

In the Matter of the Resource Plan of )  
KCP&L Greater Missouri Operations Company ) Case No. EO-2013-0538

COME NOW Dogwood Energy, LLC (“Dogwood”), Sierra Club, the Office of the Public Counsel, and Natural Resources Defense Council (collectively “Stakeholders”), and respectfully request reconsideration and/or rehearing in this proceeding pursuant to 4 CSR 240-2.160 regarding the Commission’s October 9, 2013, Notice Acknowledging KCP&L Greater Missouri Operations Company’s Annual Update Report and Closing File.

1. On November 19, 2012, Stakeholders, GMO and others submitted a Joint Filing in Case No. EO-2012-0324 regarding remedies for previously-identified deficiencies in and concerns with KCP&L Greater Missouri Operations Company's ("GMO's") 2012 Integrated Resource Plan ("IRP") compliance filing. In the Joint Filing, the parties agreed that GMO would undertake to address those deficiencies and concerns in its 2013 annual update to its IRP.

2. On December 19, 2012, in Case No. EO-2012-0324, the Commission issued its Order Regarding 2012 Integrated Resource Plan. The Commission acknowledged the considerable effort expended by the Stakeholders and approved the proposal that GMO undertake the agreed-upon remedies in its 2013 annual update. The Commission concluded that “it would be premature to make a determination now on whether the IRP complies with Chapter 22 of the Commission rules or to schedule a hearing at this time on the unresolved deficiencies and concerns alleged by the parties.”

3. The Commission also ordered GMO to comply with the Joint Filing and to address unresolved deficiencies and concerns in its 2013 annual update.

4. On June 20, 2013, GMO submitted its 2013 annual update, which was assigned to this file.

5. Stakeholders submitted pleadings herein indicating that GMO had not satisfied its obligations under the Joint Filing, and some of the Stakeholders also requested a hearing to resolve issues concerning GMO's compliance with the IRP rules and the Joint Filing.

6. On October 9, 2013, the Commission issued its Notice Acknowledging KCP&L Greater Missouri Operations Company's Annual Update Report and Closing File. Therein, the Commission interpreted the rule concerning annual updates not to allow for a hearing or authorize the Commission to take any action. Based on this interpretation, the Commission made no decision and "closed" this file.

7. Stakeholders disagree with the Commission's determination that this proceeding only concerned GMO's annual update, because in both the Joint Filing and the Commission's Order of December 19, 2012 in Case No. EO-2012-0324 it was established that GMO's 2013 annual update filing would be considered as a supplement to its 2012 IRP and examined in that context to determine whether GMO had complied with the Commission's rules regarding triennial IRP reports. Further, the Commission confirmed in its December 19, 2012 order that any decision concerning whether to hold a hearing regarding GMO's compliance would be postponed pending submittal of GMO's 2013 annual update.

8. If the Commission stands by its determination that a hearing cannot be held in this docket, notwithstanding the arguments presented by Stakeholders, then the Commission should re-open Case No. EO-2012-0324 and schedule a hearing in that proceeding to resolve the remaining deficiencies and concerns regarding GMO's 2012 IRP as supplemented by its 2013 annual update. Stakeholders have filed a Request for Hearing in that proceeding.

9. If the Commission does not allow further proceedings in either this case or Case No. EO-2012-0324, the numerous deficiencies and concerns that Stakeholders and others have identified with GMO's 2012 IRP as supplemented by its 2013 annual update will be left unaddressed, with the combined effect of the Commission's orders in the two dockets being that the company will be permitted to go through this entire triennial compliance period without ever submitting an IRP that is reviewed by the Commission to determine whether it complies with the Commission's rules. Such a result ignores the requirements of 4 CSR 240-22.080(16), is inconsistent with the Policy Objectives of the IRP rules in 4 CSR 240-22.010, and severely undermines the role of stakeholder participation in the IRP process.

10. The Commission opines in the October 9 Notice that "4 CSR 240-22.080(3)(D) . . . does not allow for a hearing regarding the annual update report and it does not authorize the Commission to take any action regarding that report." The Commission takes too narrow a view of its authority. The cited rule does not specifically state that a hearing will be held, but it certainly does not constrain the Commission's ability to hold a hearing. Similarly, the rule neither mandates nor prohibits Commission action. By definition, a rule cannot confer authority that does not exist by statute, nor can it take away authority that does exist by statute. The Commission has statutory authority to hold a hearing or take action on an annual update under its general authority under Sections 386.250 and

393.140 RSMo, and the absence of specific rule provisions does not remove that authority. Moreover, the provisions of 4 CSR 240-22.080(16) with respect to filings are not explicitly limited to triennial filings; arguably they apply to annual updates as well.

10. If the Commission does not act to rectify this situation, the Commission will be sending a message to Stakeholders and others that there is no room for flexibility in resolving deficiencies and concerns with future triennial compliance filings by allowing the company to address them in its next annual update. In the future, Stakeholders will have to refuse to allow GMO, KCP&L, Empire, or Ameren to attempt to address any issues with their triennial filings in their next annual updates, because doing so (under the Commission's interpretation of its authority under the annual update rules in Case No. EO-2013-0538) would effectively put a company's efforts to address those issues out of the Commission's jurisdiction to review. Instead, Stakeholders will have to insist that all deficiencies or concerns that they raise with a company's triennial compliance filing be addressed in that docket by the company making a corrected full triennial submittal. Stakeholders do not believe that such a hard line would prove cost-effective for the utilities, ratepayers, or the Commission, because opportunities to resolve important issues without the need for formal proceedings would be substantially reduced if not totally eliminated.

11. Stakeholders believe that utility compliance with the Commission's IRP rules is a critical component of Commission oversight and regulation. As the Commission acknowledged in its December 19, 2012 order herein, Stakeholders devote substantial resources in developing the Commission's IRP rules and in working with the utilities to try to achieve compliance with those rules. However, Stakeholders have also tried to be practical and flexible, in order to allow the utilities to resolve issues in the most cost-effective manner

possible, which often has meant in conjunction with annual update submittals. If the Commission does not require the utilities to fulfill the agreements they make in such negotiations, then Stakeholders will have to seek hearing on all unresolved issues that they raise and will not be able to ever agree again that a utility can try to address a problem with an IRP in an annual update rather than by means of a full rerun of a triennial submittal. To avoid such an outcome, Stakeholders urge the Commission either to reconsider its October 9, 2013 order in, and hold a hearing in, this matter, or to re-open Case No. EO-2012-0324 and hold a hearing in that proceeding to resolve remaining issues with GMO's 2012 IRP as supplemented by its 2013 annual update.

WHEREFORE, the undersigned Stakeholders request reconsideration and/or rehearing in this proceeding pursuant to 4 CSR 240-2.160 regarding the Commission's October 9, 2013, Notice Acknowledging KCP&L Greater Missouri Operations Company's Annual Update Report and Closing File.

Respectfully submitted,

CURTIS, HEINZ,  
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/s/ Carl J. Lumley

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## CERTIFICATE OF SERVICE

A true and correct copy of the foregoing document was either mailed, faxed, or emailed this 21st day of October 2013, to the persons listed on the below service list.

/s/ Carl J. Lumley

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