BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

REPLY BRIEF OF
KCP&L GREATER MISSOURI OPERATIONS COMPANY

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Introduction

KCP&L Greater Missouri Operations Company ("GMO" or "Company") states the following as its Reply Brief:

The initial briefs filed by the Office of the Public Counsel (OPC) and the Missouri Energy Consumers Group (MECG) plainly show they have failed to carry their burden to prove that the planned retirement of the Sibley Generating Station was an extraordinary event justifying an Accounting Authority Order (AAO) or other deferral mechanism.

They fail to cite any case from any jurisdiction where the retirement of an electric plant was ever determined to be extraordinary under the Uniform System of Accounts (USoA). They complain about the timing of the resolution of GMO's 2018 general rate case (No. ER-2018-0146),[1] and rates becoming effective after the Sibley units were retired,[2] but offer no reason why they did not raise timely objections or pursue available remedies. They ignore recent economic trends, market forces, and regulatory policies that have caused the retirement of coal plants across the United States.

Given that the allegations in the Petition are not supported by the facts, by any Commission precedent or policy, or by Missouri law, the relief it seeks must be denied and the Complaint dismissed.

[1] Order Approving Stipulations and Agreements, In re Kansas City Power & Light Co. Request for Authority to Implement a General Rate Increase, No. ER-2018-0145, and In re KCP&L Greater Mo. Operations Co. Request for Authority to Implement a General Rate Increase, No. ER-2018-0146 (Oct. 31, 2018)("GMO 2018 Rate Case").
[2] Order Approving Tariffs, GMO 2018 Rate (Nov. 26, 2018).

I. Statement of Facts

A. The Record Evidence Establishes that Granting the AAO Requested by OPC and MECG Would Reduce GMO's Earnings Which Currently Fall Short of the Lowest Return on Equity Recommended in its Most Recent Rate Case.

OPC and MECG make numerous unsubstantiated assertions throughout their initial briefs, most of which can be ignored as irrelevant to the issue the Commission will decide in this case: Is the retirement of Sibley Units 1 (boiler), 2 and 3 and common plant an extraordinary event?

GMO will, however, point out a few facts fabricated by OPC and MECG because they demonstrate that the concern driving their initiation of this case is that GMO's rates and earnings are too high. For example, OPC alleges – with no citation to any record evidence whatsoever – that GMO customers are paying "fictional costs" resulting in "over-recovery GMO is now enjoying . . . ."[3] In a similar vein, MECG asserts – also without any citation to any record evidence – that ". . . GMO immediately began to experience windfall profits."[4] While inappropriate, the failure of OPC and MECG to provide evidentiary support for these assertions is not surprising given the absence of any evidence in this record showing that GMO's earnings are excessive. In fact, the only record evidence on this point demonstrates that GMO's current earnings fall short of the lowest return on equity (ROE) recommendation made in its most recent rate case.[5] OPC witness Marke conceded that he did not consider the 8.42% ROE shown in GMO's March 31, 2019 earnings surveillance report to be excessive.[6]

Even though GMO's current earnings cannot be considered excessive by any reasonable measure, the impact of an order by the Commission granting the relief requested by OPC and MECG would push GMO's earnings even lower, regardless of whether any subsequent ratemaking

[3] See OPC Initial Brief, p. 2.
[4] See MECG Initial Brief, p. 1.
[5] See Ex. 24 at 28, Ives Rebuttal.
[6] Tr. 219 (Marke).

adjustment is ever made.[7] Staff witness Oligschlaeger agreed that there was no factual basis to initiate an earnings complaint against GMO at the present time,[8] and that GMO's earnings would be reduced if the AAO requested by OPC and MECG is granted.[9] OPC and MECG did not contest either of these conclusions. As such, MECG's argument that an AAO is not a ratemaking decision is beside the point and should be disregarded.

B. The Record Evidence Establishes that GMO's Retirement of Sibley Occurred After Appropriate Due Diligence Regarding the Sibley 3 Forced Outage and that OPC Became Aware of that Forced Outage in Time to Take Action During the Rate Case But OPC Chose Not to Do So.

