Energy Credits ("RECs") sold; the gains or losses from the sale of 2011 RECs produced by Elk River; Affidavits required to certify the energy and attributes of Elk River and Meridian Way Wind Farm ("Meridian Way"); the dates and

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<sup>1</sup> All dates refer to calendar year 2013.

amounts of payments to Elk River and Meridian Way; and the meter readings for Elk River and Meridian Way.

3. On June 10, Empire filed its *Motion For Permission To Supplement Renewable Energy Standard Compliance Report And Motion For Expedited Treatment* (“*Motion*”). On the same date, the Commission issued its *Order Directing Filing* allowing until June 14 for any party to file a response to Empire’s *Motion*.

4. Empire’s *Motion* states that “because Empire did not use any REC’s or energy from either Elk River or Meridian [Way] to comply with the RES for calendar year 2012, the Company did not believe it was required to include certain information regarding those two energy sources as part of its Compliance Report.” However, Empire’s *Compliance Report* includes some information for Elk River and Meridian Way despite the argument that these sources are not relevant to compliance with the RES rule.

5. For the Commission’s benefit Staff provides the following analysis as to why Empire is required to provide not only the information it chose to provide Staff, but also the information Staff found the *Compliance Report* to be deficient for not having, information that should be in each annual RES compliance report.

6. 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.”

7. Subparagraphs (7)(A)1.A. through N. of Rule 4 CSR 240-20.100 provide the minimum requirements for the *Compliance Report*. Contrary to Empire’s position,

some of the subparagraphs require a utility to provide information about energy and RECs from sources that have not been used in the calendar year, for example, subparagraph (7)(A)1.E. requires the general reporting of RECs acquired, sold, transferred or retired during the calendar year and subparagraph (7)(A)1.G. requires the identification of any RECs being carried forward for future calendar year compliance.

8. Rule 4 CSR 240-20.100 (7)(A)1.C. requires a utility to report the “[t]otal retail electric sales supplied by renewable energy resources, as defined by section 393.1025(5), RSMo, including the source of the energy.” Empire’s *Compliance Report* acknowledges the Elk River and Meridian Way resources as renewable energy resources. In its *Compliance Report* Empire states that because it provides electric retail service in four (4) states—Missouri, Kansas, Arkansas and Oklahoma—it cannot determine how much of the energy produced by Elk River was sold in Missouri. Missouri customers are paying for Elk River and Meridian Way costs in current tariffed rates. An allocation method is used during a rate case to determine what amount of a multi-state resource should be included for determination of a utility’s jurisdictional annual revenue requirement. If the costs of multi-state resources can be allocated to determine the amounts to use for them in determining an annual revenue requirement for the operations of that utility in Missouri, then one could use similar allocation methodology to determine an amount of energy produced by Elk River and sold in Missouri. Another alternative is to request relief from complying with this requirement of the rule.

9. Rule 4 CSR 240-20.100 (7)(A)1.E. requires a utility to report “The number of RECs acquired, sold, transferred, or retired by the utility during the calendar year.” In its *Compliance Report* Empire states that “In 2012, [Empire] sold all the 2011 RECs associated with Elk River that will not be used for compliance with the Missouri RES.” However, Empire did not provide any information about these sales because “[Empire] did not purchase or sell RECs in order to comply with the Missouri RES.” Empire’s Missouri customers are paying for a jurisdictional portion of Elk River costs in their retail rates. Gross revenues from the sale of RECs are to flow back to customers through Empire’s fuel adjustment clause. While Empire has voluntarily agreed to provide this information to Staff, Empire is required to provide such information under this subparagraph of the rule each calendar year.

10. Rule 4 CSR 240-20.100 (7)(A)1.H. requires a utility to provide “[a]n explanation of how any gains or losses from sale or purchase of RECs for the calendar year have been accounted for in any rate adjustment mechanism that was in effect for the electric utility.” As explained in the preceding paragraph nine (9) above, Missouri customers are paying for a jurisdictional portion of Elk River costs in their rates. Gross revenues from the sale of RECs are to flow back to customers through Empire’s fuel adjustment clause. Empire has agreed to provide the information as part of this case, but should also provide the information for each calendar year report. In order to account for the gains or losses for customers, Empire should provide the sale information regardless of whether the REC was associated with a resource used for RES compliance.

11. Rule 4 CSR 240-20.100 (7)(A)1.I.(II). requires a utility to provide the following:

For acquisition of electrical energy and/or RECs from a renewable energy resource that is not owned by the electric utility, the following information for each resource that has a rated capacity of ten (10) kW or greater: ... (II) An 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.

Pursuant to Rule 10 CSR 140-8.010 (4), the Missouri Department of Natural Resources (“DNR”) certifies energy generation facilities as renewable energy generation facilities for use in compliance with the RES. DNR’s assessment includes an evaluation of the facility’s air, water or land use impacts. Empire has agreed to provide Staff with the certifying affidavits from Meridian Way, but states in its *Motion* that it cannot provide an affidavit for Elk River and believes such to be redundant for RECs already certified by the North American Renewable Registry (“NAR”). Use of renewable energy is the heart of the RES, and certification ensures that a generation resource qualifies as a renewable energy resource for compliance with the RES. Empire’s *Compliance Plan* indicates that Elk River RECs are being carried forward for future compliance years. Ensuring Elk River is a renewable energy resource is important. Staff has conveyed to Empire that it views NAR attestation documentation for Elk River an acceptable alternative if Empire cannot obtain an affidavit from the owner of Elk River, but that it would need a variance from the Commission for this subparagraph of the RES rule, i.e., Staff views that the unavailability of such an affidavit would constitute “good cause” for relief from this rule requirement.

12. Rule 4 CSR 240-20.100 (7)(A)1.I.(IV) requires a utility to provide “[t]he dates and amounts of all payments from the electric utility to the owner of the facility” for renewable resources not owned by the utility. This information is important because it allows the review of the cost of renewable energy that Missouri customers will ultimately pay in rates. Empire has agreed to provide Staff with the dates and amounts of payments it made to the owners of Elk River and Meridian Way for this reporting period, but the rule requires it to provide all payment information within each calendar year report.

13. Rule 4 CSR 240-20.100 (7)(A)1.I.(V) requires a utility to provide “[a]ll meter readings used for calculation of the payments referenced in part (IV) of this paragraph” for renewable resources not owned by the utility. Meter readings ensure that Missouri customers are receiving the energy they pay for, as well as verify the number of RECs produced from the use of the renewable energy resource. In its *Motion* Empire states that it cannot provide the meter readings. However, Empire has previously reported megawatt hours as part of its monthly required filing under 4 CSR 240-3.190(E). Empire is required to provide the meter readings as part of each calendar year compliance report.

14. Providing the information that it did not provide, but which is required by rule, or requesting a variance for good cause shown does not place undue burdens upon Empire. Missouri’s other regulated electric utilities have historically either provided the same type of information as part of their compliance reports or requested variances for specific subparagraphs of the Commission’s RES rule.

**WHEREFORE**, Staff files this Response for the Commission's information and consideration, and requests that the Commission Order Empire to comply with the Commission's Renewable Energy Standard Rule and provide as part of each calendar year RES compliance report the information it did not include in its April 15, 2013 *Compliance Report*, or request a variance where it has good cause 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 electronically on this 14<sup>th</sup> day of June 2013, to the parties of record as set out on the official Service List maintained by the Data Center of the Missouri Public Service Commission for this case.

**/s/ Jennifer Hernandez**