

**BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION**

<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>	)	

## REPORT AND COMMENTS OF DOGWOOD ENERGY, LLC

COMES NOW Dogwood Energy, LLC (“Dogwood”) and respectfully submits its Report and Comments in this proceeding pursuant to 4 CSR 240-22.080(8) regarding The Empire District Electric Company’s (Empire’s) July 1, 2013 Integrated Resource Plan (IRP) triennial filing. Pursuant to Rule 22.080(8), Dogwood has identified deficiencies and concerns with Empire’s submittal to be further addressed by Empire, the other parties, and the Commission, as stated herein:

## I. Introduction and Summary

1. Empire submitted its triennial IRP filing on July 1, 2013.
2. “The fundamental objective of the resource planning process at electric utilities shall be to provide the public with energy services that are safe, reliable, and efficient, at just and reasonable rates, in compliance with all legal mandates, and in a manner that serves the public interest and is consistent with state energy and environmental policies.” See 4 CSR 240-22.010(2).
3. The foregoing fundamental objective requires that Empire “use minimization of the present worth of long-run utility costs as the primary selection criterion in choosing the preferred

resource plan”, subject to any explicitly identified and quantified constraints. See 4 CSR 240-22.010(2)(B) and (C).

4. Empire has failed to meet the foregoing rule, by not using minimization of the present worth of long-run utility costs as the primary selection criterion in choosing the preferred resource plan, without identifying or quantifying any purported constraint. Empire has also failed to meet the rule because it did not use competitive bidding procedures to identify least-cost alternative supply-side resources.

5. Specifically, Empire has included in its preferred plan the conversion of its Riverton Unit 12 combustion turbine electric generation facility to a combined cycle facility, by adding a new steam turbine and associated equipment and controls at the Riverton site, at a currently-projected cost of \$165,000,000 to \$175,000,000, instead of the less-costly alternative of acquisition of a partial interest in the Dogwood combined cycle facility located in Pleasant Hill, Missouri, at an estimated up-front capital cost savings of \$97,440,000 to \$107,440,000. Because Empire did not use competitive bidding procedures, it is currently unknown whether other lower cost alternatives besides the Dogwood Energy Facility are also available to it.

6. Empire skewed previous studies in order to justify conversion of the Riverton Unit 12 facility when the estimated cost of the project was \$125,300,000, with highly questionable results. But the recently-disclosed increase of \$50,000,000 in Empire’s cost estimate eliminates any arguable advantage to the conversion project relative to the Dogwood proposal and potentially other options as well. Nonetheless, Empire has plunged ahead and entered into a contract to proceed with the Riverton Unit 12 conversion project, without Commission approval.

7. Because Empire has violated the Commission's IRP rules, the Commission should order it to: (a) suspend all activity on the Riverton Unit 12 conversion project, (b) submit a new triennial IRP that meets the Commission's rules including by using competitive bidding procedures to identify alternative supply-side resources and by using minimization of the present worth of long-run utility costs as the primary selection criterion in choosing a preferred resource plan, and (c) seek approval of any new project or acquisition pursuant to Section 393.170 RSMo.

## **II. Discussion**

8. On September 3, 2010, Empire submitted its 2010 IRP filing pursuant to the Commission's IRP rules, 4 CSR 240-22, which filing was assigned Case No. EO-2011-0066.

9. Empire's September 3, 2010, IRP filing identified its "preferred plan", which included the projected conversion of Empire's 150 MW Riverton Unit 12 combustion turbine generation facility into a 250 MW combined cycle facility for use starting in 2015, which conversion would primarily consist of adding a new 100 MW steam turbine and associated equipment and controls at the Riverton site. See Empire 2012-2029 IRP, Vol. I, Executive Summary. Empire selected this component of its "preferred plan" based on a cost estimate prepared by an engineering and technical services company in the amount of \$1,253 per kW (in 2010 dollars), or \$125,300,000. Empire compared this information to a cost estimate of \$720 per kW (in 2010 dollars) for construction of a new 250 MW combined cycle plant (\$180,000,000) developed by combining cost estimates from a combustion turbine manufacturer and the aforesaid engineering company's conversion cost estimate. See Empire 2012-2029 IRP, Vol. III, Supply-Side Resources Analysis, Section 4.3. It is noteworthy that while Empire needed only a 100 MW capacity addition, in its IRP filing, Empire compared its proposed Riverton 12

conversion project against a much larger, and therefore in total dollars, more expensive, 250 MW combined cycle resource option rather than a more appropriately-sized 100 MW combined cycle resource option such as that available from Dogwood.

