

# BEFORE THE PUBLIC SERVICE COMMISSION OF THE 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**

## CONCURRING OPINION OF COMMISSIONER DANIEL Y. HALL IN THE REPORT AND ORDER

I join in the Commission's Report and Order, issued October 17, 2019, in the above-captioned case, which approved the establishment of an Accounting Authority Order to record a regulatory liability associated with the Sibley retirement. I support the determination of the majority affirming that Office of Public Counsel and Midwest Energy Consumers Group met their burden to demonstrate that the closure of the Sibley units by KCP&L Greater Missouri Operations Company (GMO), with 20 years of remaining anticipated service life and with 20 years of unrecovered depreciation expense remaining, was "extraordinary, unusual and unique, and not recurring." As stated in the order, it is appropriate, therefore, to require GMO to record as a regulatory asset its O&M costs related to the Sibley units, its depreciation expense and its return on that investment.

I write separately to expound upon the regulatory conditions and public policy challenges made evidently clear in this case and humbly provide some hopeful guidance

that could aid in squaring the practical and economic energy market transformation that we are witnessing here in Missouri with the regulatory framework our investor-owned electric utilities must operate within.

At the outset, it is important to note how this decision fits into the historical and national context. We are witnessing a massive shift away from coal generation to gas and renewables. Coal-fired power generation continues to fall from a peak of 57% in 1988<sup>1</sup>, to just 28% in 2018, and is expected to fall to 22% by 2020<sup>2</sup>. In contrast, renewable energy system generation has surged from roughly 10% of capacity in 2000 to almost 20% in 2017<sup>345</sup>, and accounts for over 60% of new power construction<sup>6</sup>. And more specific to Missouri, KCPL and GMO retired almost 740MW of coal generation last year, while increasing their renewable portfolio to more than 20% of total load<sup>7</sup>. Similarly, Ameren Missouri has announced plans to retire 832 MW in 2022 and construct 775 MW of wind by 2020, and 100 MW of solar by 2027<sup>8</sup>. In addition to those retirements, according to their most recent integrated resource plans, collectively Missouri investor owned electric

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<sup>1</sup>U.S. ENERGY INFORMATION ADMINISTRATION (EIA), TABLE 8.2B. ELECTRICITY NET GENERATION: ELECTRIC POWER SECTOR, 1949-2011 (2012), available at <https://www.eia.gov/totalenergy/data/annual/txt/ptb0802b.html> and John Kemp, *U.S. Power Producers' Coal Consumption Falls to 35-year Low*, Reuters, Sept. 26, 2018, available at <https://www.reuters.com/article/us-usa-coal-kemp/us-power-producers-coal-consumption-falls-to-35-year-low-kemp-idUSKCN1M61ZX>.

<sup>2</sup> EIA, SHORT-TERM ENERGY OUTLOOK (Oct. 8, 2019) <https://www.eia.gov/outlooks/steo/>.

<sup>3</sup> STATISTA, <https://www.statista.com/statistics/183420/electricity-generation-from-renewable-sources-in-the-us-from-2000/> (accessed Apr. 2, 2019 and last visited Oct. 21, 2019).

<sup>4</sup> EIA, ELECTRICITY EXPLAINED: ELECTRICITY IN THE UNITED STATES (2018), available at <https://www.eia.gov/energyexplained/electricity/electricity-in-the-us.php>.

<sup>5</sup> BCSE, 2019 SUSTAINABILITY ENERGY IN AMERICAN FACTBOOK (2019) <https://www.bcse.org/factbook/> (last visited accessed Oct. 21, 2019).

<sup>6</sup> David Z. Morris, *Renewable Energy Surges to 18% of U.S. Power Mix*, Fortune, Feb. 18, 2018, available at <https://fortune.com/2018/02/18/renewable-energy-us-power-mix/>.

<sup>7</sup> <https://www.businesswire.com/news/home/20170602005344/en/KCPL-Continues-Sustainability-Commitment-Announcing-Retirement-Units> accessed Apr. 5, 2019.

<sup>8</sup> News Release from Ameren Missouri (issued Mar. 11, 2019), available at <http://ameren.mediaroom.com/2019-03-11-Ameren-issues-new-report-detailing-its-efforts-to-build-a-cleaner-energy-future>.

utilities are considering retiring at least over half of their remaining coal fleet, or 3,840 MW, by 2036<sup>9</sup>.

