

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

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

POST HEARING BRIEF

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”), by and through counsel, and for its *Post Hearing Brief*, states as follows:

The Office of the Public Counsel (“OPC”) and the Midwest Energy Consumers Group (“MECG”) filed their *Petition for an Accounting Authority Order* on December 28, 2018, requesting that the Commission issue an order requiring KCP&L Greater Missouri Operations Company (“GMO”)

to record as a regulatory liability in Account 254 the revenue and the return on the Sibley unit investments collected in rates for non-fuel operation and maintenance costs, taxes including accumulated deferred income taxes, and all other costs associated with Sibley units 1, 2, 3, and common plant.¹

Under accounting standards and Commission precedent, Accounting Authority Order (“AAO”) requests are evaluated using a two-pronged test. To be extraordinary, an item or event must be unusual and unique in nature, and be infrequent in occurrence or outside the scope of the typical activities of the utility.² The classic example of an

¹ EFIS, Case No. EC-2019-0200, Item 1, *Petition for an Accounting Order*.

² Ex. 17, Rebuttal Testimony of Mark Oligschlaeger, p 3, lines 16-18.

extraordinary event is an “act of God”, a severe and devastating weather event like a tornado or flood.³ Recurring expenses and events or activities and costs related to the normal and expected operations of a utility should not be eligible for deferral.⁴ If an item or event is deemed extraordinary, only then does the Commission consider materiality, which is if the impact of the event or expense would cause at least a 5% impact on net annual income.⁵ Because the Complainants’ request does not meet the extraordinary standard, as retirements are an expected and recurring part of the traditional activities of a utility, there is no need to address the materiality aspect of the request, and the Commission must deny the AAO request.⁶

ARGUMENT

1. 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?

³ *Id.* at 18-20.

⁴ *Id.* at lines 10-23.

⁵ “[A]n item should be more than approximately 5 percent of income...Commission approval must be obtained to treat an item of less than 5 percent, as extraordinary” State ex rel. Office of Pub. Counsel v. Pub. Serv. Comm’n of Missouri, 858 S.W.2d 806, 810 (Mo. Ct. App. 1993)

⁶ There is no argument in this case that the revenues associated with the Sibley retirement are not material.

AAO Standard

No, the Complainants' request has not met the standards for an AAO, and therefore the Commission must deny OPC's and MAWC's request.

At the outset, Commission guidance regarding AAOs suggests any savings deferral to be booked under Account 254 must be extraordinary and significant. The Uniform System of Accounts ("USOA") General Instruction 7 states:

It is the intent that net income shall reflect all items of profit and loss during the period with the expectation of prior period adjustments as described in paragraph 7.1 and long-term debt as described in paragraph 17 below. 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. (In determining significance, items should be considered individually and not in aggregate. However, the effects of a series of related transactions arising from a single specific and identifiable event or plan of action should be considered in the aggregate). To be considered as extraordinary under the above guidelines, an item should be more than approximately five percent of income, computed before extraordinary items. Commission approval must be obtained to treat an item of less than five percent as extraordinary. (See Accounts 434 and 435).⁷

In simpler terms, to qualify, an event or transaction should be nonrecurring as well as not a business activity of a type that the company regularly or would be expected to often engage in.

The retirement of a generating facility is an infrequent event, but that alone does not make it extraordinary; the event must also be unique and outside the traditional scope

⁷ See Uniform System of Accounts, National Association of Regulatory Utility Commissioners (1996)

of utility operation.⁸ Retirement of utility plant, including generating facilities, is part of the routine operation and management of a utility.⁹ According to Staff Witness Mark Oligschlaeger, “All tangible assets placed in service are expected to have a finite service life, and thus subject to retirement at some point. Any major utility is both constantly adding new plant items to its system and constantly retiring other plant items.”¹⁰ An event that is part of the ordinary course of business for a utility cannot be considered extraordinary whether such accounting would result in a regulatory asset or a regulatory liability. In Case No. WU-2017-0351, Missouri American Water Company (“MAWC”) sought an AAO to defer the costs associated with paying various property taxes. In its *Report and Order* issued on December 20, 2017, the Commission stated,

Property taxes are an expected cost of operating a business in the State of Missouri. It is an obligation borne by all investor-owned utilities, including MAWC...There is nothing unusual or extraordinary about paying property taxes to warrant AAO. It is a recurring expense.¹¹

Similarly, GMO is expected to retire generating facilities at some point in the future from the point they are put into service.

