

Exhibit No.  
Issue: RES Compliance  
Witness: Timothy N. Wilson  
Type of Exhibit: Rebuttal Testimony  
Sponsoring Party: Empire District Electric  
Case No. EC-2013-0382  
Date Testimony Prepared: August, 2013

Before the Public Service Commission  
of the State of Missouri

Rebuttal Testimony

of

Timothy N. Wilson

August, 2013

**REBUTTAL TESTIMONY  
OF  
TIMOTHY N. WILSON**

**Q. Please state your name and business address.**

A. My name is Timothy N. Wilson. My business address is 602 South Joplin Ave., Joplin, Missouri.

**Q. What is your current job title with The Empire District Electric Company, and what are your job responsibilities in that position?**

A. I currently serve as Director of Energy Supply Services for The Empire District Electric Company ("Empire" or "the Company"). In this role I oversee the planning, budgeting, and construction of Empire's strategic projects as well as environmental compliance, permitting, collection, and submission of emission data and coal procurement and delivery contracts. I also oversee Empire's continued compliance with the renewable energy standards ("RES") in effect in both Missouri and Kansas.

**Q. Please describe your educational background and your work experience.**

A. I graduated from Pittsburg State University in 2000 with a Bachelor of Science in Education, Mathematics. I received my Master of Science in Project Management from Missouri State University in 2010.

My career with Empire began in 1999 as an Associate Planning Analyst in the Company's Strategic Planning Department. Since that time I have been promoted to various other positions including Planning Analyst, Energy Trader, Energy Supply Planning and Operations Analyst, and Renewable and Strategic Initiatives Manager. I assumed my current position of Director of Energy Supply Services in 2010.

**Q. What is the purpose of your testimony in this case?**

1 A. The purpose of my testimony is to address and rebut the allegations made in the  
2 complaint filed by Earth Island Institute d/b/a Renew Missouri; the Missouri Coalition for the  
3 Environment; Missouri Solar Energy Industries Association; Wind on the Wires; The Alternative  
4 Energy Company, LLC; StraightUp Solar; and Missouri Solar Applications (collectively “the  
5 Complainants”). More specifically, I will explain why Empire was not required to file a detailed  
6 retail rate impact calculation as part of its RES Compliance Plan for the 2012-2014 reporting  
7 period. I also will respond to the written direct testimonies filed by the Complainants’ witnesses  
8 Patrick J. Wilson and Vaughn Prost.

9  
10 **Q. Were you involved in the rulemaking that led ultimately to the Commission’s**  
11 **adoption of its Renewable Energy Standard rule, which was codified as 4 CSR 240-20.100?**  
12

13 A. Yes. I was involved in all phases of the rulemaking that led to the adoption of the  
14 Commission’s Renewable Energy Standard rule (“RES Rule”), including both the workshops  
15 that preceded the formal rulemaking and the formal rulemaking case itself, Case No. EX-2010-  
16 0169.

17  
18 **Q. Please describe the nature and extent of your involvement in that rulemaking.**  
19

20 A. I was Empire’s primary liaison during the rulemaking process for the Commission’s RES  
21 Rule. I participated in person on multiple occasions in Jefferson City at the Commission Staff’s  
22 workshops, and I also submitted written comments on Empire’s behalf.

23  
24 **Q. Based on your participation in that rulemaking, how familiar are you with the**  
25 **Commission’s RES Rule?**  
26

27 A. By virtue of my participation in the rulemaking process that led to the adoption of the  
28 RES Rule, I am very familiar with that rule, as well as the process taken to finalize it. In  
29 addition, because my job responsibilities include all of Empire’s RES compliance activities, I  
30 continually work with the Commission’s rule.

1 **Q. Have you read the complaint filed against Empire in Case No. EC-2013-0382?**

2  
3 A. Yes I have.

