BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

In the Matter of the Propriety of the Rate Schedules for Steam Service of KCP&L Greater Missouri Operations Company.	))))	**Case No. HR-2018-______**

MOTION TO OPEN RATE CASE AND TO DIRECT COMPANY TO PROVIDE INFORMATION

COMES NOW the Staff of the Missouri Public Service Commission and hereby prays that the Commission will open a rate case to consider the continued propriety of the rate schedules heretofore established for steam service provided by KCP&L Greater Missouri Operations Company ("GMO") and, in that regard, to order GMO to respond to the questions raised by the Commission in its *Order Opening a Working Proceeding Regarding the Effects Upon Missouri Utilities of the Tax Cuts of 2017 and Directing Response,* issued on January 3, 2018, in Case No. AW-2018-0174. In support of its *Motion,* Staff states:

Introduction

1. This motion requests the Commission to establish a rate case to determine the continued propriety of GMO's existing rate schedules for steam service in view of the recent enactment of the Tax Cuts and Jobs Act of 2017 ("TCJA"), which reduced the federal corporate income tax rate from 35% to 21%. In establishing this rate case, Staff further requests that the Commission order GMO to respond to the questions raised by the Commission in its *Order Opening a Working Proceeding Regarding the*

Effects Upon Missouri Utilities of the Tax Cuts of 2017 and Directing Response, issued on January 3, 2018, in Case No. AW-2018-0174.

Parties

2. GMO is a Delaware general business corporation, headquartered at 1200 Main Street, Kansas City, Missouri 64105. GMO's registered agent is CSC-Lawyers Incorporating Service Company, 221 Bolivar Street, Jefferson City, Missouri 65101. GMO is a wholly-owned subsidiary of Great Plains Energy Incorporated, a publicly-traded Missouri general business corporation and public utility holding company, also headquartered at 1200 Main Street, Kansas City, Missouri 64105.

3. In addition to the Staff, Movant herein, Staff hereby moves that the Commission make all of the parties to GMO's last rate case parties to this proceeding.

Jurisdiction

4. GMO is engaged in the business of providing steam service to the general public in Kansas City, Missouri, pursuant to rate schedules approved by the Commission. GMO is thus a heating company, § 386.020(20), RSMo., and a public utility, § 386.020(43), RSMo., subject to regulation by the Commission. Section 386.250, RSMo.

5. The Commission may, on its own motion, open a rate proceeding to determine the reasonableness of the rates and charges of any electrical, gas, heat, water, or sewer corporation. Section 386.390.1, RSMo.; ***State ex rel. Utility Consumers' Council of Missouri, Inc. v. Public Service Commission,*** 585 S.W.2d 41, 48 (Mo. banc 1979) (***"UCCM"***). Within a rate case, the Commission may investigate any matter necessary to enable it to ascertain facts requisite to the exercise of its powers. Section 393.270.1, RSMo., ***UCCM,*** at 48.

Facts

6. The TCJA reduced the federal corporate income tax rate from 35% to 21%, effective January 1, 2018. When the Commission set GMO's rates, it used a composite federal-state effective tax rate of 38.39% in calculating current and deferred income tax expense. The impact of the TCJA on the composite effective tax rate is a reduction from 38.39% to 25.45%, amounting to a reduction of 12.94% or approximately one-third of the prior effective tax rate. Incorporation of the federal corporate tax rate reduction in GMO's cost of service may result in material over earning by GMO unless its rate schedules are re-calculated using the new composite federal-state effective tax rate.

7. GMO's booked financial results during 2018 will reflect the new tax rates and rules enacted by the TCJA, and thus will reflect higher earnings than in 2017 and previous years, all other things being equal.

8. When GMO pays its 2018 taxes in 2019, the composite federal-state effective tax rate will be 25.45%.

9. Beginning on January 1, 2018, GMO began collecting payments from its customers pursuant to rates calculated using a composite federal-state effective tax rate of 38.39%.

