

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

In the Matter of the Application of KCP&L Greater)	
Missouri Operations Company for Permission and)	
Approval of a Certificate of Public Convenience and)	
Necessity Authorizing it to Construct, Install, Own,)	File No. EA-2015-0256
Operate, Maintain and Otherwise Control and Manage)	
Solar Generation Facilities in Western Missouri)	

**INITIAL BRIEF OF
UNITED FOR MISSOURI, INC.**

Kansas City Power & Light – Greater Missouri Operations (“GMO”) is a socially conscious electric utility corporate citizen. One could call GMO green. GMO is active on many fronts where it comes to reducing the emission of carbon dioxide or so-called green-house gas emissions. Kansas City Power & Light (“KCPL”), GMO’s sibling subsidiary is well known for its green impact zone.^{1,2} KCPL is aggressive in pursuing the development of electric vehicle charging stations.³ In this case, GMO proposes to develop a solar power plant of 3 MWs at its Greenwood Energy Facility in Jackson County, Missouri (“proposed project”).

I. Introduction

If GMO were an unregulated entity in a free market setting, it would be free to develop and market whatever goods and services it deemed desirable. And, indeed, if GMO were attempting to market these goods and services in an unregulated marketplace, it would be free so to do even now. In a free marketplace, GMO would have two options to pursue its conscientious

¹ UFM uses GMO and KCPL almost interchangeably in this brief. KCPL/GMO’s conduct has induced this confusion. In this case in particular, the proposed power plant will be accounted for on the GMO books and is intended to be included in GMO’s rate base but will be operated by KCPL employees.

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https://www.smartgrid.gov/project/kansas_city_power_and_light_green_impact_zone_smartgrid_demonstration.html.

³ *Motion to Open Working Docket* in File No. EW-2015-0184

goals. It could sell its green services to willing buyers on a transaction by transaction basis. In the event of the failure of such services, it could voluntarily contribute its own resources on a charitable basis to achieve its goals.

GMO is not, however, proposing to provide these services in a free marketplace. It is proposing to provide these services as part of a regulated public service. In return for providing a basic public service, GMO is authorized to receive from its captive customers an authorized return on its rate base. In essence, authorization of the construction of this plant will set in motion a series of events that will permit GMO to force all of its customers to pay for this plant whether or not they want service from it. And this is the way GMO intends it. “That’s how the current regulatory construct works,” according to GMO’s witness Mr. Ives.⁴

It is in this context that the Missouri Public Service Commission (“Commission”) must make its decision. The Commission must determine whether this power plant is a basic public service or a service beyond a basic public service. It may authorize the former. It may not authorize the latter. It may authorize what is necessary and convenient for the basic public service. It may not authorize a particular political agenda of a utility company.

The Office of Public Counsel has opined that GMO is proposing this solar power plant simply in order to increase its rate base and thereby increase its revenue.⁵ UFM has a slightly different assessment. GMO is driven by a social conscience that has outpaced its appropriate business role in a regulated public service industry. GMO’s conscience is overweened.

GMO’s activities in being green are impressive as previously mentioned, but, unfortunately, GMO attempts to impose its social conscience with other people’s money. The

⁴ Tr. p. 206.

⁵ Tr. p. 60.

green impact zone was developed with significant grants of taxpayer money.⁶ One particular pilot project in the green impact zone—a battery, costing in excess of \$7 million—was conducted with approximately a 50/50 split of KCPL and federal Department of Energy money.⁷ For electric vehicle charging stations, KCPL and GMO propose to charge all of its electric customers for their investment in the charging stations. In their *Motion to Open Working Docket* in File No. EW-2015-0184, KCPL and GMO articulated an expansive vision for cost recovery for their charging stations.

The Company envisions a bright line distinction between KCP&L’s rate case, in which the Company has requested recovery of costs in connection with the Clean Charge Network pilot project for electric vehicle charging stations, and this working case which would encompass a much broader discussion of the general regulatory policy issues around electric vehicles and electric vehicle charging stations.

Ultimately, in KCPL’s rate case, the Commission found it premature to require KCPL’s customers to bear the costs of the program. Instead the Commission established a working docket to consider the issue.⁸

In this case, GMO wants experience and expertise in building and operating solar power plants. It does not matter that these plants are significantly more expensive than other generation sources. It does not matter that there is no legal requirement for them to provide service from solar power. They will provide this power from this source because, in their words, it is “sustainable.”⁹ As UFM will discuss later, this determination of sustainability is based primarily on public opinion and not a cost benefit analysis. In essence, GMO’s desire in this case is for the

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https://www.smartgrid.gov/project/kansas_city_power_and_light_green_impact_zone_smartgrid_demonstration.html.

