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Company
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MISSOURI PUBLIC SERVICE COMMISSION

CASE NO.: EC-2019-0200

REBUTTAL TESTIMONY

OF

DARRIN R. IVES

ON BEHALF OF

KCP&L GREATER MISSOURI OPERATIONS COMPANY

**Kansas City, Missouri
May 2019**

REBUTTAL TESTIMONY

OF

DARRIN R. IVES

Case No. EC-2019-0200

1 **Q: Please state your name and business address.**

2 A: My name is Darrin R. Ives. My business address is 1200 Main, Kansas City, Missouri
3 64105.

4 **Q: By whom and in what capacity are you employed?**

5 A: I am employed by Kansas City Power & Light Company (“KCP&L”) and serve as Vice
6 President – Regulatory Affairs for KCP&L, KCP&L Greater Missouri Operations
7 Company (“GMO” or “Company”) and Westar Energy, Inc.

8 **Q: On whose behalf are you testifying?**

9 A: I am testifying on behalf of GMO.

10 **Q: What are your responsibilities?**

11 A: My responsibilities include oversight of the Company’s Regulatory Affairs department, as
12 well as all aspects of regulatory activities including cost of service, rate design, revenue
13 requirements, regulatory reporting and tariff administration.

14 **Q: Please describe your education, experience and employment history.**

15 A: I graduated from Kansas State University in 1992 with a Bachelor of Science in Business
16 Administration with majors in Accounting and Marketing. I received my Master of
17 Business Administration degree from the University of Missouri-Kansas City in 2001. I
18 am a Certified Public Accountant. From 1992 to 1996, I performed audit services for the
19 public accounting firm Coopers & Lybrand L.L.P. I was first employed by KCP&L in

1 1996 and held positions of progressive responsibility in Accounting Services and was
2 named Assistant Controller in 2007. I served as Assistant Controller until I was named
3 Senior Director – Regulatory Affairs in April 2011. I have held my current position as
4 Vice President – Regulatory Affairs since August 2013.

5 **Q: Have you previously testified in a proceeding at the Missouri Public Service**
6 **Commission (“MPSC” or “Commission”) or before any other utility regulatory**
7 **agency?**

8 A: Yes, I have testified before the Commission and the Kansas Corporation Commission
9 (“KCC”). I have also provided written testimony to the Federal Energy Regulatory
10 Commission and testified before Missouri and Kansas legislative committees.

11 **I. PURPOSE OF TESTIMONY**

12 **Q: What is the purpose of your rebuttal testimony and how is it organized?**

13 A: My rebuttal testimony is organized as follows and serves the following purposes:

- 14 ▪ In **Section II**, I introduce the witnesses who will provide rebuttal testimony
15 on behalf of GMO in this proceeding;
- 16 ▪ In **Section III**, I rebut portions of the direct testimonies of Robert E.
17 Schallenberg of OPC and Greg Meyer on behalf of MECG which purport
18 to characterize the retirement of Sibley as “extraordinary” under General
19 Instruction 7 of the Uniform System of Accounts (“USOA”);
- 20 ▪ In **Section IV**, I explain my understanding of the accounting authority order
21 (“AAO”) that the Office of the Public Counsel (“OPC”) and Midwest
22 Energy Consumers Group (“MECG”) have asked the Commission to

1 impose on GMO in connection with the retirement of the Sibley Generating
2 Station;

3 ▪ In **Section V**, I rebut the direct testimony of OPC witness Schallenberg
4 characterizing the retirement of Sibley as premature and describe how, in
5 any event, characterizing Sibley’s retirement as premature would not justify
6 imposition of an AAO to defer Sibley return and non-fuel operating and
7 maintenance (“NFOM”) expense;

8 ▪ In **Section VI**, I describe how the rationale of OPC and MECG for the AAO
9 they request is not that the retirement of Sibley is extraordinary but, rather,
10 that OPC and MECG regard the AAO as necessary to remedy apparent
11 concerns that GMO’s earnings will become excessive due to the Sibley
12 retirement. I will then explain how the OPC and MECG request is
13 inconsistent with Commission precedent and ratemaking practice, and
14 violates the Commission’s October 31, 2018 Order Approving Stipulations
15 and Agreements in Case Nos. ER-2018-0145 and ER-2018-0146 (GMO);

16 ▪ In **Section VII**, I refute the direct testimony of OPC and MECG suggesting
17 that fairness requires the imposition of an AAO in connection with the
18 Sibley retirement given that the Commission has previously approved
19 AAOs in connection with construction and renovation of generation
20 facilities; and

21 ▪ In **Section VIII**, I explain why the Commission’s approval, in Case No. ER-
22 2018-0146, of deferred accounting for depreciation expense for Sibley since

1 its retirement is reasonable and why imposition of an AAO to defer return
2 and NFOM expenses for Sibley since its retirement is not reasonable.

3 **II. INTRODUCTION OF GMO’S REBUTTAL WITNESSES**

4 **Q: Who will provide rebuttal testimony on behalf of GMO in this proceeding?**

5 A: In addition to the testimony I am sponsoring, the following individuals are providing
6 rebuttal testimony on behalf of GMO:

7 Ronald A. Klote: Mr. Klote will testify on a variety of accounting matters related
8 to the AAO requested by OPC and MECG. In particular, he will explain (1) how the relief
9 OPC and MECG have requested has not been articulated with sufficient clarity for GMO
10 to appropriately and accurately identify and record deferral accounting entries; (2) how
11 OPC and MECG have calculated the impact of the Sibley retirement on GMO’s net income
12 on an inaccurate and overstated basis; (3) that the AAO requested by OPC and MECG
13 should be rejected because it ignores cost increases GMO is experiencing since its last rate
14 order and fails to recognize GMO’s consistent historical inability to achieve its
15 Commission-authorized return on equity; and (4) certain differences between generally
16 accepted accounting principles (“GAAP”) which govern the preparation of financial
17 accounting statements filed with the Securities and Exchange Commission (“SEC”) and
18 requirements of the Uniform System of Accounts (“USOA”) of the Federal Energy
19 Regulatory Commission (“FERC”) which have been adopted by Commission rule for use
20 in Missouri (4 CSR 240-20.030) and the setting of retail rates by this Commission and, in
21 so explaining, refute OPC witness Schallenberg’s testimony suggesting that GMO has
22 established a regulatory asset, for ratemaking purposes, of approximately \$160 million in
23 connection with Sibley’s retirement.

1 Christopher R. Rogers: Mr. Rogers will testify about experience of utilities across
2 the country with respect to retirement of coal and other fossil fuel generating plants, and
3 how such retirements have become prevalent and commonplace over the last ten to 20 years
4 and are not extraordinary events.

5 John Spanos: Mr. Spanos will present the appropriate net book value to place on
6 Sibley as of June 30, 2018, and will testify that the Sibley retirement is not an extraordinary
7 retirement and that the retirement of generating facilities with undepreciated value
8 remaining is a common occurrence.

9 **III. SIBLEY RETIREMENT DOES NOT GIVE RISE TO EXTRAORDINARY ITEMS**

10 **Q: Have you previously testified in proceedings before the Commission regarding the**
11 **appropriate use of deferral accounting similar to the AAO requested by OPC and**
12 **MECG?**

13 A: Yes. I provided testimony in Case No. EU-2014-0077, a request by KCP&L for
14 Commission authority to defer transmission costs (net of transmission revenues) paid to
15 (or received from) the Southwest Power Pool (“SPP”). I also provided testimony in Case
16 No. ER-2014-0370, a KCP&L general rate proceeding, in support of Commission approval
17 of riders or trackers for SPP transmission costs (net of SPP transmission revenues),
18 property taxes and critical infrastructure protection and cyber-security (“CIP/cyber”) costs.
19 As a result, I have a thorough and current understanding of the analysis undertaken by the
20 Commission to determine whether the use of deferral accounting under an AAO is
21 warranted.

1 **Q: What is your understanding of the analysis undertaken by the Commission to**
2 **determine whether use of deferral accounting under an AAO is warranted?**

3 A: In its order in EU-2014-0077, the Commission stated

4 An AAO allows the “deferral” in the booking of a current expense
5 to a utility’s balance sheet as an asset. The cost is booked by a utility based
6 upon the possibility that a regulatory authority will agree to allow recovery
7 of the cost in a future rate case. This allows costs to be recorded in a period
8 other than that in which they were actually incurred. An AAO gives a utility
9 the opportunity to obtain future rate recovery of extraordinary costs, even if
10 those costs were not actually incurred within an ordered test year for a
11 general rate proceeding.¹

12 In evaluating requests for an AAO, the Commission has historically applied the
13 criteria as outlined for “extraordinary items” in USOA General Instruction No. 7. The
14 Commission has stated that “the USOA allows for deferral of

15 “extraordinary items” which are defined by General Instruction No. 7 which it
16 quoted:

17 Those items related to the effects of events and transactions which have
18 occurred during the current period and which are of unusual nature and
19 infrequent occurrence shall be considered extraordinary items.
20 Accordingly, they will be events and transactions of significant effect which
21 are abnormal and significantly different from the ordinary and typical
22 activities of the company, and which would not reasonably be expected to
23 recur in the foreseeable future.²

24
25 In that very same order from KCP&L’s 2014 rate case the Commission also made the
26 following findings on the topic of deferral accounting and ratemaking in Missouri:

27 114. In Missouri, rates are usually established based upon a
28 historical test year where the company’s expenses and the rate base
29 necessary to produce the revenue requirement are synchronized. The
30 deferral of costs from a prior period results in costs associated with the
31 production of revenues in one period being charged against the revenues in
32 a different period, which violates the “matching principle” required by

¹ See Report and Order, p. 7, para. 9, Case No. EU-2014-0077 (July 30, 2014)

² See Report and Order at p. 52 & n.178, Case No. ER-2014-0370, In re Kansas City Power & Light Co. (Sept. 2, 2015).

1 Generally Accepted Accounting Principles (GAAP) and the Uniform
2 System of Accounts approved by the Commission. The matching principle
3 is a fundamental concept of accrual basis accounting, which provides that
4 in measuring net income for an accounting period, the costs incurred in that
5 period should be matched against the revenue generated in the same period.
6 Such matching creates consistency in income statements and balance sheets
7 by preventing distortions of financial statements which present an unfair
8 representation of the financial position of the business. One type of deferral
9 accounting, a “tracker”, has the effect of either increasing or decreasing a
10 utility’s earnings for a prior period by increasing or decreasing revenues in
11 future periods, which violates the matching principle.

12 115. A tracker is a rate mechanism under which the amount of a
13 particular cost of service item actually incurred by a utility is tracked and
14 compared to the amount of that item currently included in a utility’s rate
15 levels. Any over-recovery or under-recovery of the item in rates compared
16 to the actual expenditures made by a utility is then booked to a regulatory
17 asset or liability account and would be eligible to be included in the utility’s
18 rates in its next general rate proceeding through an amortization to expense.

19 116. The broad use of trackers should be limited because they
20 violate the matching principle, tend to unreasonably skew ratemaking
21 results, and dull the incentives a utility has to operate efficiently and
22 productively under the rate regulation approach employed in Missouri.³

23 In that case, the Commission denied KCP&L’s request to make use of deferral accounting
24 for SPP transmission expenses, property taxes and CIP/cyber costs based on findings that
25 such costs did not constitute extraordinary items because they were “normal, ordinary and
26 recurring operation costs” that were “not abnormal or significantly different from the
27 ordinary and typical activities of the company, so they are not extraordinary and, therefore,
28 not subject to deferral under the USoA....”⁴

29 It is important to note that KCP&L appealed this aspect of the Commission’s Report
30 and Order in Case No. ER-2014-0370 to the Western District of the Missouri Court of
31 Appeals. In affirming the Commission’s decision to deny KCP&L’s requests to use

³ Id. at pp. 50-51 (emphasis supplied; footnotes omitted).

⁴ Id., p. 54 (transmission expense); p. 56 (property taxes); and p. 58 (CIP/cyber).

1 deferral accounting, the Court deferred to the Commission, holding that it “will not second-
2 guess the PSC’s reasoned decision that only extraordinary items may qualify for deferral
3 treatment.”⁵ In light of the recent nature of these decisions by the Commission and the
4 Court of Appeals, as well as the fact that the Commission has subsequently applied the
5 same analysis to other requests to make use of deferral accounting,⁶ I am of the opinion
6 that this analysis represents well-established, currently applicable and authoritative
7 Commission policy on the topic.

