BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of The Empire District Electric Company's Submission of its 2012 RES Compliance Plan	)))	**File No. EO-2012-0336**

STAFF REPORT ON COMPANY'S RES COMPLIANCE PLAN

COMES NOW Staff of the Missouri Public Service Commission (Staff), by and through the undersigned counsel, and submits this *Staff Report On Company's RES Compliance Plan* (*Staff Report*) to the Missouri Public Service Commission (Commission). In support of the Staff Report, Staff respectfully states the following:

1. On April 11, 2012, The Empire District Electric Company (Company) filed its 2012 Annual Renewable Energy Standard (RES) Compliance Plan (Plan) for calendar years 2012 through 2014.

2. Commission rule 4 CSR 240-20.100(7) states in part "…Each electric utility shall file an annual RES compliance plan with the commission. The plan shall be filed no later than April 15 of each year."

3. 4 CSR 240-20.100(7)(B) specifies what information the RES Compliance Plan shall provide.

4. 4 CSR 240-20.100(7)(D) provides that:

> The staff of the commission shall examine each electric utility's annual RES compliance report and RES compliance plan and file a report of its review with the commission within forty-five (45) days of the filing of the annual RES compliance report and RES compliance plan with the commission. The staff's report shall identify any deficiencies in the electric utility's compliance with the RES.

5. In its *Memorandum*, attached hereto and labeled as Attachment A, Staff reports on its review of the Company's Annual Compliance Plan.

6. At this time, Staff has identified no deficiencies within the Company's filing. While 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. The rule requires a calculation to net the least-cost of renewable generation for RES compliance with the cost to provide an equivalent amount of generation from nonrenewable resources.

7. Rule 4 CSR 240-20.100(10) allows the Commission to waive or grant a variance from a provision of this rule for good cause shown. Although the term "good cause" is frequently used in the law[1], the rule does not define it. Good cause "…generally means a substantial reason amounting in law to a legal excuse for failing to perform an act required by law[2]." To constitute good cause, the reason or legal excuse given "…must be real not imaginary, substantial not trifling, and reasonable not whimsical…[3]" Moreover, some legitimate factual showing is required, not just the mere conclusion of a party or his attorney.[4]

8. Although the Company did not file for a waiver from the netting calculation requirement, the calculation would serve no purpose in this instance. This netting would effectively reduce the cost attributed to RES compliance for purposes of meeting the limit. Since 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. Staff does not view this as a deficiency. As such, this

[1] *State v. Davis*, 469 S.W.2d 1, 5 (Mo. 1971).
[2] *Black's Law Dictionary*, p. 692 (6th ed. 1990).
[3] *Belle State Bank v. Indus. Comm'n*, 547 S.W.2d 841, 846 (Mo. App. S.D. 1977). *See also Barclay White Co. v. Unemployment Compensation Bd.*, 50 A.2d 336, 339 (Pa. 1947) (to show good cause, reason given must be real, substantial, and reasonable).
[4] *See generally Haynes v. Williams*, 522 S.W.2d 623, 627 (Mo. App. E.D. 1975)

instance meets the good cause requirement and Staff recommends that the Commission grant the Company a waiver from 4 CSR 240-20.100(7)(B)1.F., if the Commission deems it necessary to do so.

9. The Company filed an amended calendar year 2011 annual report on May 16, 2012. The Company is current on its fiscal year 2012 assessment.

10. The Staff is unaware of any other case currently pending before the Commission that a decision in this file will directly affect, or be affected by.

WHEREFORE, Staff submits this *Staff Report* for the Commission's information and consideration, and recommends the Commission grant The Empire District Electric Company a waiver from 4 CSR 240-20.100(7)(B)1.F., if the Commission deems it necessary to do so.

Respectfully submitted,

/s/ Jennifer Hernandez
Jennifer Hernandez
Senior Staff Counsel
Missouri Bar No. 59814

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751- 8706 (Telephone)
(573) 751-9285 (Fax)
jennifer.hernandez@psc.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by United States Postal Mail, first class postage prepaid to The Empire District Electric Company, c/o Legal Department, P.O. Box 127, 602 S. Joplin Avenue, Joplin, MO 64802; and via electronic mail to Lewis Mills, attorney for the Office of the Public Counsel at opcservice@ded.mo.gov this 29th day of May, 2012.

/s/ Jennifer Hernandez