

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

In the Matter of The Empire District Electric Company's)
2013 Triennial Compliance Filing Pursuant to) File No. EO-2013-0547
4 CSR 240-22.)

RESPONSE TO DOGWOOD'S MOTION TO COMPEL

COMES NOW The Empire District Electric Company (Empire), and states as follows to the Missouri Public Service Commission (Commission) in response to Dogwood Energy, LLC's (Dogwood) Motion to Compel Response to Data Requests:

INTRODUCTION

Within this integrated resource planning (IRP) triennial filing matter, Dogwood has moved to compel Empire to provide copies of sealed bids and other information related specifically to Empire's Riverton 12 conversion project -- a project to which Empire is contractually committed and for which construction has begun. Empire has objected to these data requests on the basis that such information is not relevant to an IRP docket, which seeks to assess Empire's resource planning for the future. Further, Empire has objected to the use of data requests by Dogwood in an IRP docket because the Commission has previously indicated that an IRP docket is not a contested case and data requests are not available in non-contested cases because there is no means to compel production of the information requested.

It is significant to note that the Motion to Compel and Empire's response specifically concern a request for information sought by a competitive provider of capacity and energy. The arguments do not concern the access to books and records provided to the Staff of the Commission (Staff) or to the Office of the Public Counsel (Public Counsel) by Section 393.140(7) and (8), RSMo. It also does not concern the access to records that a party might have

within a different type of case, such as a rate case where the prudence of costs incurred may be an issue.

BACKGROUND

1. Dogwood describes itself as follows:

Dogwood is a limited liability company organized and existing under the laws of the State of Delaware and authorized to conduct business in the State of Missouri. Dogwood owns a majority interest in the Dogwood Energy Facility, a 650 MW jointly-owned combined cycle generating facility located in Pleasant Hill, Missouri.

Dogwood Energy, LLC's Motion to Intervene, File No. EO-2013-0547 (filed July 5, 2013).

2. More specifically, as it relates to this dispute, Dogwood has previously pointed out that it is a “potential supply side resource” for Empire. *Dogwood Energy, LLC's Application to Intervene*, File No. EO-2013-0114 (filed January 29, 2013). While Dogwood’s facility is a “potential supply side resource” for Empire, it sits in another electric utility’s service territory and likely would require upgrades to the transmission system to reliably deliver firm capacity and power to Empire’s service territory. Further, Empire would be subject to transmission congestion cost risk associated with a generation asset that sits approximately 135-miles north of Joplin, Empire’s major load center, when compared to an asset (i.e. Riverton 12) that sits within Empire’s service territory only 9 miles from its major load center.

3. Dogwood appears to be interested in using this Commission proceeding, and others, in an attempt to obtain leverage to force Empire’s purchase of a portion of the Dogwood facility. The Report and Comments of Dogwood Energy, LLC, filed on December 2, 2013 in response to Empire’s Triennial Compliance Filing, focused specifically on Empire’s Riverton 12

conversion project and Dogwood's proposal to sell Empire a "partial interest in the Dogwood combined cycle facility located in Pleasant Hill, Missouri."

4. Dogwood's Motion to Compel expresses its frustration that it has not found the right regulatory vehicle to force Empire to purchase a partial interest in Dogwood's Pleasant Hill plant. In fact, there is no Commission matter that will allow a non-customer or body without utility oversight responsibilities to direct the management decisions made by a jurisdictional utility.

RIVERTON 12 CONVERSION

5. The subject of the data requests at issue is primarily Empire's Riverton 12 conversion project. This project entails conversion of the Riverton 12 unit to combined cycle operation. Empire plans to complete the project by June 2016 to replace capacity and energy provided by Riverton boiler units 7 and 8, which were placed into service in 1950 and 1954, which units will be retired in conjunction with the completion of this project. Unit 9, which was constructed in the 1960's, will also be retired. Thus, the Riverton 12 conversion is scheduled to coincide with a resource need of about 100 MW due to the planned unit retirements and is not based on projected load growth. A contract for the Riverton 12 project has been executed and engineering, procurement, and initial on-site construction activities for the project have begun.

6. Dogwood's Motion to Compel makes several allegations concerning what it believes to be deficiencies in Empire's decision to pursue the Riverton 12 conversion project. In fact, the decision by Empire to pursue this project was well thought out. Further, Dogwood's motion makes disingenuous assertions about Empire being "self-serving", uncooperative, and "kicking the can down the road" when in fact Empire has gone beyond Commission IRP requirements and directly compared the Riverton 12 conversion project and Dogwood's

proposal. Dogwood's attempt to paint a false picture of the process Empire used to compare the Riverton 12 conversion to Dogwood's supply proposal is simply a tactic to try to confuse the facts.

7. The Riverton conversion project is the lowest cost and lowest risk resource option for Empire for its 2016 resource need. While the Dogwood option has lower up-front capital costs, the Riverton 12 conversion option has lower long-run operating costs and thus the Riverton 12 conversion project represents the minimum present worth of long-run utility costs as the primary selection criteria when comparing these options -- contrary to Dogwood's assertion that Empire has failed to recognize such criteria. In addition, factors such as unit efficiency, unit age, transmission costs, potential transmission congestion risk and other operational factors make the Riverton 12 conversion a better option.

