BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

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

MISSOURI DEPARTMENT OF NATURAL RESOURCES'
INITIAL BRIEF

COMES NOW the Missouri Department of Natural Resources (MDNR) and for its Initial Brief states as follows:

MDNR is not seeking penalties for KCP&L General Missouri Operations' (GMO's) non-compliance with the Stipulation and Agreement (S&A) and the stakeholder process in this case. It is asking this Commission to protect the integrity of the planning process as well as the agreements reached by MDNR and other parties with GMO during the detailed stakeholder process portion of the S&A designed to resolve a majority of the deficiencies and concerns with GMO's August 2009 Integrated Resource Plan (IRP). MDNR wants the Commission to address the specific instances of non-compliance with the S&A identified in the hearing in this case; specifically the unexplained changes to demand side management (DSM) programs and program savings levels, the absence of a preferred resource plan in the January 18, 2011 revised IRP, the failure of GMO to submit its agreed-to DSM portfolios to integration and the absence of an analysis investigating retirement of the Sibley 3 power plant. MDNR and the other parties to the S&A devoted a significant amount of time and resources to this agreed-to, Commission approved process, and despite that effort, in the end GMO failed to deliver on its bargain. MDNR and the other stakeholders are faced with an IRP that does not live up to the expectations contemplated in the Stakeholder Process Agreement (SPA). As a result, the parties are left with an IRP

containing a DSM portfolio that cannot be properly evaluated, and skepticism as to whether the remaining agreement provisions of the S&A regarding the April 2012 IRP filing will be honored.

In addition, MDNR requests the Commission to consider any additional issues, including deficiencies and concerns, filed or to be filed by MDNR, the Commission Staff (Staff) and other parties, in response to GMO's July 1, 2011 revised IRP filing. These additional issues, deficiencies and concerns will be addressed in filings made or to be made within 120 days of GMO's July 1, 2011 revised IRP.

Significance of the Stakeholder Process to the Stipulation & Agreement

First, it is important to note that the S&A was entered into in lieu of a hearing before this Commission and would not have been needed had the IRP filed by GMO in August of 2009 (supplemented on November 5, 2009) complied with the Commission's "old" Chapter 22 IRP rule (Staff Exhibit 1). Several parties, including MDNR, Staff, Missouri Office of Public Counsel (OPC) and Dogwood Energy (Dogwood) pointed out deficiencies and concerns to the Commission suggesting that the IRP did not conform to those rules.

The result of the parties' negotiations was **not** an S&A that resolved all the alleged deficiencies and concerns within its four corners. Instead, the result included an agreement to a long-term stakeholder process provided for in the SPA attached as Appendix 1 to the S&A. The SPA contained a very specific schedule of meetings and agendas designed to result in a revised GMO IRP that would be compliant with the Commission's IRP rules. The stakeholder process was to be the source of resolution to the majority of the deficiencies and concerns expressed in the detailed reports filed by MDNR and others. In fact, the S&A document itself has limited value when read alone, as only a small percentage of the deficiencies and concerns were fully resolved in the S&A itself (MDNR Ex. 2; see, for examples page 3, 13). The majority of the

deficiencies and concerns were addressed by reference to "the agreement to a stakeholder process and revised filing contained in Appendix 1." (MDNR Ex. 2, pages 3, 4, 5, 7, 9, 10, 11, 12, and 13). The resolution of several additional deficiencies and concerns was deferred to GMO's next Chapter 22 compliance filing in April of 2012, but with specific agreements as to studies, analysis and information to be either shared with the stakeholders or included in that April, 2012 filing (MDNR Ex. 2, pages 9-10). MDNR considers that each element of the stakeholder process is essential to the bargain it struck with GMO and the other parties.

GMO's opening statement and cross-examination questions implied that since no new agreement was presented to the Commission since the April 12, 2010 S&A, GMO cannot be held to any agreements it made during stakeholder process (Tr. 39 and 118). The implication that any "agreement" made during the stakeholder process didn't "count" (i.e., "object to the characterization of it as an agreement with GMO" (Tr. 72)) carries a chilling message.

