

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 22nd day of
January, 2014.

In the Matter of The Empire District Electric)
Company's 2013 Triennial Compliance Filing)
Pursuant to 4 CSR 240-22)

File No. EO-2013-0547

**ORDER REGARDING DOGWOOD ENERGY, LLC'S MOTION TO COMPEL
RESPONSE TO DATA REQUESTS**

Issue Date: January 22, 2014

Effective Date: January 22, 2014

On July 1, 2013, The Empire District Electric Company ("Empire") filed with the Missouri Public Service Commission ("Commission") its 2013 Integrated Resource Plan ("IRP"), which is required by the Commission's Electric Utility Resource Planning Rule, 4 CSR 240-22. On July 5, 2013, Dogwood Energy, LLC ("Dogwood") filed an application to intervene, which was granted by the Commission on July 19, 2013. On December 2, 2013, Dogwood served twenty-two data requests on Empire pursuant to Commission Rule 4 CSR 240-2.090(2). The data requests sought information regarding Empire's planned conversion of Riverton Unit 12 to a combined cycle facility, including information on its bidding process, anticipated costs of the conversion, and operating cost assumptions. Empire responded by objecting to the data requests.¹ After the parties failed to resolve the dispute informally under Commission Rule 4 CSR 240-2.090(8), on December 27, 2013, Dogwood filed a *Motion to Compel Response to Data Requests*, which requested that the

¹ A copy of the data requests and the accompanying objections are attached to this order as Appendix A.

Commission overrule Empire's objections and direct Empire to respond to those data requests.

Status of Dogwood as a party

Empire objects to all the data requests on the basis that Dogwood is not a "party" to this proceeding and, therefore, not entitled to issue data requests under Commission Rule 4 CSR 240-2.090(2), which states that "[p]arties may use data requests as a means for discovery". Empire argues that because this proceeding is a noncontested case, Dogwood has no legal basis for issuing data requests. Dogwood states that it is a party because it was granted intervention by the Commission and that it should be allowed to use discovery to become better informed about Empire's submissions and to make informed decisions regarding potential remedies for alleged deficiencies.

This IRP proceeding is a noncontested case because there is no legal requirement to hold a hearing.² However, the Commission's administrative rules governing IRP proceedings specifically designate an intervenor, such as Dogwood, as a "party" to the case.³ Empire cites a 2009 Commission order for the proposition that discovery is not appropriate in noncontested cases⁴, but reliance on that order in this case is misplaced. In the 2009 order the Commission denied Staff's request to compel an electric utility to produce documents in response to a data request. However, the 2009 case should be

² A "contested case" before an administrative agency is defined by statute as "a proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after hearing[.]" § 536.010(2), RSMo 2000.

³ Commission Rule 4 CSR 240-22.020(56) states that "Stakeholder group means—

(A) Staff, public counsel, and any person or entity granted intervention in a prior Chapter 22 proceeding of the electric utility. Such persons or entities shall be a party to any subsequent related Chapter 22 proceeding of the electric utility without the necessity of applying to the commission for intervention; and

(B) Any person or entity granted intervention in a current Chapter 22 proceeding of the electric utility." (emphasis added)

⁴ *Order Regarding Staff's Motion to Compel*, issued on December 9, 2009, In the Matter of the Application of Kansas City Power and Light Company for Approval to Make Certain Changes in its Charges for Electric Service to Continue the Implementation of its Regulatory Plan, File No. ER-2009-0089.

distinguished from this case because the 2009 case was not an IRP proceeding, and the Commission's decision was based on the utility's assertion of privilege and not on classification as a noncontested case. Since Dogwood was granted intervention in both this case and Empire's previous IRP proceeding⁵, under the Commission's rules it is a party and entitled to issue data requests. The Commission concludes that Empire's objections to Dogwood's data requests on those grounds should be overruled.

