

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

In the Matter of the 2009 Resource Plan of)	
KCP&L Greater Missouri Operations Company)	Case No. EE-2009-0237
Pursuant to 4 CSR 240-22.)	

**POST-HEARING BRIEF OF THE
OFFICE OF THE PUBLIC COUNSEL**

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COMES NOW the Office of the Public Counsel (Public Counsel) and states for its Post-Hearing Brief as follows:

BACKGROUND

On April 12, 2010, KCP&L Greater Missouri Operations Company (GMO) joined in a Nonunanimous Stipulation and Agreement, which represented a joint plan to remedy deficiencies in GMO's 4 CSR 240 Chapter 22 Integrated Resource Plan (IRP) filings of August 5, 2009, and November 2, 2009. In the Nonunanimous Stipulation and Agreement, GMO committed to filing a revised IRP compliance filing by December 17, 2010. The Nonunanimous Stipulation and Agreement was approved by the Missouri Public Service Commission (Commission) on June 2, 2010, specifically directing GMO to file its Revised IRP not later than December 17, 2010.

On December 17, 2010, GMO requested an extension until January 18, 2011, to file its Revised IRP. On December 28, 2010, the Commission granted the requested extension and on January 18, 2011, GMO filed its Revised IRP which 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).

On February 8, 2011, the Staff of the Missouri Public Service Commission (Staff) filed a complaint with the Commission, Case No. ER-2011-0250, alleging that GMO's Revised IRP was deficient in that it did 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). It was Staff's contention that GMO failed to meet the requirements of Commission Rule 4 CSR 240-22.010 (2) and therefore, by filing a deficient Revised IRP, GMO violated the Nonunanimous Stipulation and Agreement.¹ The Missouri Department of Natural Resources (MDNR or DNR) intervened in the Complaint Case ER-2011-0250 supporting Staff's Complaint by stating:

MDNR was an active participant in Case No. EE-2009-0237, and a signatory to the Stipulation in which GMO agreed to submit a revised IRP filing on December 18, 2010, to address certain alleged deficiencies and concerns identified by MDNR and other parties. MDNR was also an active participant in the Stakeholder Process Agreement (SPA) set out in the Stipulation. Based on its participation in the SPA, DNR expected GMO to file an IRP that was in compliance with the terms of the Stipulation and consistent with discussions that occurred in the SPA. MDNR concurs with Staff that parties to the Stipulation understood the "revised filing" would include a revised preferred resource plan in accordance with the Chapter 22 provisions cited in Staff's complaint. The language of the Stipulation provides evidence of this expectation. Appendix 1, paragraph 30 refers to "the preferred resource plan selected by GMO in its revised IRP filing." This language was accepted by all parties to the Stipulation including GMO.²

MDNR also stated:

DNR encourages the Commission to review the statements in Paragraph 6 of GMO's January 18 filing in the context of the

¹ Complaint, ER-2011-0250.

² Missouri Department of Natural Resources' Response to KCP&L Greater Missouri Operations Company's Answer, ER-2011-0250.

stakeholder process conducted under the Stipulation. GMO had ample opportunity during the stakeholder process to discuss with the other parties its conclusion that the preferred resource plan was no longer appropriate and to discuss a schedule for completing the analysis required for a revised preferred resource plan in a timely manner. GMO did not take advantage of this opportunity; did not consult with stakeholders prior to requesting the delay of its revised filing to January 2011, did not discuss its decision to omit a preferred resource plan from its January 2011 filing, and arbitrarily determined that it would take several additional months to review two areas it deemed to be changed circumstances. In doing so, GMO also deprived the other parties the ability to avail themselves of the provision of the stipulation wherein the participants reserved the right to take any disputes concerning implementation or action items related to GMO's IRP, revised IRP or supplemental filings to the Commission for resolution. MDNR urges the Commission to look into this matter further and require GMO to act in compliance with the terms ordered by the Commission when it approved the Stipulation and Agreement on June 2, 2010.³

At the direction of the Commission, GMO filed its Completed Analysis for its Integrated Resource Plan and its Preferred Resource Plan on July 1, 2011.

As a result of Staff's Complaint, the Commission held an evidentiary hearing on August 1, 2011, to determine whether GMO violated the terms and conditions of the Nonunanimous Stipulation and Agreement.

DISCUSSION

The fundamental objective of resource planning 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.⁴ The Commission rules require a resource planning document which: (a) considers and analyzes demand-side efficiency and energy management basis with supply-side alternatives; (b) selects a preferred resource plan using minimization of the present worth of long-run utility costs as the primary selection criteria; and (c) explicitly identifies and where

³ Id.

