

**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, MECG 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 MECG 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 MECG. While MECG 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 MECG 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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Company

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

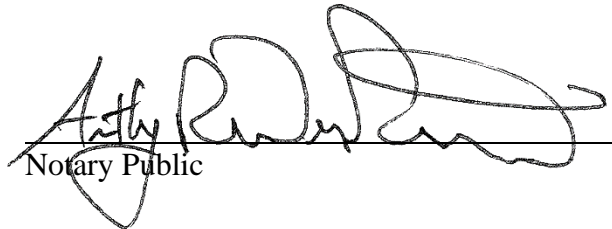
STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

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.



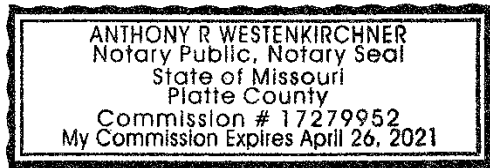
Darrin R. Ives

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



Notary Public

My Commission Expires: 4/26/2021



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 |
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FILED²

MAR 19 2018

Missouri Public
Service Commission

Exhibit No.:

Issue: Integration Plan; Merger
Efficiencies and Savings

Witness: Steven P. Busser

Type of Exhibit: Direct Testimony

Sponsoring Party: Great Plains Energy
Incorporated, Kansas
City Power & Light
Company, KCP&L
Greater Missouri
Operations Company

Case No.: EM-2018-0012

Date Testimony Prepared: August 31, 2017

MISSOURI PUBLIC SERVICE COMMISSION

CASE NO. EM-2018-0012

DIRECT TESTIMONY

OF

STEVEN P. BUSSER

ON BEHALF OF

**GREAT PLAINS ENERGY INCORPORATED,
KANSAS CITY POWER & LIGHT COMPANY, AND
KCP&L GREATER MISSOURI OPERATIONS COMPANY**

August 2017

Applicant Exhibit No. 4
Date 3/12/18 Reporter JS
File No. EM-2018-0012

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IV. MERGER ACCOUNTING 38

V. CONCLUSIONS..... 43

DIRECT TESTIMONY

OF

STEVEN P. BUSSER

Case No. EM-2018-0012

1 **I. INTRODUCTION**

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

3 A: My name is Steven P. Busser. My business address is 1200 Main Street, Kansas City,
4 MO 64105.

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

6 A: I am employed by Kansas City Power & Light Company (“KCP&L”) and serve as Vice
7 President-Risk Management and Controller for Great Plains Energy Incorporated (“GPE”
8 or “Great Plains Energy”), KCP&L, and KCP&L Greater Missouri Operations Company
9 (“GMO”).

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

11 A: I have executive responsibility for corporate accounting, energy accounting, Securities
12 and Exchange Commission (“SEC”) reporting, income taxes, accounting systems, and
13 risk management.

14 Since mid-2016, in addition to my responsibilities as Vice President – Risk
15 Management and Controller, I have served as an integration leader for the combination of
16 Westar Energy, Inc. (“Westar”) and Great Plains Energy.

1 **Q: Do you perceive any significant challenges or risks related to the achievement of**
2 **Support Services savings?**

3 A: There is minimal risk of lower savings associated with Support Services as the vast
4 majority of savings are attributable to elimination of redundancies that are within the
5 control of the Applicants.

6 **C. Generation**

7 **Q: How are the generation resource portfolios of Westar and GPE currently planned**
8 **and dispatched?**

9 A: External factors that impact the portfolio composition include potential changes to
10 environmental regulations and changes to Southwest Power Pool (“SPP”) rules and
11 trends in the power markets. Of course, cost, efficiency and reliability of plants also are
12 important factors.

13 Both generation portfolios are generally dispatched by SPP based on economics
14 of the plants in relation to other generating units across the 15-state region and
15 transmission system availability.

16 **Q: How will this planning and dispatch change with the Merger?**

17 A: In addition to continuing to evaluate each of the Applicants’ generation needs on an
18 individual basis, the planning process will also evaluate an integrated company
19 generation portfolio to determine if additional efficiencies can be gained. The generation
20 portfolios will remain dispatched by SPP as they are today.