As noted above, coal-fired plants have been losing market share for 30 years. The reasons for this trend are well-known and documented – the fracking revolution dramatically reducing the price of natural gas<sup>10</sup>; advancing technologies reducing the cost and improving the efficiencies of wind, solar, storage, and other distributed energy resources; a growing concern about the indisputable science linking fossil fuels to climate change<sup>11</sup>; and Corporate America<sup>12</sup>, as well as many residential customers<sup>13</sup>, demanding cleaner, renewable energy. Even the company's own June 2, 2017 news release, provides evidence of this shift by announcing its intentions to retire multiple coal generation units.

These actions further the company's commitment to a sustainable energy future and balanced generation portfolio. "When these power plants started operation more than 50 years ago, coal was the primary means of producing energy. Today, as part of our diverse portfolio, we have cleaner ways to generate the energy our customers need," said Terry Bassham, President

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<sup>9</sup> Ameren Missouri's 2017 Integrated Resource Plan (IRP) which is available by visiting <https://www.ameren.com/missouri/company/environment-and-sustainability/integrated-resource-plan> includes the retirement or consideration of retiring more than 2,750 MW of coal-powered generation. The Empire Electric District Company's 2019 IRP contains coal generation retirements analysis amounting to more than 390 MW which is available by visiting <https://www.empiredistrict.com/About#irp> (click the blue "magnifying glass icon" to view the report or the green "download icon" button to save a copy of the report). The KCP&L and KCP&L GMO 2016 Sustainability Report includes more than 700 MW of coal generation retirements and can be viewed by visiting <http://www.greatplainsenergy.com/static-files/e8293c10-31a6-4fcd-84f8-ec2c93bbb308>.

<sup>10</sup> Jeffry Bartash, *Fracking Revolution That's Made the U.S. the Top Global Oil Producer is Boosting the Economy – and Keeping Emissions Down*, MarketWatch, Mar. 22, 2019, available at <https://www.marketwatch.com/story/fracking-revolution-thats-made-the-us-the-top-global-oil-producer-is-boosting-the-economy-and-curbing-emissions-too-2019-03-22>

<sup>11</sup> Aaron Lawson, *Natural Gas and Renewable Energy Continue Leading the Market*, Power Mag, Jan. 1, 2019, available at <https://www.powermag.com/natural-gas-and-renewable-energy-to-continue-leading-the-market/?pagenum=4>.

<sup>12</sup> Herman Trabish, *Green designs: Corporate demand pushes new generation of utility green tariffs*, Utility Dive, May 4, 2017, available at <https://www.utilitydive.com/news/green-designs-corporate-demand-pushes-new-generation-of-utility-green-tari/441580/>.

<sup>13</sup> Peter Maloney, *'Voluntary demand' for renewables pushes utilities to new technology, business models*: Deloitte, Utility Dive, Dec. 12, 2018, available at <https://www.utilitydive.com/news/voluntary-demand-for-renewables-pushes-utilities-to-new-technology-busin/544174/>.

and CEO of Great Plains Energy and KCP&L. “After considering many options, it is clear that retiring units at Montrose, Lake Road and Sibley is the most cost-effective way to meet our customers’ energy needs as we continue to move to a more sustainable energy future.”<sup>14</sup>

Simply put, I applaud this vision.

The decision on prudence and rate treatment related to these retirement issues will fall on future Commissions. Common sense dictates that less efficient, older coal generation facilities that become more expensive to run compared to other generation alternatives, in the interest of ratepayers, should be shuttered.

We must encourage, if not require, Missouri investor owned utilities to fully and properly account for, track and report the costs and savings associated with their decisions related to generation additions and retirements to ensure future Commissioners have the information necessary to make those decisions. This underlies the importance of separately tracking the dollars related to return and other cost of service expense savings in accordance with the report and order and the stipulation and agreement approved by the Commission in File No. ER-2018-0146.<sup>15</sup>

In GMO’s next rate case, the Commission will be able to examine all relevant factors in setting just and reasonable rates going forward and determine whether to apply that regulatory asset, or some portion of that regulatory asset to make a downward adjustment to the company’s revenue requirement. I purposefully emphasize the phrase – some portion – because I think it distinctly possible that the Commission might determine that to promote fairness, consistency and adherence to certain legal principles

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<sup>14</sup> Ives Rebuttal, Sch.DRI-3, Page 1.

<sup>15</sup> *In the Matter of KCP&L Greater Missouri Operations Company’s Request for Authority to Implement a General Rate Increase for Electric Service*, File No. ER-2018-0146, Non-Unanimous Partial Stipulation and Agreement, Page 9.

that GMO be allowed to recover its investment, just not its return on that investment or operational expenses which no longer exist. For that reason, the requirement to specify these amounts in sub accounts is appropriate.