10. Although GMO's customers are charged and make payments pursuant to rates calculated using a composite federal-state effective tax rate, GMO does not pay the total amount collected from customers over to the taxing authorities immediately. Instead, a portion of GMO's tax liability has been deferred and the money collected for customers against this liability has been used by GMO as capital. The net amount of this Accumulated Deferred Income Tax ("ADIT") has been deducted from rate base when GMO's rate are set in order to provide a return to ratepayers on the monies provided.

11. Due to the TCJA, deferred taxes that were collected in years past from customers assuming a 38.39% composite federal-state effective tax rate will now actually be paid to the taxing authorities by GMO in the future at a 25.45% composite federal-state effective tax rate. This means that the current ADIT reserve balance recorded by GMO on its balance sheet and reflected in its rate base is overstated and that, unless some action is taken by the Commission to flow back excess ADIT to customers, GMO will permanently retain this customer-provided capital.

12. The ADIT balance on GMO's books at this time can be divided into two categories: protected ADIT and unprotected ADIT.

13. Protected ADIT is the portion associated with accelerated depreciation tax timing differences that must be "normalized" for ratemaking purposes. "Tax normalization" effectively means the utility receives an immediate benefit from the accelerated depreciation tax timing difference, with that benefit then being gradually passed on to customers over the estimated life of the utility asset giving rise to the accelerated depreciation deduction. Under the TCJA, Staff's understanding is that the Commission is restricted from flowing back protected excess ADIT to customers in rates any more quickly than over the estimated average remaining life of the assets that gave rise to the ADIT. This amortization period is expected to be quite lengthy, with approximately 20 years being a reasonable estimate for most utilities.

14. Unprotected excess ADIT is the portion of GMO's deferred tax reserve that resulted from normalization treatment of tax timing differences other than accelerated depreciation deductions. Staff understands that unprotected excess ADIT can be flowed back to customers through an amortization period of the Commission's choosing.

15. Based upon Staff's preliminary analysis of potential excess protected and unprotected ADIT flow back, Staff believes this component of tax reform may also have a material revenue requirement impact on GMO.

16. The nature of the action that the Commission should take with respect to GMO's current ADIT reserve balance is not yet known. Staff urges the Commission to require GMO to quantify and track its excess protected and unprotected ADIT from January 1, 2018 forward for future flow back to ratepayers in this proceeding or in subsequent general rate proceedings.

17. There may be other material impacts of the TCJA on GMO that are not yet known. Staff will provide information on other impacts of the TCJA on GMO as they become known.

The Commission's Authority to Set Rates

18. However a rate case is initiated, the Commission is required to consider all relevant factors in setting just and reasonable prospective rates for utility service rendered. ***UCCM,*** at 49.

19. Nonetheless, it is possible that the consideration of all relevant factors is unnecessary in this case. The Commission is authorized to treat an item of operating expense differently where it is just and reasonable to do so. ***State ex rel. Midwest Gas Users' Association v. Public Service Commission,*** 976 S.W.2d 470, 478 (Mo. App., W.D. 1998), *citing* ***UCCM and State ex rel. Hotel Continental v. Burton,*** 334 S.W.2d 75 (Mo. 1960). In ***Hotel Continental,*** the Court upheld the Commission's determination that the gross receipts taxes collected by a utility and paid over to taxing authorities was different in nature from other operating expenses such that it was permissible to

establish a Tax Adjustment Clause ("TAC") that provided for the automatic adjustment of rates between rate cases to reflect intervening changes in the rate of the gross receipts tax. ***Hotel Continental,*** 334 S.W.2d at 79. In ***UCCM,*** the Court distinguished ***Hotel Continental,*** and held that the fuel costs incurred by electric utilities were not different in nature from other operating expenses and that a Fuel Adjustment Clause ("FAC") that provided for the automatic adjustment of rates between rate cases to reflect changes in the cost of fuel was therefore not permissible. ***UCCM,*** at 51. Finally, in ***Midwest Gas Users' Association,*** *supra,* the Western District of the Missouri Court of Appeals revisited ***Hotel Continental*** and ***UCCM***'s review and analysis of that case and upheld the Commission's use of the "Purchased Gas Adjustment (PGA)/Actual Cost Adjustment (ACA)" system for natural gas costs.