Further, the retirements of Sibley Units 1, 2 and 3 and common plant were planned and announced in advance. According to GMO witness Darrin Ives,

On January 20, 2015, a press release was issued announcing that GMO would stop burning coal at Sibley Units 1 and 2 by December 31, 2019. Subsequently, on June 2, 2017, a press release announced the planned retirement on five generating units, including Sibley Units 1, 2 and 3 by December 31, 2018 and the planned retirement of a sixth unit (Lake Road 4/6) by December 31, 2019.¹²

⁸ Ex. 17, *Cross-Rebuttal Testimony of Mark L. Oligschlaeger*, p. 5, l. 4-7.

⁹ *Id.* at p. 4, l. 14-17.

¹⁰ *Id.* at p. 4 l. 12-14.

¹¹ WU-2017-0351, *Report and Order*, p. 15.

¹² Ex. 24, *Corrected Rebuttal Testimony of Darrin R. Ives*, p. 11, l. 4-8.

It is difficult to contemplate how the planned and anticipated retirement of a generating unit that occurred by the previously announced date could truly be considered extraordinary.

It is not Staff's position that the retirement of a generating unit could never be considered extraordinary. According to Staff Witness Mr. Oligschlaeger,

A utility may base a decision to retire generating facilities based upon unanticipated and unusual circumstances, which may then be argued to be extraordinary in nature. An example of this might be a decision to permanently close a generating facility due to damage received from a natural disaster or explosion. In these instances, the retirement decision itself would be associated with an underlying extraordinary event affecting the utility.¹³

However, none of the aforementioned events occurred in the case to cause the retirements of Sibley Units 1, 2 and 3 and common plant. Having evaluated GMO's retirement of Sibley Units 1, 2 and 3 and common plant, Staff concludes that the extraordinary standard has not been met, and an AAO should not be ordered.

Inconsistency in the Complainants' Arguments

Though OPC and MCEG jointly filed a petition in this case, their argument is supported by unclear and inconsistent reasoning. Three witnesses testified as to how Sibley's retirement was extraordinary, and each witness provided a different justification. MCEG witness Greg Meyer claimed that the retirement of any generating unit is extraordinary, stating "...the retirement occurs for that particular generator only once...Furthermore, plant retirements cannot be argued to be recurring as they only occur

¹³ Ex. 17, *Cross-Rebuttal Testimony of Mark. L. Oligschlaeger*, p. 5. I, 18-23.

once during a generator's useful life."¹⁴ However, OPC witness Robert Schallenberg stated at hearing, "I'm not saying that every—every retirement is extraordinary, because it's not."¹⁵ OPC again contradicted its co-complainant's testimony when OPC witness Geoff Marke stated

Sitting here, in none of the previous IRPs did I sit here and say we're calling you out on Montrose, we're calling you out on Lake Road. No. Retire those...Those are coal plants at the end of their useful life. For all sorts of reasons, they don't fit the description that we're talking about...Sibley is categorically different. The impact, the overall size.¹⁶

MECG's actions seem to contradict their proffered testimony that every retirement is extraordinary, as it did not request an AAO for the retirements of Lake Road or Montrose Units.¹⁷

Parsing out OPC's justification for how the Sibley retirement is extraordinary is a more complicated matter. For instance, in the OPC quote above, Dr. Marke's mention of the "size" of the retirement seems to speak to materiality. As stated above, materiality should only be addressed once the extraordinary standard has been established. The materiality or "size" of an event does not make it extraordinary; they are not one in the same. Another attempt at justifying how Sibley's retirement is extraordinary was made during the following exchange between Chairman Silvey and OPC witness Robert Schallenberg:

Q. Okay. What specifically makes this closure extraordinary?

A. The discrepancy between rates and the existing – the retirement of the unit that's not...producing. In fact, it's accumulating unrecovered costs as we speak, so that's – that's what makes this situation extraordinary.

¹⁴ Ex. 1, *Direct Testimony of Greg R. Meyer*, p. 9, l. 8-12.