8 **Q: Has the Staff described the standard for AAOs that have been used by the**
9 **Commission in past cases?**

10 A: Yes. In File No. EU-2014-0077, Staff witness Mark Oligschlaeger, Manager of the
11 Commission Staff’s Auditing Unit, filed rebuttal testimony which stated in part:

12 The most common example of AAOs in this jurisdiction are orders
13 from the Commission allowing a company to defer on its books
14 costs associated with “extraordinary events,” such as natural
15 disasters (or so-called “acts of God”) or other extraordinary events
16 involving utility infrastructure.

17 * * *

18 *Q. What standard has the Commission used to determine*
19 *whether it should authorize a utility to deviate from normal USOA*
20 *accounting rules?*

21 A. Generally, the Commission in prior cases has stated that the
22 standards for granting the authority to a utility to defer costs incurred
23 outside of a test year as a regulatory asset are:

24 (1) that the costs pertain to an event that is extraordinary,
25 unusual and unique, and not recurring; and

26 (2) that the costs associated with the event are material.
27
28
29

30 * * *

⁵ Kansas City Power & Light Co. v. PSC, 509 S.W. 3d 757, 770 (Mo. App. W.D. 2016).

⁶ Report and Order at 5-18, In re Spire Missouri, No. GU-2019-0011 (March 20, 2019); Report and Order at 4-21, In re Missouri-American Water Co., No. WU-2017-0351 (Dec. 20, 2017).

1 Q. *What types of costs associated with extraordinary events has*
2 *the Commission traditionally allowed utilities to defer through the*
3 *AAO mechanism?*
4

5 A. The Commission has most often granted utilities authority to
6 defer incremental costs incurred to repair and restore the utilities'
7 infrastructure from significant damage caused by floods, tornadoes
8 and other wind storms, and ice storms; extraordinary mechanical
9 failure not involving operator negligence; costs associated with
10 Commission rules; and costs associated with completion of
11 extraordinary capital projects.⁷

12 **Q: OPC witness Schallenberg and MCEG witness Meyer claim that the Sibley**
13 **retirement gives rise to extraordinary items for a number of reasons. How do you**
14 **respond?**

15 A: In short, the claims made by OPC and MCEG that Sibley's retirement is extraordinary are
16 unsupportable, wrong and do not justify imposition of an AAO in connection with the
17 Sibley retirement. I will address each claim in turn below.

18 a. *The 5% of Net Income Test is not Case-Dispositive.*

19 **Q: OPC witness Schallenberg asserts that an AAO should be granted in connection with**
20 **the Sibley retirement because he claims the impact exceeds 5% of GMO's net**
21 **income.⁸ How do you respond?**

22 A: As mentioned earlier, I vigorously disagree with the impact to net income estimates of both
23 OPC and MCEG, and GMO witness Klote will refute those estimates in detail.
24 Nevertheless, the Commission has made it clear that whether the 5% net income test is met

⁷ See Rebuttal Testimony of Mark L. Oligschlaeger at 4, 6-7, In re Application of Kansas City Power & Light Co. and KCP&L Greater Mo. Operations Co. for an Accounting Auth. Order, No. EU-2014-0077 (Dec. 9, 2013).

⁸ Schallenberg Direct, pp. 9-12.

1 is not case-dispositive that an item or event is extraordinary.⁹ MCEG witness Meyer
2 acknowledges this in his direct testimony.¹⁰

3 Since the 5% net income test is not case-dispositive that the Sibley retirement is
4 extraordinary or gives rise to extraordinary items, OPC witness Schallenberg's assertion
5 that the AAO should be imposed because the 5% net income test has purportedly been met
6 is wrong, inconsistent with clear and long-standing Commission precedent and provides
7 no reasonable basis for the Commission to impose an AAO.

8 b. The Fact that GMO has not Recently Retired Generating Units Does Not Mean the Sibley
9 Retirement is Extraordinary or Gives Rise to Extraordinary Items.

10 **Q: According to OPC witness Schallenberg, the fact that GMO has not retired a**
11 **generating unit in over 30 years makes the Sibley retirement extraordinary,¹¹ and**
12 **MCEG witness Meyer asserts that since a generating unit can only be retired once,**
13 **all generating unit retirements, including the Sibley retirement, are extraordinary.¹²**
14 **How do you respond?**

15 A: These OPC and MCEG claims are also wrong and inconsistent with Commission
16 precedent. They ignore the fact that utilities retire generating assets every month and asset
17 retirements are a normal activity in the electric utility business. Specifically to generating
18 unit retirements, they also ignore the fact that Sibley's retirement was planned by GMO
19 well in advance of its actual retirement and that GMO plans to retire another generating
20 unit – Lake Road unit 4/6 – before the end of 2019 which makes the retirement of

⁹ Re Missouri Public Service Co., 1 Mo.P.S.C.3d 200, 206 (December 20, 1991).

¹⁰ Meyer Direct, p. 13, ll. 14-23

¹¹ Schallenberg Direct, pp. 12-13.

¹² Meyer Direct, pp. 8-9.

1 generating units a recurring event for GMO that is consistent with the experience of GMO's
2 sibling utilities – KCP&L and Westar – as well as the industry as a whole.

3 **Q: Why do you say that GMO's retirement of Sibley was planned?**

4 A: On January 20, 2015, a press release was issued announcing that GMO would stop burning
5 coal at Sibley units 1 and 2 by December 31, 2019. Subsequently, on June 2, 2017, a press
6 release announced the planned retirement of five generating units, including Sibley units
7 1, 2 and 3 by December 31, 2018 and the planned retirement of a sixth unit (Lake Road
8 4/6) by December 31, 2019.

9 **Q: Please explain the recurring nature of GMO plant retirements.**

10 A: Like all other electric utilities, GMO retires all kinds of electric plant – including generation
11 plant – from service on a monthly basis as equipment or facilities break, wear out or
12 become obsolete for other reasons. These retirements may be large or small, but they occur
13 – and continue to occur – on a regular basis. For example, over the five-year period from
14 October 2013 through September 2018, GMO retired \$90 million of generation plant.
15 GMO's obligation and normal, recurring operating practice as a regulated public utility is
16 to retire facilities as necessitated by the circumstances.

17 In the instance of Sibley, the retirement was driven by economics. According to
18 the 20-year net present value of revenue requirement analysis conducted in accordance
19 with the Commission's integrated resource planning ("IRP") rule (4 CSR 240-22.060),
20 customers benefit from Sibley's retirement compared to keeping Sibley in-service and from
21 GMO's ability to provide reliable service without Sibley. Given that GMO retires electric
22 plant – including generation plant – on a regular basis, OPC and MECG's characterizations
23 of the Sibley retirement as extraordinary are wrong.

1 **Q: Do you have additional information that refutes the claims by OPC and MECG that**
2 **the Sibley retirement is extraordinary?**

3 A: Yes. Predecessor companies of GMO retired units in 1982 (Edmond Street) and 1987
4 (Ralph Green units 1 and 2). The Commission did not determine such retirements to be
5 extraordinary or that such retirements warranted deferral accounting treatment. In fact, our
6 research indicates that no party made any assertion that such retirements were
7 extraordinary or that they warranted deferral accounting treatment.

8 More recently, GMO retired all of Sibley unit 1 except the boiler on June 30, 2017.
9 The Commission did not determine that retirement to be extraordinary or that such
10 retirement warranted deferral accounting treatment. In fact, no party made any assertion
11 that such retirement was extraordinary or that it warranted deferral accounting treatment.

12 OPC and MECG also neglect to mention that GMO has announced plans to retire
13 Lake Road unit 4/6 before the end of 2019. GMO's retirement of this generating unit also
14 resulted from the IRP process and its analysis, and was disclosed on June 2, 2017.

15 In addition, KCP&L retired Montrose unit 1 on April 16, 2016. The Commission
16 did not determine that retirement to be extraordinary or that it warranted deferral
17 accounting treatment. In fact, no party made any assertion that such retirement was
18 extraordinary or that it warranted deferral accounting treatment.

19 Even more recently, KCP&L retired Montrose units 2 and 3, including common
20 plant, on December 31, 2018. These retirements were driven by results from the IRP
21 process also, and KCP&L's plan to retire these units on that date was announced on June
22 2, 2017 (which updated a prior retirement announcement of January 20, 2015). While
23 KCP&L is deferring depreciation expense for Montrose units 2, 3 and common plant since

1 retirement in accordance with the Commission's Order Approving 2018 Rate Case
2 Stipulations, a topic I address later in my testimony, no party made any assertion that such
3 retirements were extraordinary or that they warranted deferral accounting treatment for the
4 revenue and return on these assets or related NFOM costs.

5 As the foregoing facts clearly demonstrate, the claims by OPC and MCEG that the
6 Sibley retirement is an extraordinary event or gives rise to extraordinary items warranting
7 deferral accounting treatment is wrong because generating unit retirements are planned and
8 recurring events for GMO as they have occurred in the past and, in the case of GMO's
9 Lake Road unit 4/6, are expected to recur in the future. Moreover, generating unit
10 retirements in Missouri that have occurred in the past have not been found by the
11 Commission to give rise to extraordinary items warranting deferral accounting treatment.

12 **Q: Do you have additional information refuting the assertions by OPC witness**
13 **Schallenberg and MCEG witness Meyer that the Sibley retirement is extraordinary**
14 **or gives rise to extraordinary items that warrant deferral accounting treatment?**

15 **A:** Yes. The experience of GMO's newest sibling utility, Westar Energy, Inc., is also relevant
16 for purposes of assessing whether the Sibley retirement is an extraordinary event or gives
17 rise to extraordinary items. From 1949 through 2019 Westar (or its predecessor
18 companies) retired 38 generating units, five of which were retired in 2018. Westar (or its
19 predecessor companies) retired many more generating units before 1949 as well.

20 As can be readily observed through the data presented in the rebuttal testimony of
21 GMO witness Rogers, carbon-based generating unit retirements by electric utilities across
22 the country have become so prevalent as to be considered commonplace.

1 In light of Westar (and that of its predecessor companies) generating unit
2 retirements as well as the prevalence of generating unit retirements by electric utilities
3 across the country, as explained by GMO witness Rogers, GMO's retirement of Sibley
4 cannot be considered as giving rise to extraordinary items warranting deferral accounting
5 treatment.

6 **Q: Are you aware of any decisions or orders by any utility regulatory bodies in the United**
7 **States that have found the retirement of generating units by an electric utility to give**
8 **rise to extraordinary items warranting deferral accounting treatment for return or**
9 **NFOM related to the retired units?**

10 A: No, I am not. Neither OPC witness Schallenberg nor MECG witness Meyer is aware of
11 any such regulatory orders or decisions either.¹³

12 **Q: Are you aware of any decisions or orders by any utility regulatory bodies in the United**
13 **states that have rejected a request for deferral accounting treatment in connection**
14 **with the retirement of a generating unit by an electric utility?**

15 A: Yes. The Wisconsin Public Service Commission recently considered this issue, concluding
16 that the retirement of a plant did not justify the imposition of deferred accounting measures
17 requested by third parties and declined to open a docket. See Order at 3-4, In re Application
18 Requesting Wis. Elec. Power Co. to Defer Net Savings Arising from Voluntary and
19 Premature Retirement of Pleasant Prairie Power Plant, No. 6630-AF-100 (Wis. P.S.C.,
20 June 6, 2018) (attached as Schedule DRI-2). In this case the Citizens Utility Board of
21 Wisconsin and two industrial user groups asked that the Wisconsin Commission order a

¹³ See OPC and MECG Data Request Responses attached hereto as Schedule DRI-1.

1 deferral of net savings arising from the retirement of two coal-fired units at the Pleasant
2 Prairie Power Plant by its owner Wisconsin Electric Power Co. (“WEPCO”).

3 Declining to order the applicants’ request, the Wisconsin Commission found that
4 public utilities “routinely retire generating units between rate cases” and that the petitioners
5 “have not cited any Commission decision where deferral accounting treatment has been
6 authorized for the costs or any net savings associated with such retirements.” The
7 Wisconsin Commission’s Order additionally concluded that because the retirement “was a
8 business decision made by WEPCO which does not require prior Commission approval,”
9 it would not pursue the matter further.

