

**BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION**

In the Matter of the Application of )  
KCP&L Greater Missouri Operations ) File No. ER-2010-0356  
Company for Approval to Make Certain )  
Changes in its Charges for Electric )  
Service. )

**DOGWOOD ENERGY, LLC'S REPLY TO GMO'S APPLICATION FOR REHEARING**

Comes now Dogwood Energy, LLC pursuant to 4 CSR 240-2.080 and Commission Order, and for its Reply to GMO's Application for Rehearing states to the Commission:

1. The record shows that GMO has not exercised its option to purchase the Crossroads generating plant and has not leased that plant (and accordingly has never obtained the requisite advance Commission approval to acquire the plant pursuant to Section 393.170). The record shows that GMO has an agreement (albeit a document that is not in evidence) under which it makes periodic payments for energy and capacity, for the limited term of the agreement. The record shows that the agreement is simply a purchase power agreement, which has been assumed by GMO. Under that agreement, Clarksdale as plant owner and operator bears the risks of underperformance and the other liabilities of an owner/operator. Clarksdale employed tax exempt municipal financing to build its plant, which would be voided if GMO acquired the plant. (Janssen Rebuttal, p. 7-8; Rollison Rebuttal, p. 2-4; Weisensee Direct, p. 55; Crawford Tr. 4053, 4059; GMO Initial Brief, p. 9). The Commission recognizes these facts in its Report and Order, at pages 88-89.

2. In its Application for Rehearing, Dogwood establishes that the Commission cannot lawfully include the Crossroads plant in GMO's rate base. Dogwood also establishes that the record shows that Crossroads is not the prudent choice, even when recognized as only a purchase power arrangement. The Commission essentially agreed, at least in part, when it determined that the transmission costs associated with Crossroads are excessive and unreasonable (because the plant is not in GMO's service area where an equivalent source of power could and should be).

3. GMO has clouded the issues in this proceeding by using imprecise language in its testimony and pleadings, including now in its Application for Rehearing. On page 1 of its Application, GMO attempts to equate estimated plant valuation to “original costs expended.” But GMO has not made such a lump sum purchase; it simply pays for power from Crossroads periodically. On page 10 GMO refers to the “time of transfer” of the plant, but the record shows that there was no such transfer, just an unapproved accounting change. GMO refers to plant acquisition by GPE and “what GPE paid for the facility” on page 14, but all that occurred was an assignment by an affiliate to GMO of the contract with Clarksdale (the plant owner/operator) and assumption of prospective periodic payments by GMO. Likewise, GMO’s various references to “includ[ing] the Crossroads Energy Center in its generation fleet” are misleading.

4. GMO admits at page 16 that the merger transaction did not involve negotiations for individual assets. But it fails to concede that it is trying to allocate part of the merger price to Crossroads even though it does not own or lease the plant. The only appropriate allocation of a portion of the merger price to Crossroads would be an estimate of the market value of the assigned contract (i.e. if the contract contains prices for future capacity and energy that were below market prices at the time of the merger), for which there is no evidence. The contract could in fact have no value or even a negative value, as an asset. But a contract to pay for power over time, for a limited period of time, does not have a value equal to the total value of a power plant.

5. The Commission has the authority to examine the annual costs associated with the Crossroads purchase power agreement, determine them to be excessive, and only allow adjusted costs to be included in operating expenses. For example, the Commission can lawfully determine that GMO should be buying power from a plant proximate to its load and accordingly exclude the costs of transmission from Mississippi. The evidence certainly shows that such a plant in GMO’s

service area (whether Dogwood or a hypothetical expansion of South Harper) would present a better solution to GMO's capacity needs.

6. However, as shown in Dogwood's Application for Rehearing, and its prior Briefs, the Commission does not have the authority to allow GMO to earn a return, or take depreciation expense, on a fictitious purchase price for a plant that is still owned by Clarksdale. GMO is not entitled to a return when it has not undertaken the risk of investment. *See, e.g., State ex rel Associated Natural Gas Co. v. PSC*, 706SW2d 870, 875 (Mo App 1985). As a purchaser of power, GMO is not a plant owner. Report and Order, Case No. ER-2007-0002 (2007), starting p. 44, *aff'd State ex rel. Public Counsel v. PSC*, 274 SW3d 569, 580-81 (Mo App 2009). GMO is only entitled to a return (and depreciation) on its assets, not assets owned by others that sell it power.

7. As shown by Dogwood's Application for Rehearing, the Commission's Report and Order herein is unlawful, unjust and unreasonable regarding the decision to include Crossroads in GMO's rate base. In this regard, the Report and Order is not supported by substantial and competent evidence, and it does not contain adequate findings of fact and conclusions of law. Dogwood has provided sufficient reason for the Commission to grant and hold rehearing pursuant to Section 386.500 RSMo. and 4 CSR 240-2.160. The Commission should not be deterred by the misleading language of GMO's Application for Rehearing. **The Commission should find and conclude that the Crossroads Energy Center cannot lawfully or reasonably be included in GMO's rate base, and accordingly adjust the remaining parts of its Report and Order.**

Pending such rehearing, the Commission should stay the effectiveness of the Report and Order and take such other and further action as may be required to preclude new rates taking effect for GMO pursuant thereto, in order to protect Dogwood and other ratepayers from unlawful rate increases.

WHEREFORE, Dogwood Energy, LLC respectfully requests the Commission to grant its Application for Rehearing.

Respectfully submitted,

CURTIS, HEINZ,  
GARRETT & O'KEEFE, P.C.

/s/ Carl J. Lumley

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### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this document was emailed to the parties listed below on this 23rd day of May, 2011.

/s/ Carl J. Lumley

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