Relevance of the information requested

Empire has also objected to data requests 1-20 on the basis of relevance.⁶ Empire argues that these data requests are designed to improperly obtain information regarding Empire's past decisions about the Riverton Unit 12 conversion project, rather than focusing on the planning process itself under the Chapter 22 IRP rules. Empire suggests that Dogwood is attempting to second-guess its management decisions relating to that project, for which a contract has been executed and on which engineering, procurement and construction activities have already begun. Dogwood asserts that Empire's decision on the conversion project might be still be reversed and proposes that Empire continue to reassess that decision in the future. Data requests 1-12 seek information relating to Empire's bidding and selection process for construction of the Riverton Unit 12 conversion project. Data requests 13-20 request information regarding the anticipated costs of the conversion project.

The Commission's IRP rules require electric utilities to undertake an extensive planning process in order "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

⁵ *Order Granting Intervention*, issued on September 23, 2010, In the Matter of Empire District Electric Company's 2010 Utility Resource Filing Pursuant to CSR 240-22, File No. EO-2011-0066, EFIS Item No. 15.

⁶ Empire did not object on the grounds of relevance to data requests 21 or 22.

manner that serves the public interest and is consistent with state energy and environmental policies”.⁷ As the Commission stated in its original Order of Rulemaking, “the focus of the rules should appropriately be on the planning process itself rather than on the particular plans or decisions that result from the process”.⁸

Commission Rule 4 CSR 240.090 provides that “[d]iscovery may be obtained by the same means and under the same conditions as in civil actions in the circuit court.” Rule 56.01 governs the scope of discovery in civil actions in the circuit court, and generally, “[p]arties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action....”⁹ Relevance, for purposes of discovery, is “broadly defined to include material “reasonably calculated to lead to the discovery of admissible evidence.”¹⁰ The party seeking discovery shall bear the burden of establishing relevance.¹¹

Dogwood’s data requests 1-12 seek information relating to Empire’s bidding and selection process for construction of the Riverton Unit 12 conversion project and relate to the implementation of that management decision. However, those data requests are not asking for information about Empire’s analysis and planning process in reaching that decision, but rather are attempting to elicit details about how a decision previously made was executed. This does not relate to Empire’s planning process under the IRP rules, so the Commission concludes that Dogwood has not demonstrated that these data requests request relevant information.

⁷ Commission Rule 4 CSR 240-22.010(2).

⁸ Missouri Register, Vol. 18, No. 1, p. 91 (January 4, 1993).

⁹ Rule 56.01(b)(1); *Ratcliff v. Sprint Missouri, Inc.*, 261 S.W.3d 534, 546 -547 (Mo. App. W.D. 2008).

¹⁰ *State ex rel. Wright v. Campbell*, 938 S.W.2d 640, 643 (Mo. App. E.D. 1997); *State ex rel. Pooker ex rel. Pooker v. Kramer*, 216 S.W.3d 670, 672 (Mo. banc 2007).

¹¹ *State ex rel. Collins v. Roldan*, 289 S.W.3d 780, 786 (Mo. App. W.D. 2009).

Data requests 13-20 ask for information about the anticipated costs of the conversion project. As part of the IRP process, Commission Rule 4 CSR 240-22.040 requires Empire to conduct an analysis of its supply-side resources, such as the Riverton Unit 12 facility. The rule requires that Empire identify and evaluate those supply-side resources by collecting cost information on each resource, including capital, operation and maintenance costs. For the purposes of an IRP proceeding, then, relevant information means data or information of the type intended to be produced during the IRP process. Since these data requests relate to cost information required by Commission Rule 4 CSR 240-22.040, the Commission finds that they are reasonably calculated to lead to the discovery of admissible evidence and, therefore, relevant to this proceeding.

The Commission concludes that all of Empire's objections to data requests 13-22 should be overruled. The Commission will direct Empire to respond to those data requests.

THE COMMISSION ORDERS THAT:

1. Dogwood Energy, LLC's *Motion to Compel Response to Data Requests* is granted, in part, and denied, in part, as described in the body of this order.
2. The Empire District Electric Company shall respond to Dogwood Energy, LLC's Data Requests 13-22 no later than January 29, 2014.

3. This order shall become effective immediately upon issuance.



BY THE COMMISSION

Morris L. Woodruff

Morris L. Woodruff
Secretary

R. Kenney, Chm., Stoll, W. Kenney,
and Hall, CC., concur.

Bushmann, Regulatory Law Judge