

**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, Operate, Maintain and)
Otherwise Control and Manage Solar)
Generation Facilities in Western Missouri)

Case No. EA-2015-0256

PUBLIC COUNSEL’S POST-HEARING BRIEF

COMES NOW the Office of the Public Counsel (“Public Counsel” or “OPC”), and presents its post-hearing brief as follows:

I. Introduction

If the Commission approves this project, KCP&L, Greater Missouri Operations, Company (“GMO”) will seek to raise rates to recover the costs of this project. In fact, if GMO is unable to do so, it will not pursue this project. The testimony of Mr. Darren Ives, GMO’s Vice President of Regulatory Affairs, made it clear that GMO will not build this project if it does not increase the company’s rate base.¹ Mr. Ives even went so far as to testify that “if the Commission approved the CCN but placed one of the conditions on there, that their expectation was [that] our shareholders...foot the bill for this, it would have the same effect. We would not move forward with this project[.]”²

First and foremost, this project is about GMO increasing its rate base through capital investment so that it can collect more money from ratepayers. It should not be a surprise, nor is it inherently nefarious, that GMO intends to collect as much money as possible from ratepayers. However, it is the Commission’s role to ensure that the company proves that the cost is

¹ Tr. Vol. 2, p. 205.

² Tr. Vol. 2, pp. 197-98.

necessary. In this case, the additional cost is not justified. As explained herein, the facts presented at hearing require the Commission to reject this application.

This project is not necessary to comply with Missouri Renewable Energy Standards. This project is not necessary to comply with the Clean Power Plan. This project is not the least cost generation. This project does not significantly reduce carbon emissions. This project is *not* necessary.

Counsel for GMO told the Commission that “we would ask for a determination of decisional prudence: Based on what you have in the record today and what the Company knows, all the facts we know, is it reasonable for us to proceed with this kind of investment; is that decision prudent?”³ Mr. Ives also stated that the company is asking for a determination as to “decisional prudence” for this project.⁴ In essence, GMO is asking for pre-approval of its project. In Missouri, the Commission determines prudence as a part of the ratemaking process. Public Counsel is not asking the Commission to make a ratemaking determination in this case. Rather, Public Counsel merely requests the Commission consider rate impact as one of the many factors associated with this project.

Public Counsel is asking the Commission to deny GMO’s application for a CCN because it is not “necessary or convenient for the public service” within the meaning of § 393.170. GMO failed to present a *prima facie* case in support of its petition, and so, the Commission should deny the CCN request. Moreover, the Commission’s Staff (“Staff”) and Public Counsel offered evidence refuting GMO’s positions.

Here, the evidence shows that the company’s petition is not least-cost, economic, nor necessary. In this case, Public Counsel opposes the company’s application to build utility-scale

³ Tr. Vol. 2, p. 23.

⁴ Tr. Vol. 2, pp. 195-96.

solar generation. GMO failed to make the case to the Commission that *now* is the right time for deployment of this project, and said failure requires the Commission to deny the CCN.

II. GMO's Application

Burden of Proof

In any application for a CCN, the petitioner bears the burden of proof. This case is no different. GMO must prove, by a preponderance of the evidence, that the authority it seeks is necessary or convenient for the public service. GMO failed to do so. At the hearing, the company readily admitted that it does not need this project to comply with the Renewable Energy Standard requirements, that the project is not least-cost, and that the tax credits available for this project have been extended. The company, in its case-in-chief glossed over those facts. GMO made no attempt to quantify those costs or any putative benefits.

GMO's Petition

In November 2015, GMO filed an application for a certificate of public convenience and necessity ("CCN"), authorizing it to construct, install, own, operate, maintain and otherwise control a utility-scale solar generation facility on land previously owned by GMO in the GMO service territory.⁵ This project is projected to cost \$** ** million.⁶ Should the Commission grant the CCN application, GMO will seek to include the entire cost of the project in rate base.