⁴ 4 CSR 240-22.010 (2)

possible, quantitatively analyzes 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.⁵ A sufficient IRP filing must contain each of these elements. If Staff, Public Counsel or any intervenor finds deficiencies with the utility's IRP filing, it must work with the utility and the other parties to reach a joint agreement on a plan to remedy the identified deficiencies.⁶ The result of the joint agreement is to produce a resource planning document which meets the requirements of 4 CSR 240 Chapter 22.

In its Complaint, Staff's contention was that GMO failed to meet the requirements of Commission Rule 4 CSR 240-22.010 (2) and therefore, by filing a deficient Revised IRP, GMO violated the Nonunanimous Stipulation and Agreement. Staff's concern was that the Revised IRP did 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).

By asking the Commission to view GMO's filings as a cumulative process; with the filings of its original IRP plan in August 2009, its revised IRP plan in January 2011, and then finally the supplemental filing that was made in July 2011; GMO states it believes it has fully complied with the Commission's 4 CSR 240 Chapter 22 rules and has satisfied the concerns raised by the Staff's Complaint.⁷ However, the issue before the Commission is not one of testing the sufficiency of cumulative filings; it is a determination of whether or not GMO met its commitment to file a revised IRP compliance filing. The Revised IRP needs to be viewed separately because each of these documents is substantially different from the previous version

⁵ 4 CSR 240-22.010 (2) (A) – (C)

⁶ 4 CSR 240-22.080 (8)

⁷ Tr., P.26, L. 23-25 & P. 27, L. 1-5

and in some cases even conflict with each other.⁸ The question is whether the Revised IRP itself is so deficient as to violate the Nonunanimous Stipulation and Agreement.

Preferred Resource Plan

The parties to the Nonunanimous Stipulation and Agreement understood the Revised IRP would include a revised preferred resource plan in accordance with 4 CSR 240 Chapter 22. Commission Rule 4 CSR 240-22.070 (10) clearly states that the utility shall develop, document and officially adopt a resource acquisition strategy consisting of a preferred resource plan for an IRP filing to be sufficient. Therefore, a sufficient IRP filing must contain the utility's preferred resource plan. However, the Revised IRP did not include a preferred resource plan as required.⁹ In fact, the preferred resource plan was not filed until July 1, 2011 under order by the Commission.

The utility provides various reasons why the preferred plan was not included in the Revised IRP, but this has no effect on the requirement that the utility must file a preferred plan. Neither the Nonunanimous Stipulation and Agreement or the Commission Rules provide for an exemption from the requirement of selecting a preferred resource plan in a sufficient IRP filing.¹⁰ By not including a preferred resource plan, the Revised IRP was deficient according to the requirements of 4 CSR 240 Chapter 22. Therefore, GMO did not meet the requirements of the Nonunanimous Stipulation and Agreement.

⁸ Tr., P. 90, L. 2-11

⁹ Tr., P. 85, L. 18-20

¹⁰ Tr., P.86, L. 24-25 & P. 87, L. 1-3

Cost Effectiveness

A sufficient IRP filing must evaluate the cost effectiveness of each identified end-use measure and each potential demand-side program developed.¹¹

Staff's witness Mantle is justifiably concerned about GMO's reliance on its preferred resource plan on purchase power agreements short-term rather than putting steel in the ground.¹² A short-term purchase power agreement may be lower cost in the short-term.¹³ But over the long-term, putting steel in the ground is the least cost resource when balanced against the risk of whether or not there will be power available for purchase in the future and what the cost will be.¹⁴ An evaluation of the cost effectiveness as required by 4 CSR 240 Chapter 22 should have been completed to determine whether GMO's reliance on short-term purchase power agreements is in the best interest of the customers in the future.

Another cost effectiveness issue regarding the original IRP filing that was raised was whether it would be more economical to retire the Sibley Unit 3 plant and replace that load with DSM savings.¹⁵ The Nonunanimous Stipulation and Agreement, Appendix 1,¹⁶ reflects an agreement by GMO to include a plan for the retirement of Sibley Unit 3 in the Revised IRP: "Through this discussion, GMO and the other parties will work to define one of several accommodations of resources that appear most likely to appear most likely to provide the least cost replacement for the Sibley 3 unit, if that unit is retired. Based on this discussion, GMO agrees to develop at least one alternative resource plan that includes retirement of Sibley 3 and to

¹¹ 4 CSR 240-22.050 (3) & (7)

¹² Tr., P.56, L. 24-25 & P. 57, L. 1-3

¹³ Tr., P. 57, L. 16-17

¹⁴ Tr., P. 57, L. 17-20

¹⁵ Tr., P. 91, L. 10-17

¹⁶ MDNR Exhibit 2

include this alternative resource plan in the revised integration analysis for the filing due December 17th, 2010.”¹⁷

GMO witness Okenfuss admitted GMO was required by the Nonunanimous Stipulation and Agreement to include retirement of Sibley Unit 3 in at least one alternative resource plan pursuant to the stipulation and agreement.¹⁸ However, neither the Revised IRP nor the alternative resource plans submitted in July 2011 included a plan for the retirement of Sibley 3.¹⁹

By not performing a sufficient cost effectiveness evaluation of reliance on short-term purchase power agreements, and by completely ignoring the requirement to include retirement of Sibley Unit 3 in at least one alternative resource plan, GMO did not meet the requirements of the Nonunanimous Stipulation and Agreement.

