

**MISSOURI PUBLIC SERVICE COMMISSION**

**STAFF REPORT ON**

**KCP&L GREATER MISSOURI OPERATIONS COMPANY**

**CHAPTER 22  
ELECTRIC UTILITY RESOURCE PLANNING  
2013 ANNUAL UPDATE FILING**

**FILE NO. EO-2013-0538**

**August 20, 2013**

**JEFFERSON CITY, MISSOURI**

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

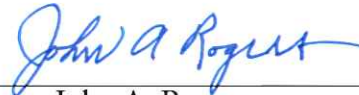
In the Matter of the 2013 KCP&L           )  
Greater Missouri Operations Company       )  
Annual IRP Update Report                    )

File No. EO-2013-0538

**AFFIDAVIT OF JOHN A. ROGERS**

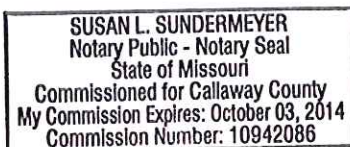
STATE OF MISSOURI       )  
                                      ) ss  
COUNTY OF COLE        )


John A. Rogers, employee of the Staff of the Missouri Public Service Commission, being of lawful age and after being duly sworn, states that he has participated in the preparation of the accompanying Staff Report, and the facts therein are true and correct to the best of his knowledge and belief.



John A. Rogers

Subscribed and sworn to before me this 20<sup>th</sup> day of August, 2013.



  
Notary Public

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## **Background**

On April 9, 2012, KCP&L Greater Missouri Operations Company (“GMO” or “Company”) filed its Chapter 22 Electric Utility Resource Planning triennial compliance filing (“2012 Filing”) in File No. EO-2012-0324. The 2012 Filing was GMO’s first Chapter 22 triennial compliance filing to comply with the Missouri Public Service Commission’s (“Commission”) revised Chapter 22 rules.<sup>1</sup>

On November 19, 2012, GMO, the Commission Staff (“Staff”), the Office of the Public Counsel (“OPC”), the Missouri Department of Natural Resources (“MDNR”), and Dogwood Energy, LLC (“Dogwood”) (collectively, the “Signatories”) filed a joint filing<sup>2</sup> (“Signatories’ Joint Filing”) that includes remedies to many of the alleged deficiencies and concerns previously highlighted, raised or discussed in the respective reports of the non-utility Signatories’ filed on September 6, 2012, in File No. EO-2012-0324. The Signatories’ Joint Filing also lists and describes nine (9) alleged deficiencies and concerns identified as unresolved.

On December 19, 2012, the Commission issued its *Order Regarding 2012 Integrated Resource Plan* in which the Commission: 1) approved the remedies to the alleged deficiencies and concerns proposed in the Signatories’ Joint Filing, and 2) ordered GMO to address in its 2013 annual update report the nine (9) alleged deficiencies and concerns identified as unresolved in the Signatories’ Joint Filing.

On June 20, 2013,<sup>3</sup> GMO filed its 2013 annual update report (“2013 Annual Report”). The 2013 Annual Report is GMO’s first annual update report to comply with 4 CSR 240-22.080(3) of the Commission’s revised Chapter 22 rules. On July 11, 2013, the Company held its annual update workshop with its stakeholders as required by 4 CSR 240-22.080(3)(B). On July 22, 2013, GMO filed its summary report as required by 4 CSR 240-22.080(3)(C).

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<sup>1</sup> 4 CSR 240-22 Rules effective June 30, 2011.

<sup>2</sup> The Midwest Energy Consumers Group (“MECG”), the City of Kansas City, Missouri (“KCMO”), the Missouri Joint Municipal Electric Utility Commission (“MJMEUC”), the Midwest Energy Users’ Association (“MEUA”), and the Southern Union Company, d/b/a Missouri Gas Energy (“Southern”) intervened in File No. EO-2012-0324, but they are not Signatories to the Joint Filing.

<sup>3</sup> As part of the Signatories’ Joint Filing, the Signatories agreed that GMO would file, pursuant to Commission Rule 4 CSR 240-22.080(13) and (15), for a variance to extend the 2013 annual update report and the 2013 annual update workshop by three (3) months, such that GMO would submit the 2013 annual update report no less than twenty (20) days prior to the 2013 annual update workshop, which would be extended to on or about July 1, 2013.