10 **Q: Do you have any concluding remarks in rebuttal to the claim by OPC that the Sibley**
11 **retirement is extraordinary due to the fact that GMO has not retired a generating**
12 **unit for more than 30 years and the claim by MECG witness Meyer that the Sibley**
13 **retirement is extraordinary due to the fact that a generating unit can be retired only**
14 **once?**

15 **A:** Yes. These claims are wrong in that they ignore (1) the fact that retirements of electric
16 plant – including generation plant – occur on a monthly basis for GMO and all other electric
17 utilities; (2) the recurring nature of generating unit retirements as borne out by GMO’s own
18 experience, both in the past and the planned retirement of GMO’s Lake Road unit 4/6 in
19 2019, and the experience of GMO’s sibling utilities KCP&L and Westar as well as that of
20 other electric utilities; (3) the fact that this Commission has never found the retirement of
21 a generating unit to give rise to extraordinary items warranting deferral of related return
22 and NFOM costs; and (4) the fact that, to my knowledge, no federal or state utility
23 regulatory body in the United States has ordered deferral accounting treatment for return

1 and NFOM in connection with retirement of a generating unit. Under such circumstances,
2 GMO's retirement of Sibley cannot fairly or reasonably be characterized as different from
3 the Company's normal and typical activities or abnormal in any way and, as such, cannot
4 be considered an extraordinary event and does not give rise to extraordinary items
5 warranting deferral accounting treatment.

6 **Q: Do you have a view of how the Commission should apply its prior application of**
7 **extraordinary items in this proceeding?**

8 A: In GMO and KCP&L's request for an AAO to defer transmission expenses in EU-2014-
9 0077, I described the extraordinary nature of transmission expenses being incurred by the
10 Company where I stated:

11 *Q: Please explain how transmission costs currently impacting the*
12 *Company meet the standards for deferral as proposed by the various*
13 *parties.*

14 A: Although the Company has always incurred transmission costs, and
15 the Company obviously expects to continue to incur transmission
16 costs in the foreseeable future, these costs are currently being
17 impacted by ***an unprecedented build out in order to expand and***
18 ***enhance the Southwest Power Pool ("SPP") transmission***
19 ***network.*** This event taken in its entirety is in fact an extraordinary
20 event and should be considered non-recurring.

21 Historically, transmission costs have fluctuated due to load
22 variations, both native and off-system. However, the Company is
23 currently experiencing increasing costs for SPP's aggressive
24 expansion of regional transmission upgrade projects that are
25 materially impacting the Company's cost of service. This event, in
26 and of itself, sets these costs apart from the "typical" transmission
27 costs incurred in the past. In addition, the amounts the Company is
28 currently being charged and projected to be charged in the future are
29 material to the Company's financial statements as highlighted in my
30 Direct Testimony. As such, ***based on the lack of previous***
31 ***occurrence, the historic convergence of factors that are driving the***
32 ***transmission expansion, and the fact that the increased level of***
33 ***spending is projected to level off after the completion of the build***
34 ***out, these costs easily meet the criteria of extraordinary, non-***
35 ***recurring and material in nature.***

1
2 The ***bold italicized*** emphasis in the paragraphs above sound very similar to arguments made
3 by OPC and MECG regarding the Sibley retirement in their direct testimony in this
4 proceeding.

5 In its order in EU-2014-0077, the Commission concluded:

6 Companies began incurring transmission expenses when they began
7 providing retail electric service and are expected to continue in the
8 foreseeable future. Furthermore, while the transmission costs at
9 issue may have a significant effect on the Companies, they are not
10 “abnormal and significantly different from the ordinary and typical
11 activities” of the Companies. The increase in transmission costs was
12 anticipated and is indeed the norm for all electric utility members of
13 SPP. Therefore, the transmission costs are not extraordinary.

14 Based upon the evidence presented by GMO in this proceeding, the only logical and
15 reasonable conclusion by the Commission in this proceeding would be to follow its
16 conclusion in EU-2014-0077 and conclude the following in this proceeding:

17 GMO began incurring generating asset retirements when they began
18 providing retail electric service and are expected to continue in the
19 foreseeable future. Furthermore, while the Sibley retirement at issue
20 may have a significant effect on the GMO, it is not “abnormal and
21 significantly different from the ordinary and typical activities” of
22 GMO. The Sibley retirement was anticipated and is indeed the norm
23 for all electric utility companies across the country. Therefore, the
24 Sibley retirement and any associated differences between costs to
25 set rates and costs incurred are not extraordinary.

1 c. The Fact that the Retirement of Sibley Occurred before the End of its Projected Life Does
2 Not Mean the Retirement is an Extraordinary Event or Gives Rise to Extraordinary Items.

3 **Q: OPC witness Schallenberg claims that the Sibley retirement is extraordinary and**
4 **warrants Commission imposition of deferral accounting because the retirement**
5 **occurred before the end of Sibley's projected life.¹⁴ How do you respond?**

6 A: Electric utility plant, including generation plant, is retired from service for a variety of
7 reasons, including being broken or worn out, or becoming obsolete from a technological
8 or economic perspective. Such plant can be retired before, on, or after the end of its
9 estimated depreciable (i.e., remaining) life, but it is much more common for electric plant
10 to be retired before or after the end of its estimated depreciable life than it is for utility plant
11 to be retired precisely at the end of its estimated depreciable life.

12 As discussed by GMO witness Spanos, it is a common occurrence under mass asset
13 accounting for generating units to retire with undepreciated value remaining.¹⁵ In the end,
14 depreciation rates and the estimated depreciable lives upon which they are based rely on
15 projections and estimates about future activity and usefulness. It is therefore impossible to
16 know when an item of utility plant will be retired until that retirement actually occurs. To
17 characterize a retirement as being extraordinary or giving rise to extraordinary items simply
18 because that retirement occurs at a time different than the estimated depreciable life is both
19 inaccurate and illogical because such retirements occur on a regular basis without regard
20 to such estimates.

21 The Sibley retirement as assessed in GMO's IRP filings was driven by economic
22 factors that make power from other sources more cost-effective than Sibley. Therefore,

¹⁴ Schallenberg Direct, pp. 13-14.

¹⁵ Spanos Rebuttal, p. 4.

1 Sibley's retirement provides benefits to customers compared to keeping Sibley in-service.
2 Like unforeseen breakage or deterioration to an item of plant, economic factors affecting
3 the cost of generation sources are subject to changes that cannot always be foreseen.
4 Economic factors, such as the introduction of the SPP Integrated Marketplace and the
5 recent decrease in the price of power generated by renewable resources, could not
6 reasonably have been foreseen when Sibley was renovated in the 1990's or when
7 depreciation rates and estimated depreciable lives have been set in rate cases prior to the
8 observation of the previously mentioned economic factors which have only become
9 apparent more recently. Ultimately, GMO retires facilities as necessitated by the
10 circumstances, whether physical, economic, a combination thereof, or some other
11 circumstance altogether. The fact that Sibley was retired before the end of its most recent
12 estimated depreciable life is no basis to find that the retirement is extraordinary or gives
13 rise to extraordinary items warranting deferral accounting treatment.

14 **Q: OPC witness Schallenberg also suggests that the fact that OPC has previously raised**
15 **concerns about risks associated with the retirement of Sibley is relevant to this**
16 **proceeding.¹⁶ How do you respond?**

17 A: If OPC witness Schallenberg is suggesting that the prudence of GMO's decision to retire
18 Sibley is relevant to the decision to be made by the Commission in this case, then I
19 vigorously disagree. This case solely concerns whether the Sibley retirement is
20 extraordinary or gives rise to extraordinary items warranting deferral accounting treatment
21 and, if so, what items should be recorded to that regulatory liability. The prudence of

¹⁶ Schallenberg Direct, p. 14.

1 GMO's decision to retire Sibley will be addressed, if at all, in a general rate proceeding or
2 fuel adjustment clause ("FAC") prudence audit.

3 **Q: Are you aware of any order or decision by this Commission finding that the**
4 **retirement of a plant at a time different than the end of its estimated depreciable life**
5 **– whether before or after – gave rise to extraordinary items warranting deferral**
6 **accounting?**

7 A: No.

8 *d. The Fact that Sibley's Costs are Included in Base Rates although Sibley is Retired Does*
9 *Not Mean the Retirement is Extraordinary or Gives Rise to Extraordinary Items.*

10 **Q: OPC witness Schallenberg asserts that because base rates include the retired Sibley**
11 **units, the Sibley retirement gives rise to extraordinary items warranting deferral**
12 **accounting treatment.¹⁷ How do you respond?**

13 A: I disagree. Whether particular items are or are not included in base rates has no bearing on
14 whether the event giving rise to those items is considered extraordinary under the USOA
15 and the analysis consistently used by the Commission to determine whether deferral
16 accounting is appropriate. That analysis considers whether the event is unusual and
17 infrequent, and whether it is abnormal and significantly different from the typical activities
18 of the company. Whether particular items are included in base rates is informative of none
19 of these factors.

20 Mr. Schallenberg appears to be suggesting that Missouri move to perfect real time
21 ratemaking. That in order for a cost to be included in rates it must be currently incurred at
22 the level recovered in rates. I presume this would also mean that if a cost is being incurred
23 currently is must be recovered in rates currently. While this would be perfect matching of

¹⁷ Schallenberg, p. 15.

1 costs incurrence and cost recovery, thus eliminating all effects of regulatory lag – which
2 GMO has struggled with for many years causing its earned returns to be below its
3 Commission authorized returns – this hypothetical scenario he paints is far from the
4 regulatory construct employed in Missouri and across the country.

5 Moreover, the suggestion, implicit in this assertion by OPC witness Schallenberg,
6 that GMO’s base rates were established improperly, or are no longer appropriate, is also
7 wrong. Base rates were set for GMO in Case No. ER-2018-0146 in accordance with the
8 Commission’s consistent and long-standing ratemaking practices which have long been
9 upheld by reviewing courts. The true-up date in that case was June 30, 2018. Sibley was
10 in-service on that date.¹⁸ Consequently, Sibley costs were necessarily and appropriately
11 included in GMO’s revenue requirement and base rates.

12 GMO disclosed its plans to retire Sibley before the end of 2018,¹⁹ so it was not a
13 surprise when GMO retired Sibley before the end of 2018. Notably, OPC witness John
14 Robinette offered prepared testimony in Case No. ER-2018-0146 disputing the
15 appropriateness of including Sibley costs in rates based on GMO’s plans to retire Sibley
16 by the end of 2018.²⁰ Ultimately, GMO’s most recent base rate case was resolved by the
17 Commission’s October 31, 2018 Order Approving Stipulations and Agreements which
18 provided, among other things, for GMO to reduce base rates by \$24 million.²¹

19 The fact that GMO’s base rates include historical, test year costs for Sibley which
20 was retired after the Commission issued its Order approving the 2018 Rate Case

¹⁸ Ives Rebuttal, p. 2, ll. 10-13, Case Nos. ER-2018-0145 and -0146.

¹⁹ See Ex. A (Jan. 20, 2015 Media Release), Ex. B (June 2, 2017 Media Release), and GMO Motion to Dismiss (filed in this docket Feb. 5, 2019); for ease of reference, the aforementioned documents are attached as Schedules DRI-2, DRI-3, and DRI-4, respectively.

²⁰ Robinette Direct, p. 9, Rebuttal pp. 6-7, Surrebuttal, pp.8-11, Case Nos. ER-2018-0145 and -0146.

²¹ Order Approving 2018 Rate Case Stipulations, p. 3, Case Nos. ER-2018-0145 and -0146, October 31, 2018.

1 Stipulations is no different, in terms of ratemaking practice or principle, from the situation
2 after the Commission issued its order in KCP&L’s 2014 Case, No. ER-2014-0370. After
3 the Commission issued its decision rejecting deferral accounting treatment requested by
4 KCP&L for SPP transmission costs, property taxes and CIP/cyber costs, certain of those
5 cost items increased above the levels included by the Commission in base rates. KCP&L
6 appealed that decision, but the Court of Appeals affirmed the Commission’s determination
7 that only extraordinary items may qualify for deferral treatment.²² Fundamental fairness
8 and equity require the same result to hold true here for GMO, and the deferral accounting
9 treatment requested by OPC and MECG should be rejected.