⁷ Tr. pp. 198-199.

⁸ See *In the Matter of Kansas City Power & Light Company’s Request for Authority to Implement a General Rate Increase for Electric Service, Report and Order*, File No. ER-2014-0370, September 2, 2015, p. 76.

⁹ Tr. pp. 177, 179, 180, 184, 185, 194, 207, 229, 230,

Commission to sanction its declarations on public opinion and public policy and authorize the collection of revenue from its ratepayers in order to follow public opinion and execute its public policy decisions.

There are many good causes for which a person or company can devote its existence. Many of us are devoted to our church. Many are devoted to the saving the lives of the unborn. Many spend their time preventing cruelty to animals. And some believe it is important to reduce the emission of carbon dioxide. But not all are devoted to any or all of these cases.

GMO is a public service company, chartered with a purpose to provide safe and reliable electrical service to its customers at just and reasonable rates. GMO may not be sanctioned in providing electrical service and nutritional services to the poor and needy. It should also not be sanctioned in imposing its public policy decisions on its ratepayers. In a free society, people should be allowed to choose the causes they endorse and support, not be made to fund the conscience chosen by the monopoly public service provider in their area. This is the Commission's charge: to prevent the use of monopoly power to extract from ratepayers the cost of providing more than what is just and reasonable in a public service.

II. GMO's Proposed Solar Power Plant is not Necessary or Convenient to the Public Service.

A. GMO Has Not Carried its Burden of Proof.

GMO has the burden of proof that its proposed project is necessary or convenient for the public service. Section 393.170.3 RSMo. provides that the Commission may grant its permission to build a power plant if it determines, "that such construction or such exercise of the right, privilege or franchise is necessary or convenient for the public service." In *State ex rel. Intercon Gas, Inc. v. Public Serv. Comm'n.*, 848 S.W.2d 593, 597-98 (Mo. App. 1993), the Western District Court of Appeals opined that in granting permission to build public services,

while “necessity” does not mean “essential” or absolutely indispensable,” the additional service must be an improvement justifying the cost. The Court also held that it is within the discretion of the Commission to determine when the awarding of a certificate is in the public interest. As has been much discussed, *In re Tartan Energy*¹⁰ is the Commission’s typical rubric for considering applications in such cases. However, cost justification and public interest are the *sine qua non* for this case. The Tartan factors may assist in the Commission’s determination, but they are not the ultimate standard.

GMO has made no effort to quantify that the benefits of the proposed project justify the cost.¹¹ As Mr. Ives states, “I think I mentioned to you earlier that I have not quantified the hands-on experience and some of the qualitative factors that we assess.”¹²

What has GMO done to assess the value of the proposed project? They have talked to people. Mr. Ives tells the story.

Consider the -- the feedback from customers, the -- what we all hear day in and day out across the country as an interest in moving to a more sustainable energy future, an interest to moving to less-carbon-intensive resources. There are a number of factors that weigh into where we've gotten today as a company, that we need to make it a strategy to diversify our portfolio over the coming years.¹³

When we look across the country of what's been happening at federal/state level, we think it's pretty clear that there's going to continue to be pressure on fossil fuel-related resources and movement towards more renewable, more sustainable future. We've been very outwardly public that as a company we know we need to move that direction. So I don't think that should be a surprise to anybody in this room.¹⁴

¹⁰ The Tartan factors are as follows:

- There must be a need for the service;
- The applicant must be qualified to provide the proposed service;
- The applicant must have the financial ability to provide the service;
- The applicant’s proposal must be economically feasible; and
- The service must promote the public interest.

In Re Tartan Energy, GA-94-127, 3 Mo.P.S.C.3d 173, 177 (1994).

¹¹ Tr. pp. 209, 215.

¹² Tr. p. 215.

¹³ Tr. p. 207.

¹⁴ Tr. p. 230.

GMO gives lip service to considering factors other than public opinion, but they have done no cost-benefit analysis. When push comes to shove, this decision is driven by public opinion.

What we do know is that their corporate stewardship colored by public opinion was considered an overriding factor.

Q. But what I'm trying to understand is are there -- are there forces in play that are pushing that same development separate and apart from any regulatory mandates?

A. Yes, I think there are a lot of stuff. Just corporate stewardship, environmental stewardship. If you look -- if you look at kind of our overarching corporate objectives, and -- you can look at one of the things that we say we're responsible to do as a company is be good stewards of our environment. It is becoming clearer and clearer across this country and across the world that there's an interest in removing fossil-fire generation at the concentration levels that we have. So I think there's -- there's a general corporate responsibility to do some of that. There are federal regulations and mandates that play into that. There are state. There are customer desires. A number of things factor into when we sit down and think about what it is ahead, what plays into that.