Importantly, while GMO will own the plant, KCP&L employees will be the ones to construct, maintain and operate the facility. GMO does not have any employees.⁷ However,

⁵ GMO filed additional supporting documentation for its application and the Commission deviated from its normal course of requiring a procedural schedule with pre filed testimony and allowances for pre-filed rebuttal testimony in favor of a schedule that required live direct examination February 11, 2016. Public Counsel objected, requested reconsideration and filed a writ seeking to set a procedural schedule which would allow meaningful discovery and pre-filed testimony. Those objections were denied and Public Counsel renewed its objections prior to the hearing which were also overruled. However, Public Counsel was granted a standing objection throughout the hearing in order to preserve the issue for appeal. Tr. Vol. 2, p. 12.

⁶ Tr. Vol. 3, p. 417.

⁷ Tr. Vol. 2, p. 218.

GMO ratepayers, and only GMO ratepayers, will bear the entire expense involved in this unnecessary project.⁸ The company's proposal to have GMO ratepayers pay to build a project that benefits the ratepayers of an affiliate is a significant, unexplained, and unjustified departure from traditional cost-of-service ratemaking. As previously stated, the Commission does not have to make a ratemaking decision, but should consider that the potential impact of this project on ratepayers. In doing so, the Commission should reject the company's plan to foist costs incurred to benefit an affiliate upon the "captive" GMO ratepayers.

III. Necessary or Convenient for the Public Service

The Commission is tasked with protecting the public from the monopoly powers of regulated utilities. In the course of exercising its supervisory role, the Commission must approve – prior to construction – applications for new projects proposed by utility companies by granting a CCN. Prior to granting a CCN, the Commission must determine that the construction and operation of the plant is "necessary or convenient for the public service."⁹ For more than twenty years, the Commission has set forth and applied certain criteria, referred to as the "*Tartan* criteria," for making that determination.¹⁰

Tartan Criteria

In 1994, the Commission issued its order in what is referred to as the "*Tartan* case." The *Tartan* case set forth five factors that should be considered when evaluating whether or not the subject of a CCN application is necessary or convenient for the public service. Those factors can be summarized as follows:

1. There must be a need for the service;
2. The applicant must be qualified to provide the proposed service;

⁸ Tr. Vol. 2, p. 219.

⁹ Mo. Rev. Stat. § 393.170.

¹⁰ *In re Tartan Energy Company*, 3 Mo. P.S.C. 3d 173, 177 (1994).

3. The applicant must have the financial ability to provide the service;
4. The applicant's proposal must be economically feasible; and
5. The service must promote the public interest.¹¹

The list of issues presented to the Commission for decision in this case largely followed the *Tartan* factors.

1. Need for Service

In order to establish whether there is a need for service, the Commission must conclude that the additional service proposed by GMO in its application would be such an improvement to its current service that the cost associated with the construction and implementation of the plant is justified.¹² GMO did not establish a need in its application, nor did it present evidence at hearing establishing a need.

a. Clean Power Plan

The Clean Power Plan ("CPP") is a Federal program designed to reduce CO₂ production by mandating utility companies reduce CO₂ production as one of their compliance requirements. The CPP, if implemented at all, will be implemented in a manner in which the Environmental Protection Agency ("EPA") will give guidance to the states.¹³ Once the CPP is in effect, Missouri will have the option to implement its own plan in compliance with the CPP, or have a plan established by the EPA go into effect.¹⁴ Currently, the CPP is wrought with uncertainty. The week of the hearing in this case, the United States Supreme Court granted a stay of its implementation pending litigation in a case joined by over 25 state attorneys general.¹⁵

¹¹ *Id.*

¹² *See State ex rel. Intercon Gas v. P.S.C.*, 848 S.W.2d 593, 597 (Mo. App. W.D. 1993).

¹³ Tr. Vol. 2, p. 124.

¹⁴ *Id.*

¹⁵ Tr. Vol. 2, pp. 127-28.