10 **IV. THE AAO REQUESTED BY OPC AND MECG**

11 **Q: Please explain your understanding of the nature of the AAO requested by OPC and**
12 **MECG.**

13 A: According to OPC witness Schallenberg, OPC requests an AAO “... to reflect all of the
14 costs associated with the generation units at Kansas City Power & Light Greater Missouri
15 Operations (“GMO”)’s Sibley station that customers are currently paying in base rates to
16 operate the station despite the fact that the station was effectively removed from service on
17 November 13, 2018.”²³ According to MECG witness Meyer, MECG seeks an AAO “...
18 creating a regulatory liability to capture the capital and operating costs currently included
19 in KCP&L Greater Missouri Operations Company’s (“KCPL-GMO”) rates following the
20 retirement of the Sibley generating units.”²⁴ Messrs. Schallenberg and Meyer base their
21 AAO request on their characterization of the Sibley retirement as extraordinary and the

²² Kansas City Power & Light Co. v. PSC, 509 S.W. 3d. 757, 770 (Mo. App. W.D. 2016).

²³ Schallenberg Direct, p. 2, ll. 17-20.

²⁴ Meyer Direct, p. 2, ll. 3-6.

fact that Sibley has been retired with Sibley costs included in rates. The claims and requests made by Messrs. Schallenberg and Meyer are inconsistent, vague and uncertain as more fully discussed by GMO witness Klote.

Q: As a general matter, how would Commission imposition of an AAO as requested by OPC and MECG affect GMO?

A: Setting aside the vagueness of the AAO requested by OPC and MECG and their overstated impact of the Sibley retirement on GMO's net income, both of which topics will be addressed in more detail by GMO witness Klote, the recording of amounts to a regulatory liability account would serve to reduce GMO's achieved earnings (i.e., net income) by the magnitude of the amounts so recorded. Although I vehemently disagree with the numbers presented in their testimony as their numbers are substantially overstated as more fully discussed in the rebuttal testimony of GMO witness Klote, I will use the estimates MECG and OPC included in their direct testimony for illustrative purposes. MECG witness Meyer posits what he characterizes as a "very conservative" estimate of the amount to be deferred of approximately \$30 million.²⁵ OPC witness Schallenberg estimates the income effect of its deferral request to be over \$39 million.²⁶ For context, the net income assumed to exist for GMO in the Staff's true-up revenue requirement in Case No. ER-2018-0146 was approximately \$160 million. It needs to be fully understood that these are estimates of amounts that would be deferred each year until GMO is able to complete its next rate case which, under the requirements of Section 393.1655.2 RSMo., cannot occur before December 6, 2021. Multiplying MECG's estimate over this period of time results in

²⁵ Meyer Direct, p. 14, l. 11 through p. 15, l. 2.

²⁶ Schallenberg Direct, p. 11, l. 5. This figure was designated as Confidential in OPC witness Schallenberg's direct testimony. Upon further review, GMO has concluded that it need not be designated as Confidential.

1 deferral of approximately \$90 million, and OPC's estimate, multiplied over the same
2 period, results in a deferral of \$117 million. To characterize these OPC and MECG
3 estimated impacts as extremely significant and damaging to GMO would be an
4 understatement.

5 **Q: Why would such estimated impacts be so damaging?**

6 A: Elimination of 20% or more of GMO's net income, as estimated in the rate setting process
7 by Staff in GMO's 2018 rate case, for such an extended period of time as a result of a
8 regulatory order is difficult to envision, but it could imperil GMO's ability to obtain capital
9 on reasonable terms and, if so, could also compromise GMO's ability to continue providing
10 safe and adequate service to customers. Furthermore, GMO's 2018 rate case was resolved
11 through an agreed-upon rate reduction of \$24 million²⁷ approved on October 31, 2018 with
12 full disclosure by GMO that it planned to retire Sibley by the end of 2018.²⁸ If the OPC
13 and MECG complaint, filed less than 60 days later, were to result in the Commission
14 issuing an AAO, the investment community would likely question the fairness of Missouri
15 regulation, potentially making it more difficult for other investor-owned utilities with
16 Missouri operations to obtain capital on reasonable terms.

²⁷ See Order Approving Stipulations and Agreements, Case Nos. ER-2018-0145 and -0146, p. 2 (Oct. 31, 2018) (hereafter referred to as "2018 Rate Case Stipulations").

²⁸ See Ives Rebuttal, p. 3, Case Nos. ER-2018-0145 and -0146.

1 V. **THE PREMISE OF OPC AND MECG'S REQUEST FOR AN AAO VIOLATES**
2 **COMMISSION PRECEDENT, CONTRAVENES COMMISSION RATEMAKING**
3 **PRACTICE, AND VIOLATES THE ORDER APPROVING THE 2018 RATE CASE**
4 **STIPULATIONS.**

5 Q: Do you have an opinion regarding the true rationale underlying the request of OPC
6 and MECG to impose deferral accounting in connection with GMO's retirement of
7 Sibley?

8 A: Yes. As shown in Section III above, it is clear that the Sibley retirement does not constitute
9 an extraordinary event or give rise to extraordinary items warranting imposition of deferral
10 accounting under the USOA and the standards consistently applied by the Commission. I
11 believe that OPC witness Schallenberg and MECG witness Meyer fully understand this
12 since the direct testimony of neither witness makes a compelling case for finding the Sibley
13 retirement to be extraordinary. In fact, given the rate of retirement of fossil fuel generating
14 units across the country over the past ten years as discussed in the rebuttal testimony of
15 GMO witness Rogers, it would be unusual and significantly different from the ordinary
16 and typical activities of a public utility company like GMO if it were not retiring fossil fuel
17 generating units.

18 I believe the real reason why OPC witness Schallenberg and MECG witness Meyer
19 are requesting an AAO in connection with the Sibley retirement is their dissatisfaction in
20 this particular situation with the Commission's long-standing practice of setting
21 prospective base rates using historical data and not making broad use of deferral accounting
22 for cost of service items that may differ when rates are effective from the historical data
23 used to set base rates. OPC witness Schallenberg makes this clear when he testifies that:

24 The cost objective in this case is the aggregation of recovery of any
25 of the financial impacts regarding the Sibley Generation Station

1 Retirement to provide for consideration of cost over or under
2 recovery in GMO's next general rate case.²⁹

3 Similarly, MECG witness Meyer testifies that:

4 . . . by deferring the savings associated with the retirement of Sibley
5 until a future rate case, the Commission may consider both the cost
6 side of the equation (the undepreciated investment) as well as the
7 savings side of the equation (the return, O&M and other cost
8 savings).³⁰

9 In other words, OPC and MECG seek to capture, through deferral accounting under an
10 AAO, cost reductions occurring after the historical period used to set rates which took
11 effect in December 2018, and to use those reductions as an offset to revenue requirement
12 in GMO's next base rate case. Rates from GMO's next base rate case cannot become
13 effective before December 6, 2021,³¹ but must become effective no later than December 6,
14 2022 for GMO to maintain its ability to use the FAC.³²

15 **Q: Are the reasons articulated by OPC and MECG for an AAO in connection with the**
16 **Sibley retirement – that is, accounting for cost reductions occurring after a historical**
17 **test period used to set prospective base rates in order to offset revenues in the next**
18 **base rate case – consistent with Commission precedent?**

19 **A:** No. This rationale upon which OPC and MECG rely for an AAO in this case is wholly
20 inconsistent with the policy articulated by the Commission less than four years ago that

21 [T]he broad use of trackers should be limited because they violate
22 the matching principle, tend to unreasonably skew ratemaking
23 results, and dull the incentives a utility has to operate efficiently and
24 productively under the rate regulation approach employed in
25 Missouri.³³

²⁹ Schallenberg Direct, p. 3, ll. 14-16.

³⁰ Meyer Direct, p. 2, ll. 19-23.

³¹ Section 393.1655.2 RSMo.

³² 4 CSR 240-20.090(10).

³³ See Report and Order at p. 52, Case No. ER-2014-0370, In re Kansas City Power & Light Co., No. ER-2014-0370 (Sept. 2, 2015)

1 As noted above, the Commission's decision that only extraordinary items qualify for
2 deferral treatment was upheld by the Court of Appeals in a unanimous decision.³⁴

3 My understanding is that the policy of limited use of deferral accounting, as
4 articulated by the Commission's decision in Case No. ER-2014-0370 and affirmed by the
5 Court of Appeals, remains in force as it has been cited by the Commission in more recent
6 decisions rejecting requests to make use of deferral accounting.³⁵

7 **Q: Have OPC or MECG made any showing that GMO's earnings are currently**
8 **unreasonable or excessive?**

9 A: No. Neither OPC nor MECG have attempted in any way to demonstrate that GMO's
10 earnings are unreasonable or excessive. Absent a finding by the Commission based on
11 competent and substantial evidence that GMO's earnings are unreasonable or excessive,
12 the Commission should reject any request to take steps, such as the imposition of the AAO
13 requested by OPC and MECG, that would reduce such earnings levels.

14 **Q: When GMO entered into the settlement agreements approved by the Order**
15 **Approving Stipulations and Agreements in Case Nos. ER-2018-0145 and -0146, did**
16 **you have expectations regarding the level of earnings GMO would experience while**
17 **the resulting rates were in effect?**

18 A: Yes. As a general matter and not from a legal perspective, I understand that when the
19 Commission sets rates for a utility, one of the goals is that those rates should provide the
20 utility with a reasonable opportunity to earn its Commission-authorized earnings level.
21 Although the revenue requirement settlements in those cases were "black box" as to return

³⁴ Kansas City Power & Light Co. v. PSC, 509 S.W. 3d 757, 770 (Mo. App. W.D. 2016).

³⁵ Report and Order, In re Spire Missouri, No. GU-2019-0011, pp. 5-18 (March 20, 2019); Report and Order, In re Missouri-American Water Co., No. WU-2017-0351, pp. 4-21 (Dec. 20, 2017).

1 on equity (“ROE”), the ROE positions presented in testimony did not vary greatly. GMO
2 recommended an ROE of 9.85%³⁶ and Staff recommended an ROE of 9.85%.³⁷ MECG
3 recommended an ROE of 9.3%.³⁸ Given these recommendations and the fact that utility
4 earnings naturally vary over time, it is my opinion that sustainable GMO earnings between
5 8.35% to 11.35% should be considered reasonable and not excessive, absent a significant
6 change in the capital markets.

7 **Q: If the Commission imposed the AAO requested by OPC and MECG, would GMO**
8 **have a reasonable opportunity to achieve its Commission-authorized earnings level?**

9 A: No. That this is true can be objectively determined by observing the earnings levels shown
10 in GMO’s recent surveillance data as shown in the rebuttal testimony of GMO witness
11 Klote. Reducing net income by \$30 million (MECG’s conservative estimate of the
12 magnitude of the deferred regulatory liability for one year) would lower GMO’s achieved
13 earnings level for the 12-month period ending March 31, 2019 from 8.42% to 6.32% - well
14 below a level I consider reasonable based on the ROE recommendations advanced in
15 GMO’s recent base rate case. Even more extreme, reducing net income by \$39 million
16 (OPC’s estimate of the magnitude of the deferred regulatory liability for one year) would
17 lower GMO’s achieved earnings for that same period to 5.69%.

18 There is simply no basis in fact, law or policy for the Commission to grant the AAO
19 requested by OPC and MECG. Doing so would eliminate any meaningful opportunity for
20 GMO to reasonably achieve Commission authorized earnings while the rates established
21 as a result of the Commission’s Order Approving Stipulations and Agreements in Case

³⁶ Ives Direct, p. 11, l. 6, Case No. ER-2018-0146.

³⁷ Staff Cost of Service Report, p. 4, ll. 22-23, Case Nos. ER-2018-0145 and -0146.

³⁸ Gorman Direct, p. 2, ll. 15-16, Case No. ER-2018-0145 and -0146.

Nos. ER-2018-0145 and -0146 continue to be in effect. This would frustrate one of the fundamental objectives of that Commission rate order and thus would represent bad policy.

Q: In addition to seeking to impose bad policy that is inconsistent with a fundamental objective of Commission rate orders as described above, is the request by OPC and MCEG inconsistent with any specific provision of the Commission’s Order Approving the 2018 Rate Case Stipulations?