21 **Q: How did Applicants identify Merger-related Generation efficiencies?**

22 A: We have continued to evaluate the resource portfolios independent of the Merger. As
23 part of these reviews, and as noted in Section II, GPE has announced that it will retire six

1 coal-fired units at Sibley, Montrose, and Lake Road either in 2018 or 2019. The
2 retirement of these older, less efficient plants will occur with or without the Merger, as
3 they reflect general market and environmental conditions, and the costs of retrofitting and
4 maintaining the plants.

5 **Q: How will customers benefit from these announced plant retirements?**

6 A: The Applicants project that the announced KCP&L plant retirements will result in
7 approximately \$222.6 million of savings over the first five years after they are retired.
8 Although these savings are not Merger-related and are not included in the savings
9 estimates discussed in my testimony, these savings will be reflected in the cost of service
10 as rate cases are processed, benefitting customers, as discussed by Messrs. Ives and
11 Somma.

12 **Q: Have the Applicants identified any changes to the portfolio made possible as a result
13 of the Merger?**

14 A: Yes. We have determined that it will now be possible to accelerate the retirement of five
15 generating units at three of Westar's generating plants. These retirements can be
16 accelerated to reduce costs for customers, yet still meet reserve requirements established
17 by the SPP. Cost savings attributable to accelerating these retirements from the mid-to-
18 late 2020s to as early as 2018 are Merger-related, and accordingly, have been included in
19 Merger savings. Non-fuel operations and maintenance ("NFOM") savings from these
20 retirements are estimated to be \$55.4 million over the first five years after retirement.

21 **Q: What other Generation-related savings are attributable to the Merger?**

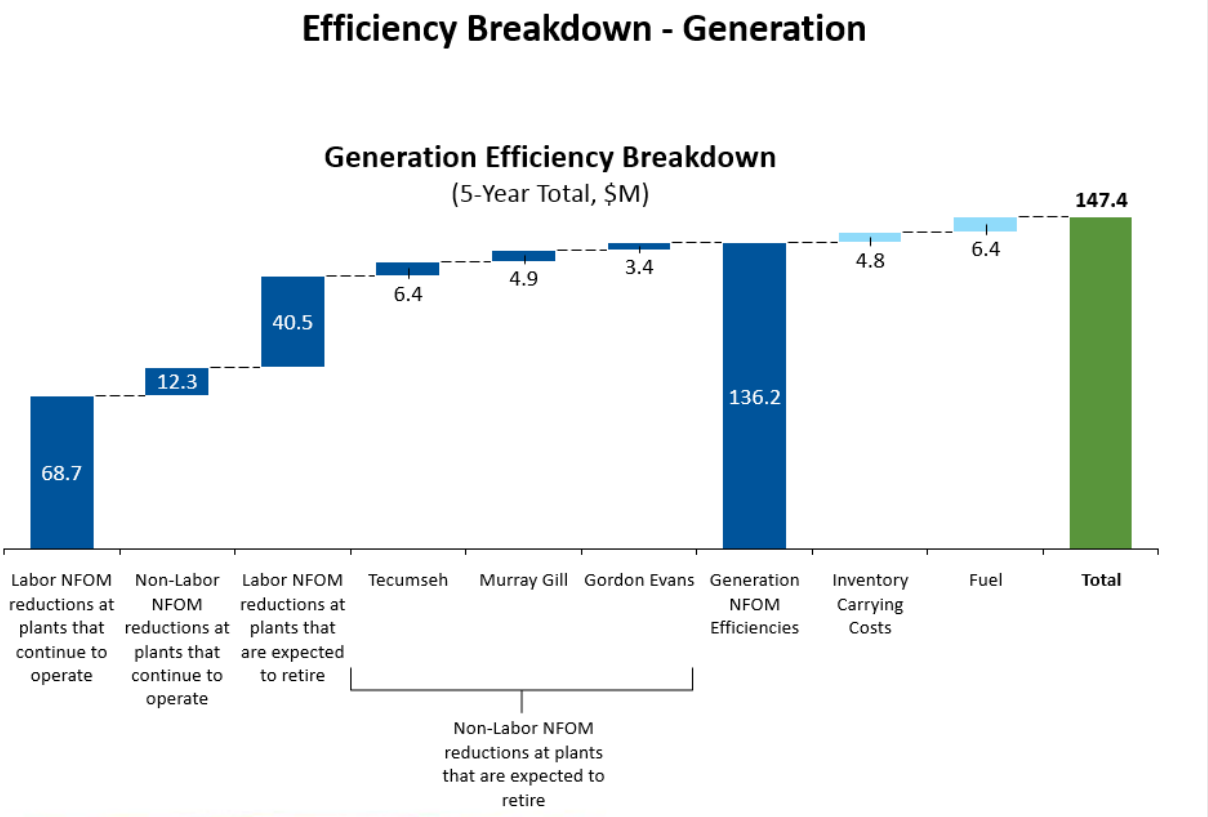
22 A: Generation efficiencies will be realized by reduced labor, maintenance, and fuel
23 expenditures from operating a combined fleet approximately twice the size of either