¹⁵ Tr. Vol. 1, p. 178, l. 25 – p. 179, l. 1.

¹⁶ Tr. Vol. I. p. 254, l. 10-18.

¹⁷ Tr. Vol. II, p. 367, l. 13.

Q. So in no other situation that was brought up in opening statements – because we – there was Montrose unit 1 and some of the others. Those did not meet the level of extraordinary because?

A. Well, in some of those they were picked up in rate cases. So they – there would not be the issue of customers paying for something that is not producing. The other thing is, is there are retirements that people accept are good retirements; they – they should happen. So you don't usually contest those. You might think it's extraordinary, but you're not going to raise the issue.¹⁸

It is unclear what standard Mr. Schallenberg is using to evaluate AAOs and when a generating facility meets the extraordinary requirement. His analysis appears to involve consideration of a step before applying the extraordinary criteria; a test of whether or not a retirement is a good or prudent decision. Dr. Marke echoes this prudence determination test at several points as well. In testimony, he cites to several cases in 2017 and 2018 where OPC filed testimony regarding the soundness of the announced decision to retire Sibley, as a rebuttal to GMO's witness Mr. Rogers' testimony that Sibley's retirement is not extraordinary since coal plants have been retiring on an ongoing basis.¹⁹ He also stated at hearing, "We would be arguing the prudence of shutting down the plant"²⁰ and "I wish the Company would have come in and actually had dealt with the prudence issue of whether to shut it down, whether that was appropriate."²¹ Although he later tries to claim that "prudence is not an issue",²² it is hard to reconcile that statement with the following response to Commissioner Rupp's inquiry on how Sibley's retirement is extraordinary but reducing workforce by 30% due to software is just simply efficiency and not extraordinary.²³

¹⁸ Tr. Vol. I, p. 198, l. 9 – p. 199, l. 2.

¹⁹ Ex. 14, *Surrebuttal Testimony of Geoff Marke*, p. 9, l. 3-7.

²⁰ Tr. Vol. I, p. 249, l. 14-15.

²¹ Tr. Vol. I, p. 252, p. 252, l. 2-4.

²² Tr. Vol. I, p. 257, l. 19.

²³ Tr. Vol. I, p. 253, l. 13- p. 255, l. 3.

“But for this particular utility under these circumstances, given the - - the investment that we just made into it, for all of those reasons, we felt like it was imprudent.”²⁴ An AAO is not avenue for a barely disguised prudence argument to be made; a rate case is the proper venue for those discussions.

The appropriate standard for an AAO is that an event must first be extraordinary. Without a cohesive argument, OPC and MCEG are unable to show that the AAO standard has been met by the retirement of Sibley Units 1, 2, and 3 and common plant.

2. 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 be recorded to the Regulatory Liability to be quantified?

Staff did not take a position on this issue at the evidentiary hearing. However, Staff Witness Mr. Oligschlaeger stated, “I don’t know that there are good estimates at this time of what the magnitude of those deferrals would be and I think there needs to be a process in case the Commission is interested in knowing that.”²⁵ In the event the Commission decides to grant the request for an AAO or other deferral accounting, Staff recommends that it should order the parties to meet to attempt to agree on an appropriate baseline for calculation of the deferral, and report back to the Commission on their progress. If no consensus can be reached, parties can bring the issue to the Commission for a decision.

²⁴ Tr. Vol. I, p. 255, l. 18-21.

²⁵ Tr. Vol. II, p. 343, l. 1-5.

Conclusion

The Commission should not grant the AAO OPC and MCEG have requested in this case. The retirement of Sibley Units 1, 2, and 3, and common plant is not extraordinary. This change is not unusual or nonrecurring, such as an "Act of God", a new regulation requiring a costly environmental upgrade, or an unusual, nonrecurring action taken due to policy considerations. Since utility plant, including generating facilities, is retired on a regular basis, it is not extraordinary and does not meet the AAO standard.

WHEREFORE, on account of all the foregoing, Staff prays that the Commission will issue its findings of fact and conclusions of law as recommended by the Staff herein; and granting such other and further relief as is just in the circumstances.

Respectfully submitted,

/s/ Casi Aslin

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, or First Class United States Postal Mail, postage prepaid, on this 29th day of August, 2019, to all counsel of record.

/s/ Casi Aslin