BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the 2009 Resource Plan of KCP&L Greater Missouri Operations Company Pursuant to 4 CSR 240-22.	)))	**File No. EE-2009-0237**

POST-HEARING BRIEF OF KCP&L GREATER MISSOURI OPERATIONS COMPANY

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KCP&L GREATER MISSOURI OPERATIONS COMPANY'S INITIAL BRIEF

Pursuant to Missouri Public Service Commission ("Commission") Rule 4 CSR 240-2.140 and the Commission's *Order Establishing Briefing Schedule* issued on August 2, 2011, KCP&L Greater Missouri Operations Company ("GMO" or "Company") hereby respectfully submits its Initial Brief in this matter.

I. INTRODUCTION

The purpose of the evidentiary hearing in this matter is "to determine whether GMO violated the terms and conditions of the Non-Unanimous Stipulation and Agreement that was approved by the Commission on June 12, 2010. (*Order Directing Filing, Providing Notice and Setting Hearing*, Ordered Paragraph 2, p. 2) Essentially, the hearing was intended to review the allegations contained in a Complaint filed by the Commission Staff ("Staff") on February 8, 2011 in the context of this Integrated Resource Planning ("IRP") case. However, Staff has now dismissed its Complaint, and Case No. EC-2011-0250 is closed. The primary issues to be reviewed now relate to concerns that were raised by the Missouri Department of Natural Resources ("MDNR") in the hearing. As discussed below, none of the concerns of MDNR demonstrate that GMO has violated the terms and conditions of the *Non-Unanimous Stipulation And Agreement.* As a result, the Commission should deny any relief proposed by MDNR, and

this case should be closed.[1]

A. Staff Complaint

On February 8, 2011, Staff filed a Complaint (EC-2011-0250) against GMO alleging that the January 18, 2011 Integrated Resource Planning ("IRP") filing was deficient under the Chapter 22 IRP rules and was in violation of the *Non-Unanimous Stipulation And Agreement* filed on April 12, 2010 ("*Non-unanimous Stipulation And Agreement*"), and the Commission's *Order Approving Stipulation And Agreement* issued on June 2, 2010. Specifically, the Staff alleged that GMO's revised IRP does not meet the requirements of 4 CSR 240-22.070 (10) and (11) and 4 CSR 240-22.080, (1) (A)-(D) and (7) and 4 CSR 240-22.010(2).

Staff was contending that GMO had not adopted a resource acquisition strategy or a "preferred plan" because GMO included in its January 18, 2010 Revised IRP filing the notice that GMO had "determined that the preferred resource plan filed in August, 2009 is no longer appropriate." GMO also indicated that it would need more time to study certain changed circumstances before it could decide upon a new "preferred plan," and it would be in a position to determine a preferred resource plan later in the summer of 2011 after further study.

On July 1, 2011, GMO submitted its completed analysis for its Integrated Resource Plan, including its "preferred" resource plan. GMO's July 1, 2011 Supplemental filing included a six-page Executive Summary, a 49-page Integrated Analysis (Volume 6); a 62-page Risk Analysis and Strategy (Volume 7), and a 25-page Implementation Plan and Resource Acquisition Strategy (Appendix 7A).

[1] The extensive procedural history of this case was discussed in GMO's Opening Statement, and it will not be repeated in detail herein. (Tr. 31-42)

At the evidentiary hearings, Staff counsel Kevin Thompson announced that from Staff's perspective, there was "no substantive violation or deficiency in the report GMO filed on July 1st, 2011." (Tr. 14) Subsequent to the conclusion of the evidentiary hearings on August 3, 2011, the Staff voluntarily dismissed its Complaint in Case Nos. EC-2011-0250 and EE-2009-0237. Staff's Voluntary Dismissal stated that Staff has the opinion that "GMO has met its obligations under the *Nonunanimous Stipulation and Agreement* ("S&A"), filed in Case No. EE-2009-0237 on April 12, 2010:

> Staff has analyzed and reviewed GMO's July 1, 2011, compliance filing and is of the opinion that GMO has met its obligation under the *Nonunanimous Stipulation and Agreement* ("S&A"), filed in Case No. EE-2009-0237 on April 12, 2010, signed by GMO and other parties including the Staff, and approved by the Commission on June 2, 2010.

Staff's Voluntary Dismissal, Case Nos. EE-2009-0237 and EC-2011-0250 (filed on August 3, 2011)

GMO wholeheartedly agrees with Staff that it has met its obligations under the *Non-Unanimous Stipulation and Agreement* filed in Case No. EE-2009-0237 on April 12, 2010.