A: Yes. Paragraph 15 on page 9 of the first of the 2018 Rate Case Stipulations (referred to as the First Stipulation in the October 31, 2018 Order Approving Stipulations and Agreements) provides that:

This Stipulation does not preclude any Signatory from proposing an accounting authority order (“AAO”), or any other ratemaking treatment for the recovery of any other costs associated with the KCP&L and GMO retirements listed above.³⁹ (emphasis supplied)

Contrary to this language, however, the complaint filed by OPC and MCEG in this matter on December 28, 2018 requests

... that the Commission order GMO to defer to a regulatory liability account all revenues associated with non-existent costs and return on Sibley investments associated with GMO’s Sibley generation units 1, 2, 3 and common plant that were included in the revenue requirement used to set rates.⁴⁰

Even though the vague AAO descriptions in the direct testimonies of OPC witness Schallenberg and MCEG witness Meyer use words like “costs” and “savings” instead of “revenues,” it seems clear that the fundamental basis of their request is that they believe GMO’s revenues are or will become excessive. It is those excess revenues that they ask the Commission to order GMO to defer. But the language in the First 2018 Rate Case

³⁹ Order Approving Rate Case Stipulations, First Stipulation, para. 15, p. 9 Case Nos. ER-2018-0145 and -0146, October 31, 2018

⁴⁰ Petition for an Accounting Authority Order, para. 15, p. 4, filed December 28, 2018. (emphasis supplied)

1 Stipulation approved by the Commission does not refer to revenues, and OPC and MEGC
2 should not be permitted to re-write that language in this AAO proceeding. The fact that
3 OPC was not a “signatory” to the First Stipulation is irrelevant as it was approved by the
4 Commission and is binding.

5 **VI. DEFERRAL OF SIBLEY DEPRECIATION EXPENSE AS REQUIRED BY THE**
6 **COMMISSION’S ORDER APPROVING THE 2018 RATE CASE STIPULATIONS**
7 **IS REASONABLE AND PROVIDES NO BASIS TO GRANT AN AAO WITH**
8 **RESPECT TO SIBLEY RETURN OR NFOM COSTS.**

9 **Q: The Commission’s Order Approving the 2018 Rate Case Stipulations requires GMO**
10 **to defer to a regulatory liability account depreciation expense associated with Sibley**
11 **upon its retirement.⁴¹ Why was this agreed to by GMO and parties?**

12 A: GMO agreed to defer Sibley depreciation expense in the context of a comprehensive
13 settlement agreement that resolved all issues in that rate case which considered all relevant
14 factors. Consequently, this deferral was fully contemplated by all parties in assessing the
15 earnings likely resulting from the Commission’s Order Approving Stipulations and
16 Agreements in Case No. ER-2018-0146. Moreover, the level of depreciation expense
17 included in rates for Sibley is readily identifiable. In contrast, the deferral OPC and MEGC
18 seek is difficult if not impossible to quantify for many reasons, including the absence of an
19 agreed-upon baseline in the revenue requirement settlement of GMO’s most recent general
20 rate case.

21 **Q: Considering this agreement, why is the OPC and MEGC AAO request in this**
22 **complaint unreasonable and not agreeable to GMO?**

23 A: In contrast, OPC and MEGC seek to defer revenues associated with investment return and
24 NFOM costs which are difficult to quantify because, as explained by GMO witness Klote,

⁴¹ See, *Order Approving Stipulations and Agreements*, p. 9, Docket No. ER-2018-0146, issued October 31, 2018.

1 there was no agreed-upon baseline level of Sibley-related costs in the various settlement
2 agreements approved by the Commission in its Order Approving 2018 Rate Case
3 Stipulations, the savings OPC and MECG seek to defer are difficult or impossible to
4 quantify in isolation, and OPC and MECG ignore other relevant countervailing factors.
5 Also, as can be seen by comparing OPC's estimate of Sibley's remaining undepreciated
6 value (\$160 million) to MECG's estimate (\$300 million), to the estimate provided by GMO
7 witness Spanos (\$145.7 million before any reduction necessary due to the impact of
8 accumulated deferred income taxes) there is not a common understanding of the return
9 value for Sibley included in base rates. The deferral of revenues associated with return and
10 NFOM for Sibley that OPC and MECG seek was not contemplated by GMO, and should
11 not have reasonably been contemplated by other parties, in assessing the level of GMO's
12 earnings likely to prevail while the rates flowing from the Commission's Order Approving
13 Stipulations and Agreements in Case Nos. ER-2018-0145 and -0146 would be in effect.
14 Using the estimates for the magnitude of the deferrals set forth in direct testimony by OPC
15 and MECG, Commission imposition of the AAO they request would reduce GMO's
16 earnings considerably below levels I contemplated, or that any other party could reasonably
17 have contemplated, during settlement negotiations.

18 In the end, substantial differences exist between the deferral of depreciation
19 expense for a retired facility and the deferral of revenues associated with investment return
20 and NFOM costs for that facility.

1 **VII. SUMMARY OF PRINCIPAL CONCLUSIONS**

2 **Q: Please summarize your principal conclusions.**

3 A: The Sibley retirement is not an extraordinary event and does not give rise to extraordinary
4 items for numerous reasons.

5 Retirement of generating assets is a recurring event happening virtually every day
6 in the normal operations of a public utility. Similarly, generating units have previously
7 been retired by corporate predecessors of GMO, GMO planned the Sibley retirement years
8 in advance and GMO plans to retire another generating unit this year. In addition, GMO's
9 sibling utilities have also retired a number of generating units recently. Moreover, the
10 retirement of Sibley is consistent with the pattern of fossil fuel generating unit retirement
11 occurring across the country which, as detailed in the rebuttal testimony of GMO witness
12 Rogers, has become a commonplace or routine event for electric utilities. In fact, in the
13 utility industry today, as demonstrated by the testimony of Mr. Rogers, it would be more
14 extraordinary if GMO were not retiring fossil fuel-fired generating units.

15 Granting the AAO requested by OPC and MCEG would violate Commission
16 precedent that broad use of deferral accounting should be limited and contravene
17 Commission ratemaking practice that establishes prospective rates on the basis of historical
18 data.

19 In light of the failure by OPC and MCEG to establish that the Sibley retirement is
20 an extraordinary event or gives rise to extraordinary items and the inconsistency of the
21 AAO requested by OPC and MCEG with Commission precedent, policy and ratemaking
22 practice, there is no reasonable basis for the Commission to approve an AAO for revenue
23 deferral in connection with the Sibley retirement.

1 **Q:** **Does that conclude your testimony?**

2 **A:** Yes, it does.

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


The Office of the Public Counsel and)	
Midwest Energy Consumers Group)	
)	
v.)	Case No. EC-2019-0200
)	
KCP&L Greater Missouri Operations Company)	
)	

AFFIDAVIT OF DARRIN R. IVES

STATE OF MISSOURI)
) ss
COUNTY OF JACKSON)

Darrin R. Ives, being first duly sworn on his oath, states:

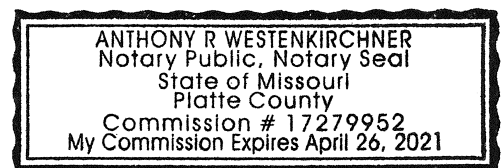
1. My name is Darrin R. Ives. I work in Kansas City, Missouri, and I am employed by Kansas City Power & Light Company as Vice President – Regulatory Affairs.
2. Attached hereto and made a part hereof for all purposes is my Rebuttal Testimony on behalf of KCP&L Greater Missouri Operations Company consisting of thirty-three (33) pages, having been prepared in written form for introduction into evidence in the above-captioned docket.
3. I have knowledge of the matters set forth therein. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded, including any attachments thereto, are true and accurate to the best of my knowledge, information and belief.


Darrin R. Ives

Subscribed and sworn before me this 23rd day of May 2019.


Notary Public

My commission expires: 4/26/2021



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

The Office of the Public Counsel and The Midwest)		
Energy Consumers Group,)	
)	
Petitioners,)	
)	Case No. EC-2019-0200
v.)	
)	
KCP&L Greater Missouri Operations Company,)	
)	
Respondent.)	

KCPL-1

1. a. Is Mr. Meyer aware of any order or decision by any federal or state utility regulatory body in the United States granting or denying a request to establish regulatory accounting for the purpose of deferring capital costs (i.e., return on investment) and non-fuel operating, and maintenance expenses included in rates for a generating unit (or units) retired by the utility? b. If so, please identify and provide all such orders.

RESPONSE: Mr. Meyer has not conducted any review of the regulatory treatment implemented by other utility regulatory bodies regarding the ratemaking for retired generating units. As such, he is not aware as to whether other utility regulatory bodies have granted or denied deferral of capital costs or O&M expenses.

KCPL-2

1. a. Is Mr. Meyer aware of any order or decision by any federal or state utility regulatory body in the United States finding that the retirement of a generating facility was an extraordinary event under the Uniform System of Accounts? b. If so, please identify and provide all such orders.

RESPONSE: Mr. Meyer has not conducted any review of whether other utility regulatory bodies have found the retirement of a generating unit to be an extraordinary event.



INFORMATION REQUEST

Company Name: Kansas City Power & Light Greater Missouri Operations

Case: EC-2019-0200

Requested By: Rob Hack

Requested From: Nathan Williams

Date Requested: 4/26/2019

Date Response Needed: 5/16/2019

Question No. : KCPL-3

1. a. Is Mr. Schallenberg aware of any order or decision by any federal or state utility regulatory body in the United States granting or denying a request to establish regulatory accounting for the purpose of deferring capital costs (i.e., return on investment) and non-fuel operating and maintenance expenses included in rates for a generating unit (or units) retired by the utility?
- b. If so, please identify and provide all such orders.

RESPONSE:

No. Mr. Schallenberg is not aware of any order or decision by any federal or state utility regulatory body in the United States granting or denying a request to establish regulatory accounting for the purpose of deferring capital costs (i.e., return on investment) and non-fuel operating and maintenance expenses included in rates for a generating unit (or units) retired by an utility.



INFORMATION REQUEST

Company Name: Kansas City Power & Light-Greater Missouri Operations

Case: EC-2019-0200

Requested By: Rob Hack

Requested From: Nathan Williams

Date Requested: 4/26/2019

Date Response Needed: 5/16/2019

Question No. : KCPL-4

1. a. Is Mr. Schallenberg aware of any order or decision by any federal or state utility regulatory body in the United States finding that the retirement of a generating facility was an extraordinary event under the Uniform System of Accounts?
b. If so, please identify and provide all such orders.

RESPONSE:

No. Mr. Schallenberg is not aware of any order or decision by any federal or state utility regulatory body in the United States that found and rejected consideration of the retirement of a generating facility as an extraordinary event under the Uniform System of Accounts.

KCP&L Announces Plans to Cease Burning Coal at Three Power Plants

1/20/2015

MEDIA CONTACT:

KCP&L 24-Hour Media Hotline
(816) 392-9455

KCP&L FURTHERS SUSTAINABILITY COMMITMENT BY ANNOUNCING PLANS TO CEASE BURNING COAL AT THREE POWER PLANTS

KANSAS CITY, Mo. (January 20, 2015) — Kansas City Power & Light Company (KCP&L) announced today that in the coming years it will no longer burn coal at three of its coal-fired power plants, Montrose Station, one of its units at Lake Road Station and two of its units at Sibley Station. This announcement furthers the company's commitment to a sustainable energy future and balanced generation portfolio. Lake Road's boiler already has the ability to burn natural gas and the company plans to operate on natural gas once it ceases coal combustion. In the coming years, KCP&L will make final decisions regarding whether to retire the units at Montrose and Sibley, or convert them to an alternative fuel source.

"After evaluating options for future environmental regulation compliance, ending coal use at these plants is the most cost effective and cleanest option for our customers," said Terry Bassham, President and CEO of Great Plains Energy and KCP&L. "By retiring or converting more than 700 megawatts of coal-fired generation, we'll take an even bigger step toward reducing emissions and improving the air quality in our region."

The decision comes in part as a result from recent Environmental Protection Agency (EPA) regulations, which would require KCP&L to make significant environmental upgrades in the coming years in order to continue burning coal at these power plants. While retrofitting our largest, newer coal-fired power plants was the most cost-effective way to comply with environmental regulations, the same cannot be said for the older, smaller units at Montrose, Lake Road and Sibley. Retiring or converting the units at Montrose, Lake Road and Sibley will be a more cost-effective way to meet environmental regulations.

