

**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.)	

**OPPOSITION OF KCP&L GREATER MISSOURI OPERATIONS COMPANY
TO PUBLIC COUNSEL’S MOTION TO COMPEL**

KCP&L Greater Missouri Operations Company (“GMO” or “Company”) states the following in opposition to the Motion to Compel of the Office of the Public Counsel (“Public Counsel” or “OPC”):

INTRODUCTION

The factual premise of this case brought by OPC and the Midwest Energy Consumers Group (collectively, “Complainants”) is that the retirement of the Sibley Generating Station (“Sibley”) was an “extraordinary” event of an “unusual nature” and an “infrequent occurrence” that justifies the imposition of an accounting authority order (“AAO”). See Complaint, ¶¶ 16-24. The Complainants have requested that the Commission invoke deferral accounting and order GMO to record “the revenue and return on the Sibley unit investments collected in rates” as a regulatory liability in Account 254 of the Uniform System of Accounts (“USOA”). Id., ¶¶ 15-17 & 7. However, the Data Requests that are the subject of OPC’s Motion to Compel do not relate to these issues and fail to meet the relevancy requirements of Rule 56.01(b)(1), Mo. Civ. R. Proc.

The Commission has stated: “‘Relevant’ evidence is that which tends to prove or disprove a fact of consequence to the pending matter.” See Order Concerning Discovery Conference at 2,

In re Union Elec. Co., No. EO-2004-0108 (Jan. 23, 2004) (emphasis added). This is consistent with the proposition that “[f]undamental to the Missouri law of evidence is the rule that evidence must be both logically and legally relevant in order to be admissible.” Pittman v. Ripley Co. Mem’l Hosp., 318 S.W.3d 289, 293 (Mo. App. S.D. 2010).¹ See Reason v. Payne, 793 S.W.2d 471, 477 (Mo. App. E.D. 1990) (relevant evidence relates to “a fact that is of consequence”).

For example, the scope of discovery in general rate cases is broad where the Commission’s obligation is to explore the quality of a utility’s “service and product,” “whether improvements are needed to protect the welfare of the public,” and “the safety and health of ... customers and employees” in order to set just and reasonable rates. See Order Concerning Discovery Conference at 2-3, In re Union Elec. Co., No. EO-2004-0108 (Jan. 23, 2004). By contrast, the Complaint seeks an AAO which only requires a determination of whether the retirement of the three Sibley units was an extraordinary item under the USOA. As a result, the relevancy requirements of Rule 56.01(b)(2) should be strictly enforced, and DRs that relate to facts not “of consequence” to AAO issues should not be permitted.

In considering whether to grant AAO requests, the Commission has been clear that applicants requesting deferral accounting must meet the requirements of USOA General Instruction 7. The must demonstrate that the subject of the request is an “extraordinary” item that is of an “unusual nature and infrequent occurrence.... 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.” See Gen’l Instr. 7, USOA, 18 C.F.R. Part 101, adopted by 4 CSR 240-20.030.

¹ “Evidence is logically relevant if it tends to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence, or if it tends to corroborate evidence which itself is relevant and bears on the principal issue of the case.” Pittman v. Ripley Co. Mem’l Hosp., 289 S.W.3d at 293-94 (emphasis added).

The Commission has stated that this language requires examination of the “Rarity” of an event. See Report & Order at 14, In re Application of Southern Union Co. for an Accounting Authority Order, No. GU-2011-0392 (Jan. 25, 2012) (granting AAO for “extraordinary” O&M expenses and capital costs related to Joplin tornado). Accord Report & Order at 18, In re Application of Spire Missouri Inc. for an AAO concerning its Commission Assessment for 2019, No. GU-2019-0011 (Mar. 20, 2019) (AAO request denied for 52% increase in annual assessment costs because “not extraordinary”).

When GMO and Kansas City Power & Light Company (“KCP&L”) requested an AAO to manage projected 16% annual increases in Southwest Power Pool (“SPP”) transmission expenses from their 2012 levels (\$5.1 million for GMO and \$10.5 million for KCP&L), the Commission denied the request. Because the “expansion of SPP regional projects and the potential funding required by SPP’s members *has been known for some time*,” they were “not extraordinary.” See Report & Order at ¶ 11, In re KCP&L and GMO Application for an Accounting Auth. Order, No. EU-2014-0077 (July 30, 2014) (emphasis added).

