

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

In the Matter of the Application of KCP&L)
Greater Missouri Operations Company for)
Approval to Make Certain Changes in its Charges)
For Electric Service) Case No. ER-2010-0356

**PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

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ATTORNEYS FOR THE
INDUSTRIAL INTERVENORS

April 4, 2011

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OF THE INDUSTRIAL INTERVENORS**

COME NOW Ag Processing, Inc. a cooperative, and the Sedalia Industrial Energy Users’ Association (collectively referred to herein as “Industrial Intervenors”) by and through undersigned counsel, pursuant to the Commission’s March 7, 2011 Order Granting Extension of Time to File Briefs, and submit their Proposed Findings of Fact / Conclusions of Law on the following issues:

1. Crossroads
 - a. Should Crossroads be included in rate base at depreciated net book value in this proceeding? If not, what is the appropriate valuation of Crossroads?
 - b. If Crossroads is included in rate base, what should the amount of accumulated deferred taxes associated with Crossroads be used as an offset to rate base?

1. This issue concerns the appropriate valuation to place on the Crossroads generating unit recently devoted by GMO to serving its ratepayers. The Supreme Court has held that the utility must be permitted to earn a return on the “fair value” of the property devoted to the public convenience.

The corporation may not be required to use its property for the benefit of the public without receiving just compensation for the services rendered by it. . . . We hold, however, that the basis of all calculations as to the reasonableness of rates to be charged by a corporation . . . must be the fair value of the property being used by it for the convenience of the public. What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is that no more be extracted from it than the services rendered by it are reasonably worth.¹

The Commission’s authority to establish the valuation of an electric corporation’s plant has also been memorialized in Section 393.230.

The commission shall have the power to ascertain the value of the property of every . . . electrical corporation . . . in this state and every fact which in its judgment may or does have any bearing on such value.

The commission shall have power to make revaluations from time to time and to ascertain all new construction, extensions and additions to the property of every . . . electrical corporation. (emphasis added).

2. The Crossroads generating unit was originally designed and constructed for use by Aquila Merchant, a non-regulated affiliate operating in the wholesale market.² Despite the fact that the ratepayers are located in Missouri, the Crossroads unit is located in Clarksdale, Mississippi.³ In August 2008, after the Great Plains Energy acquisition of Aquila, the Crossroads unit was transferred to the regulated books of GMO.⁴ Recognizing, then, that Crossroads was transferred from a non-regulated affiliate to the Missouri regulated operations, the Commission’s affiliate transaction rule is implicated.

¹ *Smyth v. Ames*, 169 U.S. 466, 546-547 (1898) (emphasis added).

² Ex. 216, page 4

³ *Id.*

⁴ *Id.* at page 5.

3. The Commission has promulgated its affiliate transaction rule at 4 CSR 240-20.015. As it applies to the immediate issue, that rule provides that the purchase of “goods or services” from an affiliate shall be “the lesser of: (a) fair market price; or (b) the fully distributed cost.”⁵

4. In this case, GMO asks that the Commission include Crossroads in rate base at its net book value of \$104 million which includes \$17.8 million of increased transmission capital costs.⁶ In contrast, the Industrial Intervenors claim that, given the mandate of the Commission’s affiliate transaction rule, the fair market value of the Crossroads unit is established by certified filings made by Great Plains Energy shortly before the transfer of the Crossroads unit to the Missouri regulated operations.

5. In February 2007, Great Plains Energy announced that it was seeking to acquire Aquila, Inc. Given several recent divestitures by Aquila, Great Plains acquisition amounted to simply the Missouri regulated electric operations as well as the Crossroads Energy Center. Over the next several months, Great Plains made three separate filings with the Securities Exchange Commission regarding the “fair value” of the Crossroads unit. As Great Plains indicated:

The preliminary internal analysis indicated a fair value estimate of Aquila’s non-regulated Crossroads power generating facility of approximately \$51.6 million. This analysis is significantly affected by assumptions regarding the current market for sales of units of similar capacity. The \$66.3 million adjustment reflects the difference between **the fair value of the combustion turbines at \$51.6 million** and the \$117.9 million book value of the facility at March 31, 2007. Great Plains Energy **management believes this to be an appropriate estimate of the fair value of the facility.**⁷

⁵ 4 CSR 240-20.015(2)(A) (emphasis added).

⁶ Ex. 12, page 3.

⁷ Ex. 216, page 12 (citing to Great Plains Energy & Aquila Joint Proxy Statement / Prospectus, filed with the SEC on May 8, 2007, at page 175) (emphasis added).

Recognizing that the valuations disclosed by Great Plains to the Securities Exchange Commission were under oath and conducted shortly prior to the transfer of Crossroads to the Missouri regulated operations, the Commission finds that it is an accurate reflection of the fair market value as required by the affiliate transaction rule.

6. In contrast, GMO claims that the fair market value of Crossroads is established by a Request for Proposals conducted in March 2007, prior to the SEC disclosures. GMO postulates that, the responses to this RFP, demonstrate that fair market value is comparable to the proposed net book value. GMO fails to explain, however, given the alleged results of the RFP, why it announced to the Securities Exchange Commission, mere months later, that “fair value” was only \$51.6 million.

7. GMO’s assertion is also inconsistent with real world evidence as to the diminution in value experienced by these deregulated generating assets. The evidence indicates that, following the crash of the deregulated electric market and the bankruptcy of Enron, many deregulated generating assets, including combustion turbines identical to those in service at Crossroads, experienced a significant devaluation. Specifically, the evidence indicates that Aquila sold General Electric combustion turbines, identical to those installed at Crossroads in 2006. At that time, Aquila sold its ownership interest in Raccoon Creek and Goose Creek in Illinois to AmerenUE. Given the deterioration in the deregulated market, Aquila took a write-off, from net book value, of \$99.7 million.⁸ Aquila sold other General Electric turbines to Nebraska and Colorado utilities.⁹ Again, the price received by Aquila was significantly affected by the deterioration in the

⁸ Ex. 215, page 51.

⁹ *Id.* at page 48.

deregulated energy market.¹⁰ These sales by Aquila, of combustion turbines identical to those installed at Crossroads, clearly indicate that the fair market value of these General Electric combustion turbines was significantly below the net book value.

8. The Commission finds, given Great Plains' statements to the Securities Exchange Commission shortly before the transfer of the Crossroads unit to the Missouri regulated operations, as well as the arms-length sale of other General Electric combustion turbines by Aquila, that the fair market value of Crossroads at the time of transfer (August 2008) was \$51.6 million. Given the subsequent 32 months, the fair market value of Crossroads for purposes of establishing rate base in this case should also reflect 32 months of depreciation on that unit.

Respectfully submitted,



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INTERVENORS

¹⁰ *Id.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing pleading by email, facsimile or First Class United States Mail to all parties by their attorneys of record as provided by the Secretary of the Commission.

A handwritten signature in black ink, appearing to read "David L. Woodsmall". The signature is written in a cursive style with a large, circular initial "D".

David L. Woodsmall

Dated: April 4, 2011