According to GMO witness Mr. Ling, “[t]he stay adds uncertainty on top of uncertainty.”¹⁶ Until the CPP is clarified and implemented this project does not help support compliance. In fact the company’s project, if built now, would not qualify for an incentive contained in the federal plan.¹⁷ GMO’s claims that this project is necessary to comply with the CPP are unfounded. The fact is that the law does not require GMO to build this plant to comply with the CPP.

b. State Mandates

i. RES Requirements

The Missouri Renewable Energy Standard (“RES”) sets forth certain portfolio requirements for all electric utilities to generate or purchase electricity derived from renewable energy resources.¹⁸ During the hearing, all parties agreed that GMO presently has enough solar generation to comply with the RES requirements.¹⁹ In fact, the company has sufficient solar generation to comply with the RES requirements for several more years, even as far out as 2030.²⁰ GMO witness Paul Ling testified that prior to being called away in May, 2015, he was prepared to present at the Midwest Environmental Compliance conference that GMO was “well-positioned to satisfy renewable requirements driven by the renewable portfolio standards in Missouri through at least 2035.”²¹ GMO witness Mr. Ives testified that, “[w]e are in compliance with the minimum standards, yes.”²²

Solar Renewable Energy Credits (“S-RECs”) are credits that utility companies are mandated by certain regulations to carry in order to prove they have renewable energy sources built into their portfolios. Sometimes, a utility will cite a need for S-RECs to remain in

¹⁶ *Id.* at 127.

¹⁷ Tr. Vol. 2, pp. 226-27.

¹⁸ Mo. Rev. Stat. § 393.1030.1.

¹⁹ Tr. Vol. 2, p. 260.

²⁰ Tr. Vol. 3, p. 390, 392.

²¹ Tr. Vol. 2, pp. 150-51.

²² Tr. Vol. 2, p. 209.

compliance with state or federal guidelines in order to justify a particular project. Not in this case. On behalf of GMO, Mr. Ives testified that “...we’re not asserting that S-REC compliance is the reason for this project.”²³ The testimony by Mr. Ives was that GMO does not need additional solar generation to meet Missouri standards until “somewhere in the 2020s” and concluded with regard to S-RECs that, “[w]e don’t have a need today.”²⁴ The Commission should note that Mr. Ives did not give a specific date, likely because he is not the company’s expert on the renewable energy standards.²⁵ In fact, GMO did not even bother to offer a member of the GMO team responsible for tracking and assuring compliance with S-RECs as a witness.²⁶ Other witnesses offered more specific dates; Staff witness Claire Eubanks testified that GMO could meet its solar RES requirements for at least ten years.²⁷

ii. Missouri Comprehensive State Energy Plan

During the testimony of Division of Energy (“DE”) witness Mr. Martin Hyman, an excerpt of the Missouri Comprehensive State Energy Plan (“CSEP”) was offered as Exhibit 2. On cross examination, Mr. Hyman testified that one of the goals of the CSEP is affordability.²⁸ And although the CSEP also encourages that the RES requirements increase for electric utilities, Mr. Hyman – who was involved in the development of the CSEP – testified that even under the proposed increased RES goals contained in the CSEP, GMO is currently in position to meet potential solar requirements through 2025.²⁹ It is important to note that while the CSEP outlines goals important to the State of Missouri, it has no force or effect of law and has not been promulgated as a rule or passed by legislature.

²³Tr. Vol. 2, p. 224.

²⁴ Tr. Vol. 2, p. 182, lines 17-19.

²⁵ Tr. Vol. 2, p. 221.

²⁶ Tr. Vol. 2, pp. 223-24.

²⁷ Tr. Vol. 2, p. 399.

²⁸ Tr. Vol. 2, p. 286.

²⁹ Tr. Vol. 2, p. 288.

c. Customers

GMO did not demonstrate any need driven by customer demand for this project. While alluding to customer surveys, GMO did not cite any specific numbers, present the Commission with any survey results, or provide evidence of any specific queries from customers requesting this plant be built. Mr. Ling testified that he did not have details about customer demand and told the Commission, “[m]aybe Mr. Ives can tell you more about the studies and evaluations where we received that feedback.”³⁰ However, Mr. Ives did not present any evidence to support his contention that there was customer demand for the project and diverted the question of customer demand by stating that pursuit of the project would help GMO understand what customers wanted.³¹ When pushed further, he referenced, but did not present, studies and claimed that industrial customers sometimes inquired about solar options.³² It is telling that GMO did not take the opportunity in its case to present evidence of customer demand. Were it available to the extent alluded to by Mr. Ives, it is reasonable to infer that GMO would present such evidence to the Commission in support of its claim. The absence of any direct evidence begs the question as to what questions were asked, how the costs of solar generation were presented and whether or not the responses were accurately portrayed.