Staff counsel also announced at the hearings that Staff would not go forward with the Complaint filed on February 8, 2011. (Tr. 14-15) According to Mr. Thompson, Staff's remaining issue to be addressed by the Commission was whether the Commission itself desired to have Staff continue to pursue the "lateness issue" by filing another complaint to address the fact that GMO did not choose a revised "preferred plan" until its July 1, 2011 Supplement Filing. (Tr. 15) This issue was resolved by the Commission's *Order Granting Leave For Staff To Voluntarily Dismiss Its Complaint* issued on August 10, 2011 wherein the Commission stated at page 2:

> Based upon the representations in the parties' pleadings, the Commission will grant Staff leave to dismiss its complaint. Additionally, because Staff has indicated that it believes GMO's IRP filing is complete and meets the obligations under the Agreement, the Commission will direct its Staff not to file additional complaints with regard to GMO's IRP.

On August 10, 2011, the Commission also closed Case No. EC-2011-0250. (*Order Granting Leave For Staff To Voluntarily Dismiss Its Complaint, p.* 2)(issued on August 10, 2011). GMO believes that this order has resolved the issues raised by Staff, and the Commission should now look toward the Company's expected application related to the Missouri Energy Efficiency Investment Act (MEEIA) to establish future policies related to GMO's demand-side management and energy efficiency programs, financial incentives, and cost recovery mechanisms. It should not waste its limited resources to rehash issues which have been addressed and satisfactorily resolved in this case.

B. MDNR's Position

At the conclusion of the hearings, MDNR's counsel in closing statements explained the agency's concerns and request as follows:

> As I had stated in my opening, IRPs are an essential tool electric utility companies and others, such as the Department of Natural Resources, use to determine whether a company's demand-side management programs are cost effective and therefore in compliance with the Missouri Energy Efficiency Investment Act. All of the parties here, including the Department of Natural Resources, have spent a significant amount of time and resources participating in the stakeholder process, and in the end, they did not get the product that they bargained for in that GMO agreed into in the non-unanimous stipulation and agreement.
>
> As a result, the Department of Natural Resources cannot properly evaluate GMO's programs, portfolios, and savings levels for cost effectiveness. If a determination cannot be made as to the cost effectiveness of these programs and portfolios, the harm will ultimately fall on GMO's customers if they do not result in savings to these customers. The evidence clearly shows that GMO did not comply with the non-unanimous stipulation and agreement or the Commission's rules.

> Therefore, in this case, the Missouri Department of Natural Resources is requesting this Commission to order GMO to live up to their end of the bargain and to comply with the non-unanimous stipulation and agreement as well as the Commission's rules by filing a credible IRP. Thank you.

First, GMO does not believe that it has violated any of the terms and conditions of the *Non-Unanimous Stipulation And Agreement* filed on April 12, 2010, and has already "lived up to their end of the bargain". Nevertheless, GMO will address MDNR's concerns in more detail below. However, to the extent that MDNR is requesting that the Commission order GMO to file a "credible IRP", GMO would simply re-iterate that it intends to file a full blown IRP Plan under the Commission's recently promulgated Chapter 22 Rules in April 2012. This IRP filing will address MDNR's concerns with updated information, and once again, allow the MDNR personnel to evaluate "GMO's programs, portfolios, and savings levels for cost effectiveness." It would be unnecessary and redundant for the Commission to direct GMO to do anything more in connection with GMO's August, 2009 IRP Plan, its January 2011 Revised IRP, or its July 1, 2011 Supplemental Filing. As Staff has found, there are no more deficiencies or violations to be addressed in these filings.

GMO believes it is now most important for the Commission to focus on the <u>future</u> policies of the State that will promote and encourage the development of DSM and energy efficiency programs--especially policies that give electric companies incentives to implement these programs rather than continuing to penalize the Companies financially for encouraging consumers to conserve or be more efficient in their use of electricity.

II. GMO'S RESPONSE TO SPECIFIC CONCERNS AND DEFICIENCIES RAISED BY MDNR.

In response to Data Request No. 3301, MDNR indicated that it had the following concerns:

"MDNR will assert at hearing that GM0 has violated this agreement on at least the following points:

1. GMO's selection of candidate alternative resource plans to submit to integrated analysis in its July 1, 2011 filing violates agreements that GMO reached with parties during the stakeholder process that was established in the April 12, 2010 Stipulation and Agreement.

2. GMO did not select a preferred plan in its January 18, 2011 filing did not fully honor the April 12, 2010 Stipulation and Agreement and agreements that GMO reached during the stakeholder process.

3. GMO's July 1, 2011 filing does not discuss or fully account for the changed circumstances to which GMO attributed its inability to select a preferred resource plan in its January18, 2011 filing.