Similarly, the retirement of the Sibley units has “been known for some time,” as the retirement was planned years in advance and is not extraordinary. However, the seven OPC Data Requests (“DRs”) at issue in this motion to compel do not seek information relevant to whether the Sibley retirement was an unusual, infrequent or abnormal occurrence under the USOA’s General Instruction 7. Most of them relate to whether the decision to retire Sibley was prudent. But, OPC does not allege imprudence, either with regard to the retirement decision or the cost of fuel or fuel-related items that powered Sibley. Such allegations are not the subject of this case. To the contrary, the Complainants explicitly reserve “future arguments regarding the prudence of GMO’s decision to retire Sibley” for another time. See Complaint, ¶ 27.

As discussed below, GMO's objections are well founded and should be upheld.

A. DRs 8505-07: Inquiries into Resource, Capacity and Decisional Prudence

DRs 8505 and 8507 seek information regarding resource adequacy and capacity issues unrelated to the Complaint. They state:

8505. Please provide a narrative explanation for how GMO will meet its resource adequacy requirements from the Southwest Power Pool following the closure of the Sibley Station.

8507. Identify the resources that make up for the capacity lost by the retirements of Sibley units 1, 2 and 3.

Neither of these two requests relate to whether the decision to retire the Sibley Station was unusual, infrequent, or "abnormal and significantly different from the ordinary and typical activities of the company," as provided by General Instruction 7. They each appear to inquire into whether the retirement will cause GMO to be unable to meet its requirements to provide adequate resources to customers, or that it will be unable to access sufficient capacity no longer available from Sibley. These issues do not relate to the premise of the Complaint, but rather seek to uncover facts related to the prudence of the decision to retire Sibley.

These DRs additionally inquire into matters of ongoing resource adequacy and capacity planning that are the subject of continuing proceedings pursuant to the Commission's Integrated Resource Planning ("IRP") rules and procedures. See 240-22.020 [defining "capacity," "resource plan" and "resource planning"]; 22.040 [Supply-Side Resource Analysis]; 22.080 [requiring filing of preferred resource plans and resource acquisition strategies]. Because the issues raised by these DRs are addressed in other proceedings, are not relevant to the issues raised by the Complaint, and are not reasonably calculated to lead to the discovery of evidence on whether an AAO should be imposed by the Commission, GMO's objections should be upheld.

DR 8506 is also not relevant to the subject of the Complaint. It states:

8506. Please provide a narrative explanation justifying GMO's decision to retire the Sibley Station.

This request plainly challenges the decision to retire Sibley, demanding that GMO explain and justify its decision. Because these issues are not raised by the Complaint, DR 8506 does not meet the relevancy standard of Rule 56.01(b)(1). As the Complaint explicitly states in Paragraph 27, questions related to the prudence of the decision to retire Sibley do not bear on whether the retirement is an unusual, abnormal or significantly different event that justifies deferral accounting under the USOA.

OPC's reliance upon the word "appears" from the second paragraph of Rule 56.01(b)(1) does not change the relevancy standard set forth in the rule's first paragraph. See OPC Motion to Compel, ¶ 6. The rule's second paragraph states in full: "It is not ground for objection that the information will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence."

Contrary to OPC's suggestion, this sentence does not alter Rule 56.01(b)(1)'s requirement that OPC meet its burden of proof. That obligation is set forth in the third sentence of the rule which declares: "The party seeking discovery shall bear the burden of establishing relevance." See Rule 56.01(b)(1), Mo. R. Civ. Proc.

These three Data Requests do not seek information under Rule 56.01(b)(1) "that is relevant to the subject matter involved in the pending action." The OPC Motion to Compel responses to these requests must be denied.

