

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

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

**ANSWER OF
KCP&L GREATER MISSOURI OPERATIONS COMPANY**

COMES NOW KCP&L Greater Missouri Operations Company (“GMO” or “Respondent”), and hereby files its Answer to the Petition (“Answer”) filed by the Office of the Public Counsel (“OPC”) and the Midwest Energy Consumers Group (“MECG”) on December 28, 2018.

A. PROCEDURAL MATTERS

1. On December 28, 2018, OPC and MECG filed a petition with the Missouri Public Service Commission in File No. EU-2019-0197 asking the Commission to issue an accounting authority order requiring GMO to defer to a regulatory liability account all revenues associated with costs and return on investments associated with certain Sibley generation units that are being retired by GMO.

2. On January 2, 2019, the Commission issued its *Notice That Petition Will Be Treated As A Complaint And Assigned A New File Number* in File No. EU-2019-0197, and a *Notice of Complaint* in File No. EC-2019-0200 which stated that the Commission is treating the Petition filed by OPC and MECG as a complaint against GMO. The *Notice of Complaint* directed that GMO file its answer no later than February 1, 2019.

B. INTRODUCTION

1. As explained by 4 CSR 240-2.070(1), “[a]ny person who feels aggrieved by an alleged violation of any tariff, statute, rule, order, or decision within the Commission’s jurisdiction may file a complaint.” In addition, formal complaints must be made “by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any person, corporation, or public utility, including any rule or charge established or fixed by or for any person, corporation or public utility, in violation or claimed to be in violation of any provision of law or of any rule order or decision of the commission.” 4 CSR 240-2.070(4). See also Sections 386.390 and 386.400, RSMo.

2. The Petition of OPC and MECG filed in File No. EU-2019-0197 fails to allege any violation of any tariff, statute, rule, order or decision within the Commission’s jurisdiction, as required by 4 CSR 240-2.070. Therefore, the Petition should be summarily dismissed. Nevertheless, this Answer will address below the allegations of the Petition on a paragraph by paragraph basis, and include the Respondent’s grounds for defense, both law and fact, as required by 4 CSR 240-2.070(9).

C. ANSWER

1. Respondent admits that GMO is an electrical corporation engaged in the generation, transmission, and sale of electricity within Missouri as alleged in Paragraph 1.

2. Respondent admits that the Commission Staff’s True-Up Accounting Schedule 1 in GMO’s most recent rate case (File No. ER-2018-0146) includes a Net Operating Income figure of \$160,169,593. Respondent denies that this amount is the actual, unadjusted net income of Respondent, and therefore denies the allegations contained in Paragraph 2.

3. Regarding paragraph 2 of the Petition, Respondent denies that Sibley unit 1 was included in GMO’s generation portfolio on June 30, 2018, the true-up date in the last GMO rate

case, because it was retired from service on June 1, 2017, although the boiler for unit 1 remained in service on June 30, 2018. Respondent admits GMO's generation portfolio included Sibley units 2, 3, and common plant and the boiler for unit 1 on June 30, 2018, the true-up date in the last GMO rate case, and that Sibley units 2 and 3 used steam generation. Respondent neither admits nor denies the allegation contained in footnote 2 of Paragraph 3 since Respondents do not have knowledge of what Petitioners "recognize" or the reasons Petitioners included Sibley 1 in their petition.

4. Respondent admits that GMO requested a rate increase in 2018 in File No. ER-2018-0146 that was resolved through a Commission-approved stipulation on October 31, 2018, and the new rates became effective December 6, 2018. Respondent denies the remainder of the allegations contained in Paragraph 4, and states that the resolution of this rate case was by a "black box" settlement which does not identify the operation and maintenance costs, return on any investment, property taxes and other sums associated with the Sibley units.

5. Respondent admits that it responded to OPC Data Request 8562 in File No. ER-2018-0146, and that Staff True Up Accounting Schedule 5 in File No. ER-2018-0146 shows amounts for annual depreciation expense for the Sibley facilities that remained in service on June 30, 2018 (i.e., Sibley units 2, 3 and common plant and the boiler for unit 1), but denies the remaining allegations contained in Paragraph 5.

6. Respondent admits the allegations stated in Paragraph 6.

7. Respondent denies the allegations contained in Paragraph 7.

8. Respondent admits that Public Counsel and MECG are identified as petitioners on the Petition (filed in EU-2019-0197 on December 28, 2018) as alleged in Paragraph 8.

9. Respondent is without knowledge of the allegations and information stated in Paragraph 9 and therefore denies the same. To the extent that Paragraph 9 includes a quotation

from Section 386.710 RSMo, Respondent states that no answer is necessary since the statute speaks for itself.

10. Respondent is without knowledge of the allegations contained in Paragraph 10 and therefore denies the same, except that GMO admits that MECG has been granted intervention in numerous GMO rate proceedings.

11. Respondent admits the allegations contained in Paragraph 11.

12. Respondent neither admits nor denies the allegations contained in Paragraph 12, as the Commission rules speak for themselves, and Respondent is otherwise without knowledge of the remaining allegations contained in Paragraph 12.

13. Respondent admits that OPC contacted GMO's representatives before filing the Petition, as alleged in Paragraph 13. Respondent denies the remaining allegations contained in Paragraph 13.

14. Respondent admits that it is an electrical corporation and public utility as defined by Section 386.020 RSMo. Respondent states that the remaining allegations are legal conclusions which do not require an answer. To the extent an answer is required, GMO denies the same.