Throughout its initial brief, OPC presents an inaccurate and misleading chronology of the events that led to the retirement of Sibley on November 14, 2018. Although OPC recognizes that GMO and its affiliate Kansas City Power & Light Company (KCP&L) announced the retirement of the three Sibley Units, the two Montrose units, and the Lake Road 4/6 unit on June 2, 2017 (OPC Brief at 7, 12), OPC accuses the Company of "intransigence" regarding "when or if the Sibley units will be retired."[10]

The position of the Company has been clear since it filed the IRP 2017 Annual Update with the Commission on June 1, 2017 and its announcement the very next day regarding Sibley and the other coal-fired plants that were now slated for retirement. See IRP 2017 Annual Update, § 7.1.5 at 68-69 (Exhibit A to GMO's Initial Brief); Sched. DRI-3 at 1-2, Ex. 24, Ives Rebuttal. GMO's analysis and actions were not only consistent with coal plant retirements occurring across the country,[11] but they reflect best practices as called for by other U.S. regulatory commissions.

[7] Tr. 294-95 (Oligschlaeger).
[8] Tr. 295-98 (Oligschlaeger).
[9] Tr. 294-95 (Oligschlaeger).
[10] See OPC Initial Brief, p. 16.
[11] See Ex. 20 at 8-13, Rogers Rebuttal.

See, e.g., Order Accepting Integrated Resource Plans at 90, In re 2018 Biennial Integrated Resource Plans, No. E-100, Sub 157 (N.C. Util. Comm'n, Aug. 27, 2019).[12]

What Mr. Ives emphasized several times during the evidentiary hearing was that although the Company's stated intent was to retire Sibley at the end of 2018, operational necessities required that the exact date of retirement would be an assumption depending upon "things like loss of other generating facilities" and similar "circumstances that were not presently foreseen that could alter our plans to retire those [units] by the end of 2018." Tr. 404 (Ives).

The record is equally clear with regard to GMO's 2018 rate case that Sibley Units 2 and 3, the Sibley Unit 1 boiler, and common plant were fully operational during the test year and the true-up period that ended June 30, 2018. OPC also twists the facts regarding the turbine vibration that tripped Unit 3 on September 5, 2018. Although the Vice President of Generation Operations sent an email to Company leadership on October 2, 2018 indicating "the direction being taken" following the incident that the "safest and most economical solution is to cease burning coal at the station," the Chief Operating Officer of the Company advised him on October 3 that senior management "will plan to review such recommendation" at a staff meeting on October 15 before "a comparable review" with the Evergy Board of Directors and its Operations Committee later in October. He stated that once that process had been completed, "we can then circle back with the management team to review any feedback received and make a final decision." See Sched. RES-S-1 (part 4 at pp. 3-4), Ex. 6, Schallenberg Surrebuttal (emphasis added). This entire chronology,

[12] "… the Commission determines that it should require Duke to provide an analysis showing whether continuing to operate each of its existing coal-fired units is the least cost alternative compared to other … resource options ….

To address the issue of economic retirement of aging coal plants, in the 2020 IRPs [Duke Energy Carolinas, LLC and Duke Energy Progress, LLC] shall include an analysis that removes any assumption that their coal-fired generating units will remain in the resource portfolio until they are fully depreciated. Instead, the utilities shall model the continued operation of these plants under least cost principles, including by way of competition with alternative new resources."

which includes diligent analysis and evaluation the Commission should want and expect, is contained in internal emails produced by GMO during discovery. Tr. 402; Id. at Sched. RES-S-1 (part 4 at pp. 1-10).

Although preliminary communications may have been made to other parties in anticipation of a potential retirement decision, the record is clear that the final decision to retire Sibley was not made until November 13, 2018, to be carried out "starting tomorrow." Id., Sched. RES-S-1 (part 4 at pp. 2-3). GMO also met with Staff and OPC on November 1 and November 20 regarding the forced outage and retirement of Sibley, as well as other units. Id., Sched. RES-S-1 (part 4 at p. 12); Tr. 378 (Ives). Clearly, there was no effort to conceal facts from OPC or any other party. This is the most likely explanation for why OPC, as well as MECG, failed to object to any of the stipulations that settled the 2018 GMO Rate Case and, similarly, made no effort to impede the tariff approval process period.[13] GMO filed tariffs implementing new rates on November 6, 2018, with substitute tariffs following on November 9 and 16. Staff recommended that the tariffs, as substituted, be approved by the Commission as they were in compliance with its previous orders. "The Commission received no other responses to the tariff filing or Staff's Recommendation."[14] These tariffs became effective December 6, 2018.

