

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

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

DOGWOOD ENERGY, LLC'S REPLY
REGARDING ITS APPLICATION TO INTERVENE

COMES NOW Dogwood Energy, LLC ("Dogwood") and pursuant to 4 CSR 240-2.080 provides a brief reply in support of its Application to Intervene, regarding misstatements made in the Responses submitted by Empire and Staff.

1. Dogwood has more than adequately explained its interests in this proceeding and will not belabor the point. Dogwood would observe that it does not have the burden of proving entitlement to affirmative relief, when all it seeks at this point is the opportunity to participate in the case to protect its interests and contribute to the Commission's decision-making process. Dogwood has not proposed any outcome to the case and has not done anything disruptive. It timely filed its Application to Intervene pursuant to the Commission's order.

2. Staff correctly identifies an "intention that intervention in prudence reviews should err on the side of inclusion" but then unfortunately seems to stray from that standard. Dogwood has shown (and Empire has conceded), that it is a market participant with an interest in the prudence of Empire's selection of sources of supply, and it should be allowed to intervene.

3. Empire directly controls its own purchasing practices on a bilateral contracting basis, under which mechanism Empire has indeed purchased power from Dogwood during the review period (for example, May 8, 2012 – 800 MW, May 9, 2012 – 800 MW, May 11, 2012 – 1,200 MW, May 14, 2012 – 1,200 MW, August 30, 2012 - 1,350 MW). Dogwood appreciates

Empire selecting it from time to time as one of its wholesale market power suppliers and indeed wishes that relationship to continue in the future to the mutual benefit of both parties and Empire's ratepayers.

4. Empire also designates the pricing and operating parameters under which Empire allows SPP to redispatch its generating units in response to pricing signals every five minutes in SPP's regional Energy Imbalance Service ("EIS") market. SPP implements the generating unit operating and pricing parameters provided by Empire and provides the market mechanism by which Empire can purchase or sell excess power, but SPP does not make purchasing decisions for Empire. Empire indirectly does that through its selection of parameters submitted to SPP.

5. Staff finds "meritorious" Dogwood's assertion that party status is required for its counsel to be able to fully review Staff's anticipated report, including the HC portions which Empire concedes will be the bulk of the report, but then seems to suggest that counsel could somehow make such review prior to intervention (but they cannot) in order to supplement yet again the explanation of Dogwood's interests. Ultimately, Staff provides no basis for precluding Dogwood from participating in this case to protect its interests, particularly when any party that participated in Empire's prior rate case could automatically participate without any explanation of its interests.

6. Empire speciously argues that just because Dogwood has not previously participated in an Empire rate case, it must be kept out of this case. The Commission's rules on intervention do not apply any such bar to participation. Contrary to Empire's assertions, prior participation in the development of the mechanics of Empire's FAC is not a prerequisite to having an interest in the prudence of its decisions regarding fuel and purchase power arrangements. Further, notwithstanding Empire's speculation, Dogwood's counsel can, if

allowed access, review a staff report and advise Dogwood as to whether outside expert review is needed, all the while fully complying with the Commission's protective order rule. But such review is not possible absent intervention, making *amicus* participation patently inadequate.

7. In paragraph 7 of its Response, Empire makes totally inaccurate statements about Case No. EO-2012-0294 regarding its IRP Annual Update. In that proceeding, Dogwood submitted comments about deficiencies in Empire's integrated resource planning, including its failure to adequately solicit, document and consider any competing proposals available from third party suppliers, including but not limited to Dogwood, and asked the Commission to order Empire to address those deficiencies in the course of developing its next triennial report, currently due April 1, 2013. And the Commission ordered Empire to do so. Dogwood did not ask the Commission to order Empire to accept Dogwood's proposal (nor could it have made such a request in an IRP Annual Update case), so of course the Commission did not reject any such request. The Commission granted exactly the relief Dogwood requested in Case No. EO-2012-0294 and, notwithstanding the errors in Empire's pleading in this case, Dogwood is still working with Empire in the context of the IRP rules and Section 393.170 in hopes that Empire will achieve a resolution of the deficiencies as ordered by the Commission without further litigation.

WHEREFORE, Dogwood respectfully requests that the Commission grant its Application to Intervene together with any further and/or additional relief the Commission deems just and proper.

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CERTIFICATE OF SERVICE

A true and correct copy of the foregoing was emailed, faxed or mailed by U.S. Mail, postage paid, this 26 day of February, 2013, to the persons shown on the following list.

/s/ Carl J. Lumley

File/Case No. EO-2013-0114 and ER-2012-0345

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