

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of the Application of KCP&L                    )  
Greater Missouri Operations Company for                    ) Case No. ER-2009-0090  
Approval to Make Certain Changes in Its                    )  
Charges for Electric Service                                    )

**MOTION TO STRIKE DOGWOOD SURREBUTTAL TESTIMONY**

COMES NOW KCP&L - Greater Missouri Operations Company (“GMO” or “Company”) and for its motion hereby states:

1. On April 9, 2009, Dogwood Energy, LLC (“Dogwood”) filed the surrebuttal testimony of Judah Rose. This testimony violates Commission Rule 4 CSR 240-2.130(7)(C) because the testimony should have been filed at the rebuttal stage.

2. The Commission’s rules (4 CSR 240-2.130(7)(c)) provide that for the purpose of filing prepared testimony, direct, rebuttal, and surrebuttal testimony are defined as follows:

(C) Where only the moving party files direct testimony, rebuttal testimony shall include all testimony which explains why a party rejects, disagrees or proposes an alternative to the moving party’s direct case; and

(D) Surrebuttal testimony shall be limited to material which is responsive to matters raised in another party’s rebuttal testimony.

3. On September 5, 2008, GMO filed the direct testimony of H. Davis Rooney. On pages 23-25 of Mr. Rooney’s direct testimony, he described a 2007 GMO Request for Proposals (“RFP”) for its short term and long term resource needs. Mr. Rooney described GMO’s analysis of the RFP responses and that the Crossroads plant was determined by GMO to be the least cost and preferred option to meet GMO’s resource needs.

4. Pages 10-11 and 14-15 of Mr. Rose's surrebuttal testimony indicates that 2007 RFP results were presented in Mr. Rooney's direct testimony which requested full cost recovery for the Crossroads plant. Mr. Rose notes that GMO witness Burton Crawford reiterated Mr. Rooney's conclusion in his rebuttal testimony. Thus, Dogwood was aware that the 2007 RFP and the ultimate selection of Crossroads in that RFP was an issue in this case when GMO's direct case was filed on September 5, 2008.

5. Mr. Rose's surrebuttal testimony takes exception to GMO's analysis of the 2007 RFP and explains in great detail (almost 40 pages) why Dogwood believes that GMO's selection of Crossroads over Dogwood's RFP bid was not appropriate. Mr. Rose testifies that GMO's RFP analysis was flawed because GMO's model did not consider off system sales and Mr. Rose provides an independent analysis to correct for this alleged flaw.

6. Dogwood did file rebuttal testimony of Robert Janssen. Mr. Janssen states at p. 3 of his testimony the purpose of his testimony was to respond to the Staff's Cost of Service Report. Mr. Janssen notes GMO's 2007 RFP selection of Crossroads but he does not testify to specific Dogwood problems with the way GMO analyzed the 2007 RFP. Under the Commission Rule 4 CSR 240-2.130(7)(C), Dogwood's rebuttal was required to include all testimony which explains why a party rejects, disagrees or proposes an alternative to the moving party's direct case. Instead, Dogwood only made general criticism of the Crossroads plant itself in Mr. Janssen's rebuttal testimony and delayed its technical criticism of the 2007 RFP selection of Crossroads until Mr. Rose's surrebuttal testimony. This delay tactic is expressly prohibited by the Commission's rules.

7. Dogwood may argue that Mr. Rose was responding to GMO witness Crawford's rebuttal testimony, which does further discuss on p. 9 the 2007 RFP. Mr. Crawford's testimony

also includes as an exhibit BLC-1 a presentation made to Staff regarding the 2007 RFP. This argument must fail because Mr. Crawford was properly responding to Staff's direct case, which replaces the energy resources from Crossroads with other resources. Under the Commission's rules, Dogwood's opportunity to take issue in testimony with the 2007 RFP selection process was at the rebuttal stage as the Company's selection of Crossroads was part of GMO's direct case. Dogwood could have also responded to Mr. Crawford in surrebuttal testimony, but it cannot present its entire RFP selection process critique and a new selection methodology in surrebuttal testimony since the results of GMO's selection process were presented by GMO in direct testimony.

8. Because Dogwood filed its critique of GMO's RFP analysis at the surrebuttal stage, KCPL has no opportunity in testimony to refute Dogwood's allegations or respond to Dogwood's new methodology. Dogwood's actions also limits GMO and other parties the ability to propound data requests and seek other discovery regarding Dogwood's critique of GMO's 2007 RFP. Dogwood's actions are in direct contravention of the Commission's rules which require the use of prefiled testimony so that all issues may be developed in testimony and that the incidence of "sandbagging" by parties is reduced. Dogwood's tactics frustrate the process of fair play by ambushing GMO in surrebuttal testimony and should not be allowed by the Commission.

WHEREFORE, GMO requests that the Commission strike the surrebuttal testimony of Judah Rose as failing to comply with the Commission's rules.

Respectfully submitted,

/s/ Roger W. Steiner

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**CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the above and foregoing Motion to Strike Dogwood Surrebuttal Testimony has been hand-delivered, emailed or mailed, First-Class mail, postage prepaid, this 22<sup>nd</sup> day of April, 2009.

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/s/ Roger W. Steiner  
Roger W. Steiner