BEFORE THE PUBLIC SERVICE COMMISSION STATE OF MISSOURI

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

STATEMENT OF POSITION OF THE MIDWEST ENERGY CONSUMERS GROUP

COMES NOW the Midwest Energy Consumers Group ("MECG"), pursuant to the Commission's June 26, 2019 *Order Changing Procedural Schedule*, and for its Statement of Positions respectfully states as follows:

OVERVIEW

On January 2, 2019, MECG and the Office of the Public Counsel filed a Petition seeking the deferral of savings associated with the recent retirement of the Sibley generating station. As the record indicates, GMO's recently completed rate case included all aspects of costs associated with owning, maintaining and operating the Sibley units. Among other things, current rates reflect costs associated with return on investment, depreciation, O&M costs and property taxes. Less than a month after the Commission issued its order in that rate case, GMO suddenly

announced the retirement of the Sibley unit.[1] Thus, given that most of these costs suddenly ceased to exist, GMO immediately began to experience windfall profits.

As this Position Statement sets forth, the Commission has historically allowed for the deferral of costs associated with extraordinary events.[2] Based upon this standard, the Commission has deferred costs associated with both the construction and the renovation of a power plant. Through this petition, MECG and OPC assert that the retirement of a generating plant is an extraordinary event which justifies the deferral of associated cost savings for consideration in a future rate case. As the evidence indicates, GMO has not retired a generating unit in over 30 years. As such, GMO's retirement of a generating station meets the criteria for the extraordinary standard. Specifically, the retirement is "unusual, infrequent, not foreseeably recurring, activities abnormal and significantly different from the ordinary and typical."

In addition, this Position Statement addresses the problems associated with both the GMO and Staff positions. Specifically, by lumping all electric plant (including computers, pole transformers, general plant and interim generating plant retirements together), Staff concludes that plant retirements are "inherently part of the routine and typical operations of a regulated utility." In this way, Staff fails to recognize the unique and significant nature of a utility finally retiring an entire generating plant and effectively concludes that GMO shareholders should keep all retirement savings even though ratepayers are not receiving any energy from the Sibley units.

While reaching the same conclusion, GMO engages in a tortured analysis of the extraordinary standard as well as a misplaced analysis for determining whether an event is

[1] Interestingly, Sibley has not produced a single megawatt hour of energy since September 5, 2018.

[2] The Commission is undoubtedly familiar with the terms Accounting Authority Order ("AAO") as well as trackers. Both of these mechanisms utilize the authority to defer costs / savings from one period for recovery in a future rate case. Thus, in this Position Statement, MECG's request for the Commission to issue an Accounting Authority Order ("AAO") is a request for the Commission to utilize deferral accounting. The terms are interchangeable in this regard. The fact that an AAO and a tracker both are technical names for the same deferral treatment has been recognized by Missouri courts. *In re: KCPL*. 509 S.W.3d 757 (Mo.App 2017).

extraordinary. For instance, while ignoring the number of previous AAOs that it has requested and been granted, GMO suddenly argues that the standard must be determined by whether the event is extraordinary in the industry, rather than extraordinary to the specific utility. In a similar manner, GMO ignores its previous deferral requests and now argues that an event cannot be extraordinary if it was "anticipated and communicated well in advance." GMO sets forth other desperate arguments designed to allow it to maintain all of the savings associated with the Sibley retirement solely for shareholders.

Given GMO's eagerness over the last 30 years to defer costs for the benefit of its shareholders, the Commission should seek to maintain a level of equity and provide not only for the deferral of costs for the benefit of utility shareholders (as it has repeatedly done in the past), but also for the deferral of savings for the benefit of customers. Such a decision will indicate that the Commission is concerned with the rapid increase in Missouri rates[3] and that a utility should not be able to conveniently time the retirement of a generating unit simply to maximize profits for shareholders.

[3] Meyer Surrebuttal, page 3.

ISSUES

ISSUE I: Does the retirement of Sibley Units 1, 2, and 3 and common plant constitute an extraordinary event as interpreted by the Commission justifying the imposition of an AAO or other deferral mechanism to record a Regulatory Liability under the Uniform System of Accounts ("USoA") in connection with GMO's retirement of Sibley Units 1, 2 and 3 and common plant?

