

**BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION**

In the Matter of the Application of Aquila, )  
Inc. d/b/a KCP&L Greater Missouri )  
Operations Company for Approval ) Case No. ER-2009-0090  
to Make Certain Changes to its Charges )  
for Electric Service. )

**DOGWOOD ENERGY, LLC’S RESPONSE OPPOSING MOTION TO STRIKE  
DOGWOOD SURREBUTTAL TESTIMONY**

COMES NOW Dogwood Energy, LLC (“Dogwood”) and for its Response Opposing the Motion to Strike Dogwood Surrebuttal Testimony that was filed by KCP&L – Greater Missouri Operations Company (“GMO”) states to the Commission:

1. GMO filed its Motion to Strike on April 22, 2009. On April 23, 2009 the Commission shortened the standard 10-day response time and directed that responses be filed by April 30, 2009.
2. As GMO indicates in its Motion, it filed direct testimony regarding its proposal to include the Crossroads plant located in Mississippi in its Missouri ratebase. (Rooney Direct, p. 23-28). That testimony included less than two pages of high level summary of GMO’s analysis of responses to a 2007 RFP, through which it determined that it should rely on the Crossroads plant to meet capacity needs. (Rooney Direct, p. 24-25).
3. As GMO admits in its Motion, it then filed rebuttal testimony regarding its Crossroads proposal. (B. Crawford Rebuttal, p. 1-14). In that testimony, GMO provided much more specific information concerning its 2007 RFP analysis, including a copy of a

27-page presentation it made to staff in October 2007. (B. Crawford Rebuttal, p. 1-14 and Schedule BLC-1).

4. GMO correctly states that Dogwood filed rebuttal testimony that responded to GMO and Staff direct testimony. (Janssen Rebuttal).

5. Dogwood also exercised its rights to respond to the more detailed information that GMO chose to introduce in its rebuttal testimony. (Rose Surrebuttal). Dogwood's surrebuttal testimony expressly states that it "responds to the rebuttal testimony of Burton Crawford submitted on March 13, 2009 on behalf of ... GMO." (Rose Surrebuttal, p. 4). Further, Dogwood's witness states: "Specifically, I respond to his [Crawford's] claim that the Crossroads Energy Center provided the lowest 20-year Net Present Value of Revenue Requirements (NPVRR) including the cost of transmission service in the GMO 2007 Request for Proposal (RFP). My analysis indicates the opposite, namely the Dogwood offer had lower costs than the Crossroads peaking plant in 2007, and has even a greater advantage based on the March 13, 2009 testimony of Robert Janssen of Dogwood Energy in which he presents a lower price for Dogwood supply." (Rose Surrebuttal, p. 4).

6. Commission rule 4 CSR 240-2.130(7)(D) allows surrebuttal testimony which is responsive to matters raised in another party's rebuttal testimony.

7. GMO should direct its complaints back onto itself. It could have included all the detail provided by Mr. Crawford about the 2007 RFP in its direct testimony that was filed in September 2008, but instead chose to wait until the rebuttal round. Dogwood has a right to respond to that rebuttal testimony by means of surrebuttal.

8. Dogwood indicated in rebuttal that it agreed with Staff's opposition to GMO's direct case proposal to include Crossroad in ratebase based on the 2007 RFP process, but then demonstrated that there was a real alternative solution (the Dogwood plant) to address GMO's capacity needs, instead of Staff's hypothetical proxy peaker. (Janssen Rebuttal).

9. When GMO made the tactical decision to provide substantial detail regarding its 2007 RFP analysis in rebuttal testimony, it should have anticipated that parties such as Dogwood might then provide a detailed response in surrebuttal.

10. There is no basis for GMO's motion to strike. Dogwood had the right to respond to GMO's direct testimony as it deemed necessary, and then had the further right to respond to GMO's more detailed rebuttal testimony as it deemed necessary. GMO is not in a position to control the evidence in this case by putting whatever it wants in rebuttal and then attempting to muzzle other parties through artificial and self-serving limits on surrebuttal. Nothing precluded GMO from having Mr. Crawford provide his information about the 2007 RFP in direct testimony, but instead GMO chose to wait until rebuttal. As a result, it cannot legitimately object to Dogwood response by surrebuttal. GMO appears to claim the right to have the last word in this case, but in truth it agreed to a procedural schedule under which all parties had the right to file simultaneous surrebuttal. Thus, neither GMO nor any other party had the sole opportunity to have the last word.

WHEREFORE, the Commission should deny GMO's Motion to Strike Dogwood's Surrebuttal Testimony.

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 was served upon the parties identified on the attached service list on this 30th day of April, 2009, by either placing same in the U.S. Mail, postage paid, by fax or email transmission.

/s/ Carl J. Lumley

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