This Staff Report provides Staff's comments in File No. EO-2013-0538 concerning GMO's 2013 Annual Report, annual update workshop, summary report, its compliance otherwise with 4 CSR 240-22.080(3), and its compliance with the Commission's December 19, 2012 *Order Regarding 2012 Integrated Resource Plan* in File No. EO-2012-0324. The Commission pointedly stated in its December 19, 2012 *Order Regarding 2012 Integrated Resource Plan* in File No. EO-2012-0324:

... Since GMO will be revising a substantial portion of the IRP in its 2013 annual update report as part of the proposed remedies, the Commission concludes 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. Rather, given the continuous nature of the IRP filings, the Commission will require KCP&L to address these unresolved deficiencies and concerns in its 2013 annual update report.

## **Summary**

As a result of its limited review of GMO's 2013 Annual Report, its participation in and review of materials provided by GMO for the annual update workshop, and its review of the GMO summary report, Staff notes that the Company has generally complied with applicable Chapter 22 rules, the Signatories' Joint Filing and the Commission's *Order Regarding 2012 Integrated Resource Plan*. However, Staff identifies instances when the Company has not complied with applicable Chapter 22 rules, the Signatories' Joint Filing or the Commission's *Order Regarding 2012 Integrated Resource Plan*; the most significant of those instances include:

1. GMO's request in its 2013 Annual Report that the Commission acknowledge under 4 CSR 22.080(17) "planning that includes a joint company view – consistent with GMO's and KCP&L's business planning processes, is reasonable" cannot be given - in whole or in part - by the Commission because:
  - a) 4 CSR 240-22.080(17) does not provide a means for Commission acknowledgment as a result of an annual update report; and
  - b) GMO did not request - and has not received - a waiver from 4 CSR 240-22.080(17); and
2. Until there is a legally recognized, lawful merger of GMO and Kansas City Power & Light Company ("KCPL"), GMO and KCPL are required to perform and file separate Chapter 22 Electric Utility Resource Planning triennial compliance filings and annual

update filings, unless a waiver is requested and received from the Commission respecting the requirements of Chapter 22 Electric Utility Resource Planning<sup>4</sup> so as to allow joint company planning. No such waiver was requested.

To remedy/address these deficiencies the following activities are required:

1. GMO should withdraw its request for “acknowledgment” under 4 CSR 22.080(17) that “planning that includes a joint company view – consistent with GMO’s and KCPL’s business planning processes, is reasonable;” and
2. Before GMO performs future Chapter 22 joint company planning, GMO should request and receive approval from the Commission for waivers from specific Chapter 22 Electric Utility Resource Planning rules. Such waiver requests should include: a) a detailed proposal for allocating capacity and energy and the cost of each between GMO and KCPL, and if GMO’s MPS and L&P rate districts are not eliminated, between GMO’s MPS and L&P rate districts; and b) GMO and KCPL should file a definitive plan for merging GMO and KCPL into one electrical corporation. As an alternative, GMO and KCPL could enter into a long-term contract for KCPL to supply capacity and energy to GMO after GMO issues a Request for Proposal for a long-term Purchased Power Agreement and evaluates the responses it receives. If GMO’s bid were the low cost solution, a bilateral contract between GMO and KCPL would have to meet the requirements of 4 CSR 240-20.015 Affiliate Transaction rule.

While Staff is not asking for hearings, if the Commission schedules hearings in this case, the Commission should schedule hearings to address the following issues: a) acknowledgment, and b) joint company planning.

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<sup>4</sup> A waiver request to perform joint company planning should identify each specific Chapter 22 rule section from which a waiver is requested and the good cause that exists for Commission approval of each waiver.

## **Acknowledgment**

GMO in its June 20, 2013, cover letter from Roger W. Steiner for the 2013 Annual Report submission and in the 2013 Annual Report itself, in File No. EO-2013-0538, requests that the Commission acknowledge under 4 CSR 22.080(17) “planning that includes a joint company view – consistent with GMO’s and KCP&L’s business planning processes, is reasonable.” However, in Staff’s opinion, a correct reading of the Commission’s Chapter 22 rules does not provide a means for Commission acknowledgment as a result of an annual update report. The Chapter 22 rules were never intended to do so. There is no provision in the rules for it.

