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

REPLY BRIEF OF THE

MIDWEST ENERGY CONSUMERS GROUP

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September 10, 2019

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1. OVERVIEW

During its opening statement in this case, MECG suggested that GMO has been very hypocritical in its approach to this case.[1] Recognizing that GMO has applied for and received Accounting Authority Orders for the deferral of costs in dozens of instances in the past, the Commission has had the opportunity to fully understand GMO's position with regards to deferral accounting. In those cases involving the deferral of costs, GMO has taken radically different positions than it does in this case involving the deferral of savings. For instance:

1) GMO has sought deferral accounting repeatedly in the past despite the fact that deferral of costs is contrary to historical test year ratemaking. Now, in this case, GMO suddenly suggests that "deferral accounting in this case would be contrary to the rate regulation approach of this Commission."[2]

2) In the past, when considering the deferral of costs, GMO and the Commission have repeatedly concluded that the consideration of a utility's earnings is not appropriate in an AAO case. Now, when the Commission is considering the deferral of savings, GMO suddenly reverses course and asserts that earnings are a necessary consideration.[3]

3) In this case, GMO asserts that MECG's request for an AAO is deficient because MECG has not provided an exact quantification of savings to be deferred. Such a position represents a radical departure from GMO's own AAO applications in which it simply provides an estimate or no quantification at all.

4) In the past, GMO has applied the extraordinary standard solely to the utility regardless of whether the event is ordinary in the industry. Based upon this application, GMO has sought and received AAO's for events that were ordinary in the industry. In this case, however, GMO changes direction and suggests that an event cannot be deemed to be extraordinary which it is occurring within the industry.[4]

5) Repeatedly, GMO has sought and received deferral of costs for events that were "anticipated and communicated well in advance." In this case, however, GMO suggests that the retirement of Sibley cannot be extraordinary because it was anticipated and communicated well in advance.[5]

[1] Tr. 14, 32 and 37.
[2] See discussion at pages 14 to 16.
[3] See discussion at pages 7 to 10.
[4] See discussion at pages 3 to 5.
[5] See discussion at pages 6 to 7.

6) Finally, in this case, GMO suggests that the MECG request for deferral accounting is not necessary and that MECG should be limited solely to filing an overearnings complaint to capture the Sibley retirement savings. In the past, however, GMO has suggested that rate cases are not adequate for addressing such extraordinary events and that deferral accounting was necessary.[6]

In this case, MECG urges the Commission to look beyond GMO's obvious self-serving arguments. In the past, the Commission has repeatedly authorized the use of deferral accounting for GMO for the deferral of costs. In those instances, the Commission has simply looked to whether the event in question was "unusual", "infrequent", "not foreseeably recurring", "abnormal" and an activity that is "significantly different from the ordinary and typical." It is undisputed that GMO has not retired a generating unit in over 30 years. Given this, it cannot be credibly argued that the retirement of Sibley is not "unusual", "infrequent" or "abnormal." While GMO and Staff seek to avoid this conclusion by conveniently lumping the retirement of a generating unit with the retirement of computers, poles, transformers and general plant, the Commission has repeatedly made a distinction in the past.[7] For this reason, the Commission should reject GMO's arguments and authorize the deferral of savings associated with the retirement of the Sibley units.

[6] See discussion at pages 11 to 14.
[7] See discussion at page 23.

ISSUE I: 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 Uniform System of Accounts ("USoA") in connection with GMO's retirement of Sibley Units 1, 2 and 3 and common plant?

2. GMO'S ASSERTIONS ARE MISPLACED

A. EXTRAORDINARY DETERMINATION IS BASED ON THE COMPANY, NOT THE INDUSTRY

In an effort to try to divert the Commission's attention from the extraordinary nature of the Sibley retirement to GMO, the utility asserts that the retirement of the Sibley units is not an extraordinary event because such retirements have become increasingly more common in the industry. Repeatedly throughout its initial brief, GMO asserts that the retirement of coal plants has become common in the industry in recent years.[8] As such, GMO falsely concludes that the retirement of Sibley cannot be deemed to be extraordinary.

As Mr. Meyer points out, however, the Uniform System of Accounts clearly indicates that the extraordinary nature of an event is determined based upon whether the event is significantly different from the "***ordinary and typical activities of the company***", not whether it is extraordinary in the industry.

> [I]t appears that GMO is asserting that, for an item to be considered extraordinary, the industry must not be encountering the same events that led to the extraordinary treatment for the specific utility. That argument is not credible and is not suggested as a requirement from General Instruction 7 of the Uniform System of Accounts. I have included the relevant portion of General Instruction 7 below:

[8] See, GMO Initial Brief, pages 1; 8-12.

7. *Extraordinary Items*.