MECG POSITION: Yes.

In 1991, the Commission set forth its standard for the utilization of deferral accounting. Based upon guidance from the Uniform System of Accounts, the Commission held that deferral accounting is appropriate for an "extraordinary" event.

> Under historical test year ratemaking, costs are rarely considered from earlier than the test year to determine what is a reasonable revenue requirement for the future. Deferral of costs from one period to a subsequent rate case causes this consideration and should be allowed only on a limited basis. This limited basis is when events occur during a period which are extraordinary, unusual and unique, and not recurring.[4]

Since expressing its extraordinary standard,[5] the Commission has provided greater definition as to what qualities an event must demonstrate in order to be considered extraordinary. Recently, the Commission concluded that the extraordinary standard focused on whether the event is "unusual, infrequent, not foreseeably recurring, activities abnormal and significantly different from the ordinary and typical)."[6]

The practical effect of a utility deferring costs from one period for recovery in a subsequent rate case is beneficial to utility shareholders and detrimental to ratepayers.

[4] *Report and Order*, Case No. EO-91-358, issued December 20, 1991, at page 7.
[5] The Missouri Court of Appeals has approved the Commission's use of deferral accounting limited to situations of an extraordinary event. "Because rates are set to recover continuing operating expenses plus a reasonable return on investment, only an extraordinary event should be permitted to adjust the balance to permit costs to be deferred for consideration in a later period." *State ex rel. Office of the Public Counsel v. Public Service Commission*, 858 S.W.2d 806, 811 (Mo.App. 1993).
[6] *Report and Order*, Case No. ER-2012-0174, issued January 9, 2013, at page 31.

Specifically, since a cost is deferred, it is not recognized in the current period. Therefore, current earnings are inflated. On the other hand, when the deferred cost is recovered in a future case, rates are increased. Thus, "the AAO works to the benefit of the utility shareholders by increasing current profits as well as future rates."[7]

An AAO in this case would work in a similar, but opposite manner. Instead of benefitting the utility shareholders, as previous AAOs have done, this AAO would work to the benefit of the utility ratepayers.

> An AAO . . . would work to the benefit of ratepayers by deferring savings resulting from an extraordinary event. In this instance, while KCPL-GMO is no longer incurring these now fictional costs, the KCPL-GMO retail customers nevertheless continue to pay rates which include the costs for the retired Sibley units that are no longer providing utility service. Therefore, the requested AAO seeks to capture the cost savings and defer them in a regulatory liability for consideration in a future rate case.[8]

More than any other utility, GMO and its sister company KCPL have taken advantageous of the Commission generosity in issuing AAO deferral requests. For instance, for KCPL-GMO alone, the Commission has allowed the deferral of costs associated with the enactment of the Missouri renewable energy standard[9]; the construction of a generating facility[10], the renovation of a generating facility[11]; ice storms[12]; floods[13]; and AM / FM mapping software.[14] Now, where an extraordinary event triggers significant savings, GMO suddenly opposes deferral accounting and seeks to maintain the savings solely for the benefit of its shareholders.

The extraordinary nature of a generating unit is undeniable. Based upon the standard utilized by the Commission, GMO's retirement of a generating station is "unusual, infrequent,

[7] Meyer Direct, page 5.
[8] *Id.*
[9] Case No. EU-2012-0131.
[10] Case No. EU-2011-0034.
[11] Case No. EO-91-358.
[12] Case No. EO-95-193.
[13] Case No. EO-94-35.
[14] Case No. EO-91-247.

not foreseeably recurring, activities abnormal and significantly different from the ordinary and typical." Specifically, GMO has not retired a generating station in over 30 years.[15] Thus, GMO's retirement of a generating unit is unusual and infrequent. Given that the Sibley units have operated for approximately 50 years and only been retired this one single time, this retirement is significantly different from the ordinary and typical. Indeed, if the Commission has found that the renovation of a generating station is extraordinary,[16] even though a renovation can occur several times during a unit's operating life, certainly the retirement of the unit, which can only occur once, is all the more extraordinary. Simply because the extraordinary event works, in this instance, to the benefit of ratepayers, instead of shareholders, does not negate its extraordinary nature as GMO not implies.