Less than three weeks later, on December 28, 2018, despite OPC's acquiescence to the settlement of the GMO Rate Case in the implementation of tariffs and, in MECG's case, its agreement with the major stipulation and agreement that led to the settlement of the case, they filed the Petition for an Accounting Order that began this proceeding.

[13] Order Approving Tariffs, GMO 2018 Rate Case (Nov. 26, 2018).
[14] Id. at 1.

II. Issue 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 USoA in connection with GMO's retirement of Sibley Units 1, 2, and 3 and Common Plant?

A. AAOs and Deferral Accounting

GMO asks nothing more in this case than that the Commission observe its long-standing – and recently re-affirmed – standard of granting an AAO only if the event in question is "extraordinary." This means that the event must be: (1) of an unusual nature; (2) of infrequent occurrence; (3) of significant effect; (4) abnormal and significantly different from the ordinary and typical activities of the company; and (5) not reasonably expected to recur in the foreseeable future.

OPC and MECG make much of the fact that no party has contested that the Sibley retirement constitutes a material event under General Instruction 7 of the USoA as interpreted by the Commission.[15] OPC and MECG also invoke the size of Sibley numerous times in an effort to bootstrap a plant retirement – a foregone conclusion for every single piece of plant ever utilized to provide electric service – into an extraordinary event.[16] The Commission has long recognized, however, that whether an event meets the net income test is "not case-dispositive" of whether the event is "extraordinary" and justifies the granting of an AAO.[17]

MECG witness Meyer acknowledged this in his direct testimony.[18] Staff also emphasized that the materiality or size of an event does not make it extraordinary.[19] Given that the materiality criterion is not dispositive to the question of whether an event is extraordinary, the Commission

[15] See OPC Initial Brief, pp. 5-6; MECG Initial Brief, pp. 7-8.
[16] See OPC Initial Brief, pp. 7, 9, 17; MECG Initial Brief, pp. 6.
[17] Report & Order, In re Missouri Pub. Serv. Co., No. EO-91-358, 1991 WL 501955 at p. 5, 1 Mo. P.S.C. 3d 200, 206 (Dec. 20, 1991).
[18] Ex. 1 at 13, Meyer Direct.
[19] See Staff Initial Brief, p. 6.

should set this factor aside and proceed to examine the Sibley retirement under the remaining elements of the standard it has long used.

OPC and MECG argue that the Sibley retirement is extraordinary because GMO's most recent previous plant retirement occurred in the 1980s.[20] But this ignores the fact that GMO retired Sibley Unit 1 (except for the boiler) in 2017 and that GMO plans to retire Lake Road Unit 4/6 in 2019.[21] It also ignores the substantial market changes that have driven the retirement of numerous large coal-fired generating units nation-wide in the past ten years as shown in the rebuttal testimony of GMO witness Rogers.[22] Given that more than twice as many of the country's coal-fired units were retired since 2010 than were retired in the previous 40 years,[23] it is only reasonable to expect that retirement of a coal-fired generating unit for GMO will recur in the foreseeable future. Given these facts, the retirement of Sibley cannot be considered an extraordinary event.

OPC also argues that the Sibley retirement must be considered extraordinary because it was announced in a press release and, according to OPC, GMO "implicitly agreed that retiring Sibley was unique, unusual and out of the ordinary, extraordinary even."[24] In making this argument, however, OPC fails to recognize that the very same press release announced the retirement of KCP&L's Montrose Station, a retirement that OPC witness Schallenberg readily admits does not constitute an extraordinary event.[25] Clearly, the issuance of a press release with respect to an event does not automatically make it "extraordinary."

[20] See OPC Initial Brief, p. 7; MECG Initial Brief, p. 6.
[21] Ex. 24 at 10-12, Ives Rebuttal.
[22] Ex. 20 at 8, Rogers Rebuttal.
[23] Id.
[24] See OPC Initial Brief, p. 7.
[25] Tr. 198-99 (Schallenberg).

OPC also emphasizes the fact that Sibley Unit 3 was retired about 20 years before the projected end of its useful life under GMO's approved depreciation rates.[26] But GMO witness John Spanos, who has more than 30 years of experience offering expert depreciation testimony before 40 utility regulatory bodies, testified that he had observed comparable scenarios across the country.[27] Mr. Spanos also noted that the last estimated depreciable life of 71 years for Sibley 3 "is at the long and beyond the upper end of what is expected."[28] Under these circumstances, the retirement of Sibley Unit 3 before the end of its projected useful life does not make it an extraordinary event.

