

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

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

MOTION FOR ORDER TO COMPEL STAFF TO PRODUCE DOCUMENTS

COMES NOW, the Office of the Public Counsel (OPC or Public Counsel), by and through counsel, and for its motion for an order directing Staff to produce documents states as follows:

1. On June 6, 2019, the OPC submitted data requests (DR) 29 through 33 to the Staff of the Public Service Commission (Staff). According to the computation of time given by the Public Service Commission's (Commission) Order Adopting Procedural Schedule, Staff is to answer those DRs by June 26, 2019.

2. The OPC's data requests seek incident reports and communications related thereto pertaining to a forced outage at KCP&L Greater Missouri Operations' (GMO)'s Sibley 3 unit.

3. OPC DR 30 reads:

Provide all documentation, correspondence, as between Staff personnel as well as between Staff and GMO and all other documents relating to KCP&L Greater Missouri Operations' compliance with 4 CSR 240-3.190(3) regarding the Sibley 3 unit.

4. OPC DR 32 reads:

Excluding information and documents already filed in EFIS or provided in answers to Staff data requests, provide all documentation and correspondence from September 1, 2018, to November 31, 2018, between KCP&L Greater Missouri Operations and Staff as well as intra-personnel communications amongst

Staff regarding the Sibley station. Documentation should include, but not be limited to, incident reports, electronic and traditional mail, and non-case filings.

5. Staff objected to the aforementioned data requests on June 14, 2019, in writing because the questions seek information “that has been treated as confidential under RSMo 386.480,” among other grounds. Staff also objects due to OPC’s request possibly delaying or restricting Staff’s investigation, despite admitting that Staff has the requested documents immediately available. OPC attaches Staff’s objections hereto.

6. Pursuant to Commission Rule 4 CSR 24-20.090(8), the OPC and Staff later conferred by telephone through counsel on June 17, 2019. The OPC and Staff were unable to resolve the dispute, and scheduled an appointment for a telephone conference with the presiding officer. OPC and GMO then held a conference with Hon. Woodruff Morris on the same day, in compliance with Commission Rules. The dispute remains unresolved.

7. Parties submit data requests in a Commission case as a means for discovery.¹ The same sanctions provided for failure to comply with discovery process provided in the rules of civil procedure apply before the Commission.² Such sanctions include entertaining a motion to compel, or staying proceedings until a party produces the requested documents.³

8. Staff’s objection that it will not turn over confidential information or privileged information as between Staff and GMO is without merit. The very same statute Staff employs to protect confidential information unambiguously states “public counsel shall have *full and complete access* to public service commission files and records.”⁴ This provision is precisely why OPC is

¹ 4 CSR 240-2.090(2).

² 4 CSR 240-2.090(1).

³ Mo. R. Civ. Pro. 61.01.

⁴ Section 386.480, RSMo (emphasis added).

able to access confidential material once parties file it within the Commission's Electronic Filing Information System without the need to file a separate non-disclosure agreement.

9. Staff's objection includes a caveat that it will turn over the information it has readily available once GMO has "authorized" that disclosure. This request by Staff is unnecessary. Missouri statutes clearly provide that OPC has immediate access to Commission files and records regardless of the desires of a regulated entity. Furthermore, Staff need not fear disclosure of confidential matters because Public Counsel respects the same obligation to secure confidential information as Staff.

10. While not relinquishing OPC's position, OPC reached out to GMO on June 17, and June 18, 2019, to ask if GMO is willing to convey its non-objection to Staff. GMO has indicated its position at this time. However, OPC notes though that OPC DRs 8521 and 8522 to GMO cover the same subject matter as DRs 30 and 32. OPC submitted DRs 8521 and 8522 on June 6, 2019, and GMO did not object within the ten-day timeframe to do so. These DRs are attached hereto.

WHEREFORE, the OPC requests that the Commission compel Staff to provide the information the OPC is requesting in DRs 30 and 32, and consider such other relief as the Commission may deem appropriate. OPC also asks that the Commission consider this Motion on an expedited basis due to imminent due date for the filing of surrebuttal testimony in the above captioned docket.

Respectfully,

OFFICE OF THE PUBLIC COUNSEL

/s/ Caleb Hall

Caleb Hall, #68112

Senior Counsel

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**Attorney for the Office of the Public
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on this 18th Day of June, 2019, with notice of the same being sent to all counsel of record.