Staff witnesses pointed out to the Commission that customers do not need an additional 3MW of electricity that would be generated by the project. Mr. Beck told the Commission that “...on paper they have enough capacity to serve their load.”³³ He further testified that the impact of this project will be “[a] very small amount...it’s just a fraction of the 3-megawatt number

³⁰ Tr. Vol. 2, p. 161.

³¹ Tr. Vol. 2, p. 171.

³² Tr. Vol. 2, p. 172-73.

³³ Tr. Vol. 2, p. 298.

that's been thrown around here.”³⁴ When asked whether or not this project would enable GMO to stop making purchases of its capacity from the market, Mr. Beck opined that it would not.³⁵

d. Hands-On Experience

GMO points to the benefit of hands-on experience with utility-scale solar electricity generation as a basis for its need in this case. However, the benefit of hands-on experience for GMO does nothing to promote the public benefit. As previously clarified, GMO does not have employees and any hands-on experience will be gained by KCP&L employees. Further, GMO witness Mr. Anyanwu discussed alternatives to gaining hands-on experience that do not involve the construction of a 3MW utility-scale solar electricity generating plant.³⁶ Importantly, Mr. Anyanwu also admitted that contractors from outside KCP&L and GMO would be utilized in much of the work at the facility.³⁷

Need Summarized

GMO failed to establish that there is a need for this project. There is no need for additional S-RECs, no federal mandate requiring the project, no state mandate requiring the project, and no evidence of customer demand for the project. The one area that GMO points to in regard to hands-on experience does nothing to establish need as defined by this *Tartan* factor in that it does not benefit the public and, for that matter, does not even benefit GMO. The failure to establish need *alone* is sufficient for the Commission to deny the CCN, but as Public Counsel points out below, there are a slew of other reasons for this CCN to be denied.

³⁴ *Id.*

³⁵ *Id.*

³⁶ Tr. Vol. 2, 103-04.

³⁷ Tr. Vol. 2, p. 104.

2. Qualifications for Service

GMO bears the burden of proving it has the qualifications requisite for this project in its case in chief by a preponderance of the evidence. When weighing this *Tartan* factor, it is appropriate for the Commission to weigh the safety and adequacy of the facilities proposed by GMO's application. The Commission should consider the relative experience and reliability of competing suppliers when weighing this factor.³⁸

GMO's evidence established that it is unclear whether or not its proposal distinguishes it from competing suppliers. Mr. Ives testified that GMO is "absolutely" qualified to construct this facility.³⁹ This statement seems to imply that simply because GMO is in the electricity generating business and that since it has experience in building different generation plants, it is automatically qualified to build a **solar** plant. During the hearing, staff witnesses expressed confusion over the claim for the need of hands-on experience when paired against the claim that GMO was qualified to provide the service. According to Staff witness Dan Beck, "I will say that, given the emphasis the Company has put on the topic [of hands-on experience] and...one witness ... just on that topic of what they don't know, that sort of perplexes me."⁴⁰

GMO cannot have it both ways: it needs experience or it is qualified. Its failure to demonstrate qualifications in its case in chief should lead the Commission to conclude that it has not met its burden on this factor, and weigh the lack of evidence as to GMO's qualifications against approval of the CCN.

3. Financial Ability for Service

Again, GMO bears the burden of proving this in its case in chief by a preponderance of the evidence. In order to weigh this *Tartan* factor, this factual determination must be based upon

³⁸ *Intercon Gas* at 597.

³⁹ Tr. Vol. 2, p. 183.

⁴⁰ Tr. Vol. 2, p. 299.

the evidence presented by GMO at hearing. In order to build and pay for this unnecessary and expensive project, GMO intends to seek recovery in rates in its upcoming rate case.

