BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

EARTH ISLAND INSTITUTE d/b/a RENEW MISSOURI, et al.,	)	
Complainants,	)	
v.	)	Case No. EC-2013-0382
	)	[Consolidated with EC-2013-0379]
THE EMPIRE DISTRICT ELECTRIC COMPANY,	)	
Respondent.	)	

MEMORANDUM OF LAW
IN SUPPORT OF THE EMPIRE DISTRICT ELECTRIC COMPANY'S
MOTION FOR SUMMARY DETERMINATION

Introductory Comment

The purpose of this filing is to support Empire's Motion for Summary Determination and for a dismissal of the Complaint initially docketed by the Commission as EC-2013-0382.[1] The undisputed material facts point instead to conclusion that the Complaint misapprehends the Commission's rule 4 CSR 240-20.0100, that it fails to recognize that the rule exempts Empire from the requirement to prepare and submit a detailed retail rate impact calculation as part of its 2012 Annual Renewable Energy Standard Compliance Plan ("Plan") and that it should be dismissed on the merits prior to going to hearing.

[1] By order dated April 9, 2013, Case No. EC-2012-0382 was consolidated into Case No. EC-2013-0379 "for all purposes".

The Standard of Approval

The standard for approval of Empire's Motion for Summary Determination requires a showing that (1) there is no genuine issue as to any material fact, (2) that the moving party is entitled to relief as a matter of law as to all or any part of the case, and (3) the Commission determines granting summary relief is in the public interest.[2] As will be shown herein, Respondent's Motion for Summary Determination meets each of these elements and, consequently, the Commission should grant summary determination in favor of Empire and dismiss the Complaint against Empire with prejudice.

The sole feature of the Complaint is the allegation that Empire is out of compliance with Commission rule 4 CSR 240-20.100 because its Plan "fails to include '[a] detailed explanation of the calculation of the RES retail impact limit calculated in accordance with section (5) of this rule.'"[3] Respondent's Motion for Summary Determination shows that the Complaint is unfounded. Empire asserts that it is entitled to a dismissal of the Complaint as a matter of law because subsection (5)(B) of 4 CSR 240-20.100 exempts Empire from making a detailed retail rate impact calculation and from including that calculation as part of it RES Compliance Plan filing because Empire does not propose to add incremental renewable energy resource generation attributable to RES compliance during the planning interval covered by the Plan.

Relevant Features of Commission Rule 4 CSR 240-20.100

In 2008, the Renewable Energy Standard ("RES") was enacted into law by initiative. It was codified at §§393.1020-.1045 RSMo. Pursuant to its authority under §393.1030.2 RSMo, the Commission promulgated 4 CSR 240-20.100.

[2] *See*, Commission rule 4 CSR 240-2.117(E).
[3] *See*, Complaint, ¶20.

As noted in the Complaint, the Commission's rule requires, among other things, that an electrical corporation file a renewable energy standard (RES) compliance plan and that such plan include "[a] detailed explanation of the calculation of the RES retail impact limit[4] calculated ***in accordance with section (5) of this rule***. This explanation should include the pertinent information for the planning interval which is included in the RES compliance plan." *See*, 4 CSR 240-20.100(7)(B)1. F. (emphasis added). It is, therefore, critical to understand what section (5) of the rule does, or does not require.

Generally, subsection (5)(A) specifies that the retail rate impact of the costs incurred by an electric utility for RES compliance activities may not exceed a one percent cap. Subsection (5)(B) specifies how the rate impact is to be calculated and what information associated with that calculation must be included in a utility's compliance plan. Generally, it requires a utility to calculate the rate cap by subtracting a revenue requirement that incorporates incremental renewable generation and purchased power from a revenue requirement based on non-renewable energy resources.