4  
5 **Q. Based on your understanding of that complaint, what do the Complainants allege**  
6 **that Empire did or failed to do with regard to its 2012–2014 Renewable Energy Standard**  
7 **Compliance Plan?**

8  
9 A. The complaint alleges that Empire’s 2012-2014 RES Compliance Plan did not comply  
10 with the requirements of 4 CSR 240-20.100(7)(B)1.F because that Plan did not include a detailed  
11 calculation of the RES retail impact limitation or a calculation of the one percent rate cap. My  
12 testimony will show that Empire did not include that information in its Compliance Plan filing  
13 because the Company was not required to do so, and I also will show that the omission of that  
14 information was not a violation of the Commission’s RES Rule.

15  
16 **Q. Did you play any role in the preparation and filing of Empire’s Renewable Energy**  
17 **Standard Compliance Plan for the 2012 through 2014 plan period?**

18  
19 A. Yes I did.

20  
21 **Q. Please describe the nature and extent of your involvement in the preparation of that**  
22 **Plan.**

23  
24 A. As I mentioned earlier in my testimony, I oversee Empire’s compliance activities related  
25 to the Missouri RES. Those compliance activities include, but are not limited to, the annual  
26 filings the Company is required to make of its RES Compliance Report, which details how  
27 Empire complied with the RES during the preceding calendar year, and its RES Compliance  
28 Plan, which details the Company’s plan for complying with the RES during a forward-looking  
29 three-year plan period. As such, I aided in the development and internal approval of Empire’s

1 RES Compliance Plan for the 2012-2014 planning period, which is the RES Compliance Plan  
2 specifically at issue in this case.

3  
4 **Q. In your response to a previous question you stated that the complaint alleges that**  
5 **Empire's 2012-2014 RES Compliance Plan did not comply with the requirements of 4 CSR**  
6 **240-20.100(7)(B)1.F. Please describe what that section of the Commission's RES Rule**  
7 **required Empire to include in its Plan.**

8  
9 A. Generally, 4 CSR 240-20.100(7) is the portion of the Commission's RES Rule that  
10 governs the annual RES Compliance Report and RES Compliance Plan filings that Empire and  
11 all other investor-owned electric utilities are required to make. More specifically, section 4 CSR  
12 240-20.100(7)(B)1.F requires Empire to provide as part of its annual RES Compliance Plan  
13 filing "[a] detailed explanation of the calculation of the RES retail limit calculated in accordance  
14 with section (5) of this rule. This explanation should include the pertinent information for the  
15 planning interval which is included in the RES compliance plan."

16  
17 Because the information required by section 4 CSR 240-20.100(7)(B)1.F must be filed "in  
18 accordance with section (5)," it is critical to understand what section (5) requires. The title of that  
19 section is "Retail Rate Impact," and section (5)(A) specifies that the retail rate impact of the  
20 costs a utility incurs for RES compliance activities may not exceed a one percent cap, as  
21 prescribed by the RES statute, Section 393.1030.2(1), RSMo. Section (5)(B) specifies how the  
22 retail rate impact is to be calculated, and what information related to that calculation must be  
23 included in the annual RES Compliance Plan filing, so the Commission can determine if a  
24 utility's compliance costs will exceed the one percent cap. Generally, section (5)(B) requires a  
25 utility to calculate the rate cap by subtracting a revenue requirement that incorporates  
26 incremental renewable generation and purchased power from a revenue requirement based on  
27 non-renewable energy resources.

1 But the concluding sentence of section (5)(B) makes clear that not all utilities are required to  
2 make a detailed calculation of the retail rate impact, as I have described above, or to include that  
3 calculation as part of their annual RES Compliance Plan filing. That sentence states as follows:

4  
5 The comparison of the rate impact of renewable and non-renewable energy  
6 resources shall be conducted only when the electric utility proposes to add  
7 incremental renewable energy resource generation directly attributable to RES  
8 compliance through the procurement or development of renewable energy  
9 resources.

10  
11 Based on the language from section (5)(B) I just quoted, any utility whose RES Compliance Plan  
12 filing does not indicate a need to *add* incremental renewable energy resource *generation*, through  
13 the procurement or development of renewable resources, that is *directly attributable to RES*  
14 *compliance* is exempt from the requirement to include a detailed retail rate impact calculation as  
15 part of its RES Compliance Plan filing.