10. The Commission approved Dogwood's intervention in Case No. EO-2011-0066.

11. On January 3, 2011, Dogwood submitted its report identifying deficiencies and concerns with Empire's September 3, 2010 IRP filing. One of the deficiencies and concerns identified by Dogwood was that Empire's 2010 IRP did not adequately examine competitively bid supply-side resources as means of meeting Empire's future resource needs.

12. On April 1, 2011, Empire, Dogwood, the Commission's Staff, the Office of Public Counsel, and the Missouri Department of Natural Resources filed a non-unanimous stipulation and agreement in Case No. EO-2011-0066 regarding Empire's September 3, 2010 IRP filing as well as its next Chapter 22 triennial compliance filing scheduled for April 1, 2013. In that non-unanimous stipulation and agreement, among other things Empire agreed to address Dogwood's issues in a Stakeholder Advisory Group process to be used to develop its 2013 triennial IRP filing.

13. On April 27, 2011, in Case No. EO-2011-0066, the Commission issued its Order Approving Nonunanimous Stipulation and Agreement and Accepting Integrated Resource Plan, and ordered Empire and the other signatory parties to comply with that non-unanimous stipulation and agreement.

14. In January and February 2012, Dogwood and Empire representatives had very preliminary communications about the availability of the Dogwood Energy Facility as an alternative supply side resource, but Empire abruptly abandoned these discussions.

15. In March 2012, pursuant to the Commission's IRP rules, Empire submitted its 2012 Integrated Resource Plan Annual Update Report, which was assigned File No. EO-2012-0294. In that report, Empire stated that its "preferred plan" had changed, including a postponement of the projected completion of conversion of Riverton Unit 12 from 2015 to 2016. Empire also stated that there "have been no significant changes to the cost information used for the proposed conversion of Riverton Unit 12 to a combined cycle" and that there was "no significant change to cost estimate" for this conversion. Empire said it would reevaluate capital costs with due diligence during the development of its 2013 IRP triennial filing. Empire also indicated that due to reductions in anticipated load growth, changes in environmental standards and related costs, and incompatible control room logistics, it now planned to convert Riverton Units 7 and 8 from coal to natural gas after the summer of 2013 and then wait to retire those 60-year-old units together with Unit 9, with a collective capacity of about 100 MW, in conjunction with the completion of conversion of Unit 12 in 2016. See Empire 2012 Integrated Resource Plan Annual Update Report, pages 10, 13-17.

16. On March 27, 2012, at the annual update workshop, Empire acknowledged that it had not yet addressed the issues that Dogwood had raised regarding Empire's 2010 IRP filing, notwithstanding its agreement to do so and the Commission's order directing it to fulfill that agreement. Additionally, Empire stated that for purposes of the annual update it had not reexamined any alternatives from its 2010 IRP, but rather had only adjusted the timing of various components of the preferred plan identified therein.

17. On or about April 18, 2012, because Empire still had not issued a request for proposals for alternatives to its "preferred plan" Riverton Unit 12 conversion project, Dogwood voluntarily submitted an unsolicited proposal for power supply resources to Empire, a copy of

which is attached hereto as **Exhibit A** and incorporated herein by reference. Therein, Dogwood offered a fractional ownership share of 100 MW in its combined cycle electric generation plant to Empire, at a price of \$677.60 per kW, or \$67,760,000, assuming a closing date of January 1, 2014. Dogwood indicated that the price would be adjusted up or down by 10% per year for a later or earlier closing, respectively, and also indicated that a smaller or larger interest could be acquired by Empire, with a minimum purchase level of 40 MW. The terms outlined in the proposal were identical to those contemporaneously agreed to by Dogwood's other co-owners, three of which had closed on the purchase of their shares in the plant at the time the proposal was issued to Empire.

18. Pursuant to the Commission's IRP rules and Commission order issued in File Nos. EE-2012-0095<sup>1</sup> and EE-2012-0040<sup>2</sup>, on April 26, 2012, Dogwood submitted comments regarding Empire's annual IRP update report. In those comments, Dogwood expressed persisting concern about Empire's plan to convert Riverton Unit 12 and the insufficiency of the information on which it based that plan. Dogwood also informed the Commission that Empire had not adequately considered lower-cost alternative supply-side resources including but not limited to acquisition of an interest in the Dogwood Energy Facility, which would also allow for immediate retirement of the 60-year-old Riverton Units 7 and 8, as well as Unit 9.

