

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.)

**PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW OF DOGWOOD ENERGY, LLC**

COMES NOW Dogwood Energy, LLC (“Dogwood Energy”) and submits its Proposed Findings of Fact and Conclusions of Law regarding the issues concerning the Crossroads generation plant.

Findings of Fact

GMO Capacity Needs

GMO has capacity needs which stem from the expiration of previous arrangements with the Dogwood plant, which was then known as Aries and owned by Calpine and Aquila. (Janssen Rebuttal, p. 3-5, 8-11). Furthermore, it faces the expiration of a 75 MW purchased power agreement with the Nebraska Public Power District in 2014. (Crawford Rebuttal, p. 6, Tr. 4045). Coal plant retirements and integration of intermittent resources such as wind generation will also create pressure for new capacity solutions. (Janssen Rebuttal, p. 4, 10-13). In particular, addition of wind generation will drive up operating reserve needs. (Crawford Tr. 4062).

Crossroads

The Crossroads plant is an approximately 300 MW gas-fired combustion turbine peaking¹ facility built in 2002. It consists of four General Electric 7EA turbines. The plant is

¹ As a peaking plant, Crossroads “actually runs less than half a percent of the time.” (Crawford, Tr. 4051; Rollison, Tr. 4076).

located 400 miles away from GMO's MPS service area, in Clarksdale, Mississippi. (Janssen Rebuttal, p. 8).

Crossroads is owned by the City of Clarksdale. It is operated by City employees. GMO personnel have only visited the site six times over the past two years. (Id. p. 4-5, Crawford Tr. p. 4052-54, Rollison Tr. 4078-79). Municipal ownership facilitated tax exempt financing. (Crawford Tr. 4053).

A tolling agreement for the capacity and energy of the plant was held by MEP Clarksdale Power, LLC, which became Aquila Merchant Services, which assigned the agreement to Aquila, Inc., which is now GMO. GMO also sometimes refers to this output agreement as a lease, but concedes that it is not a lease. The agreement apparently runs through 2032 with a right to extend up to ten more years. GMO also holds a purchase option, but does not intend to exercise it because the advantages of tax exempt financing would be lost. (Janssen Rebuttal, p. 7-8; Rollison Rebuttal, p. 2; Weisensee Direct, p. 55, Crawford Tr. 4053, 4059, GMO Initial Brief, p. 9).

GMO witness Rollison identifies the agreement as a "Generation, Operations and Maintenance Agreement" between Clarksdale and now GMO as successor in interest. He testifies that the agreement "permits GMO to receive the output of the plant in exchange for payments that cover fixed and variable costs to produce the electrical output, as well as to maintain and operate the facility." (Rollison Rebuttal, p. 2-3). GMO has the right to review and approve the annual operating plan and budget, as well as to audit costs and inspect the facility, although there is only limited evidence as to the extent that GMO exercises those rights. (Id. p. 3, Tr 4078-79). GMO is supposed to pay Clarksdale an "Availability Incentive Bonus Fee" for increased availability of generation and has the right to invoke an "Availability Liquidated

Damages” clause for reduced availability, although there is no evidence as to whether or how often such clauses have actually been applied.² (Id. p. 3-4). The City agrees to protect GMO from various risks by means of an indemnification clause. (Id. p. 4).

Crossroads faces local (Mississippi) transmission constraints, because the existing lines cannot carry the full load of the plant under certain circumstances. (Tr. 4050). As a result, it is subject to a special protection scheme mandated by SPP that makes a significant portion of its capacity less than completely available and reliable. (Janssen Rebuttal, p. 8; Crawford Tr. 4051, Rose Surrebuttal, p. 14, 31-33, Rose Tr. 4125).

GMO’s Position

GMO simply (one might say presumptuously) includes Crossroads in its rate base and expense schedules. (Janssen Rebuttal, p. 4-5). GMO does not provide any evidence as to why its arrangement with the City of Clarksdale to pay ongoing costs in order to obtain output should rise above a purely expensed purchase power agreement and instead be capitalized into rate base and generate depreciation and a return on investment.³ GMO concedes that it did not obtain approval from FERC or the Commission for the assignment of interests in the Clarksdale agreement from affiliates to GMO. (Crawford Rebuttal p. 14; Tr. p. 4052).