15. With respect to the allegations contained in Paragraph 15, Respondent states that to the extent that Paragraph 15 contains legal conclusions rather than factual allegations, no answer is required, but to the extent an answer is required, GMO denies the same. Respondent denies that the Commission should order GMO to defer to a regulatory liability account all revenues associated with costs and return on Sibley investments associated with GMO's Sibley generation units 1, 2, 3, and common plant.

16. With respect to the allegations contained in Paragraph 16 and footnotes 5, 6, 7 and 8, Respondent states that no answer is required to the extent said portion of the Petition contains legal conclusions rather than factual allegations, but to the extent an answer is required GMO

denies the same. GMO admits that Sibley units in the past have been the subject of accounting orders, but denies the relevance of this allegation.

17. With respect to the allegations contained in Paragraph 17 and footnote 9, Respondent states that to the extent said portion of the Petition contains legal conclusions rather than factual allegations, no answer is required, and the Commission rules speak for themselves. To the extent that an answer is required, Respondent denies the same.

18. With respect to the allegations contained in Paragraph 18 and footnote 10, Respondent states no answer is required since the Code of Federal Regulations (“CFR”) speaks for itself. GMO admits that the General Instructions for the Uniform System of Accounts (“USOA”) contains the quotation included in Paragraph 18. To the extent that an answer is required, Respondent denies the relevance of the quoted portion of the USOA.

19. With respect to the allegations contained in Paragraph 19 and footnotes 11 and 12, Respondent states that no answer is needed since the CFR that codifies the USOA speaks for itself, but to the extent that an answer is required, GMO denies the same.

20. With respect to the allegations contained in Paragraph 20, Respondent states that no answer is required since it contains legal conclusions and interpretations of the CFR which codifies the USOA. To the extent that an answer is required, Respondent denies the allegations contained in Paragraph 20, except that GMO admits that the retirement of a generation facility will have an effect upon accumulated deferred income taxes.

21. Respondent denies that the retirement of the Sibley generation units is “premature” or “an extraordinary event”. Respondent denies that the retirement of the Sibley units is “of an unusual nature and infrequent occurrence justifying an accounting order.” Respondent also states that no further answer is necessary since Paragraph 21 contains legal conclusions which require no answer.

22. With respect to the allegations contained in Paragraph 22 and footnote 13, Respondent denies that the retirement of the Sibley units is “premature” or “unusual” and also denies that “electric utilities do not retire generating units regularly or frequently”. Respondent states that the remaining allegations in Paragraph 22 are legal conclusions and not factual allegations which do not require an answer. To the extent an answer is required, GMO denies the same.

23. Respondent denies the allegations stated in Paragraph 23.

24. Respondent denies the allegations stated in Paragraph 24.

25. Respondent denies the allegations stated in Paragraph 25.

26. Respondent admits that Petitioners attached affidavits of OPC witnesses John A. Robinett and Robert E. Schallenberg, but reserves the right to dispute specific factual allegations and their relevance in any evidentiary hearings.

27. With respect to the allegations contained in Paragraph 27, Respondent states that the allegations are legal conclusions which do not require an answer. To the extent an answer is required, GMO denies the same.

28. Respondent admits the allegations contained in Paragraph 28.

29. Respondent denies any allegations in the WHEREFORE clause on page 7 of the Petition. Respondent further states that it has no knowledge or information about Petitioners’ request related to an accounting order addressing depreciation expense.

D. AFFIRMATIVE DEFENSES

FIRST DEFENSE

1. The Complaint fails to state a claim upon which relief may be granted.

SECOND DEFENSE

2. The Complaint should be dismissed since it fails to allege a “violation of any provision of law, or of any rule or order or decision of the commission” in violation of Sections 386.390 and 386.400, RSMo.

THIRD DEFENSE

3. The Complaint should be dismissed since it fails to allege any “violation of any tariff, statute, rule, order, or decision with the commission’s jurisdiction.” 4 CSR 240-2070(1) & (2).

FOURTH DEFENSE

4. The Complaint should be dismissed since the retirement of Sibley units 2 and 3 is not an extraordinary, rare, abnormal, or unusual event within the meaning of the USOA and recent Commission orders denying AAOs at the request of GMO and KCP&L for the deferral of other expenses.

FIFTH DEFENSE

5. The Complaint should be dismissed since the recognition of a deferral for savings generated by the retirement of Sibley generation units 2 and 3 will cause the Respondent serious financial harm and will significantly distort current earnings by decreasing earnings in 2019, 2020 and beyond.

SIXTH DEFENSE

6. The Complaint should be dismissed since 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). See also State ex rel. Harline V. PSC, 343 S.W.2d 177, 180 (Mo. App. K.C. 1960).

SEVENTH DEFENSE

7. The Complaint should be dismissed since it is an unlawful collateral attack on the Commission's *Order Approving Stipulations and Agreement* (issued on October 31, 2018) and *Order Approving Tariffs* (issued on November 26, 2018) in File No. ER-2018-0145 and ER-2018-0146, in violation of Section 386.550, RSMo. The Complaint also fails to allege that a substantial change in circumstances has occurred since the Commission issued the October 31 and November 26 Orders referenced in this paragraph.

EIGHTH DEFENSE

8. The Complaint should be dismissed because neither OPC nor MECG have statutory authority or legal standing to request an accounting authority order from the Commission since they have no authority to manage the Respondent or dictate how its books and records are maintained.

WHEREFORE, Respondent submits its Answer to the Complaint.

Respectfully submitted,

/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 1st day of February 2019.

/s/ Robert J. Hack

Robert J. Hack