16  
17 **Q. Do you believe Empire's 2012-2014 RES Compliance Plan satisfies all the**  
18 **requirements of 4 CSR 240-20.100(7)(B)1.F?**

19  
20 A. Yes, Empire's Compliance Plan filing for the 2012-2014 planning period fully complies  
21 with the requirements of 4 CSR 240-20.100(7)(B)1.F.

22  
23 **Q. Please explain your answer.**

24  
25 A. Stated simply, because during the 2012-2014 plan period Empire does not plan to add  
26 any incremental renewable energy resource generation that is directly attributable to RES  
27 compliance, the Company qualifies for the exemption in section (5) that I described earlier in my  
28 testimony. In fact, Empire's 2012-2014 RES Compliance Plan makes clear that the Company  
29 does not expect to have to add any renewable energy generation or purchased power from  
30 renewable sources through 2021 in order to comply with the portfolio requirements of the RES.

1 Consequently, 4 CSR 240-20.100(5)(B) exempts Empire from making a detailed retail rate  
2 impact calculation and from including that calculation as part of its RES Compliance Plan filing.  
3

4 **Q. What retail rate impact information did Empire include in its 2012-2014 RES**  
5 **Compliance Plan?**  
6

7 A. Empire's Plan provided a detailed description and explanation of the costs associated  
8 with RES compliance that the Company expects to incur over the three-year plan period. These  
9 costs, which for 2012 amounted approximately \$63,000, are limited to registration and  
10 retirement fees for renewable energy certificates ("RECs"), as required by the Commission's  
11 RES Rule. In addition, Empire's Plan also compared these minimal REC registration and  
12 retirement costs to the Company's then-current annual revenue requirement (approximately \$416  
13 million), to show that the RES compliance costs it will incur will be a miniscule portion of a  
14 somewhat rough estimate of the one percent retail rate cap. I believe this is more information  
15 than was required by RES Rule.  
16

17 **Q. Has anything changed since Empire filed its 2012-2014 RES Compliance Plan that**  
18 **would affect the retail rate impact in the future?**  
19

20 A. Nothing has changed in terms of the nature and magnitude of the RES compliance costs  
21 the Company expects to incur, but there have been some changes in the manner in which those  
22 costs are recovered from Empire's customers.  
23

24 **Q. Please describe those changes.**  
25

26 A. In its 2012-2014 RES Compliance Plan, Empire stated that it was recovering costs  
27 associated with the registration and retirement of RECs through the Company's fuel adjustment  
28 clause. This was done for two reasons. First, RECs that Empire does not use to comply with the  
29 RES are sold in the open market and the revenue derived from those sales is passed through the  
30 fuel adjustment clause as a credit against increases in fuel and purchased power costs that

1 Empire incurs between rate cases. Second, because the gain from the sale of RECs and the costs  
2 incurred to realize that gain are related, it seemed both convenient and fair to net those costs  
3 against the gain and to include those net costs as part of the fuel adjustment clause calculation.

4  
5 But the Commission's RES Rule prohibits the recovery of RES compliance costs through a  
6 utility's fuel adjustment clause. Consequently, as part of the settlement reached in Empire's last  
7 general rate case, Case No. ER-2012-0345, the Company no longer includes its REC registration  
8 and retirement costs as part of its fuel adjustment clause. Instead, those costs were included in  
9 the revenue requirement used to set rates in the last case, which means they will be recovered  
10 from customers through base rates. If future costs exceed the amount included in base rates in  
11 Case No. ER-2012-0345, Empire will absorb the difference until costs can be re-based in the  
12 Company's next general rate case.

13  
14 **Q. Have you reviewed the direct testimony of Patrick J. Wilson, which was filed in this**  
15 **case on behalf of Earth Island Institute d/b/a Renew Missouri?**

16  
17 **A.** Yes, I have.

18  
19 **Q. What does Mr. Wilson's testimony say, generally, about the requirements of 4 CSR**  
20 **240-20.100(7)(B)1.F as it relates to the retail rate impact information to be included in**  
21 **annual RES Compliance Plan filing, and what does that testimony say, specifically, about**  
22 **the exemption in 4 CSR 240-20.100(5)(B)?**

23  
24 **A.** Mr. Wilson's testimony focuses on his opinions regarding what he perceives to be the  
25 "purpose and significance" of the retail rate impact limitation provisions in sections (5) and  
26 (7)(B)1.F.