GMO contends that Crossroads was the lowest cost solution (based on 20-year NPVRR) to its capacity needs, pointing to an RFP process in 2007. (Crawford Rebuttal, p. 8). GMO indicates that it moved Crossroads to its regulated books in August 2008, after the consummation of the GPE acquisition, and sought to include it in rate base by means of the next rate case. (Ives

² There would be no comparable internal fees if GMO owned and operated the plant itself. (Rollison, Tr. 4076).

³ GMO witness Ives confirmed that GMO pays for Crossroads over time, but for purposes of its proposal to include the plant in rate base it has used capitalized lease accounting. (Tr. 4070-71). GMO provides no assurance that the amounts paid to the City do not already include the equivalent of depreciation and return, which would seem to expose ratepayers to double payment for such items.

Surrebuttal, p. 15, Crawford Tr. 4054-55). However, that case was settled without resolution of the question and GMO concedes that it agreed by such settlement stipulation in that rate case (ER-2009-0090) to reevaluate Crossroads and its overall generation needs. (Crawford Rebuttal p. 9). It contends that it conducted an analysis in April 2010 in an attempt to comply with that stipulation and determined that Crossroads was the least cost alternative. (Id.). However, GMO's witness Crawford conceded that those efforts were limited to short-term solutions, did not involve excluding Crossroads, and did not involve any effort to obtain current information from Dogwood. (Tr. 4046-47, 4058). Even so, Dogwood was the superior solution in 11 out of 42 scenarios. (Tr. 4047).⁴

Staff's Opposition

Staff opposes GMO's proposal to include the Crossroads plant in rate base and operating expenses, for a variety of reasons including concerns about affiliate transactions, extra transmission costs, higher natural gas prices, distant management, and plant location and size. (Staff Cost of Service Report, p. 92). Staff proposes that instead of Crossroads, the Commission should require GMO to base its rates upon the lower costs of obtaining peaking capacity from a hypothetical prudent source within GMO's territory. Staff asserts that GMO should have built such capacity in its territory in 2005. Staff indicates that "GMO was faced with need for capacity in 2008 and made the decision to use a generating station located in Mississippi that is poorly situated to meet system load requirements in its service territory – Crossroads is the wrong plant,

⁴ The study also provides weighted results for all the scenarios. The figures are highly confidential, but the Commission can see how Dogwood compared at Crawford Rebuttal Schedule BLC-2010-10, p. 29, table 9, column 20-year NPVRR, lines 2 and 3. (Tr. 4056). GMO's witness was not able to identify the margin of error for these results. (Tr. 4048). GMO's earlier study does not contain a similar comparison of weighted results. (Tr. 4048).

located at the wrong place and was placed into service for MPS at the wrong time.” (Featherstone Direct, p. 56).

Staff observes that GMO’s analysis in 2010 pursuant to the stipulation to reconsider its generation needs did not involve current information. (Schedule LMM-1).

Dogwood’s Opposition

Dogwood owns the 650 MW combined cycle generating facility located in GMO's MPS service territory in Pleasant Hill, Missouri. Dogwood acquired the plant at the end of 2006 and has invested in significant upgrades and improvements. It primarily supplies power to utilities serving the Kansas City area. (Janssen Rebuttal, p. 1-2).

The Dogwood plant is a customer of GMO’s retail electricity service, incurring significant operating costs for plant start-up and buildings and equipment on the site. Dogwood is concerned about GMO’s proposed rate increases. (Janssen Rebuttal, p. 3).

Specifically, Dogwood is concerned about rates being unduly increased based on GMO’s proposal to include in rate base and expenses the Crossroads plant in Clarksdale, Mississippi. Moreover, as a source of capacity located in GMO’s service area, Dogwood is concerned about being improperly disregarded in favor of such a less attractive power source by a monopoly retail electric utility. (Janssen Rebuttal, p. 3-6).

In support of its position, Dogwood presented the testimony of Robert Janssen and Judah Rose. (Exhibits 3601, 3602, 3603, 3604).

