STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 14th day of September, 2016.

In the Matter of The Empire District Electric Company's Submission of Its 2015 RES Compliance Report and Its 2016 RES Compliance Plan	)))	**File No. EO-2016-0279**

ORDER REGARDING RENEWABLE ENERGY STANDARD COMPLIANCE REPORT AND PLAN

Issue Date: September 14, 2016 Effective Date: September 24, 2016

The Commission's Renewable Energy Standard (RES) rule, 4 CSR 240-20.100(8), requires each electric utility to file an annual RES compliance report providing information about the most recently completed calendar year, and an annual RES compliance plan providing information about how the utility plans to comply with RES requirements in the current year and the two following years. The Empire District Electric Company filed the required report and plan on April 15, 2016.

Subsection 4 CSR 240-20.100(8)(D) requires the Commission's Staff to examine each report and plan and to file a report of its findings within 45 days. Staff's report is to identify any deficiencies in the utility's compliance with the RES. Subsection 4 CSR 240-20.100(8)(E) allows Public Counsel and other interested persons or entities to file comments based on their review of the utility's compliance report and plan. Subsection 4 CSR 240-20.100(8)(F) provides that the Commission may direct the electric utility to

"provide additional information or to address any concerns or deficiencies identified in the comments of staff or other interested persons or entities."

Staff filed its report regarding Empire's compliance on May 25. Staff did not identify any deficiencies in either Empire's compliance report or compliance plan. Renew Missouri filed comments regarding Empire's compliance on May 27. Renew Missouri contends Empire's compliance report and compliance plan are deficient in three areas.

First, Renew Missouri contends Empire has miscalculated the 1% Retail Rate Impact limits established in Commission Rule 4 CSR 240-20.100(5). That section requires the utility to determine the difference in revenue requirement between a hypothetical entirely non-renewable generation portfolio and one that meets the requirements of the RES. In its June 13 response to Renew Missouri's comments, Empire contends its calculations fully comply with the requirements of the regulation. The Division of Energy also responded on June 13, and agrees with Renew Missouri that additional guidance from the Commission about the proper calculation of the 1% Retail Rate Impact would be helpful.

The subsection that describes how the retail rate impact is to be calculated - 4 CSR 240-20.100(5)(B) - states:

> The RES retail rate impact shall be determined by subtracting the total retail revenue requirement incorporating an incremental non-renewable generation and purchased power portfolio from the total retail revenue requirement including an incremental RES-compliant generation and purchased power portfolio.

In other words, the rule requires a comparison be made between the cost associated with a hypothetical portfolio that contains no renewable generation and a portfolio that complies with the RES requirements. Paragraphs of that subsection of the rule further describe how

the contrasting portfolios are to be determined. In particular, 4 CSR 240-20.100(5)(B)1 states:

> The non-renewable generation and purchased power portfolio shall be determined by adding, to the utility's existing generation and purchased power resource portfolio excluding all renewable resources, additional non-renewable resources sufficient to meet the utility's needs on a least-cost basis for the next ten (10) years.

Renew Missouri's interpretation of the requirements of this provision of the regulation is what divides Renew Missouri from Empire and the other electric utilities.

Renew Missouri contends the non-renewable, non-RES compliant portfolio should add the hypothetical cost of non-renewable generation needed to replace the existing renewable generation contained in the RES compliant portfolio. KCP&L, GMO and Ameren Missouri respond by explaining that the rule requires the inclusion of hypothetical non-renewable resources sufficient to meet the utilities needs if renewable generation did not exist. They contend that even if the renewable generation needed to comply with the RES did not exist, they would still have sufficient capacity to meet their resource requirements for the next ten years, without adding any additional capacity from any source. Thus, they argue there is no need to include unneeded, hypothetical non-renewable resources in the hypothetical non-RES compliant portfolio. Empire simply responded by stating that its calculation is in full compliance with the Commission's rule.

Second, Renew Missouri contends Empire's reliance on its Ozark Beach hydroelectric plant to meet the RES requirement is contrary to the intent and language of the RES statute. Empire disagrees with Renew Missouri's contention. The Division of Energy is willing to reexamine this question.

The dispute is about the definition of "renewable energy resources" found in the RES statute, Section 393.1025(5), RSMo (Cum. Supp. 2013). The relevant portion of that definition includes as a renewable energy resource, "… hydropower (not including pumped storage) that does not require a new diversion or impoundment of water and that has a nameplate rating of ten megawatts or less, …" Renew Missouri and Empire disagree about whether the term "nameplate rating" refers to the "nameplate rating" of each individual generator within the hydropower facility, or the aggregate of the "nameplate ratings" of all the separate generators within the facility. Empire contends a "nameplate" refers to a physical plate affixed to each generator that describes the size of that particular generator. The Osage Beach plant has separate generators, with separate nameplates, each with a nameplate rating of less than 10 megawatts. Taken together, the total nameplate rating of the separate generators is greater than 10 megawatts.