OPC and MECG also argue that the Sibley retirement is extraordinary because of the manner in which GMO recorded the retirement in its Federal Energy Regulatory Commission (FERC) Form 1 Report filed with the Commission for 2018.[29] They compare generation plant retirements recorded in 2016 and 2017 to the generation plant retirements recorded in 2018, and conclude that the 2018 generation plant retirements (which included Sibley) must be extraordinary because the quantification of such retirements was accompanied by an explanation, while the generation plant retirements for 2016 and 2016 had no such explanation.

However, this argument ignores the fact that the FERC Form 1, preparation of which is governed by the USoA, has a specific place for the recording of extraordinary items under General Instruction 7 (accounts 434 and 435, which are reflected on page 117 of GMO's 2018 FERC Form 1). GMO's 2018 FERC Form 1, which has been public filed with the Commission, clearly shows on page 117 that no amounts were recorded to accounts 434 or 435 for the Sibley retirement. The record evidence establishes that GMO did not record a regulatory asset or liability on its FERC

[26] See OPC Initial Brief, pp. 7-8.
[27] Ex. 21 at 2, Spanos Rebuttal; Tr. 363-64 (Spanos).
[28] Tr. 363 (Spanos).
[29] See OPC Initial Brief, pp. 8-9; MECG Initial Brief, pp. 6-7.

books (accounts 183 and 254, which are detailed on pages 232 and 278, respectively, of GMO's 2018 FERC Form 1) under the USoA standards (as described in Definition 31 of the USoA) in connection with the Sibley retirement. and the record evidence also establishes that GMO's FERC books have been audited by its external auditors to assure that they are in conformity with the requirements of the USoA.[30]

If the retirement of Sibley had been considered by GMO's external auditors to be an extraordinary event, the effects of the retirement would have been required to be recorded in accounts 434 or 435. Similarly, if the requirements under Definition 31 of the USoA had been met regarding a regulatory asset or regulatory liability, they would have been recorded in accounts 183 or 254 in order for the external auditors to provide their opinion that GMO's regulatory-basis financial statements are presented in accordance with the accounting requirements of the FERC as set forth in the USoA. No such entry was made in GMO's 2018 FERC Form 1 for the Sibley retirement and GMO's external auditors did provide their opinion that the regulatory-basis financial statements were presented in accordance with the FERC USoA. Therefore, contrary to the arguments of OPC and MECG, the manner in which GMO recorded the Sibley retirement on its 2018 FERC Form 1 does not justify characterizing that retirement as an extraordinary event and, in actuality, is wholly consistent with GMO and Staff's view in this proceeding that the Sibley retirement is not an extraordinary event.

In an effort to further buttress its position, MECG argues that GMO has taken the position in this proceeding that deferral of savings is inappropriate.[31] In making this argument, MECG wholly mischaracterizes GMO's testimony. This distortion can be clearly seen by comparing the statement by MECG in its initial brief that "[i]n its rebuttal testimony, GMO alleged that the

[30] See Ex. 22 at 26-29, Klote Rebuttal; Tr. 374-75 (Klote).
[31] See MECG Initial Brief, pp. 9-10.

deferral of savings was 'inappropriate'"[32] to the sentence in GMO witness Klote's rebuttal testimony that MECG cites in support of the statement in its brief: "The AAO requested by OPC and MECG is inappropriate."[33] Nowhere does Mr. Klote assert that deferral of savings is inappropriate. Instead, Mr. Klote's rebuttal testimony accurately lays out GMO's position that the AAO requested by MECG and OPC is inappropriate.[34]

The extent of MECG's mischaracterization of Mr. Klote's testimony and GMO's position is made clear by his words:

> **Q: Does the level of earnings of an electric utility, whether below or above its authorized return on equity, support the imposition of an AAO under USoA General Instruction 7 and the criteria that has historically been applied by the Commission in approving AAO deferral requests?**
>
> A: No. As GMO witness Darrin Ives discusses in his rebuttal testimony further, the Commission has consistently applied the standard that events to qualify for AAO deferral costs must be extraordinary, unusual and unique, and not recurring for their costs to qualify for AAO deferral. This is not the case for the Sibley retirement. The retirement of Sibley was anticipated an communicated well in advance of the retirement date and was known by the Commission and parties to this proceeding. Also, as discussed by GMO witness Christopher Rogers in his rebuttal testimony, fossil fuel-fired generating units' retirements are ordinary and typical of the norm for electric utilities and have been increasing in frequency over the past ten years. . . .[35]