The parties to the S&A were entitled to expect that GMO would take its commitment to the stakeholder process seriously, as the SPA represented the benefit of the bargain to MDNR and other parties. The parties also had a reasonable expectation that when GMO agreed to certain actions in stakeholder meetings, sometimes confirmed in writing (MDNR Ex. 3, 4 and 5), GMO would act in accordance with its agreements and commitments, and in a manner consistent with maintaining the integrity of the process. "{T}his stipulation and agreement established a stakeholder process, and that through the stakeholder process, we would reach additional agreements with the Company. The agreements that are reflected in these e-mails represent those additional agreements that were made in the process." (Tr. 124).

Instead, and without any advance notice or explanation, GMO filed an admittedly incomplete supplemental IRP filing on January 18, 2011, and a "Completed Analysis for Its

Integrated Resource Plan and Its Preferred Resource Plan" on July 1, 2011, both of which are inconsistent with the S&A and some of the commitments from the stakeholder process. MDNR is not suggesting that the stakeholders could or should argue that GMO must adopt a specific preferred resource plan or a specific set of DSM programs in its IRP, but it is reasonable to expect that the agreements in the stakeholder process would be honored (Tr. 124-125). GMO's approach to these issues also puts into question the likelihood that the significant commitments made by GMO for its next IRP compliance filing, scheduled to be filed in April of 2012 (i.e., MDNR Ex. 2, p. 9-10), will be fulfilled.

Specific Areas of Non-Compliance with S&A and SPA

There are three specific areas where MDNR has identified areas of non-compliance with GMO's January 18, 2011 and July 1, 2011 revised IRPs. These are: 1) the changes in GMO's DSM portfolio; 2) the preferred resource plan; and 3) the absence of analysis of the retirement of the Sibley 3 coal unit.

1. DSM Portfolio

During the stakeholder process, the parties reached agreements (MDNR Ex. 3 and 4) regarding the levels of DSM that would be run through integration analysis (Tr. 69, 71, 73). However, GMO's January 18, 2011 revised IRP contained DSM levels that were different than what was agreed to during the stakeholder process (MDNR Ex. 7). In fact, the DSM levels were higher (Tr. 79). While it is encouraging to see an increase in DSM levels from a policy perspective, GMO did not provide additional analysis to demonstrate that the levels of savings were cost effective (Tr. 79-80), which is required by the Commission's regulations (Tr. 87). As a result, MDNR was not able to complete a review of GMO's DSM portfolios for cost effectiveness (Tr. 87-88).

Similarly, the DSM levels in GMO's July 1, 2011 revised IRP were also different from what had been previously agreed to during the stakeholder process (Tr. 102-103). However, this time, the levels were lower and produce less energy savings (Tr. 102-103). GMO did not test these savings levels for cost-effectiveness (Tr. 107). Additionally, GMO's selection of its DSM programs was different than the programs included in its January 18, 2011 revised IRP and agreed to during the stakeholder process (Tr. 94). "The July filing included the Residential Lighting and Appliances program, which was a different program and omitted the Affordable New Homes program. So there were two changes in the portfolio there." (Tr. 99). Furthermore, because GMO failed to provide a description of the Residential Lighting and Appliances program (Tr. 95), MDNR was unable to complete an analysis of this new program (Tr. 108).

2. Preferred Resource Plan

GMO failed to select a preferred resource plan in its January 18, 2011 revised IRP, in contravention to the Commission's regulations and the S&A (Tr. 85). GMO's reasons for not selecting a preferred resource plan included changes in natural gas price forecasts, changes in Carbon Dioxide (CO2) price forecasts and changes in Environmental Protection Agency (EPA) regulations (Tr. 86). However, if these changes were significant enough to affect GMO's ability to select a preferred resource plan, they should have also had significant impacts to the supply-side resources, and as MDNR points out, they did not. (Tr. 106).