B. Sibley Fuel Run Information

Without any reference to whether the retirement of the Sibley Station was an unusual or abnormal event, Public Counsel seeks the following information concerning fuel run data at Sibley:

- 8508. Please provide the results of GMO's most recent GMO fuel run that includes Sibley units 2 and 3.
- 8509. Please provide the results of any fuel run of GMO without Sibley unit 2, but with all other inputs being the same as the model requested in DR 8508.
- 8510. Please provide the results of any fuel run of GMO without Sibley units 2 and 3, but with all other inputs being the same as the model requested in DR 8508.

None of these requests is relevant to whether the retirement of Sibley or any of its units qualifies under the Commission's standards for an AAO. To the contrary, information related to fuel runs at Sibley is an essential component of the fuel and purchased power expense included in base rates, changes to which are reflected in the fuel adjustment charge ("FAC") process governed by Section 386.266² and the Commission's regulations found at 4 CSR 240-3.161 and 240-20.090. Changes in fuel and purchased power expenses are reported on a monthly basis under 240-3.161(5). Increases and decreases in these costs are reflected in customer rates on a periodic basis under GMO's FAC tariff that has been approved by the Commission.

Surveillance Monitoring Reports are provided on quarterly basis that include data on fuel inventory, as well as operating and maintenance expenses related to fuel. See 4 CSR 240-3.161(6). Finally, there are independent prudence reviews of fuel and other costs that are included in an FAC

² All statutory references are to the Missouri Revised Statutes (2016), as amended.

or other rate adjustment mechanisms which are conducted no less than every 18 months. See 4 CSR 240-20.090(7).

As the Commission held when rejecting the request of GMO and KCP&L to establish an AAO for increases in electric transmission costs, expenses related to fuel and fuel-related matters which include transmission costs should be considered in FAC proceedings, not in an AAO request. See Report & Order at 8-11, In re KCP&L and GMO Application for an Accounting Auth. Order, No. EU-2014-0077 (July 30, 2014). Because the Commission has determined that issues related to fuel costs should be addressed in the FAC process, discovery regarding fuel runs is irrelevant to this complaint case that seeks an AAO and should not be permitted.

Because OPC's inquiry into fuel run data in DRs 8508-8510 has nothing to do with whether the retirement of Sibley was an extraordinary event under the USOA and the standards that the Commission has applied to AAO requests, GMO's objections should be sustained.

C. Stranded Costs and GMO Integrated Resource Planning

As it did in DRs 8505 and 8507, Public Counsel seeks information through DR 8514 regarding GMO's Integrated Resource Planning process under Chapter 22 of the Commission regulations:

8514. How were the stranded costs of Sibley 3 handled in GMO's 2017 resource plan?

There is nothing in this data request that seeks information relevant to whether the retirement of Sibley was an unusual, infrequent, or abnormal event. Therefore, it is not relevant to the allegations of the Complaint.

OPC's reference to a "2017 resource plan" appears to relate to the reports that GMO files with the Commission to comply with the IRP requirements of Chapter 22 regarding electric utility resource planning and the annual update report that GMO prepared in 2017, pursuant to the IRP

regulations. See 240-22.080(3). If that is the subject of this DR, such reports are publicly available in GMO's IRP proceedings and accessible by Public Counsel. However, any assumptions regarding stranded cost recovery by GMO included in those reports are irrelevant to this case.

CONCLUSION

The seven DR's that are the subject of Public Counsel's Motion to Compel fail to meet the relevancy requirements of Rule 56.01(b)(1) because they have nothing to do with the Complaint. They go well beyond the allegations that the retirement of Sibley is an extraordinary event that was infrequent, abnormal, and unusual. Instead of seeking information related to those issues, the DR's inquire into the prudence of the decision to retire Sibley and into matters of resource planning that have nothing to do with whether deferral accounting should be applied to the Sibley retirement.

WHEREFORE, Respondent KCP&L Greater Missouri Operations Company requests that the Motion to Compel be denied.

Respectfully submitted,

/s/ Robert J. Hack

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**Attorneys for KCP&L Greater Missouri
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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 27th day of March 2019.

/s/ Robert J. Hack

Attorney for KCP&L Greater Missouri Operations
Company