> 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 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.[9]

Recognizing that the entire focus of the Uniform System of Accounts is whether the event is "extraordinary" to the company, and not the industry, Mr. Meyer characterizes GMO's testimony regarding the frequency of generating unit retirements in the industry as "entirely irrelevant."[10]

Given the fact that the extraordinary nature of an event is based upon the specific company,[11] and contrary to GMO's current assertion, the Commission has repeatedly allowed for the deferral of costs for events that were extraordinary to the utility, but were common and routine in the industry at the time. For instance, the Commission has allowed for the deferral of costs for GMO's construction of a generating unit, even though the construction of generating stations "was usual and frequent in the industry at the time."[12] Furthermore, the Commission allowed for the deferral of costs associated with the 2012 enactment of a Missouri renewable energy standard even though "38 states had Renewable Portfolio Standards that were either mandatory or goals" at the time.[13] Still again, the Commission has allowed utilities to defer costs associated with protecting against Y2K concerns even though that event applied equally

[9] Exhibit 2, Meyer Surrebuttal, page 6 (emphasis in Meyer testimony, not in Uniform System of Accounts).
[10] *Id.* at page 7 ("Mr. Rogers' analysis regarding the frequency of generating unit retirements in the industry is entirely irrelevant as far as the Uniform System of Accounts is concerned. In this regard, the only statistics that matters is whether the retirement of generating units is extraordinary ("unusual and infrequent) to KCPL-GMO.")
[11] Interestingly, in data request responses, GMO recognized that the focus of the extraordinary standard is entirely on the company and not the industry. Specifically, GMO objected to several data requests complaining that such data requests "are not reasonable calculated to lead to the discovery of admissible evidence regarding whether the retirement of Sibley Station and its units is "***unusual, abnormal, and significantly different from the ordinary and typical operations of the Company***." Exhibit 2, Meyer Surrebuttal, page 10.
[12] Exhibit 2, Meyer Surrebuttal, page 8. Proving his assertion that the construction of power plants was "usual and frequent" at that time, Mr. Meyer points out that 149 nuclear plants, 261 coal plants, 622 combined cycle plants and 1,703 combustion turbines were built during this period.
[13] *Id.* at pages 8-9 (citing to the U.S. Energy Information Administration).

throughout the industry.[14] Finally, the Commission has recently held that deferral of savings was appropriate to account for the extraordinary nature of the Tax Cut and Jobs Act even though that event was applicable to the entire industry.[15]

Interestingly, at various places in its Brief, GMO recognizes the fact that whether an event is extraordinary is based upon the Company, not the industry in general.

> Accordingly, the Commission has adopted the following criteria for granting deferral accounting authority, which has been approved by the courts. An extraordinary item must pertain to events or transactions that are . . . (4) abnormal and significantly different from ordinary and typical activities ***of the company***.[16]

Furthermore, in several Commission decisions referenced by GMO in its Brief, GMO acknowledges that whether an event is extraordinary is judged on the basis of the specific company. For instance, GMO references a KCPL case addressing whether it was appropriate to defer transmission costs, a cost that is incurred on a daily basis. In that case, the Commission pointed out the following: "These recurring costs are not abnormal or significantly different from the ordinary and typical activities ***of the company***, so they are not extraordinary and, therefore, not subject to deferral under the USoA."[17]

As Mr. Meyer concludes, therefore, "given the Commission's decision with regard to extraordinary events involving the TCJA, renewable energy standards, and Y2K costs, the fact that an event was usual and frequent in the industry does not mean it is not extraordinary for a Missouri utility and therefore subject to an AAO deferral."[18]

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[14] *Id.* at page 9.
[15] *Id.*
[16] GMO Initial Brief, page 12 (emphasis added).
[17] GMO Initial Brief, page 14 (citing to *Report and Order*, Case No. ER-2014-0370, issued September 2, 2015, page 51. GMO's attempts to compare a generating plant retirement to transmission expenses, cyber security costs, and property tax expenses as being normal occurences for GMO is totally misplaced. GMO has not retired a generating plant in over 30 years,, but has incurred transmission costs, cyber security costs and property taxes routinely over at least two decades.
[18] *Id.* at pages 9-10.

B. AN ANTICIPATED EVENT CAN STILL BE EXTRAORDINARY

Next, GMO attempts to divert the Commission's attention from the extraordinary nature of the Sibley retirement by claiming that the retirement was "anticipated and communicated well in advance."[19] For instance, GMO references the "imminent planned retirement of the Sibley units"[20] and directs the Commission to extra-record information contained in a prior IRP filing.[21]

As MECG pointed out in its testimony, by seeking to add such a limitation (that an extraordinary event cannot be planned or anticipated), GMO is attempting to rewrite the extraordinary standard that is contained in the Uniform System of Accounts and that has been previously applied by the Commission. As Mr. