

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

The Staff of the Missouri Public Service)
Commission,)
)
Complainant,)
)
vs.)
)
KCP&L Greater Missouri Operations)
Company,)
)
Respondent.)

Case No. EC-2011-

COMPLAINT

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, and for its Complaint against KCP&L Greater Missouri Operations Company, states as follows:

Introduction

1. This Complaint concerns Respondent’s violation of certain Commission rules and orders by filing a deficient Integrated Resource Plan.

Complainant

2. Complainant is the Staff of the Missouri Public Service Commission (“Staff”), acting through the Chief Staff Counsel as authorized by Commission Rule 4 CSR 240-2.070(1).

Respondent

3. Respondent KCP&L Greater Missouri Operations Company (“GMO”) is a Delaware general business corporation in good standing, duly authorized to do business in Missouri. Its principal place of business is located at 1200 Main

Street, Kansas City, Missouri 64105, and its registered agent is National Registered Agents, Inc., 300 B East High Street, Jefferson City, Missouri 65101.

4. GMO has been, since July 14, 2008, a wholly-owned subsidiary of Great Plains Energy, Inc. (“GPE”), a publicly-traded, unregulated, public utility holding company that also owns Kansas City Power and Light Company (KCPL).

Jurisdiction

5. GMO is in the business of owning, controlling and operating electric plant, as defined at § 386.020(14), RSMo, used for generating, transmitting and distributing electricity for sale to the public for light, heat and power. According to GPE’s Form 10-K filed with the United States Securities and Exchange Commission in February, 2010, GMO is “an integrated, regulated electric utility that primarily provides electricity to customers in the state of Missouri [and] also provides regulated steam service to certain customers in the St. Joseph, Missouri area.” GMO has approximately 312,000 customers, including 273,500 residential customers, 38,000 commercial customers, and some 500 industrial, municipal, and other utility customers. GMO operates 1,975 megawatts of generating capacity to serve its customers, including 892 megawatts produced by burning coal, 1,019 megawatts of natural gas-fired combustion turbine capacity, and 64 megawatts of oil-fired combustion turbine capacity.

6. By virtue of its activities described in Paragraph 5, above, GMO is an “electrical corporation” within the intendments of § 386.020(15), RSMo, and a public utility within the intendments of § 386.020(43), RSMo, and therefore

"subject to the jurisdiction, control and regulation of the commission and to the provisions of this chapter[.]"

7. This Commission has authority to hear and determine complaints against public utilities pursuant to § 386.390.1, RSMo, which provides that "[c]omplaint may be made . . . in writing, setting forth any act or thing done or omitted to be done by any corporation . . . in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the Commission . . ."

Integrated Resource Planning

8. Pursuant to statutory authority, the Commission has promulgated its Chapter 22 rules relating to Electric Utility Resource Planning, including Rules 4 CSR 240-22.070, "Risk Analysis and Strategy Selection," and 4 CSR 240-22.080, "Filing Schedule and Requirements." Chapter 22 sets out a comprehensive planning system intended to "ensure that the public interest is adequately served."¹ The Commission has stated that the "fundamental objective" of the planning process is: "to provide the public with energy services that are safe, reliable and efficient, at just and reasonable rates, in a manner that serves the public interest."² Rule 4 CSR 240-22.010(2) provides that, to meet this objective, the utility shall:

(A) Consider and analyze demand-side efficiency and energy management measures on an equivalent basis with supply-side alternatives in the resource planning process;

¹ Rule 4 CSR 240-22.010(1), "Policy Objectives."

² *Id.*, at (2).

(B) Use minimization of the present worth of long-run utility costs as the primary selection criterion in choosing the preferred resource plan; and

(C) Explicitly identify and, where possible, quantitatively analyze any other considerations which are critical to meeting the fundamental objective of the resource planning process, but which may constrain or limit the minimization of the present worth of expected utility costs. The utility shall document the process and rationale used by decision makers to assess the tradeoffs and determine the appropriate balance between minimization of expected utility costs and these other considerations in selecting the preferred resource plan and developing contingency options. These considerations shall include, but are not necessarily limited to, mitigation of—

1. Risks associated with critical uncertain factors that will affect the actual costs associated with alternative resource plans;

2. Risks associated with new or more stringent environmental laws or regulations that may be imposed at some point within the planning horizon; and

3. Rate increases associated with alternative resource plans.

9. Rule 4 CSR 240-22.070 provides, in pertinent part:

(10) The utility shall develop, document and officially adopt a resource acquisition strategy. This means that the utility's resource acquisition strategy shall be formally approved by the board of directors, a committee of senior management, an officer of the company or other responsible party who has been duly delegated the authority to commit the utility to the course of action described in the resource acquisition strategy. The officially adopted resource acquisition strategy shall consist of the following components:

- (A) A preferred resource plan selected pursuant to the requirements of section (6) of this rule;

- (B) An implementation plan developed pursuant to the requirements of section (9) of this rule;

- (C) A specification of the ranges or combinations of outcomes for the critical uncertain factors that define the limits

within which the preferred resource plan is judged to be appropriate and an explanation of how these limits were determined;

(D) A set of contingency options that are judged to be appropriate responses to extreme outcomes of the critical uncertain factors and an explanation of why these options are judged to be appropriate responses to the specified outcomes; and

(E) A process for monitoring the critical uncertain factors on a continuous basis and reporting significant changes in a timely fashion to those managers or officers who have the authority to direct the implementation of contingency options when the specified limits for uncertain factors are exceeded.