RESPONSE TO STAFF ARGUMENTS:

In its cross-rebuttal testimony, Staff suggests that the retirement of the Sibley unit is not extraordinary. Staff reaches this conclusion by conflating the retirement of a generating unit which has not occurred in over 30 years with the day to day retirement of electric plant including computers, distribution lines, pole transformers and general plant. As Mr. Meyer notes the retirement of computers and the final retirement of the Sibley units after 49 plus years of operation "is not comparable by any means."[17] As support for this distinction, Mr. Meyer notes that the retirement of the Sibley units was communicated to investors via press releases. Notably, Mr. Meyer ponders "when was the last time that the retirement of Company computers, power lines, pole transformers or even general plant was communicated well in advance."[18] This

[15] Meyer Direct, page 9.
[16] See, Case No. EO-90-114 and EO-91-358.
[17] Meyer Surrebuttal, page 26.
[18] *Id*. at pages 26-27.

fact alone demonstrates that the retirement of a generating unit is a much unique event than the retirement of other electric plant.

RESPONSE TO GMO ARGUMENTS:

Eager to preserve all savings solely for the benefit of shareholders, GMO has offered several novel assertions designed to distract the Commission. Specifically, GMO argues that the issuance of an AAO is "inappropriate" because: (1) the retirement of a generating station is not an unusual occurrence in the electric industry; (2) the retirement of the Sibley units was "anticipated and communicated well in advance"; (3) MECG did not consider GMO's earnings in formulating its request for deferral of Sibley savings; and (4) the request for deferral is "vague." As the evidence indicates, however, the arguments raised by GMO have either been overruled in previous Commission decisions and / or are contradicted by GMO's previous filings and positions in previous cases.

1) The Deferral of Savings is Appropriate: In its rebuttal testimony, GMO argues that the deferral of savings in this case is "inappropriate."[19] That said, however, the deferral of savings is every bit as appropriate under the Uniform System of Accounts as the deferral of costs. Specifically, General Instruction No. 7, which provides the basis for deferrals associated with extraordinary events, does not limit itself solely to the deferral of costs, but extends equally to both "items of profit and loss."[20] In fact, in a previous case, Staff witness Oligschlaeger specifically noted that "extraordinary events can lead to a financial benefit to a utility as well as to a financial detriment. Consistent treatment of both financial benefits and detriments is ***appropriate*** when considering deferrals."[21]

[19] Klote Rebuttal, page 4.
[20] Meyer Direct, page 7, citing to Uniform System of Accounts No. 7.
[21] Meyer Rebuttal, page 4 (citing to Oligschlaeger Direct, Case No. EU-2015-0094.

Indeed, proving that deferral authority extends equally to both costs and savings, the Commission recently held that it was "appropriate" to issue an Accounting Authority Order and defer savings associated with the implementation of the Tax Cut and Jobs Act.

> Witnesses for Empire, Staff and Public Counsel all agreed the passage of the federal tax cut act meets the Commission's standards for issuance of an accounting authority order in that it is unusual, unique, non-recurring and material. . . . Even if Section 393.137.3 does not apply to Empire, it would still be ***appropriate*** for the Commission to exercise its authority to order Empire to establish an AAO for that period.[22]

In the end, it is apparent that the deferral of savings, as well as costs, is "appropriate" under the Uniform System of Accounts as well as previous Commission decisions. By arguing that the deferral of savings is "inappropriate", GMO effectively seeks to preserve the ability to defer costs for the benefit of shareholders while simultaneously eliminating the possibility of deferring savings. As Mr. Oligschlaeger points out, equitable ratemaking demands "consistent treatment" of both.

2) The Extraordinary Nature of an Event is Based upon the Company, not the Industry: In its rebuttal testimony, GMO argues that the retirement of the Sibley units is not extraordinary because such retirements have become increasingly more common in the industry.[23] As Mr. Meyer reveals, however, the Uniform System of Accounts clearly indicates that the extraordinariness of an event is determined relative to the specific company, not the industry.