1 independent generation portfolio. These savings are created by improved processes that
 2 reduce both labor and non-labor related O&M expenses. Optimization across the
 3 combined portfolio will also reduce the number of rail car deliveries and inventory
 4 carrying costs. In addition, a consolidation of the Generation support functions (e.g.,
 5 generation system planning, generation engineering, etc.) will contribute to Merger
 6 savings. Generation Merger-related savings other than those attributable to the
 7 acceleration of Westar unit retirements are forecast to be approximately \$80 million over
 8 the first five years (excludes inventory carrying costs and fuel).

9 Savings from Generation efficiencies are summarized in Figure 5.

10

Figure 5



1 **Q: Do you perceive any significant challenges or risks related to the achievement of**
2 **Generation savings?**

3 A: No. Generation-related savings are primarily within the control of the Applicants
4 although a minor portion of the savings will be impacted by reduced fuel costs and from
5 interest rates that affect inventory-carrying costs. This portion remains exposed to
6 market influences.

7 **D. Supply Chain**

8 **Q: Please describe the nature of Supply Chain savings.**

9 A: The Supply Chain function is a critical function for utilities because a relatively small
10 percentage of savings in the costs associated with purchasing from equipment and service
11 providers will produce large dollar savings for customers. GPE and Westar combined
12 spent approximately \$1.9 billion on “repeatable” equipment and services in 2015.

13 The supply chain organizations achieve savings through a range of practices, and
14 measure their success by performing analytics and understanding the impact of supplier
15 negotiations against a baseline spend (pricing and volume) to determine efficiencies
16 associated with negotiating new contracts. The practices include inventory management,
17 competitive solicitations, and supplier relationship management.

18 **Q: Please describe the opportunities for efficiencies in this area.**

19 A: Most savings are attributable to two non-labor categories: economies of scale in
20 purchasing including supplier rationalization (\$87.4 million) and reduced inventory
21 carrying costs (non-Generation) and revenue requirements on capital sourcing savings
22 (\$44.2 million). The economies of scale result in opportunities to consolidate the supply
23 base, negotiate volume-driven cost reductions with potential suppliers, leverage better

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

In the Matter of the Application of Great Plains)
Energy Incorporated for Approval of its Merger) Docket No. EM-2018-0012
with Westar Energy, Inc.)

AFFIDAVIT OF STEVEN P. BUSSER

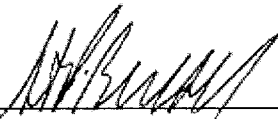
STATE OF MISSOURI)
) ss
COUNTY OF JACKSON)

Steven P. Busser, being first duly sworn on his oath, states:

1. My name is Steven P. Busser. I work in Kansas City, Missouri, and I am employed by Kansas City Power & Light Company as Vice President of Risk Management and Controller.