Mr. Ives can tell us that there was a cross-functional team that was tasked with evaluating the strategic direction that GMO wanted to take.¹⁵ However, he cannot describe the content of the recommendation.

So that group that evaluated the solar strategy, I don't remember the specifics of their recommendation. I know their recommendation was to pursue utility-scale solar. I don't know if it was at that time that that group evaluated placing it at the Greenwood facility or if it was subsequent to that team's recommendation that a smaller group began to look at sites and opportunities for that utility-scale solar.

But long story short, it was -- it was the Company's decision, once we decided to do utility-scale solar, to place it at the Greenwood facility in GMO's service territory.¹⁶

This is not a showing of a service that justifies its cost. It is not a showing that this proposed project is in the public interest. This is simply a showing that this project is being

¹⁵ Tr. p. 207.

¹⁶ Tr. p. 212.

driven by public opinion and a public policy choice of KCPL. KCPL has failed to carry its burden of proof. The application must be denied.

B. GMO's Proposed Project does not Justify the Cost and is Not in the Public Interest.

1. There is no public service justifying the cost.

GMO's proposed project fulfills neither requirement laid down by *Intercon Gas*. It is not cost justified, and it is not in the public interest. There is no public need that is satisfied by the service. Therefore, there is no benefit to the public to be had. The plant is not needed to serve load on the GMO system. The proposed project will be connected on a 12 kV distribution circuit. It will not be bid into the Southwest Power Pool market. It will not provide central station power to all of GMO's customers. It will only support one circuit on the GMO system, a circuit that is already receiving central station service from GMO.¹⁷ Neither is it needed to comply with the Missouri Renewable Energy Standard. Mr. Ives stated that GMO has no need for solar Renewable Energy Credits until sometime in the 2020s.¹⁸ These two factual conclusions are not disputed.

GMO argues that there is a need for GMO to gain experience in operating solar generating plants on their distribution system. However, this is not the need that *Intercon Gas* requires. There must be a value in providing a public service. "Service" is defined in the Public Service Commission Law as anything "devoted to the public purposes of such corporation." Section 386.020(48), RSMo. The service contemplated by the Public Service Commission Law is one intended to serve the public and not to serve the private interests of the corporation.

¹⁷ Tr. pp. 240-241.

¹⁸ Tr. p. 182.

GMO's reliance on its private interest for establishing a need is clearly wrong. Again, there is no need for the proposed project, and therefore, it brings no value.

2. The Proposed Project is not in the Public Interest.

Neither is the project in the public interest. As was discussed *supra*, in *State ex rel. AG Processing, Inc. v. Public Service Commission*, 120 S.W.3d 732 (Mo. banc 2003), the decision for the Commission depends on a comprehensive view of the impact of its decision on the public. In *AG Processing*, the Commission approved the merger of Utilicorp United, Inc. and St. Joseph Light & Power Company. In approving the merger, the Commission refused to consider the acquisition premium recoupment issue, deferring the issue until the subsequent ratemaking case. The Court reversed and remanded the case to the Commission, finding that “the PSC’s refusal to consider this issue in conjunction with the other issues raised by the PSC staff may have substantially impacted the weight of the evidence evaluated to approve the merger. The PSC erred when determining whether to approve the merger because it failed to consider and decide all the necessary and essential issues.” 120 S.W.3d at 736.

AG Processing is precisely on point in this case. The Commission cannot defer cost and rate issues. It must consider all relevant facts and issues presented by the parties and their impact on the public interest. The Commission has also found that it must consider the opportunity cost of not pursuing an available alternative. “When alternatives with economic impacts are presented, an evaluation of the detriments of a particular alternative to the public interest must include consideration of the opportunity cost of not pursuing any available alternatives.”¹⁹

¹⁹ *In re Aquila*, File No. EO-2008-0046, *Report and Order*, issued October 9, 2008, p. 16.

The project is admittedly not the least cost.²⁰ It is a relatively high cost project.²¹ And it will divert GMO's resources and efforts away from more productive and less costly generation alternatives.

There is nothing in UFM's position that mandates the Commission impose a least-cost requirement on GMO. Least-cost is not always the most prudent approach to an investment strategy, but it is a significant consideration. Consider, for example, the design and construction of a highway system. Certainly, the appropriate capacity of roads and bridges is an important consideration in the design of a highway system. A two lane road is the least-cost alternative when compared to a four lane road. However, under certain circumstances, the development of a four lane road may be the more prudent approach when circumstances dictate the four lanes will be needed in the near term. Building a two lane road, only to rebuild the road within 10 years is not the prudent approach when site development of the four lane road may be accomplished at a minimal marginal cost during the initial construction.

