BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of a Working Case to Draft A Rule to Revise Commission Rule 4 CSR 240-3.105.	)))	File No. EW-2014-0239

DOGWOOD ENERGY, LLC'S REPLY TO AMEREN MISSOURI'S RESPONSE TO STAFF MOTION FOR COMMISSION ORDER DIRECTING RESPONSES AND SCHEDULING A WORKSHOP

Comes now Dogwood Energy, LLC (Dogwood) pursuant to 4 CSR 240-2.080 and Commission Order issued herein on May 6, 2014, and for its Reply to Ameren Missouri's Response states to the Commission:

1. The Commission should deny Ameren Missouri's request to postpone activity and results in this matter by six months.

2. The primary justification offered by Ameren Missouri is that it is overloaded with regulatory work. But there will never be a time when this matter suits the preferences and work load of every interested party.

3. While it is true that anyone could have suggested that the Commission revise Rule 3.105 at any time, most parties are not engaged in an ongoing process of reviewing the need for updates to Commission rules. Dogwood timely filed its rulemaking petition when it became clear that the Integrated Resource Planning process was not going to be an adequate means of assuring full and fair consideration of the Dogwood plant as a generation resource option for the monopoly utilities.

4. Unless and until the Commission moves forward in a prompt and diligent manner with its consideration of revisions to rule 3.105, regulated Missouri electric utilities will continue to pursue electric plant projects without advance approval, ignoring competitive market alternatives and unnecessarily placing the interests of both ratepayers and shareholders at risk.

Notwithstanding the various renewable energy projects identified in Staff's Response filed in EX-2014-0205 as being subject of applications under Section 393.170, the regulated electric utilities all report on additional plans for significant capital plant projects in their Integrated Resource Plan filings, for which no application has been filed under Section 393.170.

5. Ameren erroneously asserts that "Section 393.170 has for the most part been successfully applied by the Commission for more than 100 years." To the contrary, in StopAquila.Org v. Aquila, Inc., 180 SW3d 24, 37 (Mo App 2005), the Missouri Court of Appeals concluded that the Commission's 25-year long practice of not requiring approval of electric plant construction could not be followed because it "would effectively be giving electric companies in the state carte blanche to build wherever and whenever they wish." In its Response filed in EX-2014-0205 (para. 15), Staff observed that other than Ameren, the regulated utilities were not complying with Section 393.170 even before the Commission started its 25-year practice of not requiring pre-approval.

6. The Missouri Court of Appeals emphasized the importance of the Commission exercising its authority prior to construction in order to protect the interests of the general public, ratepayers, and investors. The Court identified any post hoc disapproval authority as "toothless if a major disallowance would jeopardize the interests of either ratepayers or investors." State ex rel Cass County v. PSC, 259 SW3d 544, 549-50 (Mo App 2008). The Court recognized that the Commission cannot balance and protect the interests of all concerned after the fact, because someone must bear the costs once a company has incurred them. And even though the Court observed that the Commission's rules are deficient, Id., no action has been taken to reassert the authority of the Commission under Section 393.170.

7. The Commission should act as quickly as reasonably possible to clarify its rules regarding preapproval of projects under Section 393.170 to put a stop to the growing list of potential "no win" scenarios where either ratepayers or investors will have to bear the costs of capital construction decisions found to be imprudent after the fact. Indeed, any project undertaken without required preapproval is subject to mandatory dismantling, regardless of prudence, according to the Court of Appeals' interpretation of Section 393.170.

8. Ameren and other interested parties have had time since Dogwood filed its rulemaking petition in January to consider the issues raised therein. Ameren and other interested parties have already made substantive responses to that petition. They have known since March 5 that the Commission wanted Staff to work on a proposal and submit it by August 29, 2014. In giving that direction, the Commission already accommodated requests to take more time than allowed by the formal rulemaking process, by dismissing Dogwood's petition and opening this matter.

9. The issues before the Commission are straightforward: Should the Commission clarify its authority under Section 393.170 to gain greater compliance with that pre-approval statute by regulated utilities, and if so, how? Should the Commission clarify the type of information that should be submitted in an application under Section 393.170, and if so, how? The risks of inaction and the benefits of action are equally clear: Preapproval (or denial thereof) eliminates uncertainty and substantial financial harm.

WHEREFORE, the Commission should deny Ameren's request for delay in this matter.

Respectfully submitted,

CURTIS, HEINZ,
GARRETT & O'KEEFE, P.C.

/s/ Carl J. Lumley

Carl J. Lumley, #32869
130 S. Bemiston, Suite 200
Clayton, Missouri 63105
(314) 725-8788
(314) 725-8789 (Fax)
clumley@lawfirmemail.com

Attorneys for Dogwood Energy, LLC

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing was served upon the parties identified on the attached service list on this 9th day of May, 2014, by email transmission.

/s/ Carl J. Lumley

Office of Public Counsel
Governor Office Building, Suite 650
P.O. Box 2230
Jefferson City, Missouri 65102

Office of General Counsel
Missouri Public Service Commission
200 Madison Street
P.O. Box 360
Jefferson City, Missouri 65102

Dean Cooper
Brydon Swearingen England
312 E. Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102

Kansas City Power & Light Company
Roger Steiner
P.O. Box 418679
Kansas City, MO 64141-9679

James B. Lowery
Suite 200, City Centre Building
111 South Ninth St
Columbia Mo 65205