4 CSR 240-22.080(17) on which GMO relies does address acknowledgment but 4 CSR 240-22.080(17) only refers to a finding of acknowledgment by the Commission if the filing achieves substantial compliance with the requirements in 4 CSR 240-22.080(16). 4 CSR 240-22.080(16) refers to other subsections of 4 CSR 240-22.080, specifically for example (9) and (10), which relate to the *triennial filing*, not the annual updates:

- 4 CSR 240-22.080(17) states: “If the commission finds that the filing achieves substantial compliance with the requirements outlined in *section (16)*, the commission may acknowledge the utility’s preferred resource plan or resource acquisition strategy as *reasonable at a specific date*.” [Emphasis added.];
- 4 CSR 240-22.080(16) states: “The commission will issue an order which contains its findings regarding at least one (1) of the following options:
  - (A) That the electric utility’s filing pursuant to this rule either does or does not demonstrate compliance with the requirements of this chapter, and that the utility’s resource acquisition strategy either does or does not meet the requirements stated in 4 CSR 240-22;
  - (B) That the commission approves or disapproves the joint filing on the remedies to the plan deficiencies or concerns developed pursuant to *section (9)* of this rule [addressing deficiencies or concerns with a triennial filing];
  - (C) That the commission understands that full agreement on remedying deficiencies or concerns is not reached and pursuant to *section (10)* of this rule [addressing reports or comments related to deficiencies or concerns with a *triennial* filing], the commission will issue an order which indicates on what items, if any, a hearing(s) will be held and which establishes a procedural schedule; and

(D) That the commission establishes a procedural schedule for filings and a hearing(s), if necessary, to remedy deficiencies or concerns as specified by the commission.” [Emphasis added.].

- Acknowledgment is defined in 4 CSR 240-22.020(1) as “an action the commission may take with respect to the officially adopted resource acquisition strategy or any element of the resource acquisition strategy including the preferred resource plan.

“ . . . Acknowledgment means that the commission finds the preferred resource plan, resource acquisition strategy, or the specified element of the resource acquisition strategy to be *reasonable at a specific date, typically the date of the filing of the utility’s Chapter 22 compliance filing or the date that acknowledgment is given*. Acknowledgment may be given in whole, in part, or not at all. Acknowledgment shall not be construed to mean or constitute a finding as to the prudence, pre-approval, or prior commission authorization of any specific project or group of projects.” [4 CSR 240-22.020(1) Emphasis added.]

As previously noted, 4 CSR 240-22.080(17) states: “If the commission finds that the filing achieves substantial compliance with the requirements outlined in *section (16)*, the commission may acknowledge the utility’s preferred resource plan or resource acquisition strategy as *reasonable at a specific date*.” [Emphasis added.].

The Commission’s Chapter 22 rules only anticipate Commission acknowledgment as part of the triennial filing process and do not provide a means for Commission acknowledgment as a result of an annual update report. Further, GMO has not requested – and therefore has not received – a waiver from 4 CSR 240-22.080(17).

Finally, Commission’s *Order Regarding 2012 Integrated Resource Plan* issued on December 19, 2012, includes the following beginning at the bottom of page 2:

. . . Since GMO will be revising a substantial portion of the IRP in its 2013 annual update report as part of the proposed remedies, the Commission concludes 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. Rather, given the continuous nature of the IRP filings, the Commission will require KCP&L to address these unresolved deficiencies and concerns in its 2013 annual update report.



As a consequence, the Staff filed a Motion For Clarification on December 28, 2012, in which it asked the following question:

Is the Commission leaving open the possibility of further determinations and actions, including hearings, based upon:

- (a) the contents of GMO's 2013 annual update report and summary report,
  - (i) in reflection of the remedies / resolutions in the Signatories' November 19, 2012 *Joint Filing*, and (ii) as directed by the Commission in "The Commission Orders That" section, item "2" in the December 19, 2012 *Order*; and
- (b) Stakeholder comments concerning (i) GMO's 2013 annual update report, and (ii) GMO's summary report, filed by Stakeholders within thirty (30) days of GMO's filing of its summary report?

The Commission issued an Order Granting Motion For Clarification in which it stated in part as follows:

. . . Staff's motion asks the Commission to clarify whether it intends to take administrative action in the future concerning the 2013 annual update report and whether that update report and associated filings should be made in a new file number. The Commission determines that the 2013 annual update report and associated filings should be made in a new file number, and that no further clarification of its previous order is required.

Regardless of the Commission's December 19, 2012 Order and what GMO is seeking to do as a consequence, there is no provision respecting the annual update phase of the Chapter 22 Electric Utility Resource Planning Rules permitting GMO what it is proposing regarding acknowledgment. Moreover, GMO has not taken the action necessary for its filing to warrant the acknowledgment that it is requesting.

### **Joint Company Planning**

GMO and KCPL are legally separate utilities. Until there is a completed legal merger of GMO and KCPL, GMO and KCPL are required to perform and file separate Chapter 22 triennial compliance and annual update filings unless waivers of the requirements in Rule 4 CSR 240-22.080(1)(A) and Rule 4 CSR 240-22.080(3) are granted by the Commission. No such waiver was requested.