Mr. Ives testified with no uncertainty that under the company's proposal, GMO ratepayers – and only GMO ratepayers – would pay for the project. “Only GMO customers will pay for the facility that provides that knowledge, yes.”⁴¹ This allocation is complicated by the corporate structure that GMO chooses to utilize. Mr. Ives again admitted that it is true that GMO does not have any employees, and that it is going to be KCP&L employees that will be gaining this knowledge around the design, construction and operation of the facility.⁴² GMO ratepayers should not be forced to pay, in future rates, for a project that benefits the interests of GMO's affiliated companies.

Moreover, GMO did not present any direct evidence to the Commission of its financial status. No facts or figures were introduced to show the company's financial outlook. Mr. Ives' only real testimony on the financial ability of GMO was during a chance response to the logical concern that GMO was seeking this project in order to increase its rate base for its upcoming rate hearing.⁴³ And even then, Mr. Ives did not point to any specific figures nor did he point to the source or verification of his conclusory, unsupported assertions.

As the proponent, GMO failed to meet its burden of proof on this issue and when weighed with the other factors, the Commission must conclude that the CCN should be denied.

4. Economic Feasibility

As mentioned by Public Counsel in its opening statement, the inability of GMO to establish in its case the economic feasibility in this project exposes a major hole in GMOs application.

⁴¹ Tr. Vol. 2, p. 233

⁴² *Id.*

⁴³ Tr. Vol. 2, p. 193.

In response to a question about the economic feasibility of the project from counsel for Division of Energy, Mr. Ives stated “there is no doubt in my mind about that. I believe it is viable.”⁴⁴ Mr. Ives testified that he believes the benefits of the proposed facility will exceed the costs.⁴⁵ Absent from the record, however, is any attempt by the company to quantify the “benefits” related to the project. On cross examination, Mr. Ives testified that GMO has “not quantified the hands-on experience that we hope to gain from this solar project.”⁴⁶

There are a plethora of factors that could have been quantified and presented by GMO in support of its proposition that this project was economically feasible. GMO did not offer any of this information in its case in chief. GMO is a sophisticated, experienced litigant and the absence of such evidence logically suggests that there is no evidence to support this contention, and should be taken as an admission from GMO that its project is not economically feasible.

DE witness Mr. Hyman asserted – without support – that the project was economically feasible. Upon cross examination, Mr. Hyman admitted that he could have performed several different types of quantitative analyses that would support his conclusions.⁴⁷ However, Mr. Hyman did not perform any quantitative analysis prior to reaching his conclusions.⁴⁸ In fact, the only calculations performed by Mr. Hyman were done the day of the hearing.⁴⁹ Several witnesses were asked to comment on Mr. Hyman’s calculations, and their conclusions were all the same: his calculations did not quantify, nor support, GMO’s plan and were fraught with error. Referring to Mr. Hyman’s calculation, Staff witness Dan Beck stated “[a]nd that number, quite

⁴⁴ Tr. Vol. 2, p. 197.

⁴⁵ Tr. Vol. 2, p. 184.

⁴⁶ Tr. Vol. 2, p. 209.

⁴⁷ Tr. Vol. 2, pp. 290-92.

⁴⁸ *Id.*

⁴⁹ Tr. Vol. 2, p. 285.

frankly, makes no sense to me.”⁵⁰ Ms. Karen Lyons testified “it’s [the calculation] not reasonable.”⁵¹

Staff witness Karen Lyons made it clear during her testimony that GMO’s proposal is not economically feasible. “It’s—it’s not economical, based on all the factors that Staff has mentioned this evening. That include[s], from my perspective, the prices—the price decline, the historical price trend, the expectations going forward, the declining—or the improvements...in efficiencies. The income tax credit certainly plays a factor in that.”⁵² She also likened economic infeasibility to buying a new television for the Superbowl a week before the television is set to go on sale.⁵³ Her conclusions as an expert were clear: GMO’s proposal is not economically feasible.

Public Counsel expert witness Dr. Mike Proctor took his analysis several steps further by quantifying what GMO’s plan called for in reaching his conclusion that the project is not economically viable.