While the statutory definition may be unclear, the Commission's regulation implementing the statute clearly sides with Empire's interpretation of the statute by defining renewable energy resources as including "Hydropower (not including pumped storage) that does not require a new diversion or impoundment of water and that has *generator nameplate ratings* of ten (10) megawatts or less;" (emphasis added).[1] Similarly, the Division of Energy's regulation defines an eligible renewable energy resource as including "[h]ydropower, not including pumped storage, that does not require a new diversion or impoundment of water and that *each generator has a nameplate rating* of ten megawatts

[1] 4 CSR 240-20.100(1)(N)9.

(10 MW) or less." (emphasis added).[2] Division of Energy has certified the Ozark Beach hydroelectric facility as an eligible renewable energy resource pursuant to its regulation.

Third, Renew Missouri argues that Empire's retirement of unbundled, out-of-state RECs - RECs that are not associated with power sold to Missouri customers - is contrary to the intent of the statute. Empire contends its usage of unbundled RECs is allowed by the statute.

The Commission's original RES regulation included a "geographic sourcing" provision that would have imposed the requirement sought by Renew Missouri. However, the Joint Committee on Administrative Rules (JCAR), struck that provision from the rule and, as a result, the current rule does not include such a requirement. In addition, the Commission specifically rejected Renew Missouri's argument in File No. EC-2013-0377, a complaint brought by Renew Missouri against Ameren Missouri.[3]

In determining how to address Renew Missouri's stated concerns, the Commission is guided by its rule, 4 CSR 240-20.100(8)(F), which gives the Commission authority to direct an electric utility to "provide additional information or to address any concerns or deficiencies identified in the comments of staff or other interested persons or entities." However, it is also important to understand that this proceeding is not a contested case in which the Commission will determine the rights of any party, or impose any penalty against a party.

After reviewing Empire's filing and the responses of Staff and the various stakeholders, the identified concerns and the responses of the utility are clear. As a result,

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[2] 4 CSR 340-8.010(2)8.

[3] *Earth Island Institute d/b/a Renew Missouri v. Union Electric Company, d/b/a Ameren Missouri*, Order Denying Motion for Summary Determination of Renew Missouri and Granting Motions to Dismiss of Ameren Missouri and Empire, File No. EC-2013-0377, issued November 26, 2013.

requiring additional filings in this non-contested case would not be productive. For that reason, the Commission will not require Empire to provide any additional information or to address any concerns or deficiencies. In deciding that no additional filings will be required, the Commission is not making any findings or determinations about the merits of the concerns raised by Renew Missouri. Renew Missouri is free to bring a complaint against Empire as permitted by Section 386.390, RSMo 2000 and the penalty provisions of 4 CSR 240-20.100(9)(A). In addition, if Renew Missouri believes that a Commission regulation should be amended, it may file an appropriate petition pursuant to Section 536.041, RSMo (Cum. Supp. 2013).

THE COMMISSION ORDERS THAT:

1. The Empire District Electric Company shall not be required to provide additional information or to address any concerns or deficiencies identified in the comments of staff or other interested persons or entities in this case.

2. This order shall be effective on September 24, 2016.

3. This file shall be closed on September 25, 2016.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Woodruff, Chief Regulatory Law Judge

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 14th day of September 2016.

Morris L. Woodruff
Secretary

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MISSOURI PUBLIC SERVICE COMMISSION

September 14, 2016

File/Case No. EO-2016-0279

Missouri Public Service Commission
Staff Counsel Department
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
staffcounselservice@psc.mo.gov

Office of the Public Counsel
James Owen
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102
opcservice@ded.mo.gov

Empire District Electric Company, The
Diana C Carter
312 E. Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102
DCarter@brydonlaw.com

Missouri Division of Energy
Alexander Antal
301 West High St.
P.O. Box 1157
Jefferson City, MO 65102
Alexander.Antal@ded.mo.gov

Missouri Public Service Commission
Bob Berlin
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
Bob.Berlin@psc.mo.gov

Renew Missouri
Andrew J Linhares
1200 Rogers St, Ste B
Columbia, MO 65201-4744
Andrew@renewmo.org

Renew Missouri
Henry B Robertson
319 N. Fourth St., Suite 800
St. Louis, MO 63102
hrobertson@greatriverslaw.org

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

Sincerely,

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.