

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 13th day of December, 2017.

In the Matter of the Application of The Empire District Electric Company for Approval of Its Customer Savings Plan

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File No. EO-2018-0092

ORDER REGARDING MOTION FOR PROTECTIVE ORDER

Issue Date: December 13, 2017

Effective Date: December 13, 2017

On October 31, 2017, The Empire District Electric Company (“Empire”) applied to the Commission for approval of its proposed plan to achieve customer savings through the development of wind generation using federal tax incentives in conjunction with a tax equity partner and the retirement of a coal-fired unit. On November 21, 2017, Dogwood Energy, LLC (“Dogwood”) filed a timely motion to intervene. That unopposed motion to intervene was granted effective on December 15, 2017. On December 4, 2017, Empire filed a motion for a protective order to prevent the disclosure to Dogwood’s employees of competitively-sensitive information relating to wholesale electric markets and Empire’s Request for Proposal issued as part of its Customer Savings Plan.

Empire asserts that due to the nature of Dogwood’s business, designating such information as “confidential” under Commission Rule 4 CSR 240-2.135 would not provide adequate protection for that information, as it would require Empire to produce this competitively-sensitive information regarding Dogwood’s competitors to Dogwood’s employees. Empire has no objection to disclosing such information to Dogwood’s legal

counsel and outside consultants who have executed a nondisclosure agreement. To prevent harm to Empire and to avoid the creation of a competitive advantage over Dogwood's non-party competitors, Empire makes the following requests:

- a. 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, shall be designated "Highly Confidential" at the time of its disclosure.
- b. Disclosure of materials or information designated "Highly Confidential" shall be made only to Dogwood's attorneys, and to such outside consultants of Dogwood who have executed a Commission Nondisclosure Agreement. No "Highly Confidential" information shall be provided directly or indirectly to any Dogwood employee.
- c. Persons afforded access to materials or information designated "Highly Confidential" shall neither use nor disclose such materials or information for purposes of business or competition or any other purpose other than in regard to the case referenced above, and shall keep the materials and information secure and confidential and in accordance with the purposes and intent of the protective order.
- d. All material and information designated as "Highly Confidential" in the possession of Dogwood, as well as any notes pertaining to such information, shall be returned to Empire or destroyed upon the conclusion of the referenced case, with certification of same to Empire.
- e. If Dogwood disagrees with the "Highly Confidential" designation of any information, Dogwood shall follow the informal discovery dispute resolution procedures set forth in Commission Rule 4 CSR 240-2.090(8). If Dogwood exhausts these dispute resolution procedures, Dogwood may file a motion challenging the designation.

Dogwood does not object to Empire's request regarding Empire's Request for Proposal issued as part of its Customer Savings Plan. However, Dogwood does object to Empire's request to limit disclosure of confidential information about wholesale electric markets to only legal counsel and outside consultants. Dogwood argues that this request is

ambiguous and overly broad in violation of Commission Rule 4 CSR 240-2.135(4)¹ and would prejudice Dogwood's ability to participate in this proceeding by limiting access to case information to its internal expert. Dogwood notes that its employee expert has been Dogwood's representative on SPP committees for many years and has had access to confidential market information without violating any confidentiality requirements. Dogwood states that the Commission's confidential information rule adequately protects Empire without the necessity for the additional restriction on disclosure that Empire requests.

Commission rules provide for the issuance of protective orders when necessary to protect information from discovery more rigorously than would be provided from a confidential designation.² Missouri Supreme Court Rule 56.01(c) states that 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".

The Commission finds that requiring Empire to disclose competitively-sensitive information relating to wholesale electric markets and Empire's Request for Proposal to Dogwood's employees could be harmful to the business interests of Empire and Dogwood's non-party competitors. Dogwood has not demonstrated that the probative value of the information sought outweighs the harm that disclosure would cause to its competitors. So, the Commission will grant Empire's motion for a protective order, including the specific requests described above.

¹ "The commission may order greater protection than that provided by a confidential designation upon a motion explaining what information must be protected, the harm to the disclosing entity or the public that might result from disclosure of the information, and an explanation of how the information may be disclosed while protecting the interests of the disclosing entity and the public..."

THE COMMISSION ORDERS THAT:

1. The motion for protective order filed by The Empire District Electric Company on December 4, 2017, is granted.
2. This order shall be effective when issued.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, Kenney, Rupp, and
Coleman, CC., concur.

Bushmann, Senior Regulatory Law Judge

² Commission Rule 4 CSR 240-2.135(4).

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 13th day of December 2017.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

December 13, 2017

File/Case No. EO-2018-0092

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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,

A handwritten signature in black ink that reads "Morris L. Woodruff". The signature is written in a cursive style with a large, stylized initial "M".

**Morris L. Woodruff
Secretary**

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.