

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

In the Matter of The Empire District Electric	)	
Company's Submission of its 2013 RES	)	Case No. EO-2013-0458
Compliance Plan	)	

**MOTION FOR PERMISSION TO SUPPLEMENT
RENEWABLE ENERGY STANDARD COMPLIANCE REPORT
AND MOTION FOR EXPEDITED TREATMENT**

Under authority of 4 CSR 240-20.080 and for good cause shown, The Empire District Electric Company ("Empire" or "the Company"), through its undersigned counsel, hereby moves the Missouri Public Service Commission ("Commission") for an order granting the Company authority to supplement the *2013 Annual Renewable Energy Standard Compliance Report*, which Empire filed on April 15, 2013, to address alleged deficiencies cited in the *Staff Report on Company's Calendar Year 2012 RES Compliance Report* ("Staff Report"), which the Commission Staff ("Staff") filed on May 30, 2013. Because prompt consideration of the Company's motion will assist both the Commission and Staff in satisfying their respective responsibilities under 4 CSR 240-20.100, Empire further moves the Commission for expedited treatment of the Company's motion to supplement. The Company states the following in support of its motions:

1. As required by the Commission's rules,¹ on April 15, 2013, Empire filed its *2013 Annual Renewable Energy Standard Compliance Report* ("Compliance Report"), which describes the results of the Company's efforts to comply with Missouri's Renewable Energy Standard ("RES")² during calendar year 2012.

2. In accordance with 4 CSR 240-20.100(7)(D), on May 30, 2013, the Staff filed the Staff Report, which described the results of Staff's examination and review of the Company's Compliance Report. The Staff Report identified alleged deficiencies in Empire's compliance with the RES for the

¹ 4 CSR 240-20.100(7).

² §§393.1020-393.1030, RSMo.

2012 reporting period. As described in paragraph 10 of that report, as well as in the memorandum that accompanied the report as Attachment A, the deficiencies identified by Staff were due to the fact that the Company's Compliance Report did not include information regarding the following: (i) Empire's total retail electric sales of electricity supplied by the Elk River Wind Farm ("Elk River"); (ii) the quantity of 2011 Elk River REC's³ the Company sold during 2012; (iii) the gains or losses recorded by Empire from the sale of 2011 Elk River RECs; (iv) affidavits certifying that energy from Elk River and the Meridian Way Wind Farm ("Meridian") was derived from eligible renewable energy technology and had not been used to meet the requirements of any other local or state mandate; (v) the dates and amounts of the Company's 2012 payments to Elk River and Meridian; and (vi) meter readings used to calculate Empire's payments to Elk River and Meridian Way.

3. Although Staff identified the omission of the information described in the preceding paragraph as "deficiencies," paragraph 11 of the Staff Report acknowledged that Empire agreed to supplement its Compliance Report to satisfy the alleged deficiencies. Staff's report further states that when the Company files the supplemental information Staff will review the filing and update the Staff Report as necessary. Consequently, the primary purpose of this motion is to obtain the authority necessary to fulfill Empire's promise to supplement the Company's Compliance Report, to the degree possible, by providing the information identified as deficiencies in the Staff Report, which will enable Staff to review that information and, as necessary, update the Staff Report.

4. The Company's motion also has a secondary purpose: to explain to the Commission why Empire did not include certain information in its Compliance Report in the first place, and to seek clarification and guidance that will eliminate future questions regarding what does and does not need to be included in the Company's annual RES compliance reports. Empire believes such clarification and guidance – should the Commission choose to provide it – would be helpful in the future to both the Company and Staff.

³ As used in this motion, the acronym "REC" means Renewable Energy Credit as defined by §393.1025(5), RSMo.

5. If the Commission grants this motion, Empire will provide the following additional information to Staff to supplement the Company's Compliance Report: (i) the dates and amounts of Empire's 2012 payments to Elk River and Meridian; (ii) invoices supporting those payments (iii) the quantity of Elk River RECs the Company sold in 2012; (iv) the gains/losses that Empire recorded in 2012 from the sale of Elk River RECs; (v) the dates and amounts of the Company's 2012 payments to Elk River and Meridian; and (vi) affidavits from Meridian certifying that the energy it supplied to Empire was derived from eligible renewable energy technology and was not used to satisfy the requirements of any other state or local renewable energy mandate. The Company cannot, however, provide the certifying affidavits from Elk River that Staff has requested, specific meter readings used to calculate payments to Elk River or Meridian, or information regarding Empire's total retail electric sales of electricity supplied by Elk River.

6. The Company did not provide the certifying affidavit from Elk River that Staff identified as a deficiency because Empire believes such certification is redundant for RECs already certified by the North American Renewables Registry, as required by 4 CSR 240-20.100(1)(J). Although Empire recognizes that the lack of an Elk River affidavit may constitute a technical deficiency under 4 CSR 240-20.100(1)(J), the Company does not believe that omitting this information constitutes a material deficiency because during 2012 the Company did not use any Elk River RECs to comply with the RES.

