

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

The Office of the Public Counsel and )  
Midwest Energy Consumers Group, )  
 )  
Complainants, )  
 )  
v. )  
 )  
KCP&L Greater Missouri Operations )  
Company, )  
 )  
Respondent. )

**Case No. EC-2019-0200**

**REPLY BRIEF**

**COMES NOW** the Staff of the Missouri Public Service Commission, by and through counsel, and for its *Reply 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.<sup>1</sup>

For the reasons outlined in its *Post Hearing Brief* and for the reasons detailed below, OPC and GMO’s request for an AAO must be denied.

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

## **THE EXTRAORDINARY STANDARD HAS NOT BEEN PROVEN**

As stated in Staff's *Post Hearing Brief*, 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 in 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).<sup>2</sup>

In the introduction to its *Initial Post-Hearing Brief*, OPC argues, "Sibley's retirement was extraordinary because of the unique circumstances particular to Sibley, because customers are continuing to pay **fictional plant costs** without full credit while GMO is also seeking recovery of retirement costs..." (emphasis added).<sup>3</sup> OPC continues to reference "fictional costs" throughout its *Brief*. However, due to the nature of plant retirements being ongoing and continuous, some level of "fictional plant costs" as defined by OPC is almost always included in utility rates. As previously stated in prefiled testimony and in Staff's *Initial Brief*, "Any major utility is both constantly adding new plant items to its system and constantly retiring other plant items."<sup>4</sup> This is not extraordinary but a

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<sup>2</sup> See Uniform System of Accounts, National Association of Regulatory Utility Commissions (1996).

<sup>3</sup> *Public Counsel's Initial Post-Hearing Brief*, p. 2.

<sup>4</sup> Ex. 17, *Cross-Rebuttal Testimony of Mark L. Oligschlaeger*, p. 5, l. 6-7.

normal and ongoing function of regulatory lag. In actuality, OPC is making the argument that the “fictional costs” associated with Sibley are extraordinary because they are larger than the “fictional costs” associated with non-generating plant retirements. This speaks to the materiality prong of the AAO standard, not the extraordinary prong.

As part of its argument that the retirement of Sibley is extraordinary, MECG states in its *Initial Brief* that “the extraordinary nature of the Sibley retirement is also demonstrated by the magnitude of the costs involved as well.”<sup>5</sup> The Brief goes on to point out a major increase in the value of reported retirements from 2017 to 2018. Like OPC, MECG is placing a focus on the dollar value associated with the Sibley retirement, not whether or not the event itself was extraordinary.

Both OPC and MECG have presented materiality arguments labeled as extraordinary arguments. An AAO request must be proven to meet both the extraordinary *and* materiality prongs of the AAO standard. Proving one does not automatically prove the other; they are two separate and distinct requirements. Without proof that the Sibley retirement is extraordinary, the Commission cannot grant the Complainants’ AAO request.

### **TIMING OF THE SIBLEY RETIREMENT**

Both OPC and MECG make note in their briefs of the timing of the Sibley retirement in relation to GMO’s most recent rate case, ER-2018-0146. MECG’s brief states, “GMO conveniently waited until the case had been resolved to inform the parties that Sibley was being retired.”<sup>6</sup> According to OPC, GMO “refused to have rates reflect” the

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<sup>5</sup> *Initial Brief of the Midwest Energy Consumers Group*, p. 6.

<sup>6</sup> *Id.* at p. 1, footnote 1.

retirement of Sibley.<sup>7</sup> In the first *Non-Unanimous Stipulation and Agreement* in Case No. ER-2018-0146, which was signed by MEGC and not opposed by OPC, a provision was included requiring a deferral of Sibley depreciation expense following retirement of each unit.<sup>8</sup> OPC could have objected to the stipulation if they felt that GMO should not have included costs relating to Sibley in rates. The stipulation was later treated as unanimous and approved by the Commission.<sup>9</sup>

To clarify the timing of the Sibley retirement in relation to GMO's most recent rate case, Staff would refer the Commission to the section of *The Initial Brief of KCP&L Greater Missouri Operations Company* titled "Events Leading to Retirement;" this section gives a clear timeline of events that put to rest the ideas that GMO conveniently timed the Sibley retirement.

### **CONCLUSION**

As stated in *Public Counsel's Initial Post-Hearing Brief*, "The burden of proof always falls upon the movant attempting to demonstrate the truth of a claim." However, neither OPC nor MEGC have met their burden of proof. For the AAO the Complainants are requesting to be granted, they must prove that the retirement of Sibley units 1, 2, 3, and common plant are extraordinary *and* material. Proving one prong of the test is insufficient and proof of materiality does not translate to proof of extraordinariness. For the reasons stated in Staff's *Initial Post Hearing Brief* and those stated above, the AAO standard has not been proven and a deferral of savings should not be granted.

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<sup>7</sup> *Public Counsel's Initial Post-Hearing Brief*, p. 10.

<sup>8</sup> EFIS Case No. ER-2018-0146, item 262, *Non-Unanimous Stipulation and Agreement*.

<sup>9</sup> EFIS Case No. ER-2018-0146 item 479, *Order Approving Stipulations and Agreements*.

**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 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 10<sup>th</sup> day of September, 2019, to all counsel of record.

**/s/ Casi Aslin**