Timeline for Coal Cessation:

Generating Unit:	Capacity:	In-Service Year:	Cease Coal Burning By:
Lake Road 6	96 MW	1967	December 31, 2016
Montrose 1	170 MW	1958	December 31, 2016
Sibley 1	48 MW	1960	December 31, 2019
Sibley 2	51 MW	1962	December 31, 2019
Montrose 2	164 MW	1960	December 31, 2021
Montrose 3	176 MW	1964	December 31, 2021

While this decision will impact employees at Montrose, Lake Road and Sibley, the utility does not anticipate that any employees will lose jobs as a result. KCP&L will find job opportunities within the company for displaced employees.

"For decades, coal has been a reliable, very low cost way to provide power to our customers, and is one reason why our rates are lower than the national average," said Bassham. "However, as our nation moves to a cleaner, more sustainable energy future, our industry is facing increasing environmental scrutiny and regulations, many of which are focused on coal-fired generation. Our commitment and focus is to move to a cleaner energy future for our region while balancing the cost impact to our customers."

Today's announcement is part of the utility's larger plan to provide cleaner energy to the region. KCP&L has the largest renewable energy and largest per capita energy efficiency portfolios of any investor-owned utility in the region. In addition, the utility recently made a number of new environmental investments and commitments, including the announcement of up to 400 MW of additional wind power and expanded energy-efficiency programs for customers.

For more information on KCP&L's sustainability efforts, visit www.kcpl.com/environment.

About Great Plains Energy:

Headquartered in Kansas City, Mo., Great Plains Energy Incorporated (NYSE: GXP) is the holding company of Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company, two of the leading regulated providers of electricity in the Midwest. Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company use KCP&L as a brand name. More information about the companies is available on the Internet at: www.greatplainsenergy.com or www.kcpl.com.

Forward-Looking Statements:

Statements made in this release that are not based on historical facts are forward-looking, may involve risks and uncertainties, and are intended to be as of the date when made. Forward-looking statements include, but are not limited to, the outcome of regulatory proceedings, cost estimates of capital projects and other matters affecting future operations. In connection with the safe harbor provisions of the Private Securities Litigation Reform Act of 1995, Great Plains Energy and KCP&L are providing a number of important factors that could cause actual results to differ materially from the provided forward-looking information. These important factors include: future economic conditions in regional, national and international markets and their effects on sales, prices and costs; prices and availability of electricity in regional and national wholesale markets; market perception of the energy industry, Great Plains Energy and KCP&L; changes in business strategy, operations or development plans; the outcome of contract negotiations for goods and services; effects of current or proposed state and federal legislative and regulatory actions or developments, including, but not limited to, deregulation, re-regulation and restructuring of the electric utility industry; decisions of regulators regarding rates the Companies can charge for electricity; adverse changes in applicable laws, regulations, rules, principles or practices governing tax, accounting and environmental matters including, but not limited to, air and water quality; financial market conditions and performance including, but not limited to, changes in interest rates and credit spreads and in availability and cost of capital and the effects on nuclear decommissioning trust and pension plan assets and costs; impairments of long-lived assets or goodwill; credit ratings; inflation rates; effectiveness of risk management policies and procedures and the ability of counterparties to satisfy their contractual commitments; impact of terrorist acts, including but not limited to cyber terrorism; ability to carry out marketing and sales plans; weather conditions including, but not limited to, weather-related damage and their effects on sales, prices and costs; cost, availability, quality and deliverability of fuel; the inherent uncertainties in estimating the effects of weather, economic conditions and other factors on customer consumption and financial results; ability to achieve generation goals and the occurrence and duration of planned and unplanned generation outages; delays in the anticipated in-service dates and cost increases of generation, transmission, distribution or other projects; Great Plains Energy's ability to successfully manage transmission joint venture; the inherent risks associated with the ownership and operation of a nuclear facility including, but not limited to, environmental, health, safety, regulatory and financial

risks; workforce risks, including, but not limited to, increased costs of retirement, health care and other benefits; and other risks and uncertainties.

This list of factors is not all-inclusive because it is not possible to predict all factors. Other risk factors are detailed from time to time in Great Plains Energy's and KCP&L's quarterly reports on Form 10-Q and annual report on Form 10-K filed with the Securities and Exchange Commission. Each forward-looking statement speaks only as of the date of the particular statement. Great Plains Energy and KCP&L undertake no obligation to publicly update or revise any forward-looking statement, whether as a result of new information, future events or otherwise.

KCP&L Continues Sustainability Commitment by Announcing Retirement of Six Units at Three Power Plants

6/2/2017

Media Contact:

KCP&L 24-hour Media Hotline
(816) 392-9455

KANSAS CITY, Mo. (June 2, 2017) — Kansas City Power & Light Company (KCP&L) announces its plans to retire six generating units at the company's Montrose, Lake Road and Sibley Stations. These actions further the company's commitment to a sustainable energy future and balanced generation portfolio.

"When these power plants started operation more than 50 years ago, coal was the primary means of producing energy. Today, as part of our diverse portfolio, we have cleaner ways to generate the energy our customers need," said Terry Bassham, President and CEO of Great Plains Energy and KCP&L. "After considering many options, it is clear that retiring units at Montrose, Lake Road and Sibley is the most cost-effective way to meet our customers' energy needs as we continue to move to a more sustainable energy future."

In 2015, KCP&L announced the company was considering retiring the coal units or converting them to an alternative fuel source at these plants. One coal-fired unit at the Lake Road Station was converted to natural gas in 2016. Since that time, several emerging industry trends and changing circumstances led the company to announce its plans to retire the six generating units.

A number of factors contributed to the decision to retire these units, including:

- **Reduction in wholesale electricity market prices.** The value of energy produced by these plants has dropped in recent years, primarily driven by new wind generation and lower natural gas prices.
- **Near-term capacity needs.** KCP&L does not anticipate needing new capacity for many years with expected relatively flat long-term peak load growth. In addition,

the amount of reserve generating capacity the company is required to carry has been reduced.

- **Plant age.** The impacted units are older, with all beginning service between 1960-1969. Making costly investments in the units does not make financial sense when compared to other generation sources.
- **Expected environmental compliance costs.** It is not economic to retrofit these plants with the controls necessary to meet expected environmental requirements.

Wind energy sources have become a much more economic generation resource for the region. According to the Southwest Power Pool, of which KCP&L is a member, energy generation from wind has increased 30 percent year-over-year in 2016. KCP&L announced plans in 2016 to purchase an additional 500 megawatts (MW) of power from two new wind facilities at Osborn and Rock Creek. In 2017, the company is set to increase its renewable portfolio to more than 1,450 MW, or greater than 20 percent of KCP&L's total generating capacity needs.

"In addition to our substantial renewable energy portfolio, KCP&L has the largest per capita energy efficiency portfolio of any investor-owned utility in the region," said Bassham. "By retiring these plants, KCP&L is taking another step forward in our plan to provide cleaner, cost effective energy to our customers."

KCP&L intends to retire all the Montrose and Sibley coal units by December 31, 2018. The Lake Road natural gas unit will be retired by December 31, 2019. Lake Road's steam operations are not impacted by today's announcement. KCP&L is committed to making every reasonable effort to find job opportunities within the company for employees currently working at these plants.

Timeline for Retirement:

Generating Unit	Capacity	In-service	Retire by
Lake Road 4/6	97 MW	1967	Dec. 31, 2019
Montrose 2	164 MW	1960	Dec. 31, 2018
Montrose 3	176 MW	1964	Dec. 31, 2018
Sibley 1	48 MW	1960	Dec. 31, 2018
Sibley 2	51 MW	1962	Dec. 31, 2018
Sibley 3	364 MW	1969	Dec. 31, 2018

For more information on KCP&L's sustainability efforts, visit www.kcpl.com/environment.

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Forward-Looking Statements: Statements made in this release that are not based on historical facts are forward-looking, may involve risks and uncertainties, and are intended to be as of the date when made. Forward-looking statements include, but are not limited to, the outcome of regulatory proceedings, cost estimates of capital projects and other matters affecting future operations. In connection with the safe harbor provisions of the Private Securities Litigation Reform Act of 1995, Great Plains Energy and KCP&L are

providing a number of important factors that could cause actual results to differ materially from the provided forward-looking information. These important factors include: future economic conditions in regional, national and international markets and their effects on sales, prices and costs; prices and availability of electricity in regional and national wholesale markets; market perception of the energy industry, Great Plains Energy and KCP&L; changes in business strategy, operations or development plans; the outcome of contract negotiations for goods and services; effects of current or proposed state and federal legislative and regulatory actions or developments, including, but not limited to, deregulation, re-regulation and restructuring of the electric utility industry; decisions of regulators regarding rates the Companies can charge for electricity; adverse changes in applicable laws, regulations, rules, principles or practices governing tax, accounting and environmental matters including, but not limited to, air and water quality; financial market conditions and performance including, but not limited to, changes in interest rates and credit spreads and in availability and cost of capital and the effects on nuclear decommissioning trust and pension plan assets and costs; impairments of long-lived assets or goodwill; credit ratings; inflation rates; effectiveness of risk management policies and procedures and the ability of counterparties to satisfy their contractual commitments; impact of terrorist acts, including but not limited to cyber terrorism; ability to carry out marketing and sales plans; weather conditions including, but not limited to, weather-related damage and their effects on sales, prices and costs; cost, availability, quality and deliverability of fuel; the inherent uncertainties in estimating the effects of weather, economic conditions and other factors on customer consumption and financial results; ability to achieve generation goals and the occurrence and duration of planned and unplanned generation outages; delays in the anticipated in-service dates and cost increases of generation, transmission, distribution or other projects; Great Plains Energy's ability to successfully manage transmission joint venture; the inherent risks associated with the ownership and operation of a nuclear facility including, but not limited to, environmental, health, safety, regulatory and financial risks; workforce risks, including, but not limited to, increased costs of retirement, health care and other benefits; and other risks and uncertainties.

This list of factors is not all-inclusive because it is not possible to predict all factors. Other risk factors are detailed from time to time in Great Plains Energy's and KCP&L's quarterly reports on Form 10-Q and annual report on Form 10-K filed with the Securities and Exchange Commission. Each forward-looking statement speaks only as of the date of the particular statement. Great Plains Energy and KCP&L undertake no obligation to publicly update or revise any forward-looking statement, whether as a result of new information, future events or otherwise.

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

The Office of the Public Counsel and)	
Midwest Energy Consumers Group,)	
)	
Complainants,)	Case No. EC-2019-0200
)	
v.)	
)	
KCP&L Greater Missouri Operations)	
Company,)	
)	
Respondent.)	

**MOTION TO DISMISS THE COMPLAINT OF
THE OFFICE OF THE PUBLIC COUNSEL AND
MIDWEST ENERGY CONSUMERS GROUP
AND SUGGESTIONS IN SUPPORT**

Introduction

KCP&L Greater Missouri Operations Company (“GMO” or “Company”), pursuant to Missouri Public Service Commission (“Commission” or “PSC”) Rule 4 CSR 240-2.070(7), moves to dismiss the Complaint filed by the Office of the Public Counsel (“OPC”) and Midwest Energy Consumers Group (“MECG”) (collectively, “Complainants”) for failure to state a claim upon which relief can be granted.

The Complaint fails to allege that GMO is violating its tariff, any Commission order or rule, or any other provision of law. The absence of any such allegation renders the Complaint defective under Section 386.390.1¹ and requires its dismissal.

The Complaint seeks the unprecedented and improper application of an accounting authority order (“AAO”) to the retirement of Units 1, 2 and 3 of GMO’s Sibley Generating Station (“Sibley”), despite the fact such a retirement is neither unusual, extraordinary, nor a violation of

¹ All statutory references are to the Missouri Revised Statutes (2016), as amended, unless otherwise noted.

any rule or law. The retirement of Sibley, which was first announced over four years ago in 2015, is not an “extraordinary event” under the Uniform System of Accounts. Moreover, there is no legal basis for the Commission to use an AAO to create a regulatory liability on the books of a public utility when its management decides that it is prudent to retire a generating station that is more than 50 years old in the interests of efficiency, sustainability, and a more balanced generation portfolio.

The Complaint is also an improper collateral attack on the Commission’s recent order approving stipulations and agreements in GMO’s 2018 rate case, No. ER-2018-0146, and violates Section 386.550. The first stipulation and agreement approved by the PSC in its Order of October 31, 2018 specifically addressed and considered issues regarding the retirement of the Sibley Station, and resulted in rates being reduced by \$24 million.