Clearly, Mr. Klote has not testified or taken the position, contrary to the assertion of MECG in its brief, that it is inappropriate to defer savings. Instead, an accurate statement of Mr. Klote's rebuttal testimony and GMO's position is that the event itself needs to be evaluated under USoA General Instruction 7 as it has been historically interpreted by the Commission to determine whether it is

[32] See MECG Initial Brief, p. 9.
[33] See Ex. 22 at 4, Klote Rebuttal.
[34] Id. at 3-6.
[35] Ex. 22 at 23-24, Klote Rebuttal.

"extraordinary." In light of MECG's distortion of Mr. Klote's rebuttal testimony and GMO's position, the Commission should simply disregard section 5 on pages 9-10 of MECG's Initial Brief.

B. Plant Retirements are not Extraordinary under General Instruction 7 as historically interpreted by the Commission

Facing incontrovertible evidence presented by GMO witness Rogers that the Sibley retirement is wholly consistent with widespread experience of utilities across the country in recent years,[36] OPC doesn't attempt to refute that evidence. Instead, OPC argues that only the experience of GMO is relevant under General Instruction 7 of the USoA.[37] But the Commission has never interpreted General Instruction 7 to prohibit consideration of the experience of other utilities. For example, in denying the GMO and KCP&L requests for an AAO in connection with rising transmission costs paid to the Southwest Power Pool, the Commission found that the "increase in transmission costs was anticipated and is indeed the norm for all electric utility members of SPP. Therefore, the transmission costs are not extraordinary."[38]

Experience of the industry at large with respect to a particular item or event is also logically relevant to assessing another element of the standard the Commission has historically used to determine whether to issue an AAO, i.e., whether the item or event is reasonably likely to recur in the foreseeable future. The expert testimony of GMO witness Rogers clearly established that the retirement of coal and other fossil fuel-fired generating units is common in today's electricity

[36] Ex. 20 at 6-7, Rogers Rebuttal.

[37] See OPC Initial Brief, pp. 7 and 16. Even MECG's witness Meyer eventually admitted that he would "never tell the Commission what they should do" or "not to look at certain things" such as "what is happening in the electricity industry today." See Tr. 124-25.

[38] Report & Order at 10, In re Application of Kansas City Power & Light Co. and KCP&L Greater Mo. Operations Co. for an Accounting Authority Order, No. EU-2014-0077 (July 30, 2014). See Report & Order at 15, In re Application of Mo.-American Water Co. for an Accounting Authority Order related to Property Taxes, No. WU-2017-0351 (Dec. 20, 2017) ("Property taxes are an expected cost of operating a business … [and] an obligation borne by all investor-owned utilities ….").

markets. Consequently, it is reasonable to conclude that the retirement by GMO of a coal-fired unit is reasonably likely to recur in the foreseeable future.

Because the Commission has historically considered evidence concerning experience of the industry at large in determining whether an event for a particular utility is extraordinary, and because the record evidence establishes that retirement of a coal-fired generating unit is reasonably likely to recur for GMO in the foreseeable future, the Commission should reject OPC's invitation to disregard the expert testimony of GMO witness Rogers.

C. No State or Federal Regulatory Commission has found a Plant Retirement to be Extraordinary under General Instruction 7

It is worth noting that neither OPC nor MECG cite a single decision or order by any utility regulatory body in the country granting a request to defer savings from the retirement of a generating unit. In contrast, GMO has provided the Commission with an order from the Wisconsin Public Service Commission denying a request to defer savings from the retirement of a generating unit that is strikingly similar to the request made by OPC and MECG in this case.[39] In addition, this Commission has recently issued an order denying a proposal to defer costs and savings in connection with a potential generating plant retirement on the grounds that it could not find the event to be extraordinary and that granting the AAO was not a reasonable or necessary condition to granting a certificate of convenience and necessity.[40]

D. Granting an AAO or Deferral Accounting In This Case Would be Contrary to the Rate Regulation Approach of this Commission

OPC witness Marke was questioned at length about the use of future test years to set utility rates in Missouri and he testified as follows:

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[39] In re Wis. Elec. Power Co., Order No. 6630-AF-100, 2018 WL 2938141 at *1 (Wis. P.S.C. 2018) (attached as Sched. DRI-4 to Ex. 24, Ives Rebuttal).