Stakeholder Process

A significant part of the plan to remedy the identified deficiencies agreed to in the Nonunanimous Stipulation and Agreement was the stakeholder process. MDNR witness Bickford testified that the parties agreed in the Nonunanimous Stipulation and Agreement to participate in a stakeholder process that would review the deficiencies that different parties found in order to produce a revised IRP plan for GMO.²⁰ As MDNR witness Bickford stated, there was a detailed schedule of meetings beginning in April and May of 2010 that would cover specific issues that the parties had with the goal of reviewing the demand-side management (DSM)

¹⁷ Tr., P. 110, L. 3-24

¹⁸ Tr., P. 187, L. 13-18

¹⁹ Tr., P. 102, L. 6-12

²⁰ Tr., P.65, L. 24-25 & P. 66, L. 1-4

filings, to review the supply-side options and to come up with information for the Company's use in providing a revised plan in December of 2010.²¹

The parties understood that these plans and programs would first be vetted through the stakeholder process prior to being included in a revised IRP.²² The stakeholder process was designed to resolve questions the parties had about GMO's program and their portfolio and to ensure the portfolio GMO tested through the process was comprehensive and cost effective.²³ Ultimately the DSM programs that were selected to be placed in a revised IRP filing would have been discussed during the stakeholder process first.²⁴

However, what was discussed and agreed to in the stakeholder process is not what was included in the Revised IRP. For example, MDNR witness Bickford stated that stakeholder agreements about the level of DSM to be modeled did not appear in the January 2011 filing.²⁵ The numbers provided in the work papers are different than the numbers in the tables in the January 2011 filing, and the numbers in the work papers were different than what had been agreed to in the stakeholder process back in July 2010.²⁶

The stakeholder process is extremely time consuming and costly in terms of money and resources. While Staff expressed the opinion that the language of the Nonunanimous Stipulation and Agreement does not require GMO to actually use the stakeholder-agreed-to demand-side programs in its updated analysis and its preferred plan, Staff also stated that some parties may have a disagreement of what the intent was.²⁷ It is odd to expect the Commission to believe that the Nonunanimous Stipulation and Agreement required this large expenditure of time and

²¹ Tr., P. 66, L. 2-12

²² Tr., P. 66, L. 13-16

²³ Tr., P. 96, L. 15-20

²⁴ Tr., P. 96 L. 21-25

²⁵ Tr., P. 81, L. 3-6

²⁶ Tr., P. 84, L. 16-20

²⁷ Tr., P.58, L. 12-22

resources to develop programs which the utility can then unilaterally decide whether to use or not use in its IRP filing.

By not using the stakeholder-agreed-to demand-side programs in its updated analysis and its preferred plan, GMO violated the intent, if not the express language, of the Nonunanimous Stipulation and Agreement.

CONCLUSION

As a signatory to the Nonunanimous Stipulation and Agreement, Public Counsel shares the concerns of Staff and MDNR. Commission Rule 4 CSR 240 Chapter 22 contains the definitions of what a sufficient IRP is to include. The Nonunanimous Stipulation and Agreement provided the mechanism for GMO to produce a satisfactory revised IRP according to 4 CSR 240 Chapter 22. The evidence shows that the Revised IRP did not include a preferred resource plan, nor did it evaluate the cost effectiveness of each identified end-use measure and each potential demand-side program developed, including retirement of Sibley Unit 3, as required. By not using the stakeholder-agreed-to demand-side programs in its updated analysis and its preferred plan, GMO violated the intent, if not the express language, of the Nonunanimous Stipulation and Agreement.

There is sufficient evidence for the Commission to find that the Revised IRP filing was deficient and violated the Nonunanimous Stipulation and Agreement. However, even if the Commission finds the filing was not so deficient as to violate the Nonunanimous Stipulation and Agreement, this case is an example of the struggle to ensure the fundamental objective of resource planning - 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 - is achieved. Given the ongoing difficulties with ensuring that utilities keep their commitments in IRP cases and other

cases, Public Counsel asks the Commission to encourage electric utilities to follow through on commitments made in IRP settlements.

Respectfully submitted,

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By:_____

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 8th day of September 2011:

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