

**BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION**

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| <b>In the Matter of The Empire District</b>        | ) |                              |
| <b>Electric Company's 2013 Triennial</b>           | ) | <b>Case No. EO-2013-0547</b> |
| <b>Compliance Filing Pursuant to 4 CSR 240-22.</b> | ) |                              |

**DOGWOOD ENERGY, LLC'S  
REPLY IN SUPPORT OF MOTION TO COMPEL RESPONSE TO DATA REQUESTS**

COMES NOW Dogwood Energy, LLC (“Dogwood”) pursuant to Rules 4 CSR 240-2.090 and 2.080 and for its Reply in Support of Motion to Compel The Empire District Electric Company (“Empire”) to respond to Dogwood’s First Set of Data Requests, states to the Commission:

1. In its Response to the Motion to Compel, Empire strays from the discovery issues presented in the Motion and attempts to avoid providing the requested information by mischaracterizing Dogwood's interests in this proceeding and by prematurely arguing about the merits of its integrated resource planning.

2. Dogwood has been granted intervention by the Commission and is a party and stakeholder. Contrary to Empire's assertion, Dogwood does not participate in this IRP case "in an attempt to obtain leverage to force Empire's purchase of a portion of the Dogwood facility." Dogwood fully understands that is not possible. Instead, Dogwood simply strives to make certain that it is given fair consideration in the integrated resource planning process as a potential supply-side resource for a monopoly utility like Empire. The Commission has regulatory authority to examine Empire's planning process as a direct result of the potential that such a

monopoly utility would not give full consideration to lower cost generation alternatives such as the Dogwood Energy Facility, and instead pursue higher cost alternatives that inflate rate base and profit and thereby harm consumers. Monopoly utilities are a significant component of the market for the generation capacity of Dogwood's plant, and as a result Dogwood has a keen interest in making sure such utilities give it a fair chance that matches up with the objectives of the Commission and the interests of consumers.

3. Empire also inaccurately implies that Dogwood would make improper use of the information sought by the data requests. Dogwood fully understands the purposes and requirements of the Commission's protective order rule. Empire has never shied away from making use of such protections to limit use of its information. Dogwood has always complied with the limitations on use of confidential information.

4. Further, Empire improperly attempts to persuade the Commission to pre-judge the merits of the substantive issues in this proceeding, rather than simply decide the discovery issues at hand. Empire's contentions about the suitability of the Dogwood Energy Facility as a resource (paragraph 2), and the propriety of its alleged commitment to the Riverton Unit 12 conversion project (paragraphs 5-7), are the matters that are in dispute and about which Dogwood has promulgated its data requests. Whether Empire is actually irreversibly committed to the Riverton Unit 12 conversion project, and whether or not it conducted appropriate planning in making that alleged commitment, remains to be seen after it responds to the discovery.

5. As shown in the Motion to Compel, the data requests seek information that is reasonably calculated to lead to the discovery of admissible evidence to be used as Dogwood works with Empire and other parties to try to resolve the open issues in this case and/or at

hearing. The information requested bears directly on the adequacy of Empire's planning process, its compliance with the Commission's IRP rules, and the alleged status of Empire's plans. Empire did not respond directly to this part of the Motion to Compel.

6. Likewise, as shown in the Motion to Compel, discovery is available for use by parties in IRP proceedings as they prepare for the potential hearings. Again, Empire did not directly respond and it certainly did not disagree that it would be entitled to a hearing before the Commission could decide that it had failed to meet the IRP rules. Empire cites decisions in which the Commission had already decided not to hold a hearing, or in which the Commission had already held the hearing, none of which are on point in this case.

7. Parties should be allowed to conduct discovery in anticipation of hearings regarding IRP submittals because it enables them to evaluate the self-serving assertions of the utility. In some instances, such due diligence enables a party to accept the utility's assertions and thereby narrow the issues. In other instances, it confirms the reasons for disagreement and enables a party to prepare for the hearing. In all instances, discovery ultimately enables the Commission to hear and decide cases thoroughly and fairly.

WHEREFORE, Dogwood requests that the Commission overrule Empire's objections and direct Empire to respond to Dogwood's First Set of Data Requests.

Respectfully submitted,

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

/s/ Carl J. Lumley

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**CERTIFICATE OF SERVICE**

A true and correct copy of the foregoing document was either mailed, faxed, or emailed this 8th day of January, 2014, to the persons listed on the below service list.

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