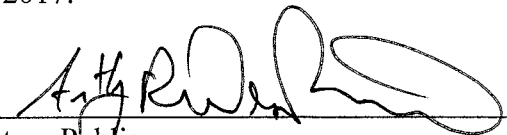
2. Attached hereto and made a part hereof for all purposes is my Direct Testimony on behalf of Great Plains Energy Incorporated, Kansas City Power & Light Company, and KCP&L Greater Missouri Operations Company consisting of forty-four (44) pages, having been prepared in written form for introduction 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.



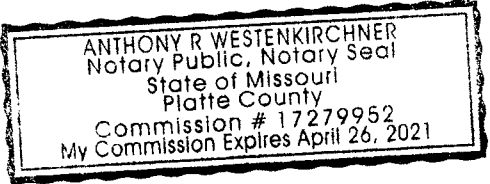
Steven P. Busser

Subscribed and sworn before me this 31st day of August 2017.



Notary Public

My commission expires: 4/26/2021



FILED²
MAR 19 2018
Missouri Public
Service Commission

Exhibit No.:
Issue: Renewable Energy; Resource
Planning
Witness: Burton L. Crawford
Type of Exhibit: Surrebuttal Testimony
Sponsoring Party: Great Plains Energy Incorporated,
Kansas City Power & Light
Company, and KCP&L Greater
Missouri Operations Company
Case No.: EM-2018-0012
Date Testimony Prepared: February 21, 2018

MISSOURI PUBLIC SERVICE COMMISSION

CASE NO.: EM-2018-0012

SURREBUTTAL TESTIMONY

OF

BURTON L. CRAWFORD

ON BEHALF OF

**GREAT PLAINS ENERGY INCORPORATED
KANSAS CITY POWER & LIGHT COMPANY, AND
KCP&L GREATER MISSOURI OPERATIONS COMPANY**

February 2018

Applicant Exhibit No. 5
Date 3/12/18 Reporter JRS
File No. EM-2018-0012

SURREBUTTAL TESTIMONY

OF

BURTON L. CRAWFORD

Case No. EM-2018-0012

1 **I. INTRODUCTION AND PURPOSE**

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

3 A: My name is Burton L. Crawford. My business address is 1200 Main, Kansas City, Missouri
4 64105.

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

6 A: I am employed by Kansas City Power & Light Company (“KCP&L” or “Company”) as
7 Director, Energy Resource Management.

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

9 A: I am testifying on behalf of Great Plains Energy Incorporated (“GPE”) and its wholly-
10 owned subsidiaries, Kansas City Power & Light Company (“KCP&L”) and KCP&L
11 Greater Missouri Operations Company (“GMO”). In addition, I am providing information
12 regarding Westar Energy, Inc. and Kansas Gas and Electric Company’s (together referred
13 to herein as “Westar”) renewable generation portfolio. GPE, KCP&L, GMO and Westar,
14 collectively referred to herein as “Applicants,” filed an Application seeking approval of the
15 Missouri Public Service Commission (“Commission”) for the merger of GPE and Westar
16 (the “Merger”). The new holding company formed by the Merger is referred to variously
17 in this testimony as the “combined company”.

1 generation (244 MW from the Pratt wind facility located in Pratt County KS and 200 MW
2 from the Prairie Queen wind facility located in Allen County KS). The Pratt wind farm is
3 expected to come online by the end of 2018 and the Prairie Queen wind farm is expected
4 to be online by June 2019. These resources will be allocated between KCP&L and GMO.

5 **Q: Does Kansas have a renewable energy standard that KCP&L complies with?**

6 A: Yes, although the Kansas standard is voluntary, as of 2015. IOUs provide historical and
7 projected renewable capacity data annually to the KCC that shows how they comply with
8 RES.⁹ To comply with the state's voluntary RES program, IOUs must own or purchase
9 renewable generation such that the nameplate capacity of the renewable generation is equal
10 to 20% of the utility's prior three-year peak retail load by 2020. KCP&L easily exceeds
11 the standard. Based on current in-service renewable resources, KCP&L exceeds the
12 expected 2020 standard by approximately 50%.