Dr. Proctor’s Exhibit 22 is the *only* cost-benefit study provided to the Commission evaluating the costs and benefits to ratepayers from a 2016 implementation of the proposed solar project. He based his calculations on GMO’s claim that the need for the project was in order to gain experience for a future implementation of solar. It is one thing to claim benefits for a project, and another thing to provide a quantification of the costs and benefits that are forthcoming from a project. The Company has the burden of proof that the benefits to ratepayers that they claim result from this project exceed the costs of the project. As explained above, the Company did not provide any quantification of benefits it expects to receive from implementing

⁵⁰ Tr. Vol. 2, p. 357.

⁵¹ Tr. Vol. 2, p. 452.

⁵² Tr. Vol. 2, p. 422.

⁵³ Tr. Vol. 2, p. 437.

a relatively small solar project in 2016 in order to gain experience for the potential, but not certain, implementation of a future solar project. In fact, there was testimony from Staff witness Dan Beck at the hearing that the company's Integrated Resource Plan ("IRP") did not include any additional solar generation plants for at least ten years.⁵⁴ The Commission should reject the Company's application on the grounds of insufficient evidence to support the hypothesis that the benefits they hope to obtain exceed the costs of the proposed project.

For ratepayers, Dr. Proctor's position is that benefits will occur in terms of reduced fixed O&M costs for the future implementation of a similar project.⁵⁵ In his analysis, Dr. Proctor allows four years to gain enough experience to lower fixed O&M costs from high levels shown on Exhibit 19 as 50% above the low levels shown on Exhibit 19; e.g., in 2016 going from **

**⁵⁶

The levelized, annual benefits from going directly to low fixed O&M costs for a 2020 project rather than having to experience the first four years at high fixed O&M costs are shown in the results on Exhibit 22 for a future implementation of 3 MW, 30 MW and 90 MW solar facilities. As Dr. Proctor stated in his testimony, these benefits are calculated on a per kW basis and increase proportionately with the size of the future project.⁵⁷

The costs incurred for gaining these benefits are described by Dr. Proctor as the costs associated with the 2016 project, which would incur capital costs and property taxes as well as high O&M costs during the first four years of operations before incurring low fixed O&M costs⁵⁸ As Dr. Proctor points out, in order to obtain a fair measure of the costs, revenues from the sales

⁵⁴ Tr. Vol. 2, p. 353.

⁵⁵ See Benefits from Early Implementation on Exhibit 22.

⁵⁶ *Id.*

⁵⁷ Tr. Vol. 2, pp. 503-04.

⁵⁸ See Costs of Early Implementation on Exhibit 22.

of energy from the project should be subtracted as an offset to the levelized revenue requirements of the early 2016 start-up project.

GMO's counsel pointed out that Dr. Proctor's results in Exhibit 22 appeared to be unreasonably high compared to the costs. However, the Assumptions on that page provide the Commission with numbers that are reasonable calculations of the costs as follows:

- If the capital costs, property tax and fixed O&M costs shown in the Assumptions are added **

**,.

- But Dr. Proctor's Exhibit 22 takes into account the sale of energy from this project at \$40/MWh and \$80/MWh in each year. At energy production of 4,700 MWh, the sale of energy from the 2016 solar project results in revenues of \$188,000 at \$40/MWh, and \$376,000 at \$80/MWh.
- Subtracting these revenues from the levelized costs for the project gives net levelized costs of **

**,.

Comparing these levelized costs netted for sales of energy to the market to the benefits shown in the results on Exhibit 22, clearly shows that even for energy sales at \$80/MWh, the netted levelized, annual costs of ** ** exceeds benefits for future additions of solar in 2020 whether those additions are for 3 MW, 30 MW, or even for 90 MW facilities where the levelized benefits are only ** ** per year. As Dr. Proctor testified it is unreasonable to assume that the Company will come anywhere close to adding 90 MW of solar in the near future.⁵⁹

⁵⁹ Tr. Vol. 3, pp. 509-10.

Based upon all the evidence presented in the case, it becomes abundantly clear that GMO's project is not economically feasible and fails this test under the *Tartan* factors. As such, its CCN application must be denied.

