

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 RESPONSE TO GMO'S
APPLICATION FOR REHEARING**

COMES NOW Dogwood Energy, LLC ("Dogwood") and for its Response to KCP&L Greater Missouri Operations Company's (GMO) Application for Rehearing states to the Commission:

ISSUE: CROSSROADS ENERGY CENTER

GMO disregards the Commission's conclusions: (1) that it had already recently ruled on the Crossroads valuation and transmission issues in File No. ER-2010-0356; (2) that GMO failed to convince the Commission that it should change its prior decisions; and (3) that in any event administrative and judicial economy weighed against changing those prior decisions because of the pending appeal. (Report and Order, p. 52-54). Instead, GMO seems to pretend that the Commission completely ignored its prior decisions and made totally new and unrelated decisions. As a result, GMO does not challenge the Commission's actual determinations in this

case, does not properly present an issue for rehearing pursuant to Section 386.500, and hence preserves no issue for appeal regarding Crossroads.

The Commission's actual decision not to revisit the merits of its prior determinations about Crossroads was well within its discretion pursuant to Sections 386.430 and 386.490. While the Commission is not strictly bound by stare decisis or res judicata, it has also long recognized that "where a particular situation has previously been presented to the Commission, and conclusions announced with respect thereto, the views so announced are controlling unless conditions are made to appear in a subsequent presentation which justifies or requires a different conclusion." *In Re Home Tel. Co.*, 23 Mo PSC 367, 379 (1937)(cited in 79 ALR2d 1126). In a 1982 Missouri Public Service Company decision, the Commission similarly stated: "the Commission certainly has the authority to establish and follow reasonable consistent principles and guidelines in approaching issues which are presented to the Commission for decision with some frequency." 25 Mo PSC (NS) 139. The courts have indicated that the reason agencies are not bound by prior decisions is so that they can correct prior errors, not so that they can be compelled to make the same decision over and over again. *Mitchell v. City of Springfield*, 410 SW2d 585, 589-90 (Mo App 1966), *revd on other grounds* 425 SW2d 143 (Mo 1968).

In its Application for Rehearing, GMO not only fails to address the Commission's express decision that GMO did not provide any reason that it should exercise discretion to change its prior decisions, but in addition GMO does not even raise any new arguments. Instead, it simply rehashes its post-hearing briefs that the Commission has already found to be unpersuasive. Indeed, GMO concedes that its Application simply reiterates its criticisms of the prior decisions. (Application para. 56). GMO makes no attempt whatsoever to demonstrate why the Commission should not have decided to wait for the final outcome of the pending appeal.

Moreover:

- the Commission does not fully articulate in findings and conclusions the basis for its decision, which again was a determination not to reconsider the merits of the valuation and transmission decisions from its prior Report and Order now pending appeal (Report and Order, p. 52);

- GMO was not entitled to new decisions on Crossroads issues just because it asked for them based on the same arguments it had presented before, but rather had to overcome the initial burden of convincing the Commission that it should reconsider its prior decisions (Report and Order, p. 53, 58);

- the Commission expressly identified GMO's arguments and found they were not persuasive (Report and Order, p. 55-56);
- as the Commission found and concluded, there is no evidence in the Record that GMO or GPE incurred any "cost" to acquire the purchase power agreement for Crossroads from Aquila (Report and Order, p. 56);
- GMO conceded at page 61 of its Brief that there was no evidence of cost and that it was actually arguing only about purported "original value";
- as found and concluded by the Commission, Staff did provide substantial evidence regarding "fair value" (Report and Order, p. 57);
- the Commission found and concluded that it should stand by its prior decision to construct a surrogate value for Crossroads given the inappropriate location of the plant in Mississippi, rather than place no value on it at all (Report and Order, p. 57);
- the Commission expressly found that the high cost of transmission from Mississippi is not outweighed by lower fuel costs, as compared to a plant location more proximate to load, in part because GMO inappropriately pointed to unnecessary and inflated year-round fuel costs when making its arguments (Report and Order, p. 54, 58);
- the Commission correctly concluded that its prior decision to exclude transmission costs from Mississippi did not violate the Filed Rate

Doctrine because it did not find FERC rates to be too high or reduce them to zero, but rather found that GMO was imprudent to rely on a plant in Mississippi, and therefore, it should not be using any interstate transmission service at all (Report and Order, p. 59);

- 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; 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;

- GMO continues to erroneously portray its internal opinion, based on its self-serving assumptions, as an indisputable fact that Crossroads was its lowest cost option, and ignores the Commission's holding based on all the evidence presented by all the parties, that: "to recognize the marginal value of purchased power from Crossroads does not constitute an endorsement of its inflated cost" (Report and Order, p. 59).

Thus, in all respects, GMO fails to file a proper application for rehearing or raise any basis for further action in this proceeding concerning Crossroads.

Conclusion

The Commission should deny GMO's Application for Rehearing of the Report and Order in this case, as it pertains to the Crossroads Energy Center. GMO did not comply with Section 392.500 RSMo, in that it fails to seek rehearing "in respect to any matter determined therein" and in that it fails to provide "sufficient reason" for rehearing.

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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 28th day of January, 2013, to the persons shown on the attached list.

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