13 **Q: Has GPE announced the retirement of several fossil-fueled facilities?**

14 A: Yes. In addition to including the retirement of coal and gas facilities in its IRP Annual
15 Preferred Plans, GPE has publicly stated that it plans to shut down the fossil-fueled
16 facilities shown in Table 2.

⁹ Renewable Energy Standards Act, Kan. Stat. Ann. § 66-1256 (2015). See also Docket No. 13-KCPE-463-CPL.

Table 2: GPE Fossil-Fueled Retirements¹⁰

| 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 ¹¹ | 48 MW | 1960 | Dec. 31, 2018 |
| Sibley 2 | 51 MW | 1962 | Dec. 31, 2018 |
| Sibley 3 | 364 MW | 1969 | Dec. 31, 2018 |

1 **Q: Please describe KCP&L’s and GMO’s other clean energy initiatives.**

2 A: KCP&L’s and GMO’s other clean energy initiatives are: (1) energy efficiency; (2) energy
3 storage; and (3) green power rates.

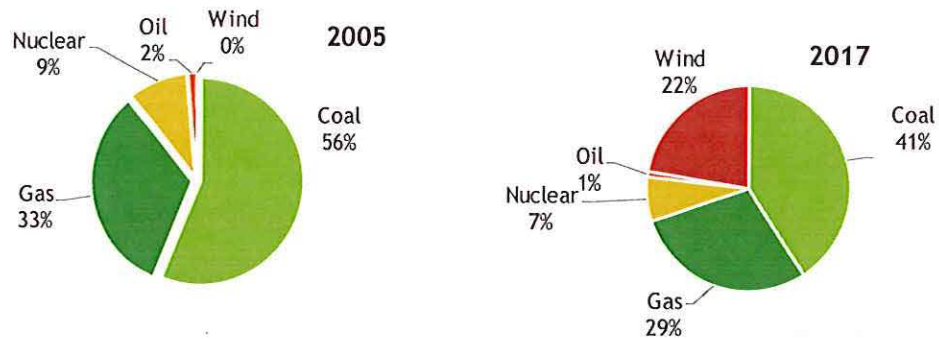
4 **Q: Please discuss KCP&L and GMO’s energy efficiency initiatives.**

5 A: KCP&L and GMO have a history of implementing Demand Side Management (“DSM”)
6 programs. Throughout the 1990s, KCP&L offered various energy efficiency, demand
7 reduction and pricing programs to encourage energy efficiency. In 2005, KCP&L adopted
8 the Comprehensive Energy Plan (“CEP”), which was the product of a highly collaborative
9 process with its customers, community leaders and regulators to develop a regional
10 approach to the investments needed to meet its customers’ needs for safe, reliable and
11 cleaner power. The CEP resulted in six major commitments.: (1) to propose a portfolio of
12 demand response, energy efficiency and affordability programs for approval by the

¹⁰ Press Release, KCP&L Continues Sustainability Commitment by Announcing Retirement of Six Units at Three Power Plant, June 2, 2017

¹¹ Sibley 1 retired from electric service on June 1, 2017, and Montrose 1 (170 MW not listed in table above) was retired in April 2016.

Figure 2: Westar's Generation Mix Comparison of 2005 to 2017



1 Moreover, in 2017, 31%¹⁵ of Westar's retail sales were supplied by renewable
2 energy.

3 **Q: Does Westar comply with the Kansas RES Act?**

4 A: Yes. In 2017, Westar reported it had 1,765 MW of renewable capacity, which would more
5 than cover the 20% RES compliance percentage.

6 **Q: Is it your understanding that Westar has decided it can accelerate the retirement of
7 several of its fossil-fueled units by five to ten years?**

8 A: Yes. Similar to GPE, Westar has announced that it plans to retire 781 MW of fossil-fueled
9 generation by the end of 2018. The units had originally been slated to close between 2023
10 and 2028, but it was determined that these units could be retired earlier. Westar is planning
11 to retire the fossil-fueled resources shown in Table 4.