27  
28 There is no mention anywhere in Mr. Wilson's testimony of the exemption in 4 CSR 240-  
29 20.100(5)(B).



1 **Q. Do you think Mr. Wilson was unaware of the exemption provided in 4 CSR 240-**  
2 **20.100(5)(B) when he filed his direct testimony in this case?**

3  
4 A. As a self-proclaimed “expert” on Missouri’s RES, including the Commission’s RES  
5 Rule, it is difficult to believe Mr. Wilson was unaware of the exemption. That’s especially true  
6 because Empire’s RES Compliance Plan for the 2013-2015 plan period – a revised version of  
7 which was filed on May 14, 2013 – specifically mentions the exemption authorized by 4 CSR  
8 240-20.100(5)(B) in the retail rate impact section of the Plan. The exemption also is mentioned  
9 in the Staff report regarding that Plan, which was filed on May 30, 2013. Empire believes Mr.  
10 Wilson’s employer, Earth Island Institute d/b/a Renew Missouri, received a copy of each of those  
11 filings. Based on those facts, one must come to the conclusion that when he filed his direct  
12 testimony in this case Mr. Wilson was aware of the exemption provided by 4 CSR 240-  
13 20.100(5)(B). It appears he simply chose to ignore it, which makes his testimony regarding the  
14 requirements of the Commission’s RES Rule either incomplete or deliberately misleading.

15  
16 **Q. Are you aware that on July 16, 2013, Mr. Wilson gave a deposition regarding his**  
17 **testimony in this case?**

18  
19 A. Yes I am. Empire’s counsel participated in that deposition on behalf of the Company.  
20

21 **Q. Did you review the transcript of that deposition?**  
22

23 A. Yes I did.  
24

25 **Q. During his deposition, did Mr. Wilson answer questions regarding the exemption**  
26 **from the retail rate impact calculation provided by 4 CSR 240-20.100(5)(B)?**  
27

28 A. Yes he did.  
29

30 **Q. Please describe Mr. Wilson’s deposition testimony on that issue.**

1 A. Three aspects of Mr. Wilson's deposition testimony are particularly noteworthy as they  
2 relate to the provisions of 4 CSR 240-20.100(5)(B) and 4 CSR 240-20.100(7)(B)1.F. First, in his  
3 responses to questions from Empire's counsel, Mr. Wilson refused to clearly acknowledge that if  
4 the Company complied with the requirements of 4 CSR 240-20.100(5)(B) it also would comply  
5 with the requirements of 4 CSR 240-20.100(7)(B)1.F, even though that conclusion is very clear  
6 from the language used in the Commission's RES Rule. Second, Mr. Wilson refused to  
7 acknowledge that under certain circumstances 4 CSR 240-20.100(5)(B) provides an exemption  
8 to the general requirement that utilities must include a detailed retail rate impact calculation as  
9 part of their annual RES Compliance Plan filings. Mr. Wilson's deposition testimony indicates  
10 that he doesn't care whether the rule provides an exemption because he *personally believes* such  
11 information should be filed by every utility. Finally, in response to specific questions regarding  
12 the conditions that must be satisfied in order for the exemption to apply, Mr. Wilson testified that  
13 he doesn't believe Empire's 2012-2014 RES Compliance Plan qualified for the exemption  
14 because he contends that during the plan period the Company plans to add incremental  
15 renewable energy resource generation directly attributable to RES compliance. He based this  
16 testimony on the fact that Empire's 2012-2014 RES Compliance Plan states that the Company  
17 intends to re-direct some of the RECs it derives from purchased power agreements with two  
18 Kansas wind farms, which have been in place for many years, to compliance with Missouri's  
19 RES. Because Empire has not previously needed those RECs for compliance with the Missouri  
20 RES, it has sold those excess RECs in the open market and used the revenue derived from those  
21 sales to offset increases in fuel and purchased power passed through the Company's fuel  
22 adjustment clause.