(11) Reporting Requirements. To demonstrate compliance with the provisions of this rule, and pursuant to the requirements of 4 CSR 240-22.080, the utility shall furnish at least the following information:

(A) A decision-tree diagram for each of the alternative resource plans along with narrative discussions of the following aspects of the decision analysis:

1. A discussion of the sequence and timing of the decisions represented by decision nodes in the decision tree and a description of the specific decision alternatives considered at each decision point; and

2. An explanation of how the critical uncertain factors were identified, how the ranges of potential outcomes for each uncertain factor were determined and how the subjective probabilities for each outcome were derived;

(B) Plots of the cumulative probability distribution of each performance measure for each alternative resource plan;

(C) For each performance measure, a table that shows the expected value and the risk of each resource plan;

(D) A plot of the expected level of annual unserved hours for the preferred resource plan over the planning horizon;

(E) A discussion of the analysis of the value of better information required by section (8), a tabulation of the key

quantitative results of that analysis and a discussion of how those findings will be incorporated in ongoing research activities;

(F) A discussion of the process used to select the preferred resource plan, including the relative weights given to the various performance measures and the rationale used by utility decision-makers to judge the appropriate tradeoffs between competing planning objectives and between expected performance and risk; and

(G) The fully documented resource acquisition strategy that has been developed and officially adopted pursuant to the requirements of section (10) of this rule.

10. Rule 4 CSR 240-22.080 provides, in pertinent part:

(1) Each electric utility which sold more than one (1) million megawatt-hours to Missouri retail electric customers for calendar year 1991 shall make a filing with the commission every three (3) years that demonstrates compliance with the provisions of this chapter. The utility's filing shall include at least the following items:

(A) Letter of transmittal;

(B) Summary information and any press release related to the filing;

(C) Reports and information required by 4 CSR 240-22.030(8), 4 CSR 240-22.040(9), 4 CSR 240-22.050(11), 4 CSR 240-22.060(6) and 4 CSR 240-22.070(11);

(D) A narrative description and summary of the reports and information referred to in subsection (1)(C). The narrative shall specifically show that the resource acquisition strategy contained in the filing has been officially approved by the utility and that the methods used and the procedures followed by the utility in formulating the resource acquisition strategy comply with the provisions of this chapter;

* * *

(7) All workpapers, documents, reports, data, computer model documentation, analysis, letters, memoranda, notes, test results, studies, recordings, transcriptions and any other supporting information relating to the filed resource acquisition strategy within

the electric utility's or its contractors' possession, custody or control shall be preserved and made available in accordance with any protective order to the staff, public counsel and any intervenor for use in its review of the periodic filings required by this rule. Each electric utility shall retain at least one (1) copy of the officially adopted resource acquisition strategy and all supporting information for at least ten (10) years.

Count I

Violations by GMO by Filing a Deficient Revised IRP

11. Complainant hereby realleges and incorporates herein by reference Paragraphs 1 through 10.

12. On April 12, 2010, GMO joined in a *Nonunanimous Stipulation and Agreement*, filed in Case No. EE-2009-0237, which represented a joint plan to remedy deficiencies in GMO's Chapter 22 Integrated Resource Plan ("IRP") filings of August 5, 2009, and November 2, 2009. A true and correct copy of the *Nonunanimous Stipulation and Agreement* is attached hereto as Exhibit A and is hereby incorporated herein by reference for all purposes as though fully set out.

13. In the *Nonunanimous Stipulation and Agreement*, GMO committed to filing a revised IRP compliance filing by December 17, 2010.

14. The Commission approved the *Nonunanimous Stipulation and Agreement* on June 2, 2010, and specifically directed GMO to file its revised IRP not later than December 17, 2010. A true and correct copy of the Commission's Order is attached hereto as Exhibit B and is hereby incorporated herein by reference for all purposes as though fully set out.

15. On December 17, 2010, GMO moved for an extension, until January 18, 2011, stating that it had been unable to complete the required analyses in

time due to lack of resources in that key personnel were unavailable due to the demands of its ongoing general rate case, Case No. ER-2010-0356. A true and correct copy of GMO's Motion is attached hereto as Exhibit C and is hereby incorporated herein by reference for all purposes as though fully set out.