In addition, although GMO selected a preferred resource plan in its July 1, 2011 revised IRP filing, it did not select a plan that was discussed or even mentioned during the stakeholder process, and it was not included in any of the reports that were filed with the Commission (Tr. 104). "[W]e had a set of plans that we had agreed – agreed to have modeled and the plans that were modeled to produce a preferred resource plan were different, completely different." (Tr.

104). Selecting a preferred resource plan that was not brought before the stakeholders completely undermines the purpose of the stakeholder process because there was not an opportunity for the stakeholders to comment or even provide alternatives to this plan (Tr. 104).

3. Retirement of the Sibley 3 Coal Unit

The S&A contained a very explicit agreement regarding consideration of the retirement of the Sibley 3 coal unit. "Parties will work to define one or several accommodations of resources that appear most likely to provide the least cost replacement for the Sibley 3 unit, if that unit is retired. Based on this discussion, GMO agrees to develop at least one alternative resource plan that includes retirement of Sibley 3 and to include this alternative resource plan in the revised integration analysis for the filing due September -- excuse me, December 17th, 2010." (Tr. 110). The alternative resource plans submitted by GMO in its July 1, 2011 revised IRP filing, however, did not include the retirement of Sibley 3, in contravention to the S&A. (Tr. 102).

Consequences and Request for Relief

Because of the violations of the S&A by GMO, the integrity of the stakeholder process was breached, a credible IRP plan is still not on file, and the preferred resource plan with the reduced level of DSM was selected despite indications that a higher level of DSM savings was viable and should have been analyzed further for possible inclusion in the preferred resource plan. (Tr. 100–102) MDNR has indicated that it does not wish to pursue a complaint against GMO for these violations because "its concerns with GMO's compliance with the Agreement and the relief it is seeking are properly before the Commission" in this matter (the IRP case), and can be addressed herein (Missouri Department of Natural Resources' Response to Staff's Voluntary Dismissal, August 9, 2011, p. 2).

MDNR's role in this case is not that of a regulatory body and its interest is not punitive in nature. However, GMO's actions contravene the agreements in the S&A and the stakeholder process and place the integrity of its IRP and the stakeholder process in question. MDNR requests that this Commission order GMO to live up to its end of the bargain from the agreements made during the stakeholder process and to comply with the S&A by correcting the deficiencies noted by MDNR, including filing a credible, revised IRP. It has been over two years since GMO filed this triennial IRP. After two years of lengthy and difficult negotiations, and numerous meetings during the stakeholder process, MDNR's confidence in GMO's analysis is severely shaken. As a consequence, MDNR was compelled to pursue this matter despite Staff's withdrawal of the formal complaint. MDNR realizes that a request that the Commission order GMO to now refile an IRP consistent with its previous agreements is unlikely to prevail. However, the Commission needs to be aware of the extent to which the process has been undermined, resulting in a revised plan that is not credible or even capable of being evaluated to determine its credibility. MDNR also encourages the Commission to find that GMO has violated the terms of the S&A (considered in its entirety—including the SPA and agreements made during the SPA process) and remind GMO that is it obligated to comply fully with the remaining agreements in the S&A that are specifically applicable to the analysis and stakeholder process for its upcoming April 2012 integrated resource plan.

MDNR Continues to Review the GMO IRP:

As stated on the record, MDNR has not completed its review of the "complete" GMO IRP, up to and including the July 1, 2011, filing (Tr. 22, 23). The law judge assured the parties during the hearing on August 1, 2011 that they would not be precluded from completing their review and responding to GMO's July 1, 2011 revised IRP (Tr. 25). MDNR expects to conclude

its review soon and intends to file its comments, alleged deficiencies and concerns well in advance of the expiration of the 120 day period following the July 1, 2011 filing, which would run until November 1, 2011.

WHEREFORE, MDNR respectfully submits its Initial Brief in this matter.

Respectfully submitted,

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or emailed to all counsel of record this 8th day of September, 2011.

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