Mr. Janssen is Senior Vice President of Kelson Energy, which owns Dogwood Energy. Mr. Janssen is also President and General Manager of Dogwood. Mr. Janssen's responsibilities

include the operation of the Dogwood facility and representation of Kelson and Dogwood at the SPP RTO, and state and federal regulatory agencies. (Janssen Rebuttal, p. 1-3).⁵

Mr. Rose is a managing director with the consulting firm ICF International. He provides a full explanation of his extensive 30-year career in assessing wholesale power markets and power contracts, as well as background about ICF. (Rose Surrebuttal, p. 1-3).⁶

Staff's proxy South Harper peaking turbines are meant to mimic the costs and benefits that GMO customers would obtain if GMO had built such peaking facilities in 2005. But accounting adjustments will only address costs, not the benefits of local generation. Proximity of a plant to load is important, providing reduced losses on supply of real power, reactive power, and reliable power with less risk of curtailed transmission. Local generation also brings jobs and business to the region. (Janssen Rebuttal, p. 10-11).

The Dogwood plant represents an alternative and already-constructed solution to the capacity issues identified by Staff. It demonstrates that GMO can not only have appropriate rates, but also actually use a more efficient capacity solution than Crossroads. Dogwood would provide local intermediate capacity that would be more valuable to GMO than the peaking capacity offered by Crossroads, particularly given the prospects of coal plant retirements and the growing use of intermittent renewable generation such as wind. (Janssen Rebuttal, p. 4, 10-13).

Dogwood meets the needs that Staff identifies for GMO, including good location, right size, no affiliate issues, lower gas costs, and reduced transmission costs. It is not only already built (eliminating construction risks), but also recently improved and updated. It can provide local, efficient, and clean intermediate capacity that would be more valuable to GMO than the

⁵ Mr. Janssen provides a resume with his rebuttal testimony that describes his background and experience in the electric industry, regarding electricity generation, transmission, markets, and rates. (Schedule RJ-1).

⁶ Mr. Rose also provides a resume with his surrebuttal testimony describing his background and experience. (Schedule A).

distant peaking capacity available from Crossroads. Because of its proximity to GMO's load, Dogwood offers reduced losses of supply, greater reliability, reactive power, lower natural gas and transmission costs, and greater economic impact. These benefits will even increase over time, and the plant can be expanded if needed. (Janssen Rebuttal, p. 12-14).

Mr. Janssen explains that Dogwood has responded to RFPs issued by GMO and made other proposals that are more attractive than Crossroads, involving both power and asset acquisition options for GMO. It does not face the transmission restrictions that confront Crossroads. And as Mr. Janssen explains, the Dogwood plant has a cheaper natural gas fuel supply than Crossroads.⁷ (Janssen Rebuttal, p. 10-14).

Mr. Janssen provides details regarding Dogwood's responses to RFPs issued by GMO and other proposals that Dogwood has made to GMO. He also testifies that Dogwood is more than willing to work with GMO to make sure that its proposals meet GMO's needs. He testifies that these proposals were superior to Crossroads, due to the efficiency of the Dogwood plant, lower transmission costs, and other advantages including off-system sales opportunities.

(Janssen Rebuttal, p. 14-18).

⁷ Mr. Janssen testifies that natural gas prices for supply to GMO's load area, where Dogwood is located, have been significantly lower than for supply to Crossroads. (Janssen Rebuttal, p. 11). GMO submitted rebuttal testimony attempting to defend its decision to rely on Crossroads, purporting to demonstrate that Crossroads has a cheaper source of natural gas but actually masking differences in variable commodity costs with sunk transportation costs. (Blunk Rebuttal). Mr. Janssen provides surrebuttal testimony contradicting GMO's testimony and showing in detail that Dogwood has a cheaper and more reliable natural gas supply. He testifies that GMO would be able to make arrangements in the ordinary course of business to gain access to less expensive supply to a plant in its load area, as compared to Crossroads. Further, he testifies that GMO's witness failed to take into account the greater cost of transmission to get electricity from Mississippi to western Missouri, which would overshadow any temporary advantage in natural gas prices that might occur. GMO witness Crawford testified that that transmission costs that GMO included in its studies were \$406,000 per month. (Tr. 4050). GMO witness Blunk conceded that he did not take such costs into account in concluding that Crossroads would be a superior choice in terms of natural gas supply. (Tr. 4067). Mr. Janssen shows that comparatively high gas prices and long-distance and less reliable transmission remain reasons not to include Crossroads in rate base notwithstanding Mr. Blunk's testimony. (Janssen Surrebuttal, p. 1-10).

Mr. Janssen expresses concern about the degree to which GMO has actually considered Dogwood's proposals. He testifies that GMO conducts its RFPs in a manner that is not conducive to obtaining the most cost-effective results for customers. (Janssen Rebuttal, p. 14-17).