/s/ Caleb Hall

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PUBLIC COUNSEL DATA REQUESTS 8521-8522

The Office of Public Counsel (Public Counsel) hereby presents the following Data Requests to KCP&L Greater Missouri Operations (GMO). Please provide electronic responses to the following: opcservice@ded.mo.gov and caleb.hall@ded.mo.gov. The data requests are continuing in nature and require supplemental responses as soon as further or different information is obtained that is responsive to them.

DATA REQUESTS

- 8521. Please provide a narrative explanation for how GMO reported the mechanical failure or forced outage of the Sibley 3 unit that occurred in September of 2018. Identify when communications were made to the Staff of the Public Service Commission, by who and to whom, and whether those communications were completed via telephone, EFIS, or other medium. Also, include the contents and substance of the identified communications.

- 8522. In addition to the narrative explanation provided in DR 8521, provide copies of all documents, incident reports, and correspondence, as between GMO and Staff as well as intra-company communications, made relating to reporting the mechanical failure or forced outage of the Sibley 3 generation unit, as well as any other Sibley component.

Submitted by John Robinett, June 6, 2019.



Commissioners

RYAN A. SILVEY
Chairman

WILLIAM P. KENNEY

DANIEL Y. HALL

SCOTT T. RUPP

MAIDA J. COLEMAN

Missouri Public Service Commission

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Secretary

LOYD WILSON
Director of Administration

NATELLE DIETRICH
Staff Director

June 14, 2019
Via email

Marc Poston
Caleb Hall
P.O. Box 2230
Jefferson City, MO 65201

RE: Staff Objections to OPC data request numbers 0030 and 0032 to Staff in Case No. EC-2019-0200

Mr. Poston and Mr. Hall:

On June 6, 2019, Mr. Hall of the Office of the Public Counsel submitted data requests (DRs) number 0030 and 0032 to Staff in Case No. EC-2019-0200. Staff raises the timely objections set forth below to those DRs.

Data Request 0030 states as follows:

Provide all documentation, correspondence, as between Staff personnel as well between Staff and GMO and all other documents relating to KCP&L Greater Missouri Operations' compliance with 4 CSR 240-3.190(3) regarding the Sibley 3 unit.

Objection is made to Data Request 0030 for the following reasons. The DR is beyond the scope of proper discovery by requesting Staff to provide information provided by

GMO that has been treated as confidential under RSMo 386.480. The request is also objectionable because it could be read to include privileged or confidential communications between GMO and Staff. The request may also impede Staff's audit / investigation of this case and other cases, and may delay or restrict the flow of information to Staff during the course of the case and other cases. Staff also objects to this request to the extent that the request seeks information and documents protected from discovery by the attorney-client privilege, the attorney work-product doctrine, or any other privilege or doctrine. Subject to and without waiving the above objections, the sole responsive documents Staff has are two outage notifications and one 90 day investigative report, supplied by GMO and deemed confidential and protected from disclosure under RSMo. 386.480. Although typically confidential information should be sought from the source of the confidential information, if OPC can secure GMO's authorization for Staff to release the protected information, Staff will supply the responsive documents.

Data Request 0032 states as follows:

Excluding information and documents already filed in EFIS or provided in answers to Staff data requests, provide all documentation and correspondence from September 1, 2018, to November 31, 2018, between KCP&L Greater Missouri Operations and Staff as well as intra-personnel communications amongst Staff regarding the Sibley station. Documentation should include, but not be limited to, incident reports, electronic and traditional mail, and non-case filings.

Staff objects to Data Request 0032 for the following reasons. The DR is beyond the scope of proper discovery by requesting Staff to provide information provided by GMO that has been treated as confidential under RSMo 386.480. The request is also objectionable because it could be read to include privileged or confidential communications between GMO and Staff. The request may also impede Staff's audit / investigation of this case and other cases, and may delay or restrict the flow of information to Staff during the course of the case and other cases. Staff also objects to

this request to the extent that the request seeks information and documents protected from discovery by the attorney-client privilege, the attorney work-product doctrine, or any other privilege or doctrine. Subject to and without waiving the above objections, responsive documents Staff has are two outage notifications and one 90 day investigative report, supplied by GMO and deemed confidential and protected from disclosure under RSMo. 386.480. Although typically confidential information should be sought from the source of the confidential information, if OPC can secure GMO's authorization for Staff to release the protected information, Staff will supply the responsive documents. Additionally, Staff has a copy of the presentation made to members of Staff and members of OPC on November 1, 2018, which Staff will provide.

Please contact me if you have any questions,

Sincerely,

/s/Casi Aslin

Associate Counsel

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**Attorney for the Staff of the
Missouri Public Service Commission**

CC: Natelle Dietrich, Kevin Thompson, Nicole Mers, Marc Poston