7. As for the amount of energy produced at the Elk River facility that was sold to Empire's retail customers in Missouri, the Company cannot provide that information because there is no way to collect it. Empire provides retail electric service in four states – Missouri, Kansas, Arkansas, and Oklahoma – and power purchased from Elk River is part of the portfolio of generation and purchased power resources that Empire uses to serve native loads in each of those states. But once electricity from Elk River enters the transmission grid, it becomes impossible for the Company – or anyone else – to trace where that electricity goes and who ultimately uses that electricity. In fact, not only is it impossible to identify the source of electricity sold to retail customers, when electricity enters the grid it is impossible to determine

if electricity sold to any customer was produced by renewable resources or non-renewable sources. The Company would not encounter this problem if it purchased electricity from Elk River for the sole purpose of complying with the RES. But because electrons are fungible and are indistinguishable one from another and also because energy from Elk River is part of the portfolio of base load generation and purchased power assets that Empire uses to serve its native load and, therefore, is not directly attributable to RES compliance, the Company cannot identify and keep track of how much Elk River energy was sold to retail customers in Missouri or in any of the other three states where Empire provides retail electric service.

8. The reason Empire did not provide as part of its original Compliance Report filing the supplemental information that is the subject of this motion is because the Company's interpretation of the purpose of the Commission's rules governing compliance with the RES – which, in turn, dictates what must be filed in the annual compliance report – differs from that of Staff. When the Commission adopted 4 CSR 240-20.100 – the rule governing RES compliance – it included the following statement that the purpose of the rule is to *assess and determine compliance with the RES*: “This rule sets the definitions, structure, operation, and procedures *relevant to compliance* with the Renewable Energy Standard.” (Emphasis added) The second sentence of subsection (7) of the rule – which prescribes the content of annual RES compliance reports and the process for filing those reports – re-emphasizes that purpose:

Each electric utility shall file an RES compliance report no later than April 15 *to report on the status of the utility's compliance with the renewable energy standard* and the electric utility's compliance plan as described in this section for the most recently completed calendar year. [emphasis added]

Because the emphasis of the rule was on compliance with the RES, Empire interpreted the rule consistent with that objective. Therefore, the Company limited its annual compliance report to information that specifically addressed how the Company had complied with the RES during the preceding year. Information related to activities not required to comply with the RES was omitted from the report. Consequently, because Empire did not use any RECs or energy from either Elk River or Meridian to

comply with the RES for calendar year 2012, the Company did not believe it was required to include certain information regarding those two energy sources as part of its Compliance Report.

9. Two events related to the filing of Empire's last RES compliance report reinforced the Company's belief that its interpretation of the Commission's rule was correct. First, prior to filing Empire's 2011 compliance report, a now-retired member of Staff specifically advised the Company that it was not required to file certain information regarding Elk River and Meridian because neither was used for RES compliance. Second, the Staff report issued in connection with Empire's compliance report for calendar year 2011 did not identify any deficiencies regarding the limited information the Company provided regarding Elk River or Meridian. Ironically, the information omitted from that report is the same information that Staff identified as deficiencies in its current Staff Report.

10. To ensure that both Empire and Staff are clear as to what the Commission's rules require, the Company requests that in its final order in this case the Commission indicate whether Empire's interpretation of the purpose of the RES compliance rule is correct or, alternatively, if information regarding Elk River and Meridian identified in the Staff Report must be filed as part of each annual compliance report even if energy or RECs from one or both of those facilities is not used for RES compliance during the reporting period. Such a statement from the Commission will clarify for Empire what information it should include in future compliance reports, thereby making an exercise similar to this one unnecessary in the future.

11. Empire asks that its motion to supplement its Compliance Report be given expedited treatment to facilitate Staff's review of that material and to allow Staff, if necessary to update its Staff Report. This request for authority to file a substitute compliance plan is being filed as close as practicable to the date Staff indicated that it believed Empire's Compliance Plan was deficient, and timely action on this motion will enable Staff – and any other interested person – to review the additional information the Company intends to provide and to file a supplemental report or comments based on that information. Good cause therefore exists to grant Empire's motion to file supplemental information related to its

Compliance Plan, and neither Staff nor any interested party will be prejudiced by granting the Company's request for expedited treatment. Consequently, Empire asks that the Commission issue an order either granting or denying the Company's motion within ten days of the date the motion is filed.

WHEREFORE, for all of the reasons stated above, Empire asks the Commission (i) to grant the Company's motion to file supplemental information related to the *2013 Annual Renewable Energy Standard Compliance Report (Revised)* and (ii) to grant that motion expedited treatment.

Respectfully submitted,

/s/ L. Russell Mitten
L. Russell Mitten MO Bar # 27881
BRYDON, SWEARENGEN & ENGLAND, P.C.
312 East Capitol Avenue
P. O. Box 456
Jefferson City, Missouri 65102-0456
Telephone: (573) 635-7166
Facsimile: (573) 634-7431
Email: rmitten@brydonlaw.com

ATTORNEYS FOR
THE EMPIRE DISTRICT ELECTRIC COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served, via e-mail, the 10th day of June, 2013, on counsel for the Commission Staff, the Office of the Public Counsel, and each of interested parties who filed written comments in Case No. EO-2013-0458.

/s/ L. Russell Mitten