In support of this motion, the Respondent states the following:

SUGGESTIONS IN SUPPORT OF THE MOTION TO DISMISS

A. Statement of Facts

1. Plans to Retire the Sibley Station

On January 20, 2015, GMO announced that it intended to cease coal-fired operations at two of the units at the Sibley Station, noting the possibility that it may retire all three units. See Exhibit A (Jan. 2015 Media Release). Such a step was deemed prudent because it would produce the “most cost effective ... option” for customers in light of the decreasing cost-competitiveness of older coal units relative to other, more modern and more sustainable alternatives. Id. Consistent with this plan, GMO confirmed on June 2, 2017 that it would retire all three Sibley units by December 31, 2018. See Exhibit B (June 2017 Media Release). The management of GMO, Kansas City Power & Light Company (“KCP&L”), and Great Plains Energy Incorporated (“GPE”),

the owner of the GMO and KCP&L utilities at the time, concluded that these actions would further their “commitment to a sustainable energy future and balanced generation portfolio.” Id. The announcement further cited the fact that “[w]ind energy sources have become a much more economic generation resource for the region,” which made it “clear that retiring units at ... Sibley is the most cost-effective way to meet our customers’ energy needs as we continue to move toward a more sustainable energy future.” Id.

The retirement of the Sibley Station was again confirmed in direct testimony filed two months later in August 2017, as the Commission considered the merger of GPE and Westar Energy, Inc. in Case No. EM-2018-0012. GPE’s Controller and Vice President of Risk Management, Steven P. Busser, testified that the Sibley units, as well as the coal-fired unit 4/6 at Lake Road and the units at KCP&L’s Montrose Generating Station were “older, less efficient plants” whose “retirement ... reflect general market and environmental conditions, and the costs of retrofitting and maintaining the plants.” See Exhibit C, Busser Direct (Ex. 4 at 22-23), In re Great Plains Energy Inc. for Approval of its Merger with Westar Energy, Inc., No. EM-2018-0012 (Aug. 31, 2017). KCP&L’s Director of Energy Resource Management Burton Crawford testified that pursuant to this plan, Montrose unit 1 retired in April 2016, Sibley unit 1 retired on June 1, 2017, and the other Sibley and Montrose units would be retired by December 31, 2018. See Exhibit D, Crawford Surrebuttal (Ex. 5 at 7-8 & Table 2), In re Great Plains Energy Inc. for Approval of its Merger with Westar Energy, Inc., No. EM-2018-0012 (Feb. 21, 2018).

These facts were cited by the Commission and known to all parties. See Report & Order, ¶ 47 at 20-21, In re Application of Great Plains Energy Inc. for Approval of its Merger with Westar Energy, Inc., No. EM-2018-0012 (May 24, 2018) (“KCPL and GMO additionally plan to retire approximately 850 MW of fossil-fueled generation by the end of 2019.”). Mr. Busser and Mr.

Crawford also discussed the planned retirement of a number of Westar generating units in 2018 (Murray Gill units 3 and 4; Gordon Evans units 1 and 2; and Tecumseh unit 7). All told, GMO, KCP&L and Westar retired or plan to retire 12 generating units from 2016 through 2019. See Exhibit C at 23-24, Busser Direct (Aug. 31, 2017); Exhibit D at 13-14 & Table 4, Crawford Surrebuttal (Feb. 21, 2018).

More recently, the Commission incorporated into the order that concluded GMO's 2018 rate case the terms of a stipulation that addressed Sibley retirement issues. See In re KCP&L Greater Mo. Operations Co.'s Request for Authority To Implement a General Rate Increase, Order Approving Stipulations & Agreements at 1-2, No. ER-2018-0146 (Oct. 31, 2018) ("October 31 Order). In approving the Non-Unanimous Partial Stipulation & Agreement of September 19, 2018 (which it referred to as the "First Stipulation"), the Commission's October 31 Order explicitly approved provisions that addressed Sibley retirement revenues and expenses. Section 15 of the First Stipulation sets forth the steps that GMO would undertake to create a regulatory liability "to capture the amount of depreciation expense included in GMO's revenue requirement" regarding Sibley depreciation expense upon the retirement of the Sibley Station. See First Stipulation, §15 at 9 (Sept. 19, 2018). GMO, Staff, MCEG and other parties also agreed that "the rates established in this case include O&M associated with the Sibley units." Id.

While the First Stipulation provided that any signatory may propose an AAO "for the recovery of any other costs associated with the ... GMO retirements" at Sibley, there was no similar preservation of rights regarding an AAO related to any revenues and return on investments associated with the Sibley Station. Id. Because no party filed a timely objection to the First Stipulation or the other three stipulations filed in the case, the Commission treated them as

unanimous under 4 CSR 240-2.115(2). See October 31 Order at 3 & n.2. The Commission's Order of October 31 is now final, with no party having filed an appeal.

B. The Complaint Fails to State a Violation of Any Law, Rule, Tariff, Order or Decision of the Commission

Complainants fail to meet the fundamental prerequisite necessary to file a complaint under Section 386.390, as well as the Commission's rule on complaints, 4 CSR 240-2.070. Under Section 386.390.1, a complaint may only be made by "setting forth any act or thing done or omitted to be done ... in violation, or claimed to be in violation, of any provision of law subject to the commission's authority, of any rule promulgated by the commission, of any utility tariff, or of any order or decision of the commission."

The Commission's rule contains a similar requirement that a complaint must allege a "violation of any tariff, statute, rule, order, or decision within the commission's jurisdiction." See 4 CSR 240-2.070(1). Informal complaints are subject to the same jurisdictional requirement. See 4 CSR 240-2.070(2).

If a complaint does not contain an allegation of violation of law, rule, or commission order, the Commission does not have jurisdiction to hear it. In State ex rel. Ozark Border Elec. Coop. v. PSC, 924 S.W.2d 597, 599-600 (Mo. App. W.D. 1996), the Court of Appeals held that the Commission properly dismissed a complaint brought by an electric cooperative because it "did not contain an allegation of violation of law, rule or commission order." The case brought by Ozark Border Electric Cooperative asserted that a territorial agreement that was "no longer in the public interest because it increase[d] duplication of electric distribution facilities in the area, and because the City [of Poplar Bluff] lack[ed] the long term capability to adequately service the electrical need of all of the consumers in the assigned area." Id. at 600. Disregarding the merits of the claim, the Court of Appeals stated that where a complaint failed to assert a violation of law, rule or

Commission order, “jurisdiction was improper” under Section 386.390.1, the case was properly dismissed. Id. at 600. See City of O’Fallon v. Union Elec. Co., 462 S.W.3d 438, 441, 445 (Mo. App. W.D. 2008) (PSC properly dismissed complaint that failed to allege utility violated any statute, rule, order or Commission decision).

The Complaint in this proceeding does not allege that GMO has violated or may violate any law, rule, or order issued by the Commission. Instead, OPC and MECG request that the Commission issue an AAO requiring Respondents to defer revenues and the return on investment related to the Sibley Station as regulatory liabilities. See Complaint, ¶ 15 at p. 4 & p. 7 (prayer).

While Complainants cite to authority that supports the Commission’s power to allow a public utility to use an AAO, they fail to identify any case holding that the failure to request or utilize an AAO is a violation of law, the Commission’s rules, or a utility’s tariff. This is not surprising as the Commission’s power to grant or deny an AAO is subject to its discretion and is not a right to which a public utility or a complainant is entitled. Any decision to grant an AAO or other deferral, such as a tracker, is necessarily a discretionary judgment that is within the expertise of the PSC.” Kansas City Power & Light Co. v. PSC, 509 S.W.3d 757, 770 (Mo. App. W.D. 2016). In State ex rel. Office of the Public Counsel v. PSC, 858 S.W.2d 806, 809 (Mo. App. W.D. 1993), the Court observed that under Section 393.140(4) the Commission has the authority “in its discretion” to defer expenses, as well as to decline such treatment.

Similarly, the Complaint fails to identify any instance where an electric utility’s plan to retire a plant and the financial results that flowed from such a decision were found by any U.S. utility regulatory commission to violate a statute, rule, order, or tariff.

The failure of OPC and MECG to assert a violation necessary to invoke the jurisdiction of the Commission under Section 386.390.1 requires that the Complaint be dismissed.

C. The Retirement of the Sibley Station is not an Unusual or Extraordinary Event that Justifies an AAO

The Complaint fails to state facts sufficient to justify the issuance of an AAO because a plant retirement is not an unusual or extraordinary event. Provisions of the Uniform System of Accounts (USOA), as prescribed by the Federal Energy Regulatory Commission and adopted by the Commission, establish the rules for when deferral accounting may be used to account for “extraordinary items:”

Those items related to the effects of events and transactions which have occurred during the current period and which are of unusual nature and infrequent occurrence shall be considered extraordinary items. Accordingly, they will be events and transactions of significant effect which are abnormal and significantly different from the ordinary and typical activities of the company, and which would not reasonably be expected to recur in the foreseeable future [emphasis added].²

However, contrary to Complainants’ assertions, the planned retirement of the Sibley Station is not an unusual, abnormal, or extraordinary occurrence. The retirement of any electric generating plant is consistent with and typical of the ordinary and usual management activities of any electric public utility. In fact, GMO and its sister utilities KCP&L and Westar will have retired or plan to retire 12 generating units during the period 2016 through 2019. In light of these numerous generating unit retirements and considering that the planned deactivation of Sibley units was first announced over four years ago, the retirement of the Sibley Station is not an “extraordinary item” that justifies the imposition of an AAO.

The Wisconsin Public Service Commission recently considered this identical issue, concluding that the retirement of a plant did not justify the imposition of deferred accounting measures requested by third parties, and exercised its discretion to decline to open a docket. See

² 18 C.F.R. 101, General Instruction 7. In 1975 this Commission adopted the USOA for use by electrical corporations subject to its jurisdiction. See 4 CSR 240-20.030.

Order at 3-4, In re Application Requesting Wis. Elec. Power Co. to Defer Net Savings Arising from Voluntary and Premature Retirement of Pleasant Prairie Power Plant, No. 6630-AF-100 (June 6, 2018) (attached as Exhibit E). Similar to this proceeding, the Citizens Utility Board of Wisconsin and two industrial user groups requested the Wisconsin Commission to order a deferral of net savings regarding the retirement of two coal-fired units at the Pleasant Prairie Power Plant by Wisconsin Electric Power Co. (“WEPCO”). In declining to entertain the Application’s request, the Wisconsin Commission found that public utilities “routinely retire generating units between rate cases” and that the petitioners “have not cited any Commission decision where deferral accounting treatment has been authorized for the costs or any net savings associated with such retirements.” Id. at 4. It additionally concluded that because the retirement “was a business decision made by WEPCO which does not require prior Commission approval,” it would not pursue the matter further. Id.

The Wisconsin PSC’s order is consistent with this Commission’s policy that deferral accounting, while occasionally granted, is generally not favored. In KCP&L’s 2014 rate case, the Commission declared: “The broad use of trackers should be limited because they violate the matching principle, tend to unreasonably skew ratemaking results, and dull the incentives a utility has to operate efficiently and productively under the rate regulation approach employed in Missouri.” Report & Order at 51, In re Kansas City Power & Light Co. Request for Auth. to Implement a General Rate Increase, No. ER-2014-0370 (Sept. 2, 2015).

Rejecting KCP&L’s request for a tracker to address significant increases in Southwest Power Pool (“SPP”) transmission costs, the Commission stated that such “transmission costs, while having increased in recent years, are normal, ordinary and recurring operation costs. These recurring costs are not abnormal or significantly different from the ordinary and typical activities

of the company, so they are not extraordinary and, therefore, not subject to deferral under the USoA.” Id. at 54. This reasoning was similarly used to deny KCP&L’s tracker requests for rising cyber-security and critical infrastructure protection (“CIP”) costs, as well as increases in property taxes. Id. at 56, 58. The Court of Appeals expressly approved this Commission policy when it affirmed these decisions. Kansas City Power & Light Co. v. PSC, 509 S.W.3d 757, 769-771 (Mo. App. W.D. 2016).

GMO is not aware of any Missouri appellate case or Commission order in which an AAO was authorized to defer the revenues and the related investment return on a retired plant. Complainants have cited no authority to support such a proposition. Moreover, such a deferral request so soon after the conclusion of a general rate case is particularly inappropriate.