MDNR asserts two additional deficiencies in GM0's various filings:

1. GMO has not demonstrated the cost-effectiveness of their DSM portfolio as required in 4 CSR 240-22.050(7).

2. GMO has changed the programs in their "enhanced" DSM portfolio presented in its July 1, 2011 filing, but has not provided the documentation of the programs as required in 4 CSR 240-22.050(6) (C) and 4 CSR 240-22.050(11)(G)." (GMO Ex No. 2)

For the reasons stated herein, the Commission should reject these "concerns" and "deficiencies", and instead focus on the GMO's expected MEEIA filing to establish policies related to DSM programs and energy efficiency programs.

A. MDNR Has Failed To Establish That Any Agreements Between MDNR And GMO Were Violated.

The only agreement between GMO and MDNR in this proceeding was formalized

in the *Non-unanimous Stipulation And Agreement* that was filed on April 12, 2010, and approved by the Commission in its *Order Approving Non-unanimous Stipulation And Agreement and Accepting Integrated Resource Plan* on June 2, 2010.

During the hearings, Dr. Adam Bickford, MDNR's witness, seemed to complain that GMO had "violated" subsequent "agreements" with MDNR. (Tr. 71-75) However, Dr. Bickford admitted that there were no agreements filed after the April 12, 2010 *Non-Unanimous Stipulation And Agreement*. (Tr. 112) While GMO and MDNR had extensive discussions during the stakeholder process, it is incorrect to suggest that formal or informal agreements were reached, and that GMO somehow "violated" agreements that were never made or filed with the Commission. In any event, GMO does not believe it has violated any of the terms and conditions of the *Non-Unanimous Stipulation And Agreement* that was approved by the Commission in this case.

B. GMO Selected a Preferred Plan in its Original IRP Filing, Re-considered the Preferred Plan As A Result of Changed Circumstances, and then Subsequently Adopted a Preferred Plan in Its July 1st, 2011 Supplemental Filing.

As explained in the hearings, the Company's filings should be viewed as a cumulative process-- with filing its original IRP Plan in August 5, 2009, its Revised IRP filing in January 18, 2011, and finally its Supplemental Filing to the IRP Plan which was filed on July 1, 2011. Taken together, GMO believes it has fully complied with the Commission's Chapter 22 Rules and has satisfied the concerns expressed by Staff in its Complaint and MDNR's witness in the hearings.

MDNR, like Staff, criticizes GMO for failing to select a "preferred plan" when it filed its Revised IRP on January 18, 2011. However, MDNR's witness acknowledged

that GMO did indeed select a preferred plan in its Supplemental Filing on July 1, 2011. (Tr. 119)

GMO has explained at length during the hearings the reasons that it was unable to select a "preferred plan" in its January 18, 2011 Revised IRP filing. (Tr. 25-43; 132) Essentially, the Company needed to review in more depth the natural gas prices, CO2 emissions costs, and recently proposed Environmental Protection Agency ("EPA") rules (i.e. the "changed circumstances") before it could select a "preferred plan". (Tr. 132) In addition, there were many policies related to DSM and energy efficiency programs in flux in January 2011 that required evaluation by the Company. In particular, the expected financial treatment of substantial DSM and energy efficiency investments was uncertain, and the Company believed it needed more certainty before it selected a preferred plan.

After more fully evaluating these issues and receiving an order from the Commission in the GMO Rate Case, GMO filed its Supplemental Filing in July, 2011, which included a "preferred plan." Staff has now dismissed its Complaint, recognizing that GMO has fully complied with the Chapter 22 Rules. The Commission should also recognize GMO's compliance, and reject MDNR's position on this issue.

C. GMO's Supplemental Filing Included Analysis of The Factors That Changed From Its Original IRP Filing.

MDNR's third criticism was that "GMO's July 1, 2011 filing does not discuss or fully account for the changed circumstances to which GMO attributed its inability to select a preferred resource plan in its January18, 2011 filing." According to Dr. Bickford, the Company did not fully explain or justify the changed circumstances. (Tr. 119) However,

this criticism is also misplaced since the Company included in its July 1st Supplemental Filing the revised data, including revised natural gas prices, the revised CO2 emissions assumptions, and the consideration of the EPA's new transport rule. (Tr. 119-20).

Apparently, the real criticism of Dr. Bickford is that while the Company admittedly used the revised data that caused the conclusion that there were "changed circumstances" in its Supplemental Filing, it did not compare the data on a side-by-side basis. (Tr. 120) However, even Dr. Bickford admitted that there was nothing in the Chapter 22 Rules that specifically requires such a side-by-side comparison of the data. (Tr. 120) More importantly for this proceeding, there is nothing in the *Non-Unanimous Stipulation And Agreement* that required this type of comparison.