The Joint Operating Agreement<sup>5</sup> made and entered in to on October 10, 2008, by and between GMO and KCPL states at the top of page 12: “KCP&L and KCP&L GMO will be operated, and planned for as separate control areas with wholesale transactions governed by applicable FERC tariffs and rules, until and unless otherwise determined by the parties and approved by all applicable regulatory bodies.”

Staff Concern G is an unresolved concern in the November 19, 2012 Signatories’ Joint Filing, which states: “GMO and KCPL do not have the proper operating agreements and/or contracts in place to correctly analyze joint company planning. In the absence of proper operating agreements and/or contracts, joint company planning must be performed in the context of a plan to merge GMO and KCPL and no such plan to merge the two companies exists at this time.” On May 21, 2013, Staff and GMO had a telephone call to discuss how GMO would address Staff Concern G in its 2013 Annual Update as ordered by the Commission.<sup>6</sup> Presently, Staff and GMO continue to “agree to disagree” on a resolution to Staff Concern G, which has not been addressed by the Company as ordered by the Commission, and, therefore, remains unresolved. The Companies merely stated in their 2013 Annual Update that they share a unique status in Missouri of being Missouri investor owned utilities held by one holding company, and the Chapter 22 Rules are silent as to how planning should be conducted given their unique situation.

GMO and KCPL are registered as individual market participants<sup>7</sup> of the Southwest Power Pool (“SPP”) and as such are separate load balancing authorities.<sup>8</sup> This means that unless GMO and KCPL have entered into bilateral contracts with each other for energy and/or capacity services, SPP will operate its energy imbalance service market and its integrated marketplace

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<sup>5</sup> In Case No. EM-2007-0374.

<sup>6</sup> On December 19, 2012, the Commission issued its *Order Regarding 2012 Integrated Resource Plan* in which the Commission: 1) approved the remedies to the alleged deficiencies and concerns proposed in the Joint Filing, and 2) ordered GMO to address in its 2013 annual update report the nine (9) alleged deficiencies and concerns identified as unresolved in the Joint Filing.

<sup>7</sup> Edison Electric Institute (“EEI”), Glossary of Electric Industry Terms, April 2005, defines market participant as: “(1) any entity that, either directly or through an affiliate, sells or brokers electric energy, or provides ancillary services to the Independent Transmission Provider, unless the Federal Energy Regulatory Commission (FERC) finds that the entity does not have economic or commercial interests that would be significantly affected by the Independent Transmission Provider’s actions or decisions; and (2) any other entity that the FERC finds has economic or commercial interests that would be significantly affected by the Independent Transmission Provider’s actions or decisions.”

<sup>8</sup> North American Electric Reliability Corporation (“NERC”), Glossary of Terms Used in NERC Reliability Standards Updated July 22, 2013, defines balancing authority as the responsible entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a Balancing Authority Area, and supports Interconnection frequency in real time.

with total indifference to the fact that both utilities have the same parent. The fact that KCPL may be long on capacity and GMO may be short on capacity at any given time, does not mean that KCPL's capacity will be utilized by SPP to meet GMO's capacity needs. Except for bilateral contracts, GMO's energy and capacity needs at any time will be met through the financial and operational protocol for the SPP's Integrated Marketplace at that time, which may or may not result in energy and/or capacity from KCPL.

Staff continues to make the following recommendation to the Commission concerning capacity planning for GMO and KCPL:

Staff recommends that the Commission not allow GMO and KCPL to conduct joint resource planning of capacity and resources. If the Commission considers allowing joint resource planning, before the Commission allows KCPL and GMO to share capacity resources or engage in capacity resource planning together, it should require: 1) GMO and KCPL to file a detailed proposal for allocating capacity and energy between KCPL and GMO, and if GMO's MPS and L&P rate districts are not eliminated, between GMO's MPS and L&P rate districts; and 2) KCPL and GMO to file a definitive plan for merging KCPL and GMO into one electrical corporation.<sup>9</sup>

An alternative available to KCPL and GMO may involve KCPL and GMO entering into a long-term contract for KCPL to supply capacity and energy to GMO after GMO issues a Request for Proposal ("RFP") for a long term PPA and evaluates the responses it receives. If KCPL's bid would be the low cost solution, a contract between KCPL and GMO would have to meet the requirements of 4 CSR 240-20.015 Affiliate Transaction rule.<sup>10</sup>

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<sup>9</sup> See page 246, lines 14 – 21, of Staff's Revenue Requirement Cost-of-Service Report filed on August 9, 2012, in Case No. ER-2012-0175.

<sup>10</sup> See page 248, lines 4 – 8, of Staff's Revenue Requirement Cost-of-Service Report filed on August 9, 2012, in Case No. ER-2012-0175.