Mr. Janssen also testifies that GMO did not fulfill its obligations under the stipulation that led to a "black box" resolution of its prior rate case (ER-2009-0090). In that stipulation, "GMO agreed to reevaluate Crossroads by exploring 'all reasonable options to add generating capacity to GMO's system and use its best efforts to determine the best terms available for each such option.'" But despite this agreement, GMO made no effort to obtain current information from Dogwood and its purported 2010 study was based on 2009 costs. (Janssen Rebuttal, p. 17-18). On cross-examination, GMO witness Crawford confirmed that GMO did not contact Dogwood to obtain information for purposes of its 2010 study, notwithstanding its stipulation to exert best efforts. (Tr. p. 4046-47, 4058).

Mr. Rose explains in detail that, contrary to GMO's claims, the proposals made by Dogwood have consistently been substantially more attractive than Crossroads and other solutions. He provides highly confidential testimony quantifying the advantages of Dogwood over Crossroads. He identifies errors in GMO's analysis regarding plant heat (efficiency) rates, transmission costs, energy sales revenues, transmission losses, and transmission constraints. He explains that Dogwood is more economical than Crossroads because of energy cost savings in the process of converting natural gas fuel to electricity, higher off-system sales revenues, and lower transmission costs.⁸ And beyond financial advantages, Dogwood will simply be more

⁸Mr. Rose stood by his conclusions regarding transmission costs during cross-examination, noting that purported tariff information presented to him by GMO was incomplete. (Tr. 4124-27). He also testified that Dogwood would still be preferred even at lower transmission costs for Crossroads than his estimate. (Rose Surrebuttal, p. 36).

reliable due to proximity and efficiency, have lower emissions, and offer a diversity of supply that Crossroads does not. (Rose Surrebuttal, p. 6-9, 12-15, 18-39).

Mr. Rose testifies that in its evaluations of power supply alternatives, GMO has improperly ignored off-system sales (which favor Dogwood) and transmission risks such as loss of energy over distance and even insufficient transmission (which disfavor Crossroads). (Rose Surrebuttal, p. 7-8, 15-16, 21-34).

Mr. Rose also shows that GMO's proposal to obtain power from Crossroads is very unusual given the distant location of the plant. On average, GMO acquires power from plants within 70 miles, and at the farthest about 100 miles. He is unaware of another example of a peaking power plant that is as far away from the utility load center as Crossroads at 400 miles. (Rose Surrebuttal, p. 27-29). In contrast, he observes that Dogwood constitutes a unique "low emitting local plant." (Rose Surrebuttal, p. 37).

Mr. Rose concludes that "the Dogwood plant is preferred to the GMO Crossroads plant because it has much lower net costs to ratepayers." (Rose Surrebuttal, p. 35). He recommends:

"that GMO choose the Dogwood plant to meet GMO's need for capacity. It is a real solution to a real problem that is more economic than Crossroads. Were GMO to correct its analyses, it will likely show, as do the three analyses I have conducted (2008 historical, 2010 historical, and the 2009 vintage forecast) and as supported by the implications of the likely flaws in the GMO analyses, that Dogwood results in lower ratepayer costs and rates than Crossroads and less risks. This savings level could be high; to provide perspective, the estimated savings per kW could be greater than the total capital cost of Crossroads at [~~***(highly confidential figure, deleted)***~~]. This estimate of savings does not fully include the benefits of higher reliability per kW due to Dogwood's

proximity to load, and does not account for the benefits of greater use of Missouri resources by GMO by choosing Dogwood rather than Crossroads. This savings is so large because Dogwood is so much more efficient and has lower transmission costs and risks. Accordingly, the Commission should not approve inclusion of the Crossroads plant or its excessive costs in GMO's rate base."

(Rose Surrebuttal, p. 38).

Timing

GMO argues that it should be allowed to include Crossroads in rate base and expenses pursuant to a 2007-08 analysis. Staff contends that the pertinent decision date was in 2005. But the parties agreed to, and the Commission approved, a stipulation in the last GMO rate case (ER-2009-0090) that such matters would be reevaluated based on current information. (Crawford Rebuttal, p. 9; Janssen Rebuttal, p. 18). GMO has yet to fulfill that stipulation, and the time for such evaluation is still "now".

