

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

In the Matter of The Empire District Electric)	
Company's Submission of its 2013 Renewable)	<u>File No. EO-2013-0458</u>
Energy Standard (RES) Compliance Plan)	

**STAFF RECOMMENDATION ON EMPIRE'S REQUEST FOR WAIVER OR
VARIANCE FROM 4 CSR 240-20.100(7)(B)1.F**

COMES NOW Staff of the Missouri Public Service Commission ("Staff"), by and through the undersigned counsel, and for its Recommendation states to the Missouri Public Service Commission ("Commission") the following:

Background

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

2. In addition to the *Plan* and *Report*, Empire filed a *Request For Waiver or Variance From 4 CSR 240-20.100(7)(B)1.F And Motion For Expedited Treatment* ("Request For Waiver"). Empire's *Request For Waiver* requests the Commission grant it relief (a variance) from the requirement of 4 CSR 240-20.100(7)(B)1.F. that Empire provide as part of its Renewable Energy Standard (RES) Compliance Plan "A detailed explanation of the calculation of the RES retail impact limit calculated in accordance with section (5) of this rule."

3. On April 16, the Commission issued its *Order Directing Notice And Setting Filing Deadlines* ("Order"), directing any interested person or entity to respond to Empire's *Request For Waiver* no later than April 25.

¹ All dates refer to calendar year 2013.

4. On April 24, Staff filed a request for an extension of time until May 2 to file its recommendation on the *Request For Waiver*. The Commission granted Staff's request on April 25.

Analysis

5. Rule 4 CSR 240-20.100(7)(B)1.F. states:

1. The RES compliance plan shall include, at a minimum—...F. A detailed explanation of the calculation of the RES retail rate impact limit calculated in accordance with section (5) of this rule. This explanation should include the pertinent information for the planning interval which is included in the RES compliance plan.

6. Rule 4 CSR 240-20.100 (5) generally describes the retail rate impact cap for the prudent costs of renewable energy resources directly attributable to an electric utility's compliance with the RES. Subsection (5)(A) provides:

The retail rate impact shall be calculated on an incremental basis for each planning year *that includes the addition of renewable generation directly attributable to RES compliance* through procurement or development of renewable energy resources, averaged over the succeeding ten (10)-year period, and shall exclude renewable energy resources owned or under contract prior to the effective date of this rule.

(Emphasis added).

7. Additionally, Subsection (5)(B) of the rule specifically provides for how to calculate the retail rate impact. The last sentence of (B) states:

The comparison of the rate impact of renewable and non-renewable energy resources shall be conducted *only* when the electric utility proposes to add incremental renewable energy resource generation directly attributable to RES compliance through the procurement or development of renewable energy resources.

(Emphasis added).

8. Attached hereto is Staff's *Memorandum*. In that *Memorandum* Staff notes that Empire is not adding any new resources in its 2013 *Plan* to meet the RES.

It is Staff Counsel's opinion that Empire is not required to perform the calculation under Rule 4 CSR 240-20.100 (5)(B) for the 2013 *Plan* 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.

9. Further, within its *Memorandum*, Staff explains the calculation of rate impact provided by Empire in its 2013 *Plan*. Empire took one percent (1%) of its current annual revenue requirement approved in Case No. ER-2012-0345 to determine a limit to compare to its actual RES compliance costs. Empire's calculation is based on its current annual revenue requirement rather than the plan to meet its ten (10)-year needs required by Subsection (5)(B).

10. While Empire's calculation method did not follow the method outlined in Subsection (5)(B) of the RES rule, Empire's explanation for the 2013 *Plan* is technically sufficient for the following reasons: Empire's RES-compliant portfolio and non-renewable portfolio are the same; Empire cannot adjust downward its proposed renewable resource mix since it is not proposing to add any new renewable resources; the RES retail rate impact is to be calculated only when adding a new renewable resource is planned; and the actual costs incurred by Empire, for RES compliance, are significantly less than its current annual revenue requirement.

Other

11. Rule 4 CSR 240-20.100 (6)(A)(16) prohibits the recovery of RES compliance costs through a fuel adjustment clause: "RES compliance costs shall only be recovered through an RESRAM or as part of a general rate proceeding and

shall not be considered for cost recovery through an environmental cost recovery mechanism or fuel adjustment clause or interim energy charge.”

12. Empire’s *Request for Waiver* at paragraph five (5) states “The Company currently recovers all of those [REC registration and retirement] fees and costs from customers through its fuel adjustment clause.” Staff will address this item as part of its Report on Empire’s *Plan*, due to be filed May 30.

13. On February 22, Empire sought an extension to file its 2012 Annual Report. The Report is now due May 15. Empire is current on the payment of the Commission’s fiscal year 2013 assessment.

14. On January 30, Earth Island Institute d/b/a Renew Missouri, et.al., filed a *Complaint* against Empire in Case No. EC-2013-0382, alleging a deficiency in the RES retail impact calculation in Empire’s 2012-2014 RES Compliance Plan. Although the *Complaint* involves a different calendar year, a decision on Empire’s *Request For Waiver* may affect a decision in that case.

Recommendation

15. Staff recommends the Commission deny the variance request here because, as Empire asserts, Empire is not obligated by Rule 4 CSR 240-20.100 to perform the RES retail rate impact limit calculation or explain it. However, if the Commission views that Rule 4 CSR 240-20.100 requires Empire to perform the RES retail rate impact limit calculation or explain it, then Staff recommends the Commission grant Empire variances from the calculation of the RES retail rate impact limit requirement of Subsection (5)(B) and the detailed explanation of that calculation required by Subparagraph (7)(B)1.F of Rule 4 CSR 240-20.100.

WHEREFORE, Staff files this Recommendation for the Commission's information and consideration, and recommends the Commission find Empire does not need the variance it requests. However, if the Commission finds relief from Rule 4 CSR 240-20.100 is required, then Staff recommends it find Empire's retail rate impact calculation for the 2013 *Plan* sufficient and grant Empire variances from Subsection (5)(B) and Subparagraph (7)(B)1.F of Rule 4 CSR 240-20.100.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served electronically on this **2nd day of May 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