¹⁵ Westar December 2017 Generation Results.

Table 4: Westar Fossil-Fueled Retirements

| Generating Unit | Capacity | In-service |
|------------------------|-----------------|-------------------|
| Murray Gill Unit 3 | 104 MW | 1956 |
| Murray Gill Unit 4 | 86 MW | 1959 |
| Tecumseh Unit 7 | 61 MW | 1957 |
| Gordon Evans Unit 1 | 154 MW | 1961 |
| Gordon Evans Unit 2 | 376 MW | 1967 |

1 **Q: Does Mr. Rábago recommend that the Commission require Applicants to develop and**
2 **adopt a commitment that provides for a firm date-certain to close the Westar coal**
3 **and gas-fired power plants slated for retirement?**¹⁶

4 **A:** Yes. Although Applicants confirm they will retire these units soon, they cannot provide a
5 firm retirement date until the Southwest Power Pool (“SPP”) completes the 2018 Integrated
6 Transmission Planning (“2018 ITP”) study. Westar has provided the required 6-month
7 notice to the SPP for retirement of Tecumseh 7, Gordon Evans 1 and Gordon Evans 2 steam
8 units which will allow for unit retirements by December 31, 2018. Westar has not yet
9 provided this notice for the Murray Gill 3 or 4 units but intends to do so before Summer
10 2018 to allow for retirement by December 31, 2018. The SPP is currently conducting the
11 2018 ITP which includes 0 MW output for all units Westar plans to retire. The study will
12 be finalized and approved by the SPP Board of Directors in July 2018.

¹⁶ Rebuttal Testimony of Karl Rábago, at 24.

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AFFIDAVIT OF BURTON L. CRAWFORD

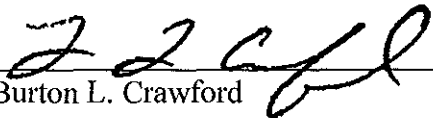
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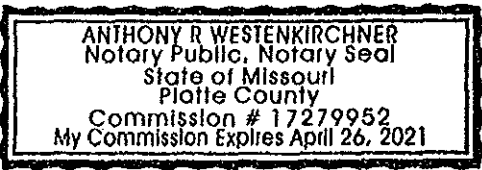
Burton L. Crawford

Subscribed and sworn before me this 21st day of February 2018.



Notary Public

My commission expires: 4/26/2021



| |
|---|
| <p>SERVICE DATE Jun 06, 2018</p> |
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PUBLIC SERVICE COMMISSION OF WISCONSIN

Application Requesting that the Public Service Commission of Wisconsin direct Wisconsin Electric Power Company and its Parent, WEC Energy Group Inc., to Defer for the Benefit of Customers the Net Savings Arising from their Voluntary and Premature Retirement of Pleasant Prairie Power Plant

6630-AF-100

ORDER

This is the Order declining to open a docket on the Petition filed by the Wisconsin Industrial Energy Group Inc. (WIEG), the Citizens Utility Board of Wisconsin (CUB), and the Wisconsin Paper Council (WPC) (collectively, Joint Petitioners), on April 9, 2018. In the Petition, the Joint Petitioners requested that the Commission open a docket pursuant to Wis. Admin. Code § PSC 2.07 and direct the Wisconsin Electric Power Company (WEPCO) to defer the net savings, excluding monitored fuel costs,¹ arising from the retirement of the Pleasant Prairie Power Plant. ([PSC REF#: 340850](#).) Pursuant to Wis. Admin. Code § PSC 2.07(5), the Commission exercises its discretion to decline to open a docket.

Background

In the Petition filed on April 9, 2018, the Joint Petitioners stated that this deferral request aligns with the SOP 94-01. ([PSC REF#: 340850](#) at Exhibit 2.) Additionally, the Joint Petitioners requested that the Commission assign carrying costs at WEPCO's most recently authorized weighted average cost of capital for this deferral. (*Id.* at 11.)

