

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.)

REPLY BRIEF OF DOGWOOD ENERGY, LLC

COMES NOW Dogwood Energy, LLC (“Dogwood Energy”) and submits its Reply Brief regarding the issues concerning the Crossroads generation plant for consideration by the Commission.

In its Initial Brief, Dogwood demonstrates that the Commission should not include the Crossroads plant in GMO’s rate base and operating expenses because:

- GMO did not provide any evidence explaining why a facility owned and operated by the City of Clarksdale, Mississippi, should be treated as if it were owned by GMO;
- GMO has never obtained Commission approval to acquire an interest in Crossroads;
- GMO has never obtained FERC approval to acquire an interest in Crossroads;
- GMO has not fulfilled its obligations under the stipulation that resolved its prior rate case to exert best efforts to explore anew all reasonable solutions to its capacity needs in lieu of Crossroads; and
- the evidence shows that Crossroads is not the best capacity solution for GMO and its ratepayers.

GMO admits that it does not own the Crossroads plant, confirming on page 9 of its Brief that it simply “assumed the contract” from an affiliate. That tolling agreement for capacity and energy (“Generator Operations and Maintenance Agreement”) puts the risks of operations on the actual owner of the plant, the City of Clarksdale. (Rollison Rebuttal, p. 2-4, GMO Brief, p. 13).

GMO declines to purchase (or lease) the plant, because municipal tax exempt status would be lost. (Crawford Tr. 4053, 4059).¹ As a purchaser of power, GMO is not an owner. *State ex rel Public Counsel v. PSC*, 274 S.W.3d 569, 580-81 (Mo. App. 2009).

GMO alludes to a purported capital investment in Crossroads (Brief p. 19), but it has not made any such investment. It is simply buying output year-to-year. Hence, while it would be important for the Commission to make certain that artificially inflated investment values are not used for ratemaking, the debates in other parties' briefs over the fair market value of the plant are premature because GMO has no present intention of buying it.

GMO erroneously argues that the Commission cannot "interfere" with its power procurement activities. (Brief. p. 7). Under GMO's fuel adjustment clause, and independent thereof, its purchase power arrangements are subject to Commission prudence review. FERC approval is also required pursuant to 16 USC 824b or 824d because of the assumption of the contract from an affiliate. And if GMO were to decide in the future to acquire the plant from the City, Commission approval would be required pursuant to Sections 393.170-200. *Stopaquila.org v. Aquila, Inc.*, 180 S.W.3d 24 (Mo. App. 2005), see also *State ex rel. Cass County v. PSC*, 259 S.W.3d 544 (Mo. App. 2008), see also KCPL Initial Brief, Case No. ER-2010-0355, p. 7.

GMO erroneously argues that the Staff cannot propose accounting adjustments to address imprudent purchase power arrangements. Its characterization of such adjustments as illegal inclusion of phantom plants that are not used and useful is specious. But Dogwood has also shown that its plant is a real alternative, available to meet GMO's admitted capacity needs. (GMO Brief, p. 6, 18).

¹ Potentially, even GMO's attempts to assert ownership by placing the plant in rate base would jeopardize the municipal tax exempt financing of the plant. If GMO is the owner of related municipal bonds, which is not evident from the record, such an investment would not constitute the equivalent of plant ownership, but rather would simply be a loan to the city of Clarksdale.

Dogwood provided extensive evidence that its plant is a superior alternative to Crossroads. GMO responded that Dogwood's arguments are self-serving. GMO concedes Dogwood has not tried to conceal its self-evident interests. (Brief, p. 17). Presumably all parties are pursuing their interests (in the case of Staff and OPC, the public interest). In this case, Dogwood's interests are aligned with the public interest in avoiding artificially inflated utility rates.

As a monopoly, GMO is not free to solely pursue the interests of shareholders and disregard the Dogwood plant at the expense of ratepayers. GMO should fully consider its customers' interests, which would be adversely impacted by its proposal for full cost recovery plus a return on a purported investment in a municipal power plant that is really only subject to an output contract obtained from an affiliate. This adverse impact would be multiplied further by GMO's proposal to use inflated values for this purported investment, rather than the lower market values reported by Staff and the Industrials in their briefs. (Janssen Rebuttal, p. 14-18).

GMO and others stipulated with Dogwood in the settlement of the prior rate case to start over again and examine its capacity needs and schedules anew. GMO has not met its obligation to exert best efforts to conduct that analysis. In its Brief, it makes the bald assertion that it met this stipulation, with no explanation or evidence. (Brief, p. 15). But its witness conceded facts showing that is not true. (Crawford Tr. 4046-47, 4058).

Dogwood's evidence is substantial and compelling. (Janssen Rebuttal, p. 10-18, Rose Surrebuttal). GMO asks the Commission to ignore that evidence because of purported errors for which GMO offers no proof. It points to an un-sponsored and unexplained tariff (Ex. GMO-49), but witness Rose testified at length regarding such matters and stated GMO's purported tariff information did not reflect all transmission costs. (Tr. 4124-27). It alleges an error concerning

Dogwood's own capacity factor, but points only to a response to a hypothetical question. (Tr. 4130-31). There is no basis for GMO's critique of Dogwood's evidence. And GMO does not even attempt to respond to Dogwood's critique of GMO's flawed and self-serving analysis that it claims favors Crossroads.

GMO erroneously argues that Crossroads offers a favorable option on terms of natural gas prices. (Brief, p. 11). Mr. Janssen explained that in fact gas supply to the area in which Dogwood and the South Harper plant are located is cheaper. (Janssen Rebuttal, p. 11, Surrebuttal, p. 1-10). Further, he explained that even temporary² gas price savings at Crossroads would be overshadowed by the cost of transmission to get electricity from Mississippi to western Missouri. (Id.). GMO's witness ignored this reality (Blunk Tr. 4067), which GMO now tries to pass off by arguing differences in gas prices and transmission costs are a wash, without any evidence to that effect. (Brief, p. 12). GMO likewise does not address the transmission constraints that limit Crossroads. (Janssen Rebuttal, p. 8; Crawford Tr. 4050-51; Rose Surrebuttal, p. 14, 31-33; Rose Tr. 4125).

There is no basis for GMO's proposal to include a plant it does not own in rate base. There is no basis for GMO's proposal to recover imprudent expenses related to the Crossroads plant. There is no basis for GMO's ongoing refusal to fairly consider the Dogwood plant (even after stipulating it would exert best efforts to do so).

As indicated in Dogwood's Initial Brief and this Reply Brief, the Commission should not allow rate increases for GMO that are based on the Crossroads plant. The Commission should provide GMO with an appropriate regulatory incentive and opportunity to actually address its power needs through a resource located near its load and not 400 miles away in another state,

² GMO witness Blunk spoke of potential advantages when the weather pattern in Mississippi differs from western Missouri, but conceded such weather patterns are usually (90% of the time) the same. (Tr. 4067).

such as by means of a regulatory plan or other action pursuant to Section 393.170. Dogwood also continues to encourage the Commission to require that non-affiliated power sources like the Dogwood plant are fully and fairly considered by monopoly retail electricity suppliers like GMO in resource planning and acquisition.

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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 4th day of April, 2011, by either placing same in the U.S. Mail, postage paid, by fax or email transmission.

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