19. The Empire IRP stakeholder group met in June 2012 pursuant to the Commission's April 27, 2011, Order Approving Nonunanimous Stipulation and Agreement and Accepting Integrated Resource Plan, issued in Case No. EO-2011-0066, but Empire was not prepared to discuss the issues that Dogwood had raised.

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<sup>1</sup> In the Matter of the Empire District Electric Company's Application for Variance Concerning Commission Rule 4 CSR 240-22.080.

<sup>2</sup> In the Matter of a Determination of Special Contemporary Resource Planning Issues to be Addressed by The Empire District Electric Company in its Next Triennial Compliance Filing or Next Annual Update Report.

20. On July 17, 2012, the Commission issued its Order Regarding 2012 Integrated Resource Planning Annual Update Summary in File No. EO-2012-0294, in which it ordered Empire to “comprehensively address the alleged deficiencies and concerns identified by [Dogwood and the other] participants to this file in its next triennial Integrated Resource Plan.” (Emphasis added).

21. The stakeholder group met in September 2012 pursuant to the Commission’s April 27, 2011, Order Approving Nonunanimous Stipulation and Agreement and Accepting Integrated Resource Plan, issued in Case No. EO-2011-0066, but Empire was not prepared to discuss the issues that Dogwood had raised.

22. On December 18, 2012, pursuant to the Commission’s IRP rules, interested stakeholders met with Empire regarding the development of Empire’s 2013 Integrated Resource Plan, which by the IRP rules was due to be filed April 1, 2013.

23. During the December 18, 2012 meeting with stakeholders, including Dogwood, Empire indicated that although it still had not met prior commitments to update its information sources with due diligence, it nonetheless still planned to go forward with the Riverton Unit 12 conversion and wait to retire Units 7, 8 and 9 until anticipated completion of the Unit 12 conversion in 2016. Empire indicated that it expected the Riverton Unit 12 conversion project would be a “committed” project by the time it submitted the 2013 IRP in April 2013. Empire confirmed it had not obtained Commission approval for the conversion project. Empire indicated that it had already converted Riverton Units 7 and 8 to gas-fired status, ahead of its previously announced schedule to make the conversion in the summer 2013.

24. On January 24, 2013, during another IRP stakeholder meeting, Empire acknowledged that the issues raised by Dogwood had not yet been addressed. However, the parties agreed to meet separately about those issues on February 6, 2013 at the Riverton plant.

25. Dogwood, Empire and other interested stakeholders did meet on February 6, 2013 at the Riverton plant and held further discussions. Empire agreed to conduct further studies comparing its conversion project to Dogwood's proposal, but did not agree to explore any other alternatives.

26. On March 20, 2013, the Commission granted Empire additional time to file its triennial IRP, to July 1, 2013. (Case No. EO-2013-0405).

27. Empire conducted an additional analysis, separate from its IRP filing, comparing conversion of Riverton Unit 12 to acquisition of a partial interest in the Dogwood Energy Facility. Empire provided the results to stakeholders on April 5, 2013. Empire did not examine any other alternatives. Empire concluded that it still should proceed with the Riverton Unit 12 conversion project.

28. Dogwood raised questions and concerns about the assumptions and results of the study provided on April 5, 2013, and while Empire did continue to share some information, it also made plain that it was not interested in any further analysis regarding the conversion project.

29. Empire's purported justification for proceeding with the Riverton Unit 12 conversion project relied on purported benefits that would not be realized within the 20 years of an IRP study. Accepting Empire's study results at face value, purported 20-year benefits were projected to be \$3.6 million, purported 28-year benefits were projected to be \$27.2 million, and purported 38-year benefits were projected to be \$58.2 million.



30. On July 1, 2013, Empire submitted its triennial IRP filing in File No. EO-2013-0547. Therein it stated that it expected very soon to be committed to the Riverton Unit 12 conversion project, with construction to start in 2014 and finish in 2016.

31. On July 19, 2013, Empire announced that it had entered into a contract to proceed with the Riverton Unit 12 conversion project.

32. On October 28, 2013, in Case No. EW-2012-0065, Empire revealed that it had entered into the contract to proceed with the Riverton Unit 12 conversion project even though the cost had increased from its original estimate of \$125,300,000 to a newly-reported cost of \$165,000,000 to \$175,000,000.<sup>3</sup>

33. The cost increase of \$50,000,000 for the project that Empire disclosed on October 28, 2013 subsumes the purported long-term benefits identified by Empire's studies (see paragraph 29 above).