I would also note that there is legal uncertainty as to whether Missouri law allows GMO to recover from its rate payers costs or investments associated with plant that is no longer used and useful. While the Commission did not render its decision on this basis, it is an issue that will be addressed during GMO's next rate case. There is one case - *State ex rel. Missouri Office of Public Counsel v. Public Service Commission of State*, 293 S.W.3d 63, 74-76 (Mo. App. S.D. 2009) – which seems to indicate that while stranded costs can be recovered in rates, a return on those stranded costs is not permitted.

Some may argue that our decision here disincentivizes the retirement of aging coal plants even when they may no longer be cost effective sources of generation. I disagree. If a utility fails to close an inefficient coal generation facility that is no longer cost effective to run, solely in the interests of shareholders and to the detriment of ratepayers, I have faith that an informed and enlightened Commission, with the necessary evidence before it, will find costs related to the ongoing operations of such units imprudent and disallow them.

Thus, when a utility has significant rate base left in a non-cost effective generation unit, it finds itself caught between Homer's mythical sea monsters, Scylla and Charybdis. Either close down inefficient coal facilities that are no longer cost effective and possibly lose the return of and on that investment; or keep them running and face the likelihood of related costs being disallowed. There is at least one viable solution to this dilemma – securitization. It requires legislative action but it would allow the utility to recover its

undepreciated investment and re-invest those monies in additional renewables, grid modernization, energy storage, or transmission. If legislation is written correctly and implemented properly, it is a win for the utility, a win for ratepayers, and a win for the environment. It brings certainty and fairness.

As I understand that utilities and their shareholders are focused on their performance as evaluated by credit rating agencies, I would share that securitization is an approach that Moody's calls "a credit positive tool for regulated utilities" and is a "tool to recover often significant costs related to large or unforeseen developments" and "allows utilities to avoid potentially credit negative events."<sup>16</sup>

Shifting toward a more diverse portfolio should be applauded. Given that Missouri's current aging coal fleet includes over 8,000 MW of generation capacity and represents over \$5 billion in undepreciated rate base<sup>17</sup>, the scope of this challenge is enormous. To that end, it is incumbent upon us to ensure future Commissions have the ability to appropriately consider the prudence of continuing to operate or retire such units. Accordingly, this Commission must preserve and provide an adequate record to review in future proceedings. It is then incumbent upon our regulated electric utilities and policymakers to provide the extraordinary leadership necessary to ensure that the interests of both utility customers and shareholders are not unduly harmed on this perilous but inevitable journey.

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<sup>16</sup> Moody's Investor Service, *Regulated Utilities – US: Utility Cost Recovery through Securitization is Credit Positive 1* (Jul. 18, 2018) (available through subscription).

<sup>17</sup> Based on company filings made *In the Matter of Kansas City Power & Light Company's 2018 Triennial Compliance Filing Pursuant to 4 CSR 240-22*, File No. EO-2018-0268, *In the Matter of KCP&L Greater Missouri Operations Company's 2018 Triennial Compliance Filing Pursuant to 4 CSR 240-22*, File No. EO-2018-0269, *In the Matter of The Empire District Electric Company's 2019 Triennial Compliance Filing Pursuant to 4 CSR 240-22*, File No. EO-2019-0049, and *In the Matter of Ameren Missouri's 2017 Utility Resource Filing Pursuant to 4 CSR 240 - Chapter 22*, File No. EO-2018-0038.

For the forgoing reasons, I concur.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. Hall", written in a cursive style.

Daniel Y. Hall  
Commissioner

Dated at Jefferson City, Missouri,  
on this 24<sup>th</sup> day of October 2019.

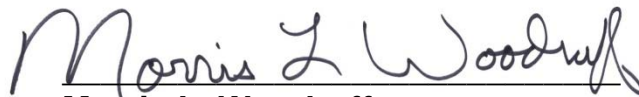
**STATE OF MISSOURI**

**OFFICE OF THE PUBLIC SERVICE COMMISSION**

**I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.**

**WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 24<sup>th</sup> day of October 2019.**



  
**Morris L. Woodruff**  
**Secretary**



**MISSOURI PUBLIC SERVICE COMMISSION**

**October 24, 2019**

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

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**Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).**

**Sincerely,**



**Morris L. Woodruff  
Secretary**

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