RELEVANCE

8. The IRP rules establish a process to allow the Commission to gather "information to allow it to determine whether the electric utility's IRP filing complies with the requirements" of the IRP rules. *Final Order Regarding AmerenUE's 2008 Integrated Resource Plan*, MoPSC Case No. EO-2007-0409, 2009 Mo. PSC LEXIS 531. As stated by the Commission in its order originally implementing the IRP rules, "the focus of the rules should appropriately be on the planning process itself rather than on the particular plans or decisions that result from the process." *Order of Rulemaking*, Missouri Register, Vol. 18, No. 1, Page 91 (January 4, 1993).

9. Dogwood data requests 1-20 are not designed to illicit information to aid the Commission in determining whether or not Empire's IRP filing complies with the IRP rules, and they are not designed to illicit information regarding Empire's planning process for the future.

Instead, these data requests seek information with regard to Empire’s past specific decisions with regard to the Riverton Unit 12 conversion project. As explained by the Commission in its *Order of Rulemaking*, “management flexibility . . . and planning decision-making should appropriately and wisely be left to each individual utility.” Missouri Register, Vol. 18, No. 1, Page 84 (January 4, 1993).

10. Further, when the current version of the IRP rules were promulgated, the Commission expressly decided that it did not want to address the approval of specific projects as a part of the IRP process. The Staff and the Public Counsel both opposed an option for pre-approval of large projects as a part of the IRP process. The Commission stated that it agreed “with its staff and public counsel that there are other more appropriate alternatives for pre-approval and [the commission] will not include a provision for pre-approval of large investments in its Chapter 22 rules.” Missouri Register, Vol. 36, No. 10, Page 1352 (May 16, 2011). It was also stated that “the commission does not wish to move down the path toward pre-approval of projects as part of the resource planning process.” *Id.* at 1353. As a result, the Commission Rule states as follows:

The commission’s policy goal in promulgating this chapter is to set minimum standards to govern the scope and objectives of the resource planning process that is required of electric utilities subject to its jurisdiction in order to ensure that the public interest is adequately served. *Compliance with these rules shall not be construed to result in commission approval of the utility’s resource plans, resource acquisition strategies, or investment decisions.*

4 CSR 240-22.010(1) (emphasis added).

11. Data requests 1-20 seek information related specifically to the contracting process for a project that has been selected by Empire, for which a contract has been executed and on which engineering, procurement, and initial construction activities have begun. Such

information is not reasonably calculated to lead to the discovery of admissible evidence and, therefore is not relevant to the subject matter of this docket.

USE OF DATA REQUESTS IN AN UNCONTESTED CASE/IRP PROCEEDING

12. This Commission has stated that IRP proceedings are not contested cases. *See Final Order Regarding AmerenUE's 2008 IRP*, MoPSC Case No. EO-2007-0409, 2009 Mo. PSC LEXIS 531 (issued February 19, 2009) (“ . . . the Commission concludes this is not a contested case and no evidentiary hearing is needed”). More recently, in a Kansas City Power & Light Company IRP case (File No. EO-2012-0323), the Commission stated “since this is a non-contested case, the Commission is not required to conduct a hearing and no party has a right to a hearing.” Order Denying Request for Hearing (issued November 26, 2013).

13. Given this fact, data requests in general are not proper or appropriate for use in this proceeding by a stakeholder such as Dogwood Energy. In *In the matter of the Application of Kansas City Power and Light Company for Approval to Make Certain Changes in its Charges for Electric Service*, the Commission found that “There is no provision or mechanism for the application of discovery rules outside the boundaries of the existence of a contested case.” Further, the Commission found that “Data requests, by definition, are informal written requests for documents and information, and when used outside of the framework of a contested case discovery rules do not provide any means to compel production of the information requested.” *Order Regarding Staff's Motion to Compel*, File No. ER-2009-0089 (issued December 9, 2009), clarified in *Order of Clarification*, File No. EO-2010-0259 (issued April 14, 2012).

CONCLUSION

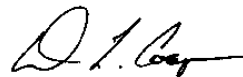
14. The bid, negotiation and contracting information sought by Dogwood is extremely sensitive. This is information that could provide an unfair advantage to a potential

supplier in regard to other suppliers and in regard to Empire's contracting process. While Staff and Public Counsel have a right to such information by statute, no such right is given to Dogwood. Accordingly, such requests should be given close scrutiny.

Here, the requested information is not relevant to Empire's forward-looking resource planning and compliance with Chapter 22 of the Commission's rules. Further, because this is a non-contested case, there is no means to compel responses to the data requests and, thus, the data request process is not appropriate for use by Dogwood.

WHEREFORE, Empire respectfully requests that the Commission issue its order denying Dogwood's Motion to Compel Response to Data Requests.

Respectfully submitted,



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CERTIFICATE OF SERVICE

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