Consistent with Commission policy, AAOs have been used to account for expenses that are abnormal, unusual, significant, and beyond a utility’s control. See State ex rel. Mo. Gas Energy v. PSC, 210 S.W.3d 330, 336 (Mo. App. W.D. 2006) (upholding AAO for Emergency Cold Weather Rule costs); Report & Order, In re Southern Union Co. Application for an Accounting Authority Order, No. GU-2011-0392, 2012 WL 363727 (Jan. 25, 2012) (issuing AAO to account for losses caused by the Joplin tornado).

Moreover, an AAO that seeks to regulate cost decisions made by a utility’s management in response to long-term economic, efficiency and sustainability trends would be unprecedented. Imposing a deferral under the facts of this case would violate the principle that the “commission’s authority to regulate does not include the right to dictate the manner in which the company shall conduct its business.” State ex rel. PSC v. Bonacker, 906 S.W.2d 896, 899 (Mo. App. S.D. 1995). Missouri statutes have “provided regulation which seeks to correct the abuse of any property right of a public utility, *not to direct its use*. Exercise of the latter function would involve a property

right in the utility. The law has conferred no such power upon the Commission.” State ex rel. Harline v. PSC, 343 S.W.2d 177, 180 (Mo. App. K.C. 1960) (original emphasis). Although the powers of regulation delegated to the PSC “are comprehensive and extend to every conceivable source of corporate malfeasance,” they “do not, however, clothe the Commission with the general power of management incident of ownership.” Id. at 182.

In an attempt to avoid these regulatory principles, OPC and MCEG inaccurately equate the early 1990’s renovation and retrofit of Sibley with the retirement decision. See Complaint, ¶¶ 16-22. The Commission granted AAOs to GMO’s predecessor Missouri Public Service (“MoPub,” at that time a smaller company than GMO) for extraordinary construction project costs that were “unusual because of their size and substantial cost.” State ex rel. Office of the Public Counsel v. PSC, 858 S.W.2d 806, 811 (Mo. App. W.D. 1993). While the Commission found that the expenditure of several hundred million dollars to extend the life of the Sibley plant by at least twenty years and to convert the station to burn low-sulfur coal were “extraordinary events,” it must also be recognized that MoPub was required to file a rate case in 12 months. Id. at 809, 811. If a rate case was not filed by the end of 1992, no recovery of the deferred expenses would be allowed. Id.

By contrast, under current Missouri law GMO is now subject to a statutory form of rate freeze because it elected to make the deferrals set forth in Section 393.1400. This election triggered the provision in Section 393.1655.2 that the Company’s “base rates shall be held constant” for the next three years. Therefore, if the AAO requested by Complainants is granted, the Company will have no opportunity for almost three years to remedy the effects of a one-sided deferral that only addresses “the revenue and the return on the Sibley unit investments,” and not

the costs of proceeding with the retirement and other costs that are incurred as a result of the Sibley units not operating.

As a result, the option offered by the Commission when it denied GMO and KCP&L's request for AAOs to help it manage rising SPP transmission costs is not available. Finding such costs not extraordinary, the Commission advised GMO and KCP&L to seek relief "[a]s part of a general rate case." See In re Application of KCP&L and GMO for an Accounting Authority Order, Report & Order at 11, No. EU-2014-0077 (July 30, 2014) ("Transmission AAO Case").

Indeed, the Commission's rationale regarding transmission costs is analogous to plant expenses. In the Transmission AAO Case, the Commission noted that SPP costs caused by "the process of a multi-year build out of construction projects to expand the SPP transmission footprint" and to accommodate "projects planned to reduce system congestion and improve integration ... are increasing." Id. at 6. Despite the fact that costs were projected to increase 16% per year from 2012 through 2022, the Commission found that such expenses "are part of the ordinary and normal costs of providing electric service" and that "the potential funding required by SPP's members has been known for some time." Id. at 7-8.

Similarly, given the trends over the past several years regarding the inability of certain coal-fired plants to operate efficiently and economically, and GMO's plans to phase-out unproductive and expensive units, the Company's decision regarding the Sibley units was "part of the ordinary and normal" course of a utility's ongoing obligation to provide electric service. Id. at 8, 10. Notably, OPC and MECG have not claimed that the retirement of KCP&L's three units at the Montrose Generating Station require the imposition of an AAO.

Such measures are the normal and predictable practices employed by electric utilities. As indicated by the comprehensive order approving the Westar merger, there was no suggestion by

any party or the Commission itself during that proceeding that the significant number of plant retirements contemplated by GMO, KCP&L and Westar between 2016 and 2019 - a total of 12 units – were unusual, abnormal or extraordinary events. See Report & Order at 20-23, 30-31, In re Application of Great Plains Energy Inc. for Approval of its Merger with Westar Energy, Inc., No. EM-2018-0012 (May 24, 2018).

GMO began planning years ago how to respond to the economic and environmental challenges posed by Sibley, and announced in January 2015 that coal-burning would cease at two of the Sibley units in the near future. These plans continued to develop, with the retirement of the Sibley Station announced in June 2017 and the cessation of operations at the end of 2018. This was not an abnormal, unusual or extraordinary decision that justifies the imposition of an AAO under the USOA, as interpreted by the Commission’s recent decisions.

Consequently, the Complaint fails to state a claim upon which relief can be granted and must be dismissed.

D. The Complaint is an Unlawful Collateral Attack on the Commission’s Orders Approving GMO’s Tariffs

The imminent retirement of Sibley was not a secret as the parties met to resolve dozens of issues relating to GMO’s 2018 general rate case. The First Stipulation reflects a series of comprehensive agreements, including Sibley issues, that were reached by a number of parties, including OPC and MCEG. While MCEG signed the First Stipulation, OPC did not. However, OPC did not oppose or object to it. Section 22 of the First Stipulation expressly stated that OPC and two other non-signatory parties “do not oppose Commission approval of this Stipulation.”

Under Commission Rule 4 CSR-2.115(2), where a non-unanimous stipulation and agreement is not objected to, it may be treated as unanimous. Therefore, OPC is bound by the terms of the First Stipulation. However, the Complaint of OPC and MCEG now seeks to

collaterally attack the Commission's final orders approving the First Stipulation and subsequent tariffs, and is in violation of Section 386.550.

Of the four stipulations that settled GMO's rate case, the First Stipulation addressed revenue requirement matters, including capital structure, amortization, and other subjects. See Order Approving Stipulations & Agreements at 1-2, In re KCP&L Greater Mo. Operations Co.'s Request for Authority To Implement a General Rate Increase, No. ER-2018-0146 (Oct. 31, 2018) ("October 31 Order"). In approving the First Stipulation (filed September 19, 2018), the October 31 Order explicitly endorsed provisions that addressed Sibley retirement revenues and expenses. Section 15 of the First Stipulation sets forth the steps that GMO would undertake to "create a regulatory liability to capture the amount of depreciation expense included in the Company's revenue requirement beginning when each of the following units is related," naming "Sibley units 1, 2 and 3, including common plant" and an unrelated GMO unit at its Lake Road plant. See First Stipulation, §15 at 9 (Sept. 19, 2018). GMO, Staff, MECG and other parties also agreed that "the rates established in this case include O&M associated with the Sibley units." Id.

The First Stipulation provided that any signatory may propose an AAO "for the recovery of any other costs associated with the ... GMO retirements" at Sibley. Id.³ However, there was no preservation of rights regarding an AAO related to any revenues and return on investments associated with the Sibley Station. Id.

The Commission's Order of October 31 treated the First Stipulation and the three other that settled the case "as unanimous [under 4 CSR 240-2.115(2)] because no party to the case filed a timely objection." See October 31 Order at 3 & n.2. Neither MECG nor OPC requested rehearing

³ The First Stipulation also "does not preclude any party from opposing an AAO, or any other ratemaking treatment, for the recovery of any other costs associated with the ... retirement of the units" specified. See First Stipulation, §15 at 9.

or filed an appeal of the October 31 Order. Similarly, no party appealed the final order in the GMO 2018 rate case that approved the tariffs submitted by the Company. See Order Approving Tariffs, In re KCP&L Greater Mo. Operations Co.’s Request for Authority To Implement a General Rate Increase, No. ER-2018-0146 (Nov. 26, 2018) (“November 26 Order”).

Although these orders are now final, the Complaint’s attempt to litigate these issues constitutes a collateral attack that must be dismissed. As Section 386.550 provides: “In all collateral actions or proceedings the orders and decisions of the commission which have become final shall be conclusive.” There was no subsequent notice of appeal or application for rehearing filed by either Complainant or any other party which sought to contest the Commission’s authorization of GMO’s rate treatment, which included considerations for retiring the Sibley Station. See October 31 Order at 9. A notice of appeal and application for rehearing is the exclusive remedy for challenging a Commission under Sections 386.500 and 386.510. Because no party exercised this remedy, the Commission’s orders are final.

Similarly, the tariffs setting GMO’s rates are final and cannot be collaterally attacked by the Complaint. The Commission’s November 26 Order was not the subject of any application for rehearing or appeal. See State ex rel. Licata, Inc. v. PSC, 829 S.W.2d 515, 518 (Mo. App., W.D. 1992) (§ 386.550 barred a complaint challenging a gas utility rule that the Commission approved in another proceeding).

The Complaint also fails to allege that a substantial change in circumstance has occurred since the Commission issued the October 31 and November 26 Orders. GMO had previously announced that all three Sibley units would be retired by December 31, 2018. See Exhibit B at 2-3 (June 2, 2017). If a complaint seeks to re-examine “any matter determined by the Commission [it] must include an allegation of a substantial change of circumstances; otherwise, Section 386.550

bars the complaint.” In re Missouri-American Water Co. Tariff to Revise Water and Sewer Rate Schedules, Order Concerning Motion to Dismiss Complaint, No. WR-2003-0500, 2003 Mo. PSC LEXIS 1493 *15 (Nov. 20, 2003). See In re Union Elec. Co., Report & Order, No. EM-96-149 (July 12, 2001) (no change of circumstances existed to justify reconsideration of PSC order regarding expiration of AmerenUE’s second Experimental Alternative Regulation Plan).

The Complaint seeks to overturn a critical element of the final settlement of GMO’s rate case because it seeks an AAO regarding “the revenue and the return on the Sibley unit investments” (Complaint ¶ 15 at p. 4; p. 7), despite the fact that the First Stipulation approved by the Commission only allows parties to propose an AAO regarding “the recovery of any other costs associated” with the retirement of Sibley and other units. Because it is a collateral attack on the Commission’s October 31 and November 26 Orders under Section 386.550, the Complaint must be dismissed.

E. Conclusion

There is no legal basis for the Commission to exercise jurisdiction to adjudicate the Complaint because it fails as a matter of law under Section 386.390.1 to allege that GMO has violated a statute, rule, tariff or order of the Commission.

Moreover, it fails to allege any set of facts that the planned retirement of the Sibley Station is an “extraordinary event” justifying deferred accounting. In January 2015 GMO publicly announced that two units at Sibley would no longer burn coal and that retrofitting any of the units at Sibley was not a cost-effective way to meet environmental regulations. See Exhibit A, Media Release (Jan. 20, 2015). “Retiring” Sibley and other units was specifically mentioned as an option. After further study, GMO announced the retirement of the Sibley Station in June 2017, over 18 months ago. See Exhibit B, Media Release (June 2, 2017). The deliberate and careful process that

resulted in Sibley being taken out of service is not an unusual, extraordinary or abnormal event that qualifies for an AAO.

Finally, the efforts of the Complaint to collaterally attack the final orders in GMO's 2018 Rate Case, in violation of Section 386.550 are unlawful.

WHEREFORE, Respondent KCP&L Greater Missouri Operations Company asks that the Complaint be dismissed for failure to state a claim upon which relief can be granted.

/s/ *Robert J. Hack*

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand-delivered, emailed or mailed, postage prepaid, to all parties of record this 5th day of February, 2019.


/s/ *Robert J. Hack*

Attorney for KCP&L Greater Missouri Operations
Company

VERIFICATION


STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

Darrin R. Ives, being first duly sworn, on his oath and in his capacity as Vice President—Regulatory Affairs, states that he is authorized to execute on behalf of KCP&L Greater Missouri Operations Company the foregoing document, and has knowledge of the matters stated in this Motion to Dismiss, and that said matters are true and correct to the best of his knowledge and belief.



Darrin R. Ives

Subscribed and sworn to before me this 4th day of February 2019



Notary Public

My Commission Expires: 4/26/2021