23  
24 **Q. In your previous answer you stated that Mr. Wilson testified during his deposition**  
25 **that if a utility redirects RECs it already owns toward compliance with Missouri's RES**  
26 **that action constitutes adding incremental renewable energy resource generation directly**  
27 **attributable to RES compliance. Do you agree with Mr. Wilson's position?**

28  
29 A. No, I do not.

1 **Q. Please explain the reasons you disagree with Mr. Wilson.**

2  
3 A. As defined in the Commission's RES Rule, a REC is created when 1 megawatt-hour of  
4 renewable energy is generated and delivered to the power grid. According to the Environmental  
5 Protection Agency (EPA) a REC represents the property rights to the environmental, social, and  
6 other nonpower qualities of renewable electricity generation. A REC, and its associated attributes  
7 and benefits, can be sold separately from the underlying physical electricity associated with a  
8 renewable-based generation source.

9  
10 Based on the definitions I just cited, a REC is simply something that can be used to show  
11 compliance with a utility's own RES or that can be sold to another entity and used to show  
12 compliance with its RES. A REC is *NOT* a generation resource. "Generation resource" is a term  
13 that is meant to refer to a generating facility, such as a wind farm or a combustion turbine.

14  
15 But even if one were to confuse a REC with a generation resource, Empire would still be entitled  
16 to claim the exemption in 4 CSR 240-20.100(5)(B) unless the Company was *adding* incremental  
17 RECs *for the specific purpose of complying with the RES*. The wind farm RECs that Empire will  
18 re-direct toward future compliance with the Missouri RES were not added for that specific  
19 purpose. In fact, those RECs were not "added" at all because they are derived from purchased  
20 power agreements that pre-date the 2012-2014 compliance period by several years. It would  
21 seem obvious – although apparently not to Mr. Wilson – that Empire isn't adding anything if it is  
22 simply using something the Company already owns.

23  
24 **Q. How does Empire interpret the language in 4 CSR 240-20.100(5)(B) that says a**  
25 **detailed retail rate calculation is required "only when the electric utility proposes to add**  
26 **incremental renewable energy resource generation directly attributable to RES compliance**  
27 **through the procurement or development of renewable energy resources"?**

28  
29 A. Empire interprets this language according to its plain meaning; that is, if Empire were to  
30 add an incremental renewable energy generation resource directly attributable to RES

1 compliance then it would be required to perform the one percent retail rate impact calculation  
2 and include detailed information regarding that calculation as part of its RES Compliance Plan  
3 filing. Otherwise, the Company is not required to perform the calculation or include detailed  
4 information supporting that calculation.

5  
6 **Q. Have you read the direct testimony of Vaughn Prost, which was filed in this case on**  
7 **behalf of Missouri Solar Applications, LLC?**

8  
9 A. Yes I have.

10  
11 **Q. Do you have any comments or opinions regarding that testimony that you want to**  
12 **share with the Commission?**

13  
14 A. Yes. In summary, Mr. Prost testifies that he, believes it “essential that the Commission  
15 require strict adherence to both 4 CSR 240-20.100(5) and 4 CSR 240-20.100(7)(B)1.F.” As far  
16 as Empire is concerned, the retail rate impact information the Company included in its 2012-  
17 2014 RES Compliance Plan did strictly adhere to the requirements of both those rules.

18  
19 **Q. In response to a prior question, you stated that you participated in the rulemaking**  
20 **that led to the adoption of the Commission’s Renewable Energy Standard rule. Do you**  
21 **recall when the exemption in 4 CSR 240-20.100(5)(B) was first proposed to be part of that**  
22 **rule?**

23  
24 A. Based on my recollection, as well as on my review of the filings in Case No. EX-2010-  
25 0169 on EFIS, a form of the exemption was included in the Commission’s original rulemaking  
26 proposal, which was sent to the Secretary of State in January 2010. Although the specific  
27 language used in the exemption changed slightly from the original proposal to the final rule,  
28 none of those changes was material. To my knowledge, there has never been a version of what  
29 ultimately became the Commission’s RES Rule that did not include the exemption.