Importantly, however, the concluding sentence of (5)(B) states the following:

> The comparison of the rate impact of renewable and non-renewable energy resources shall be conducted ***only when the electric utility proposes to add incremental renewable energy resource generation directly attributable to RES compliance through the procurement or development of renewable energy resources.*** (emphasis added)

Thus, any utility whose RES compliance plan does not include a proposal to add incremental renewable energy resource generation,[5] through procurement or development

[4] This phrase refers to the one percent (1%) retail rate impact cap included in the RES as a consumer protection. *See*, 393.1030.2(1) RSMo.

[5] The term "Renewable Energy Resources" is defined at §393.1025(5) RSMo as:

> "electric energy produced from wind, solar thermal sources, photovoltaic cells and panels, dedicated crops grown for energy production, cellulosic agricultural residues, plant residues,

of renewable resources that is *directly attributable to RES compliance* is exempt from the requirement to include a detailed retail rate impact calculation as part of its RES compliance plan.[6]

Empire is Exempt from the Requirement to Include a Retail Rate Impact Calculation in its 2012 Compliance Plan

The undisputed material facts show that Empire is entitled to the exemption from the requirement of including in its Plan a detailed retail rate impact calculation. As established in the Motion, the Plan encompasses the years 2012 through 2014. The Plan states that Empire "will fully meet the RES Compliance requirements for 2012, 2013 and 2014 *with its current purchased power contracts and hydroelectric facility*." Mr. Timothy Wilson, Empire's Director of Energy Services, elaborates on this point by stating that Empire "does not expect to have to add any renewable energy generation or purchased power from renewable sources through 2021 in order to comply with the portfolio requirements" of the RES.[7] Accordingly, the Complaint against Empire should be dismissed with prejudice.

> methane from landfills, from agricultural operations, or from wastewater treatment, thermal depolymerization or pyrolysis for converting waste material to energy, clean and untreated wood such as pallets, 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, fuel cells using hydrogen produced by one of the above-named renewable energy sources, and other sources of energy not including nuclear that become available after November 4, 2008, and are certified as renewable by rule by the department."

[6] As noted in paragraph 17 of the Complaint, the Missouri Court of Appeals for the Western District recently upheld the lawfulness and reasonableness of the Commission's rule 4 CSR 240-20.100. *State ex rel. Missouri Energy Development Ass'n. v. Public Service Commission*, 386 S.W.3d 165 (Mo. App. 2012).

[7] Importantly, the Complaint does not claim that Empire has proposed to add incremental renewable energy resource generation directly attributable to RES compliance through the procurement or development of renewable energy resources for the period of time encompassed by the Plan.

Granting the Relief Requested in the Motion is in the Public Interest

As noted above, the one percent (1%) retail rate impact provision of the Act was included as a consumer protection, that is, to keep any rate increases attributable to the RES to a minimum. The purpose of the law is to encourage and facilitate the use of renewable energy resources where they make economic sense, but to do so in a manner that does not place an unreasonable cost burden on consumers. The retail rate impact calculation specified by the Commission is not a business planning tool put in place to advance the parochial commercial business interests of the renewable energy industry, as claimed by the Complainants. The Commission's rule recognizes that there is no purpose to be served requiring an electric utility to undertake a detailed calculation of the retail rate impact of complying with the RES when the utility has no need to add renewable generation resources in order to meet the portfolio standard. Requiring Empire to undertake such a calculation in these circumstances would only cause it to incur costs which will not advance the public interest and would, in fact, drive up costs to consumers.

Conclusion

The undisputed fact show that Empire has not proposed to add any renewable energy generation or purchased power from renewable sources in the years 2012, 2013 or 2014 in order to comply with the portfolio requirements of the RES. Accordingly, Empire is entitled to the exemption from the requirement to prepare and file a detailed calculation of the retail rate impact associate with RES compliance. Summary determination in favor of Empire is in the public interest in that it avoids unnecessary

costs when it is clear that Empire's compliance with the RES for the planning period will not have an impact on retail rates. Also, summary determination avoids the necessity of holding an evidentiary hearing to no apparent purpose.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic transmission to the following counsel of record on this 23rd day of August, 2013.

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