16. On December 28, 2010, the Commission granted the requested extension. A true and correct copy of the Commission's Order is attached hereto as Exhibit D and is hereby incorporated herein by reference for all purposes as though fully set out.

17. On January 18, 2011, GMO filed its revised IRP ("Revised IRP"). Therein, at Paragraph 6, GMO stated:

As a result of this additional analysis completed per the Stipulation and Agreement in Case No. EE-2009-0237, GMO has determined that the preferred resource plan filed in August, 2009 is no longer appropriate. **Significant changes have occurred in projections of both natural gas costs and CO2 emission costs along with recently proposed U.S. Environmental Protection Agency regulations, (Transport Rule) that dictates [sic] the need to fully evaluate additional alternative resource plans prior to determining a revised preferred plan. GMO will be conducting this additional analysis and expects to have results available in the summer of 2011[.]** (Emphasis added).

A true and correct copy of GMO's Revised IRP, with all attachments, is attached hereto as Exhibit E and is hereby incorporated herein by reference for all purposes as though fully set out.

18. GMO's Revised IRP is deficient in that it does not meet the requirements of Commission Rule 4 CSR 240-22.070, (10) and (11), and Commission Rule 4 CSR 240-22.080, (1)(A)-(D) and (7). Consequently, GMO has failed to meet the requirements of Commission Rule 4 CSR 240-22.010(2).

19. By filing a deficient Revised IRP, GMO violated the *Nonunanimous Stipulation and Agreement* of April 12, 2010, approved by the Commission on June 2, 2010.

20. By filing a deficient Revised IRP, GMO violated the Commission's specific Order of June 2, 2010, as extended by its Order of December 28, 2010, that GMO file a revised Integrated Resource Plan not later than January 18, 2011.

WHEREFORE, Staff prays that the Commission will give notice to Respondent as required by law and, after hearing, find (1) that Respondent has violated Commission Rule 4 CSR 240-22.070, (10) and (11), Commission Rule 4 CSR 240-22.080, (1)(A)-(D) and (7), and Commission Rule 4 CSR 240-22.010(2); (2) that Respondent has violated the *Nonunanimous Stipulation and Agreement* of April 12, 2010, approved by the Commission on June 2, 2010; and (3) that the Respondent has violated the Commission's Order of June 2, 2010, as extended by its Order of December 28, 2010; and, further, Staff prays that the Commission will deem these violations to be continuing violations; and, further, Staff prays that the Commission will direct GMO to file a fully compliant and sufficient revised Integrated Resource Plan not later than the 60th day following its order herein.

Count II

Authority to Seek Penalties

21. Complainant hereby realleges and incorporates herein by reference Paragraphs 1 through 20.

22. Section 386.570, RSMo, provides:

1. Any corporation, person or public utility which violates or fails to comply with any provision of the constitution of this state or of this or any other law, or which fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement, or any part or provision thereof, of the commission in a case in which a penalty has not herein been provided for such corporation, person or public utility, is subject to a penalty of not less than one hundred dollars nor more than two thousand dollars for each offense.

2. Every violation of the provisions of this or any other law or of any order, decision, decree, rule, direction, demand or requirement of the commission, or any part or portion thereof, by any corporation or person or public utility is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be and be deemed to be a separate and distinct offense.

3. In construing and enforcing the provisions of this chapter relating to penalties, the act, omission or failure of any officer, agent or employee of any corporation, person or public utility, acting within the scope of his official duties of employment, shall in every case be and be deemed to be the act, omission or failure of such corporation, person or public utility.

23. Section 386.600, RSMo, provides:

An action to recover a penalty or a forfeiture under this chapter or to enforce the powers of the commission under this or any other law may be brought in any circuit court in this state in the name of the state of Missouri and shall be commenced and prosecuted to final judgment by the general counsel to the commission. No filing or docket fee shall be required of the general counsel. In any such action all penalties and forfeitures incurred up to the time of commencing the same may be sued for and recovered therein, and the commencement of an action to recover a penalty or forfeiture shall not be, or be held to be, a waiver of the right to recover any other penalty or forfeiture; if the defendant in such action shall prove that during any portion of the time for which it is sought to recover penalties or forfeitures for a violation of an order or decision of the commission the defendant was actually and in good faith prosecuting a suit to review such order or decision in the manner as provided in this chapter, the court shall remit the penalties or forfeitures incurred during the pendency of such

proceeding. All moneys recovered as a penalty or forfeiture shall be paid to the public school fund of the state. Any such action may be compromised or discontinued on application of the commission upon such terms as the court shall approve and order.

WHEREFORE, Staff prays that the Commission will give such notice to Respondent as is required by law and, after hearing, in the event that any of the conduct herein described is determined to be a violation of any law of the State of Missouri or of any order, decision, or rule of the Commission, deem each day that such violation existed to be a separate offense and authorize its General Counsel to proceed in Circuit Court to seek such penalties as are authorized by law.

Respectfully submitted,

s/ Kevin A. Thompson

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