5. Public Interest

The Commission must weigh the public interest when applying the *Tartan* factors. Often, when weighing this factor, the Commission will look to the previous four factors and if any *one* of those factors is not met, the Commission may conclude that the project does *not* promote the public interest. "Generally speaking, positive findings with respect to the other four standards will in most instances support a finding that an application for a certificate of convenience and necessity will promote the public interest."⁶⁰ Because GMO would save a substantial amount of money by delaying this project, even by a couple years, the Commission cannot conclude that this project promotes the public interest. In addition, because GMO ratepayers will bear the cost in a subsequent rate case when they do not need the extra electricity generated by the plant, the Commission cannot conclude that the project promotes the public interest.

The company's application requires that the Commission rely on "feelings" and "intuition" to support a finding that the project is in the public interest. There is no quantification presented to support the company's application.⁶¹ As it relates to the experience the company hopes to achieve as a result of constructing and operating the proposed project, GMO witnesses were vague. Mr. Ives testified:

But -- but we are looking for hands-on experience, both on the -- both on the operation of the generation facility and on the implications to our distribution network, both from reviewing the intermittent nature of the resource and its

⁶⁰*Tartan* at *41.

⁶¹ See Tr. Vol. 2, p. 215 Mr. Ives stating that he has not quantified any economic development benefits of this project, but asserting that "it's rather intuitive."

impact on our system, as well as some of the benefits that -- that Emeka referred to.⁶²

On cross examination, Mr. Ives testified that GMO has “not quantified the hands-on experience that we hope to gain from this solar project.”⁶³ As discussed previously, Mr. Anyanwu testified about the number of different ways the company may gain experience without building a 3MW utility-scale solar electricity generating plant.⁶⁴

Environmental impact is an area that may be explored when weighing whether the project is in the public interest. This project will not reduce the company’s environmental impact. No party has suggested that this project is going to avoid any existing generation. The Company does not need additional generation, and this project is not going to displace any current carbon sources of generation. If the company did have a need or desire to pursue additional renewable energy generation – wind generation is less expensive.⁶⁵

Again, GMO witnesses relied upon vague assumptions when responding to questions about the environmental impact of its project. On direct, Mr. Ives testified that the company has made announcements for the cessation of coal at a number of its facilities in the upcoming years.⁶⁶ However, on cross examination, Mr. Ives could not state what GMO fossil fuel generation *this* project would displace.⁶⁷

GMO could have brought in evidence related to any proposed health benefits the project would provide in its implementation. However, it did not and again relied upon generalities and assumptions versus evidence. In his direct testimony, Mr. Ives, though he admitted he is not an

⁶²Tr. Vol. 2, p. 174.

⁶³Tr. Vol. 2, p. 209.

⁶⁴ Tr. Vol. 2, p. 103-04.

⁶⁵ Tr. Vol. 2, p. 302, 479; Ex. 18.

⁶⁶ Tr. Vol. 2, p. 175.

⁶⁷ Tr. Vol. 2, pp. 213-14.

expert in the area, testified that this project could lead to health benefits for consumers.⁶⁸ On cross examination, however, he testified that he has not done any health benefit quantification.⁶⁹

In his direct testimony, Mr. Ives testified that there are economic benefits that he expects to occur related to this project.⁷⁰ On cross examination Mr. Ives admitted that he had not quantified any economic development benefits of this project.⁷¹

The take-away from these portions of testimony is that even though GMO extols the myriad “benefits” that may result from this project, GMO has neither performed nor provided the Commission with any analysis to evaluate the putative public benefits of this project.

IV. Conclusion

GMO’s failure to establish a *prima facie* case in this matter alone justifies denial of its CCN. However, when the Commission takes into account all the ways that GMO fails to support its contention that it has met the *Tartan* criteria in its application and case in chief, it becomes clear that this is not the right time for GMO to pursue the project. GMO has failed to meet its burden of proof and the Commission should deny its CCN application.

WHEREFORE, Public Counsel submits its post-hearing brief and respectfully request the Commission to deny GMO’s application for CCN in this matter.

Respectfully submitted,

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⁶⁸ Tr. Vol. 2, pp. 175-76.

⁶⁹ Tr. Vol. 2, p. 214.

⁷⁰ Tr. Vol. 2, p. 176.

⁷¹ Tr. Vol. 2, p. 215.

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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 18th day of February 2016:

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