20. It may be that the impact of the TCJA is like the gross receipts tax analyzed in ***Hotel Continental*** and the natural gas commodity costs considered in ***Midwest Gas Users' Association*** and that the Commission may order a reduction in utility rates without the necessity of considering all relevant factors in an extended general rate case. In ***Midwest Gas Users' Association,*** the Court applied the principles gleaned from ***Hotel Continental*** and ***UCCM*** to the PGA/ACA and determined that it was permissible: it was not single-issue ratemaking because the commodity price of natural gas does not include labor or other components subject to management economizing, so that savings in one area can offset cost increases in another. Much of the commodity price of gas is set by the FERC and simply passed on to customers much like the gross receipts tax considered in ***Hotel Continental.*** It was not retroactive ratemaking because the price already charged and paid was not changed and any

shortfall was collected prospectively from future customers. It did not violate the filed-rate doctrine because the utility was required to put an actual rate in the tariff, not merely a formula as was the case with the FAC in ***UCCM.*** Any customer could examine the tariff and see how much she would have to pay for gas service. Finally, it was not an abdication of the Commission's regulatory duties because, in the ACA phase, the amounts paid for gas and charged to customers were subject to audit, prudence review and true-up by the Commission. For these reasons, the PGA/ACA was approved. ***Midwest Gas Users' Association,*** 479-483.

WHEREFORE, on account of all of the foregoing, Staff prays that the Commission will:

(A) Giving such notice as it deems appropriate, open a rate case on its own motion in order to investigate the propriety of GMO's rates for steam service in light of the enactment of the TCJA, and to set the prospective just and reasonable rates therefor;

(B) Make Staff, the Office of the Public Counsel, and all intervenors that were parties to GMO's last rate case parties to the new rate case;

(C) Direct GMO to respond, within ten (10) days, to the questions raised by the Commission in its *Order Opening a Working Proceeding Regarding the Effects Upon Missouri Utilities of the Tax Cuts of 2017 and Directing Response,* issued on January 3, 2018, in Case No. AW-2018-0174:

1. What is the appropriate avenue for effectuating change to utility rates as a result of the federal income tax reductions?

2. Is a different avenue appropriate for regulated corporations and Commission-regulated pass-through entities such as S Corporations, LLCs, and partnerships?

3. What is the appropriate mechanism(s) for effectuating change to utility rates as a result of the federal income tax reductions?

4. How does the change to the federal income tax affect pending rate cases?

Can the change be considered in the pending rate cases?

5. Please calculate the first-year approximate annual Missouri jurisdictional change in cost of service for your utility that is projected to result from implementation of the Tax Cuts and Jobs Acts of 2017 (all other things being equal) and provide supporting workpapers for this calculation.

(D) Direct GMO to quantify and track all TCJA rate impacts from January 1, 2018, going forward;

(E) Direct GMO to quantify and track its excess protected and unprotected ADIT for future flow back to ratepayers and to advise the Commission how best that flow-back might be accomplished;

(F) Direct GMO to advise the Commission whether or not the impact of the TCJA is like the gross receipts tax analyzed in ***Hotel Continental*** and the natural gas commodity costs considered in ***Midwest Gas Users' Association*** and whether the Commission may order a reduction in utility rates without the necessity of considering all relevant factors in an extended general rate case;

(G) Direct GMO to identify and quantify all other impacts of the TCJA not already discussed herein;

and grant such other and further relief as the Commission determines is just in the circumstances.

Respectfully submitted,

/s/ Kevin A. Thompson

KEVIN A. THOMPSON
Chief Staff Counsel
Missouri Bar No. 36288

Missouri Public Service Commission
P. O. Box 360
Jefferson City, Missouri 65102
(573) 751-6514 (Telephone)
(573) 526-6969 (Fax)
kevin.thompson@psc.mo.gov

Attorney for the Staff of the
Missouri Public Service Commission

Certificate of Service

I certify that a true and correct copy of the foregoing was served electronically upon GMO and the Office of the Public Counsel **on** this 21st day of February, 2018.

/s/ Kevin A. Thompson