34. Empire has committed itself to the Riverton Unit 12 conversion project:

(a) without first issuing an RFP to obtain sufficient cost information regarding its supply-side resource alternatives,<sup>4</sup>

(b) without an open-minded and full analysis of the proposal that Dogwood submitted on its own (when it became clear Empire was not going to seek such information) as one such available and viable alternative supply-side resource,

(c) without due regard for \$97,440,000 to \$107,440,000 in up-front capital cost savings and related ratepayer benefits that would result from buying a fractional interest in the Dogwood Energy Facility rather than converting Riverton Unit 12, and

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<sup>3</sup> The pertinent slide from Empire's presentation is attached hereto as **Exhibit B**. Dogwood is conducting discovery regarding these figures.

<sup>4</sup> On information and belief, Empire only received Dogwood's unsolicited proposal, did not explore any other alternatives by an RFP process, and only issued an RFP to obtain competing bids to construct the Riverton Unit 12 conversion project.

(d) without due regard for the opportunity to accelerate retirement of Riverton Units 7, 8 and 9 in connection with a prompt acquisition of an interest in the Dogwood Energy Facility (or another alternative source of supply).

35. Empire has also committed itself to the Riverton Unit 12 conversion project without advance Commission approval pursuant to Section 393.170 RSMo., which statute prohibits commencement of construction without such advance approval.<sup>5</sup> See *State ex rel. Cass County v. Public Service Commission*, 259 SW3d 544 (Mo. App. 2008).

36. Empire's plan to proceed with the Riverton Unit 12 conversion project does not meet the minimum standards and fundamental objectives of the Commission's IRP rules, 4 CSR 240-22, because its plan fails to use minimization of the present worth of long-run utility costs as the primary selection criterion in choosing a preferred resource plan. This failure stems from Empire's additional failure to rely upon adequate competitive procurement policies in the acquisition and development of supply-side resources and related failure to sufficiently consider available supply-side resource options including but not limited to the Dogwood Energy Facility.

37. Empire has not yet satisfied the Commission's orders in Case No. EO-2011-0066 and File No. EO-2012-0294 as well as Empire's underlying agreement (see para. 12-13, 20), and the requirements of the Commission's IRP rules, 4 CSR 240-22. It has not comprehensively explored alternative supply-side resources. As a result, ratepayers are exposed to the harms that will attend the unnecessary inflation of Empire's Missouri rate base in 2016 with the cost of

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<sup>5</sup> The Commission exercises jurisdiction over generation plants located across the state line when included in Missouri rate base. For example, the Commission has previously exercised its jurisdiction over Empire's interest in the Plum Point generation plant in Arkansas. See, e.g., Case No. EF-2006-0263 (approval of construction financing); Case No. EO-2010-0262 (approval of construction accounting).

conversion of Riverton Unit 12 to combined cycle, as well as the loss of the savings that would attend the potential accelerated retirement of Riverton Units 7, 8 and 9.

38. Since filing its prior IRP in September 2010, Empire has remained fixated on converting Riverton Unit 12 and has not sought alternatives or considered any options with an open mind. Because Empire refused to use an RFP process to identify alternative supply-side resources, the only available information at present that demonstrates that Empire is not pursuing the least-cost alternative is Dogwood's unsolicited bid. However, that bid makes clear that Empire has not used minimization of the present worth of long-run utility costs as the primary selection criterion in choosing a preferred resource plan. Upon further exploration of supply-side alternatives by means of an RFP, perhaps an even better option will be identified.

WHEREFORE, Dogwood requests that the Commission examine Dogwood's Report and Comments, and unless Empire addresses these issues on its own under the IRP rules, Dogwood requests that the Commission conduct further proceedings and a hearing pursuant to 4 CSR 240-22.080(10), and in conjunction therewith order Empire to: suspend all activity on the Riverton Unit 12 conversion project, submit a new triennial IRP that meets the Commission's rules including use of competitive bidding procedures to identify alternative supply-side resources and use of minimization of the present worth of long-run utility costs as the primary selection criterion in choosing a preferred resource plan, and seek approval of any new project or acquisition pursuant to Section 393.170 RSMo.

Respectfully submitted,

CURTIS, HEINZ,  
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/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 2d day of December, 2013, to the persons listed on the below service list.

/s/ Carl J. Lumley

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