¹ The Commission evaluates monitored fuel costs through its fuel rules in Wis. Admin. Code ch. PSC 116.

On May 8, 2018, WEPCO filed a timely response requesting that the Commission dismiss the Petition.² ([PSC REF#: 342466](#).) In its response, WEPCO asserted that the Petition is a collateral attack on the Commission's decision to freeze base rates in docket 5-UR-108. (*Id.* at 1.) Additionally, WEPCO stated that the criteria from the SOP 94-01 do not support the Joint Petitioners' request for deferral. (*Id.* at Appendix A.)

The Commission discussed the threshold question of whether to open a docket in response to the Petition at its open meeting of May 24, 2018.

Legal Standards

Pursuant to Wis. Admin. Code § PSC 2.07(1), any person can request that the Commission open a docket. If the request to open a docket alleges a violation of an order enforced by the Commission, the person filing the request shall serve a copy of the request upon the person named, in the manner provided in Wis. Stat. § 801.11 for service of a summons.³ Wisconsin Admin. Code § PSC 2.07(5) states that within 60 days from the receipt of the request to open a docket, the Commission shall either open a docket or deny the request. Thus, the 60 days for initial Commission action ends on June 8, 2018.

Pursuant to Wis. Admin. Code § PSC 2.07(5), the Commission determination of whether to open a docket on this matter is a discretionary decision. Discretionary decisions contemplate a process of reasoning based on facts in the record or reasonably inferred from the record, and a conclusion based on a logical rationale founded upon proper legal standards. *Reidinger v.*

² The Joint Petitioners served WEPCO with the Petition on April 18, 2018. ([PSC REF#: 341374](#).) Wisconsin Admin. Code § PSC 2.07(4) allows any person to file a response to a request to open a docket within 20 days of the date of service of the request.

³ The Petition alleges that “[d]espite negotiations during the Docket No. 05-UR-108 settlement discussions and issuance of voluminous data requests, WEPCO represented at all times that its 2018 test year revenue requirement included Pleasant Prairie expenses; it did not disclose through discovery responses that it was considering voluntarily and prematurely retiring Pleasant Prairie.” ([PSC REF#: 340850](#) at 4.)

Optometry Examining Bd., 81 Wis. 2d 292, 297, 260 N.W.2d 270 (1977). Further, some courts have held that discretionary decisions are not judicially reviewable decisions under Wis. Stat. § 227.52. *Wis. Envtl. Decade, Inc. v. PSC*, 93 Wis. 2d 650, 651-659A, 287 N.W.2d 737 (1980). If the Commission denies the Petition, it must notify the Joint Petitioners of its decision and include a brief statement of the reasons for its decision. Wis. Admin. Code § PSC 2.07(5).

Here, the Commission has the authority to direct deferral accounting pursuant to Wis. Stat. § 196.06.⁴ Under the SOP 94-01, there are several criteria that Commission staff use to evaluate a request for deferral accounting treatment for a utility expenditure: (1) whether the cost is outside of the utility's control; (2) whether the cost is unusual and infrequently occurring; (3) whether the amount, if recognized in the year of expenditure, would cause the utility serious financial harm or significantly distort the current year's income; and (4) whether the immediate recognition of the expenditure would have a significant impact on ratepayers. These criteria can be considered individually or together with other criteria. The Commission may also assign carrying costs for deferrals.

Discussion

As the Joint Petitioners did not argue that WEPCO's decision to close the Pleasant Prairie Power Plant should be reversed, the primary question here is whether deferral accounting for the net savings, excluding monitored fuel costs, arising from the retirement of the Pleasant Prairie Power Plant is appropriate. While much is made in the filings⁵ as to the timing and the merits of the decision to retire Pleasant Prairie, the prudence of that decision and any recoverability of

⁴ Wisconsin Stat. § 196.06(3) states that "[e]ach public utility shall keep and render its books, accounts, papers and records accurately and faithfully in the manner and form prescribed by the commission and shall comply with all directions of the commission relating to such books, accounts, papers and records."