Conclusions of Law

This case presents the first opportunity for the Commission to consider whether to allow the Crossroads plant to be included in GMO's rate base. (Janssen Rebuttal, p. 6). However, even now GMO has not presented a formal request for approval of acquisition of the plant to the Commission, instead just including it in its various accounting schedules. (Janssen Rebuttal, p. 6-7).

The Commission concludes it should not approve GMO's proposal to include Crossroads in rate base for a number of reasons.

First, GMO did not provide any evidence explaining why it would be appropriate to include a plant that is owned and operated by the City of Clarksdale, Mississippi in its rate base. Its agreement with the City appears to be a purchase power agreement that should at most be included in expenses, given that it only requires GMO to make periodic payments for the right to output. (Rollison Rebuttal, p. 2-3). The agreement puts the risk of underperformance on the City by means of a liquidated damages clause. (Id. p. 3-4). Further, the agreement puts the risk of major problems upon the City by means of an indemnification clause. (Id. p. 4). GMO holds a purchase option, thereby for now avoiding the risks that would accompany actual purchase and ownership and gaining tax advantages. (Crawford Tr. 4053, 4059) There does not appear to be any basis for allowing GMO shareholders to earn a return on this plant, when they do not own it or bear its risks. (GMO Initial Brief, p. 13).

“In determining the reasonableness of rate base inclusion, the Commission determines that a utility is entitled to a fair return on its prudent investment in property devoted to public service.” *In the matter of Kansas City Power & Light*, 28 Mo PSC (NS) 228 (1986). That “fair return” is meant to compensate shareholders for the risk of investment. *See, e.g., State ex rel Associated Natural Gas Co v. PSC*, 706 SW2d 870, 875 (Mo App 1985). In this situation, there is no risk of investment, because GMO has not yet exercised its option to purchase the plant. In effect it wants the best of both worlds, getting preferential tax treatment and risk avoidance by having the City own the plant, yet seeking inclusion in rate base that would result in recovery of not only out-of-pocket expenses but also depreciation and rate of return. But as the Commission has previously determined, “the purchase of power does not give the purchaser an ownership

interest in the supplier of power.” Report and Order, Case No. ER-2007-0002 (2007), starting p. 44, *affd State ex rel Public Counsel v. PSC*, 274 SW3d 569, 580-81 (Mo App 2009).⁹

Second, GMO has not obtained approval from this Commission regarding its proposal to include Crossroads in rate base. GMO contends that it made the decision in 2007 to move Crossroads into rate base, and put it on its regulated books in August 2008 (Crawford Rebuttal, p. 8; Ives Surrebuttal, p. 15). But in the GPE merger case that the Commission decided in July 2008, the Commission found that Crossroads was to remain a merchant plant that could not be used in Missouri due to lack of transmission and that would possibly be considered for inclusion in rate base sometime in the future. Report and Order, Case No. EM-2007-0374 (July 2008), p. 8, 147 & note 566.¹⁰ When GMO filed its next rate case later in 2008, it did propose to include Crossroads in rate base (without seeking Commission approval of assignment of the agreement with Clarksdale¹¹), but it settled that case by stipulation in 2009. (ER-2009-0090).

Advance approval from the Commission is required under section 393.170 and 4 CSR 240-3.105 for construction of an electric power plant. *Stopaquila.org v. Aquila, Inc.*, 180 SW3d 24 (Mo. App. 2005), see also *State ex rel Cass County v. PSC*, 259 SW3d 544 (Mo. App. 2008). This requirement also naturally extends to purchase of a plant constructed by another; otherwise the statute could be skirted. (*See Cass County, supra*, finding that advance approval is required because: “Although the PSC always has the power to disallow capital improvements in a utility’s rate base, that post hoc authority is toothless if a major disallowance would jeopardize the interests of either ratepayers or investors.”) Other statutes also require approval of such a major

⁹Potentially, 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.

¹⁰ Appeal pending. Missouri Supreme Court SC91322.

¹¹ Featherstone Rebuttal, p. 17-18.

acquisition and the related financial obligations. See Sections 393.190-200. KCPL acknowledged the need for Commission approval of material capital investments in its most recent regulatory plan. See KCPL Initial Brief, Case No. ER-2010-0355, p. 7. Chapter 393 envisions a “cradle to grave” process, under which plant additions are approved before being built or acquired, and under which subsequent disposal is also approved (393.190), all outside the context of the ratemaking process. As made clear in the above-referenced appellate cases involving the South Harper plant, such Commission authority over generation plants is essential to its obligations to protect the public interest.