> [I]t appears that GMO is asserting that, for an item to be considered extraordinary, the industry must not be encountering the same events that led to the extraordinary treatment for the specific utility. That argument is not credible and is not suggested as a requirement from General Instruction 7 of the Uniform System of Accounts. I have included the relevant portion of General Instruction 7 below:

[22] Report and Order, Case No. ER-2018-0366, issued August 15, 2018, pages 21 and 22 (emphasis added).
[23] Rogers Rebuttal and Ives Rebuttal.

7. *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.[24]

Recognizing that the entire focus of the Uniform System of Accounts is whether the event is "extraordinary" to the company, and not the industry, Mr. Meyer characterizes GMO's testimony in this regard as "entirely irrelevant."[25]

Given the fact that the extraordinary nature of an event is based upon the specific company,[26] and contrary to GMO's current assertion, the Commission has repeatedly allowed for the deferral of costs for events that were common and routine in the industry at the time. For instance, the Commission has allowed for the deferral of costs for GMO's construction of a generating unit, even though the construction of generating stations "was usual and frequent in the industry at the time."[27] Furthermore, the Commission allowed for the deferral of costs associated with the 2012 enactment of a Missouri renewable energy standard even though "38 states had Renewable Portfolio Standards that were either mandatory or goals" at the time.[28] Still again, the Commission has allowed utilities to defer costs associated with protecting against

[24] Meyer Surrebuttal, page 6 (emphasis in Meyer testimony, not in Uniform System of Accounts).
[25] Meyer Surrebuttal, page 7 ("Mr. Rogers' analysis regarding the frequency of generating unit retirements in the industry is entirely irrelevant as far as the Uniform System of Accounts is concerned. In this regard, the only statistics that matters is whether the retirement of generating units is extraordinary ("unusual and infrequent) to KCPL-GMO.")
[26] Interestingly, in data request responses, GMO recognized that the focus of the extraordinary standard is entirely on the company and not the industry. Specifically, GMO objected to several data requests complaining that such data requests "are not reasonable calculated to lead to the discovery of admissible evidence regarding whether the retirement of Sibley Station and its units is "***unusual, abnormal, and significantly different from the ordinary and typical operations of the Company***." Meyer Surrebuttal, page 10.
[27] *Id*. at page 8.
[28] *Id*. at pages 8-9 (citing to the U.S. Energy Information Administration).

Y2K concerns even though that event applied equally throughout the industry.[29] Finally, the Commission has recently held that deferral of savings was appropriate to account for the extraordinary nature of the Tax Cut and Jobs Act even though that event was applicable to the entire industry.[30]

As Mr. Meyer concludes, therefore, "given the Commission's decision with regard to extraordinary events involving the TCJA, renewable energy standards, and Y2K costs, the fact that an event was usual and frequent in the industry does not mean it is not extraordinary for a Missouri utility and therefore subject to an AAO deferral."[31]

3) An Anticipated Event Can Still Be Extraordinary: Next, GMO argues that the retirement of the Sibley units is not extraordinary since it was "anticipated and communicated well in advance."[32] As MECG points out in its testimony, by seeking to add such a limitation, GMO is attempting to rewrite the extraordinary standard contained in the Uniform System of Accounts and previously applied by the Commission. As Mr. Meyer points out, whether an event was anticipated is not recognized within the Uniform System of Accounts definition of extraordinary. Rather, the Uniform System of Accounts definition of extraordinary is entirely focused on whether an event is of "unusual nature and infrequent occurrence."[33] Recognizing that the Sibley units have never previously been retired and that GMO has not retired any generating units in over 30 years, the Sibley retirement certainly qualifies as of "unusual nature and infrequent occurrence."

Further, contrary to GMO's self-serving assertion here, the Commission has routinely extended deferral treatment to events that were "anticipated and communicated well in

[29] *Id.* at page 9.
[30] *Id.*
[31] *Id.* at pages 9-10.
[32] Klote Rebuttal, page 24.
[33] Meyer Surrebuttal, page 19.

advanced." For instance, the Commission has previously granted deferral treatment to GMO of costs associated with both constructing and renovating a generating unit. Certainly the completion of those projects was anticipated and well communicated, but still qualified for extraordinary deferral treatment because they were of "unusual nature and infrequent occurrence".[34] Still again, the Commission has provided deferral treatment for anticipated events such as renewable energy standard costs; AM / FM mapping costs; Y2K costs; cold weather rule costs and gas pipeline safety costs.[35] Clearly then, based upon the Uniform System of Accounts as well as previous Commission decisions, the fact that an event was "anticipated and communicated well in advance" does not preclude the deferral of cost / savings associated with the event. GMO's attempt to limit the extraordinary standard is self-serving.