The problem with the proposed project is that the circumstances do not indicate that there is anything to be gained by the initial early development of the project. There is no impending need for the proposed project. Costs for solar panels are not going up. There are no economies of scale to be achieved by advancing the project now. The only advantage is to provide GMO experience, experience that will be gained at the expense of more cost effective investments. There is no indication that this costly alternative has any advantage to the public good.

3. The Tartan Factors.

Turning then to the five Tartan factors, it is critical to note that the need and public interest of the proposed project are of most significance because they are the factors called out in

²⁰ Tr. p. 177.

²¹ Staff Exhibit No. 4HC.

Intercon Gas as being the basic point around which the Commission's decision is to be made. The other three factors, while useful, are not of the same character. It is important to note that the *Tartan* case and its predecessor *Intercon Gas* related to service area certificates and natural gas pipelines needed to provide new services to communities in Missouri. In the circumstances of new service to a community, it is important to consider the financial and technical capabilities of the entity proposing to provide the service as well as the economic feasibility of the project, the other three factors of *Tartan*. But when the service is not a proposed new service, not needed, and detrimental to the public interest, the capability of the service provider and the economic feasibility of the project diminish. What does it matter that an entity is capable of providing a service if the service is not needed? Therefore, while UFM believes that GMO is technically and financially capable of providing the service and that the project is economically feasible, these factors do not outweigh the more significant considerations that the proposed project is not needed and is detrimental to the public interest.

4. Conditions

UFM will abandon its position that the Commission impose a condition on the CCN if it is granted by this Commission that GMO not receive the benefit of investment tax credit. UFM recognizes Mr. Ives difficulty in getting into a tax policy discussion. Tax policy is complex when applied to this case. However, for the reasons expressed in its *Position Statement*, UFM posits that those reasons that prompted it to propose the condition, now prompt the Commission to deny the application.

In its Position Statement, UFM cited the words of Fredric Bastiat in his work *The Law*, that,

[The law] has acted in direct opposition to its proper end; it has destroyed its own object; it has been employed in annihilating that justice which it ought to have established, in

effacing amongst Rights, that limit which it was its true mission to respect; it has placed the collective force in the service of those who wish to traffic, without risk and without scruple, in the persons, the liberty, and the property of others; it has converted plunder into a right, that it may protect it, and lawful defense into a crime, that it may punish it.²²

This concept of converting plunder into a right is the very concept Mr. Ives spoke of when he spoke of UFM's condition. "I would consider it likely that the Commission would believe it imprudent if we did not pursue available federal tax credits for a solar project if they approved the CCN for the construction of it."²³

But it is now apparent after the hearing that this concept of plunder transcends even the discussion of the investment tax credit. When asked about earning a return on GMO's investment in the proposed project, Mr. Ives responded as follows:

Q. And if this project was put into rate base, the Company would earn a return on that investment; correct?

A. That's how the current regulatory construct works.²⁴

Mr. Ives explains further on his view of the regulatory construct and how it works.

You know, long story short, I would echo what we said in our opening, that those economic conditions have – have led us to the conclusion that we need to ask the Commission to address decisional prudence in the – in the order on this CCN or, said more clearly maybe, if it is the view of this Commission to follow the economic conditions provided by OPC and Staff indicating that our shareholders should fund an investment for generating resource for our system, we'd prefer to know that before we start construction, because -- because our shareholders will not be willing to provide generation resources on their dime for our customers. Our shareholders invest in our company to earn a return on their investment, not to be charitable and provide generating resources to our customers for free.²⁵

²² Frederic Bastiat, *The Law* 5 (Ludwig von Mises Institute, 2007).

²³ Tr. p. 193.

²⁴ Tr. p. 206.

²⁵ Tr. pp. 191-192.

This is the posture of plunder. An entity with altruistic motives and goals may seek to further those motives and goals by its voluntary efforts, but it should not be allowed to plunder its customers to achieve those goals as a right.

III. Conclusion

GMO is a socially conscious corporate citizen. But its concern goes well beyond its regulated function of providing safe and reliable service at just and reasonable rates. If it wants to pursue its concerns beyond its function, it should take its desire and subject it to the risk of the free market and not impose its desires on the good ratepayers of Missouri. The application should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Initial Brief of United for Missouri, Inc. was sent to all parties of record in File No. EA-2015-0256 via electronic transmission this 18th day of February, 2016.

/s/ David C. Linton