[40] Report & Order at 47-49, In re Application of Empire Dist. Elec. Co. for a CCN for Wind Facilities, No. EA-2019-0010 (June 20, 2019).

Q: [By Mr. Fischer] At lines 26 through 28 you state, "The best way to evaluate how all of the company's expenses and revenues interact and counterbalance each other is by looking at known and measurable data from a historic test year."

That's what you testified to. Correct?

A: [By Dr. Marke] Yes, sir.

Q: And you still believe that?

A: I – I absolutely still believe that.

Q: And that's sometimes referred to as the matching principle. Correct?

A: That is correct. I think the rest of my testimony talks about that.[41]

During later cross-examination, Dr. Marke agreed that Sibley was operational during the historical test year and true-up period used to set rates in GMO's last rate case.[42]

Even though OPC witness Marke has testified that the manner in which GMO's rates were set – using known and measurable data from a historical test year to maintain the matching principle – is "the best way to evaluate how all of the company's expenses and revenues interact and counterbalance each other," OPC vehemently criticizes the "'discrepancy' between the rates customers are paying and the actually incurred expenses those rates were set to support"[43] and "the condition of GMO's customers paying for a fictional plant . . . ."[44] OPC even goes so far as to claim that GMO is "double dipping"[45] and that the position taken by GMO regarding Sibley rate treatment in the 2018 Rate Case makes Sibley's retirement extraordinary.[46]

[41] Tr. 235-36 (Marke).
[42] Tr. 239 (Marke).
[43] OPC Initial Brief, p. 10.
[44] Id. at 11.
[45] Id.
[46] Id at 12-15.

Through all of OPC's bluster, however, one simple fact remains true. GMO's rates were set in accordance with long-standing Commission practice and policy through the use of known and measurable data from a historical test year and true-up period to maintain a matching relationship between rate base, expenses and revenues, which reflected that Sibley was operational on June 30, 2018 at the end of the true-up.[47] The fact that cost of service elements have changed since the historic test year and true-up period used to set rates in GMO's last rate case is not a surprise. The fact that Sibley was retired after the true-up period and before the end of 2018 was not a surprise either, as GMO's plan to retire Sibley by year-end 2018 plan had been announced in June of 2017.[48]

The record evidence demonstrates that GMO advised OPC on November 1, 2018, that Sibley 3 was in a forced outage,[49] providing OPC more than enough time to bring that fact to the Commission's attention before the November 10, 2018 effective date of the Order Approving Stipulations and Agreements in the GMO 2018 Rate Case and before the December 6, 2018 effective date of the Order Approving Tariffs in that case. OPC chose not to do so.

Yet, what OPC and MECG have done is launch a collateral attack on the stipulation and agreement, as well as the rates approved by the Commission in GMO's 2018 Rate Case. Recognizing that collateral attacks are prohibited under Section 386.550,[50] the Complainants have disguised their claims as a request for an AAO or some form of deferral accounting. On this basis alone, the Petition, now being treated as a Complaint, should be dismissed as an unlawful collateral attack on the Commission's Order Approving Stipulations and Agreements of October 31, 2018,

[47] Ex. 24 at 21, Ives Rebuttal; Tr. 232 (Marke).
[48] Ex. 24, Sch. DRI-3 at 1-2, Ives Rebuttal.
[49] See Ex. 6, Sch. RES-S-1 (part 4 at p. 12); Tr. 378 (Ives).
[50] All statutory citations are to the Missouri Revised Statutes (2016), as amended.

as well as the Order Approving Tariffs of November 26, 2018.[51] State ex rel. Licata, Inc. v. PSC, 829 S.W.2d 515, 518-19 (Mo. App. W.D. 1992).

In any event, this approach should not be tolerated by the Commission, given that other lawful remedies are available.