1 **Q. Mr. Wilson's direct testimony states that he also participated in that rulemaking. At**  
2 **any time during that rulemaking did Mr. Wilson, Earth Island Institute d/b/a Renew**  
3 **Missouri, or any other of the Complainants in this case publicly express any concern about,**  
4 **or objection to, the exemption from the retail rate impact calculation that is provided in 4**  
5 **CSR 240-20.100(5)(B)?**

6  
7 A. Not that I recall. I also reviewed the written comments filed by some of the  
8 Complainants, and none of those comments even mentions that exemption.

9  
10 **Q. Earth Island Institute d/b/a Renew Missouri filed written comments in Case No.**  
11 **EO-2012-0336, the case that considered Empire's 2012-2014 RES Compliance Plan. Did**  
12 **those comments express any concern about the retail rate impact information that Empire**  
13 **included in that Plan or object to the Plan because it did not include a detailed retail rate**  
14 **impact calculation?**

15  
16 A. No. Those comments do not object to the fact that Empire's 2012-2014 RES Compliance  
17 Plan did not include a detailed retail rate impact calculation. In fact, the comments don't even  
18 mention the portion of the Company's Plan that discusses the retail rate impact.

19  
20 **Q. Prior to filing the formal complaint in this case, did any of the complainants ever**  
21 **express to Empire any concerns about the retail rate impact information in the Company's**  
22 **2012-2014 Renewable Energy Standard Compliance Plan?**

23  
24 A. No. The formal complaint was the first indication Empire had that any of the  
25 Complainants had any concerns about the retail rate impact information the Company included  
26 in its 2012-2014 RES Compliance Plan.

27  
28 **Q. Please summarize the major points made in your testimony.**  
29

1 A. The main point of my testimony is to show the Commission that Empire's 2012-2014  
2 RES Compliance Plan fully complies with the requirements of 4 CSR 240-20.100(5)(B) and 4  
3 CSR 240-20.100(7)(B)1.F. As I describe in my testimony, Empire validly claimed the exemption  
4 in 4 CSR 240-20.100(5)(B), which meant the Company was not required to file a detailed retail  
5 rate impact calculation as part of its RES compliance plan. Empire qualified for the exemption  
6 because during the plan period the Company will not add any incremental renewable energy  
7 generation directly attributable to RES compliance.

8  
9 The complaint completely ignores the exemption, as do the two witnesses who testify in support  
10 of that complaint. But if Empire legitimately qualified for the exemption – as it did – then the  
11 fact that the Company did not include a detailed retail rate calculation as part of its RES  
12 Compliance Plan does not constitute a violation of the Commission's RES Rule or the RES  
13 itself.

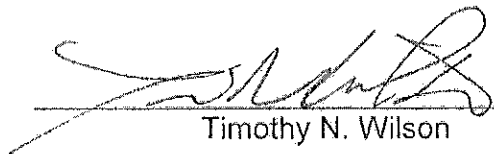
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15 **Q. Does this conclude your rebuttal testimony?**

16  
17 A. Yes it does.  
18  
19

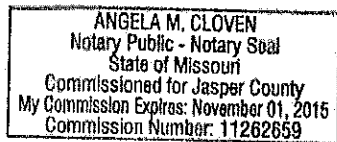
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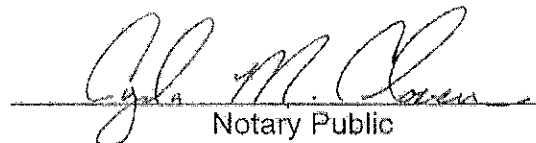
STATE OF MISSOURI   )  
                                      ) ss  
COUNTY OF JASPER   )

On the 9 day of August, 2013, before me appeared Timothy N. Wilson, to me personally known, who, being by me first duly sworn, states that he is the Director of Energy Supply Services of The Empire District Electric Company and acknowledges that he has read the above and foregoing document and believes that the statements therein are true and correct to the best of his information, knowledge and belief.

  
Timothy N. Wilson

Subscribed and sworn to before me this 9 day of August, 2013.



  
Notary Public

My commission expires: 11-01-2015.