⁵ Joint Petitioners filed a reply which was not authorized by Wis. Admin. Code § PSC 2.07. While the Commission has discretion to consider this filing, not all of the Commissioners reviewed or considered it.

costs associated with that decision are not presently before the Commission or at issue in the Petition. What is before the Commission is purely a decision as to the appropriate accounting treatment. The Commission denies the Petition and declines to authorize deferral accounting treatment for the net savings, excluding monitored fuel costs, arising from the retirement of the Pleasant Prairie Power Plant. The Commission finds that the request does not satisfy the criteria set forth in the SOP 94-01 and is otherwise not substantiated. The costs associated with the retirement of the Pleasant Prairie Power Plant are not outside of WEPCO's control. This was a business decision made by WEPCO which does not require prior Commission approval. Further, according to WEPCO, it was a decision that was part-and-parcel of its freeze proposal and was at least alluded to very generally when it indicated that cost cuts would be required to implement the freeze.

Public utilities, including WEPCO, routinely retire generating units between rate cases and Joint Petitioners have not cited any prior Commission decision where deferral accounting treatment has been authorized for the costs or any net savings associated with such retirements. While the timing and WEPCO's communication relating to its decision could have been better, WEPCO was under no legal obligation to notify the Commission of its decision. Even though deferral accounting is not appropriate here, this Order does not preclude a future Commission from evaluating and determining the proper ratemaking treatment for any costs associated with the retirement of the Pleasant Prairie Power Plant in any future WEPCO rate proceeding.

Conclusion

For the reasons stated above, the Commission exercises its discretion to decline to open a docket in response to the Petition. This decision is without prejudice to any future action the

Commission may take relating to the recovery of costs associated with the retirement of the Pleasant Prairie Power Plant.

Dated at Madison, Wisconsin, the 6th day of June, 2018.

By the Commission:

A handwritten signature in black ink that reads "Steffany Power Coker". The signature is written in a cursive, flowing style.

Steffany Power Coker
Secretary to the Commission

SPC:MRD:RPM: DL:01638014

See attached Notice of Rights

PUBLIC SERVICE COMMISSION OF WISCONSIN
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**NOTICE OF RIGHTS FOR REHEARING OR JUDICIAL REVIEW, THE
TIMES ALLOWED FOR EACH, AND THE IDENTIFICATION OF THE
PARTY TO BE NAMED AS RESPONDENT**

The following notice is served on you as part of the Commission's written decision. This general notice is for the purpose of ensuring compliance with Wis. Stat. § 227.48(2), and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

PETITION FOR REHEARING

If this decision is an order following a contested case proceeding as defined in Wis. Stat. § 227.01(3), a person aggrieved by the decision has a right to petition the Commission for rehearing within 20 days of the date of service of this decision, as provided in Wis. Stat. § 227.49. The date of service is shown on the first page. If there is no date on the first page, the date of service is shown immediately above the signature line. The petition for rehearing must be filed with the Public Service Commission of Wisconsin and served on the parties. An appeal of this decision may also be taken directly to circuit court through the filing of a petition for judicial review. It is not necessary to first petition for rehearing.

PETITION FOR JUDICIAL REVIEW

A person aggrieved by this decision has a right to petition for judicial review as provided in Wis. Stat. § 227.53. In a contested case, the petition must be filed in circuit court and served upon the Public Service Commission of Wisconsin within 30 days of the date of service of this decision if there has been no petition for rehearing. If a timely petition for rehearing has been filed, the petition for judicial review must be filed within 30 days of the date of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition of the petition for rehearing by operation of law pursuant to Wis. Stat. § 227.49(5), whichever is sooner. If an *untimely* petition for rehearing is filed, the 30-day period to petition for judicial review commences the date the Commission serves its original decision.⁶ The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

If this decision is an order denying rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not permitted.

Revised: March 27, 2013

⁶ See *Currier v. Wisconsin Dep't of Revenue*, 2006 WI App 12, 288 Wis. 2d 693, 709 N.W.2d 520.