4) GMO Earnings are Irrelevant: Additionally, GMO suggests that deferral of savings may not be appropriate because MECG did not consider GMO's earnings at the time that it made the deferral request.[36] Again, GMO's argument is disingenuous.[37] Repeatedly, the Commission has found that a utility's earnings is irrelevant to a request for an AAO and that the only relevant inquiry is whether the underlying event is extraordinary. For instance, while considering GMO's request to defer costs associated with the renovation of the Sibley unit in 1991, the Commission rejected Staff's suggestion that GMO was overearning and held that "whether the utility was earning above its authorized rate of return is a "rate case issue and best left for rate case review."[38] While irrelevant to the immediate inquiry, Mr. Meyer nevertheless questions GMO's suggestion that it is not earning its authorized

[34] *Id.* at pages 20-21.
[35] *Id.* at page 21.
[36] Klote Rebuttal, pages 20-24.
[37] Interestingly, in response to several MECG data requests, GMO asserted that any discovery related to earnings were irrelevant. "GMO objects to data requests [related to earnings] as they seek information that is not relevant and not reasonable calculated to lead to the discovery of admissible evidence." Meyer Surrebuttal, page 25.
[38] Meyer Surrebuttal, pages 22-23.

return. Specifically, Mr. Meyer points out that GMO completed a rate case at the end of 2018. Further Mr. Meyer points out that with the existence of a fuel adjustment clause, the enactment of plant in service accounting and GMO's ability to keep all savings associated with the merger of Great Plains Energy and Westar, "it is hard to imagine why KCPL-GMO could not earn its authorized rate of return."[39]

5) Savings Do Not Have to Be Quantified Now: Ignoring its past requests for deferral of costs, GMO now suggests that MECG's evidence is deficient because it did not provide an accurate quantification of the savings associated with the Sibley retirement. As Mr. Meyer points out, however, the Commission has never required such a quantification at the time of the deferral request. In fact, GMO itself has made numerous deferral requests where it provided simply an "estimate" or no quantification at all.[40] Further, the quantification of costs / savings is an undertaking routinely conducted by parties to a rate case. The ultimate quantification of savings in this case can easily be conducted in a similar manner once the Commission orders the deferral of savings.[41]

6) The Deferral Request is Not Vague: Finally, GMO suggests that MECG's deferral request is vague. As Mr. Meyer points out, however, the request to defer savings associated with the Sibley retirement is crystal clear. Specifically, MECG seeks the deferral of all savings associated with the retirement of this unit including "operating and maintenance costs, property taxes, depreciation, and return on investment."[42] Clearly then, the MECG request is not "vague" as GMO conveniently suggests.

[39] *Id.* at pages 23-24.
[40] *Id.* at page 13.
[41] *Id.* at page 12.
[42] *Id.* at page 5.

ISSUE II: If the Commission determines that an AAO or other deferral accounting mechanism should be ordered in connection with GMO's retirement of Sibley Units 1, 2 and 3 and common plant, how should amounts to be recorded to the Regulatory Liability be quantified?

MECG POSITION: MECG does not believe that this is a necessary issue for Commission determination in this case. Rather, the Commission's determination of whether to grant deferral of savings is limited to whether the retirement of the Sibley unit is "extraordinary". As mentioned, once the Commission has ordered the deferral, the parties will conduct the necessary quantification. In many ways, this is no different than the quantification that occurs in the context of every rate case. Only in the event of a disagreement of quantification will the Commission need to make a decision in this regard. As such, GMO's suggestion that the Commission must direct the parties how to quantify every single aspect of Sibley savings is simply an attempt to deter the Commission from allowing GMO from keeping all savings solely for the benefit of its shareholders.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing pleading by email, facsimile or First Class United States Mail to all parties by their attorneys of record as provided by the Secretary of the Commission.

____/s/_David Woodsmall_____
David L. Woodsmall

Dated: July 22, 2019