GMO believes it is now important for the Commission to focus on the future policies of the State that will promote and encourage the development of DSM and energy efficiency programs--especially policies that give electric companies incentives to implement these programs rather than continuing to penalize the Companies financially for encouraging consumers to conserve or be more efficient in their use of electricity.

D. GMO Demonstrated the Cost-Effectiveness of Its DSM Programs in Its Original IRP Filing Made On August 5, 2009.

MDNR's fourth criticism was that the Supplemental Filing in July 2011 did not demonstrate the "cost-effectiveness" of its DSM programs in the Supplemental Filing. (Tr. 120) During cross-examination, Dr. Bickford admitted, however, that there was a cost effectiveness test of the DSM programs done by GMO in its original IRP Filing in August, 2009. (Tr. 120-21; *See also* Tr. 137). This MDNR criticism is apparently based upon Dr. Bickford's unrealistic expectation that all IRP filings would include a

completely new, full blown IRP Plan (Tr. 112-13), including a new "cost-effectiveness" test. (Tr. 121) Dr. Bickford also agreed that there was nothing in the *Non-Unanimous Stipulation And Agreement* that required GMO to do a completely new "cost-effectiveness" test in its Supplemental Filing. (Tr. 122):

[Fischer]: Q. Was there anything in the non-unanimous stipulation and agreement that required that?

[Bickford]: A. No, it was something that we assumed would happen, however. (Tr. 122)

Just because MDNR assumed there would be a new "cost-effectiveness" test of the DSM programs is not sufficient reason to require GMO to go back now and perform another cost-effectiveness test. The analysis has been done that showed GMO's DSM programs are cost-effective, and it would be a waste of scarce resources to require the recreation of the analysis to paper the file. Apparently, MDNR does not really believe that the Company's DSM programs would fail the cost-effective test anyway since it seems to be advocating a much more extensive investment in DSM than even the Company believes is appropriate and realistic. More importantly, MDNR has failed to demonstrate that a new cost-effectiveness test was required by the terms and conditions of the *Non-Unanimous Stipulation And Agreement*. As a result, MDNR's fourth criticism should also be rejected.

E. GMO Was Not Required To Select An "Agreed Upon" Plan As Its "Preferred Plan" By the Terms and Conditions of the *Non-Unanimous Stipulation And Agreement*.

MDNR's final criticism is that GMO has changed the programs in their "enhanced" DSM portfolio presented in its July 1, 2011 filing, but has not provided the

documentation of the programs as required in 4 CSR 240-22.050(6) (C) and 4 CSR 240-22.050(11)(G)." (GMO Ex No. 2).

During the Stakeholder Process, GMO discussed with other parties several alternative resource plans that it agreed to model and fully evaluate ("Agreed Upon" Plans). However, GMO did not agree to adopt any of the "Agreed Upon" Plans as its Preferred Plan. Staff witness Lena Mantle agrees that the *Non-Unanimous Stipulation And Agreement* does not require that GMO select one of the "Agreed Upon" Plans as its own Preferred Plan:

[Fischer]: Q. Okay. I wanted to clarify one other thing. In response to a data request that we sent, I believe the Staff expressed the opinion that the language of the stipulation and agreement, the non-unanimous stipulation and agreement that we've been talking about, does not require GMO to use the stakeholder-agreed-to demand-side programs in its updated analysis and its preferred plan. Is that the Staff's opinion?

[Mantle]: A. There are no direct words to that in the stipulation agreement. Some of the parties may have a disagreement of what the intent was, but we looked at what the words were.

[Fischer]: Q. Okay. And just to clarify, I think it's clear in the record, but at the present time, the Staff no longer is asserting there are deficiencies that need to be addressed as part of the Complaint?

[Mantle]: A. At this time, that is correct. (Tr. 58-59)

III. CONCLUSION

In conclusion, the purpose of this hearing is "to determine whether GMO violated the terms and conditions of the *Non-Unanimous Stipulation and Agreement* that was approved by the Commission on June 12, 2010." (*Order Directing Filing, Providing Notice and Setting Hearing*, Ordered Paragraph 2, p. 2) None of the criticisms raised by MDNR or any other party in this proceeding has demonstrated that GMO violated the terms and conditions of the *Non-Unanimous Stipulation And Agreement*.

WHEREFORE, KCP&L Greater Missouri Operations Company respectfully requests that the Commission deny the relief being requested by MDNR, and close this case.

Respectfully submitted,

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September 8, 2011

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was delivered by first class mail, electronic mail or hand delivery, on this 8th day of September, 2011 to the parties of record.

/s/ Roger W. Steiner
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