E. Any Concern regarding GMO's Earnings can be Addressed in an Earnings Investigation.

Because cost of service elements are expected to change after rate cases are concluded, the appropriate recourse if rates become unreasonable – whether too low or too high – is for the utility to seek a rate increase in a general rate proceeding, or for another party to initiate an over-earnings complaint. The only possible way for a company to "double-dip" is by over-earning. However, the only evidence concerning GMO's earnings in this record establishes that GMO's current earnings – 8.42% based on the March 31, 2019 earnings surveillance report – fall well below the lowest ROE recommended in GMO's last rate case of 9.3%.[52] Tellingly, Staff witness Oligschlaeger testified that there is no factual basis at this time to initiate an earnings investigation regarding GMO, but that Staff would continue to monitor GMO's earnings.[53]

Given that the primary concern of OPC and MECG is that GMO's rates and earnings are excessive, they should file a complaint where they will have an opportunity to prove that GMO's current rates and earnings are excessive. Although GMO's base rates are frozen until December 6, 2021 under Section 393.1655 due to its election to make use of plant-in-service accounting pursuant to Senate Bill 564, the record evidence establishes that the most recent earnings complaint

[51] The prohibition on collateral attacks upon Commission decisions under Section 386.550 is the Seventh Affirmative Defense raised by GMO in its Answer to the Complaint. See Answer of KCP&L Greater Mo. Operations Co. at 8 (filed Feb. 1, 2019).
[52] Ex. 22 at 21, Klote Rebuttal.
[53] Tr. 295-98 (Oligschlaeger).

filed regarding an electric utility took "well over a year" to prosecute.[54] Given the length of time it takes to process an earnings complaint and Staff witness Oligschlaeger's testimony that no basis currently exists to initiate an earnings complaint with respect to GMO, there is no reason to believe that the Senate Bill 564 rate freeze would prevent the Commission from making timely adjustments to GMO's rates as a result of an earnings complaint.

III. Issue 2: If the Commission determines that an AAO or other Deferral Mechanism should be ordered in connection with GMO's retirement of Sibley Units 1, 2, and 3 and Common Plant, how should amounts to be recorded to the Regulatory Liability be Quantified?

Both Staff and MECG agree with GMO that if the Commission decides to grant an AAO as requested by Complainants, further proceedings are warranted for the purpose of determining how amounts to be recorded to the regulatory liability should be quantified.[55]

OPC, on the other hand, suggests that the regulatory liability should be quantified using the costs and revenues that GMO estimated for Sibley in its last rate case, "by returning to what GMO filed in its last rate case."[56] This vast over-simplification ignores the fact that GMO's last rate case was resolved by Commission approval of a black box settlement. As but one example, that black box settlement did not provide an agreed-upon authorized ROE or rate of return on investment underlying the settled revenue requirement.[57] While OPC acknowledges that the authorized rate of return is necessary to quantify a regulatory liability in connection with Sibley's retirement,[58] it makes no effort to explain how to determine that figure.

The bottom line is that if the Commission decides that the retirement of Sibley is an extraordinary event, then GMO must have the ability to make accounting entries – actual numbers

[54] Tr. 295-96 (Oligschlaeger).
[55] See Staff Initial Brief, p. 8; MECG Initial Brief, pp. 11-13; GMO Initial Brief, pp. 35-37.
[56] See OPC Initial Brief, p. 20.
[57] Ex. 20 at 27-28, Ives Rebuttal.
[58] See OPC Initial Brief, p. 21.

entered into its FERC books under the USoA – to record a regulatory liability on an ongoing basis. Neither OPC nor MECG have made any reasonable recommendation in their evidence about how to quantify such a regulatory liability that can actually be recorded by GMO on its books. Under these circumstances, the only alternative for the Commission – if it determines that the Sibley retirement is an extraordinary event – is to conduct further proceedings for the purpose of determining how to measure the amounts to be recorded in the associated regulatory liability. Only after those proceedings are concluded should the Commission order GMO to record a regulatory liability in connection with the Sibley retirement.

IV. Conclusion

Nothing about the retirement of the coal-fired units at Sibley was extraordinary. As such, given the settlement of all issues in GMO's 2018 rate case *without objection by any party* and the approval of compliance tariffs, *also without objection by any party*, there is no factual or legal basis to support the AAO requested by OPC and MECG which would be contrary to the long-standing and recently re-affirmed policy and practices of this Commission, and without precedent in U.S. utility regulatory history.

WHEREFORE, Respondent KCP&L Greater Missouri Operations Company asks that the relief sought by the Office of the Public Counsel and Midwest Energy Consumers Group be denied, and that their Petition, now treated as a Complaint, be dismissed.

Respectfully submitted,

/s/ Robert J. Hack

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand-delivered, emailed or mailed, postage prepaid, to all parties of record this 10th day of September 2019.

/s/ Robert J. Hack

Attorney for KCP&L Greater Missouri Operations Company