That is not to say that GMO could not proceed to seek Commission approval by separate proceeding. Because it has not yet actually acquired the plant, it can still seek the advance approval required by the statutes without the need for the legislative gymnastics that ultimately led to a resolution of the South Harper disputes. But its failure to proceed in that manner thus far underscores the impropriety of its current proposal to include the plant as if already owned.

Third, GMO was required to obtain advance approval from FERC to “acquire” the plant from its affiliate. As indicated above, there does not appear to be any evidence explaining how or why the agreement between Clarksdale and GMO should be treated as a capital item in rate base rather than a purchase power agreement (“PPA”) in expenses.

If the arrangement is considered to be a PPA, FERC authorization under Section 205 of the Federal Power Act (“FPA”)¹² was needed in order to transfer the power purchase obligation to GMO from its affiliate so that FERC could review the transaction for potential self-dealing or affiliate abuse. See, *Boston Edison Co. re Edgar Electric Co.* (“*Edgar*”), 55 FERC ¶ 61,382 (1991) (requiring affiliates to demonstrate that the price, terms and conditions of transactions are reasonable when compared to alternatives in the market involving non-affiliates). On the other

¹² 16 USC 824d

hand, if the arrangement is somehow deemed to qualify as a lease, then Section 203(a)(1)(D) of the FPA¹³ required FERC authorization for which the *Edgar* standard also applies. *See Ameren Energy Generating Company and Union Electric Company, d/b/a Ameren UE*, 108 FERC ¶ 61,081 (2004) (applying the *Edgar* standard to Section 203 applications involving affiliates).

Thus, regardless of whether the arrangement is a PPA or something else that somehow can be capitalized, GMO was required, in the first instance, to obtain FERC authorization, but did not. Consequently, there would appear to be no basis for GMO to recover in retail rates costs related to Crossroads for which it has failed to receive FERC authorization.

Fourth, GMO has yet to fulfill its obligations under the Commission-approved stipulation in ER-2009-0090. GMO admits that it failed to contact Dogwood - the only independent generation source in its service area - for current information before conducting the study promised in the stipulation. And Dogwood's self-initiated offer of April 2010 was not taken into account, with the study being based on 2009 costs. (Janssen Rebuttal, p. 17-18). It appears that GMO just reran old data in its files without contacting anyone to obtain current information. Thus, it simply is not possible to legitimately conclude that GMO fulfilled its promise in the stipulation to reevaluate Crossroads and its generation needs by exploring "all reasonable options to add generating capacity to GMO's system and use its best efforts to determine the best terms available for each such option." In order to protect the integrity of the approved stipulation that resolved the prior rate case, the Commission concludes it should not consider Crossroads for inclusion in rate base except in conjunction with a review of a study that complies with that stipulation.

¹³ 16 USC 824b. In pertinent part, Section 203 provides that: "No public utility shall, without first having secured an order of the Commission authorizing it to do so – (D) purchase, lease, or otherwise acquire an existing generation facility – (i) that has a value in excess of \$10,000,000; and (ii) that is used for interstate wholesale sales and over which the Commission has jurisdiction for ratemaking purposes."

Fifth, the evidence shows that Crossroads is not the best option for ratepayers, based on current evidence as required by the prior rate case stipulation, and also has not been the best solution at all other times as well. Through Mr. Janssen's and Mr. Rose's testimony, Dogwood shows that it is an available and attractive solution to GMO's capacity needs that should not be ignored in favor of the Mississippi plant, and that offers the real world solution that GMO seeks to Staff's objections to the Crossroads plant.¹⁴ Dogwood has made attractive offers in response to GMO RFPs and on its own. But GMO has not fully and fairly considered these offers. The Commission has authority to review the prudence of such power procurement decisions.

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 temporary¹⁵ gas price savings at Crossroads would be overshadowed by the cost of transmission to get electricity from

¹⁴ Transcript, p. 3789 (GMO Opening Statement).

¹⁵ 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).

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).

In summary, the Commission concludes it 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.

For all the foregoing reasons the Commission concludes not to allow rate increases for GMO that are based on the Crossroads plant.

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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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