

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of KCP&L Greater Missouri )  
Operations Company's Request for Authority to ) File No. ER-2012-0175  
Implement A General Rate Increase for Electric Service. )

**DOGWOOD ENERGY, LLC'S REPLY BRIEF**

COMES NOW Dogwood Energy, LLC ("Dogwood") and respectfully submits its Reply Brief in this proceeding regarding KCP&L Greater Missouri Operations Company's (GMO) proposed rate increase.

**ISSUE: CROSSROADS**

Contrary to GMO's argument (GMO Brief, p. 59-60), there is no evidence in the Record that GMO or GPE incurred any "cost" to acquire the purchase power agreement for Crossroads from Aquila. In support of its erroneous contention, GMO only references page 26 of the surrebuttal testimony of its witness Ives, who simply testified: "In its request in this case, GMO's 'MPS' jurisdiction has included Crossroads in rate base at its net book value, or in terms of the Federal Energy Regulatory Commission ("FERC") Uniform Systems of Account ("USOA") at net original cost." Mr. Ives further testified at page 27 that: "the valuation of the Crossroads facility at the time of acquisition, as supported by a third party valuation and

consistent with generally accepted accounting principles, was the net book value of the facility on the books of Aquila at the time of acquisition.” Thus, he was simply stating GMO’s position on value and he did not provide any evidence of cost. GMO concedes the point at page 61 of its Brief, when it acknowledges it is really discussing purported “original value” and not cost. Of course it must concede the point, because it did not buy the plant, but rather assumed the liability of making ongoing payments for its output. (Tr. p. 883-85 Crawford).

As indicated in Dogwood’s initial Brief, there does not appear to be any evidence as to the present value of ongoing payments for Crossroads, in order to determine whether such present value does or does not exceed fair value, as required to capitalize such payments into rate base under FERC account 101, rather than expense them. But contrary to GMO’s argument, Staff did provide substantial evidence regarding “fair value”.

While the Commission can and should more fully articulate its prior decision to allow GMO to include Crossroads in rate base at a value of \$61.8 million as of August 2008, including its reliance on the evidence provided by Staff as to what such a plant would have cost if located in Missouri, there is no reason for it to reconsider that decision just because GMO does not like it.

Regarding the transmission costs associated with Crossroads' unusually distant location, Dogwood has already explained in its initial Brief that GMO also failed to provide any basis for the Commission to change that aspect of its prior decision. Contrary to GMO's argument at page 67-68 of its Brief, the Commission's prior decision to exclude such transmission costs did not violate the Filed Rate Doctrine.

The Commission did not unlawfully eliminate FERC-approved rates, or "trap costs" under the Filed Rate Doctrine and the supremacy clause of United States Constitution, Article VI, clause 2. It did not find FERC rates to be too high or reduce them to zero. Instead, the Commission found that GMO should not have opted to rely on a plant in Mississippi, and therefore, it should not be using any interstate transmission service at all. The Commission is of course authorized to make such a determination that expenditures are not prudent.

The cases cited by GMO are not applicable because the Commission did not substitute its judgment for that of FERC as to the reasonableness of interstate transmission rates, but rather held that the plant should be valued as if located in Missouri without the need for any such transmission. Even though state commissions cannot second guess rates set by FERC, they can nonetheless still reject imprudent discretionary purchasing decisions of

utilities that implicate FERC-approved rates. See, e.g., *Pike County Light & Power Co.-Elec. Div. v. Pennsylvania Pub. Util. Comm'n*, 77 Pa. Cmwlth. 268, 465 A.2d 735, 738 (1983); *Kentucky W. Virginia Gas Co. v. Pennsylvania Pub. Util. Comm'n*, 837 F.2d 600, 609 (3d Cir. 1988); 2 *Law of Independent Power Appendix 8* (2012) at note 121.

The United States Supreme Court in *Nantahala Power & Light Co. v. Thornburg*, 476 U.S. 953, 972, 106 S. Ct. 2349, 90 L. Ed. 2d 943 (U.S.N.C. 1986), accepted the analysis in *Pike County Light & Power Co.-Elec. Div.*, 465 A.2d 735 as valid, but found it inapplicable to the case before it. In *Nantahala Power & Light Co.*, 476 U.S. 953, the Court stated:

Without deciding this issue, we may assume that a particular *quantity* of power procured by a utility from a particular source could be deemed unreasonably excessive if lower cost power is available elsewhere, even though the higher cost power actually purchased is obtained at a FERC-approved, and therefore reasonable, *price*.

The Court also denied certiorari in *Kentucky W. Virginia, supra*, wherein the Third Circuit applied the *Pike County* doctrine.

FERC has not mandated any use of Crossroads by GMO and the Missouri Commission stayed well within the bounds of its intrastate authority in determining that GMO should not be allowed to impose unusual and unnecessary transmission costs on its ratepayers just because it was

beneficial to its parent company to save the Crossroads plant from the scrap heap.

### **Conclusion**

As demonstrated in the initial briefs submitted by Dogwood, Staff, MECG, MEUA, and Ag Processing, the Commission should further explain and stand by its prior decision on Crossroads issues.

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 emailed, faxed or mailed by U.S. Mail, postage paid, this 11th day of December 2012, to the persons shown on the attached list.

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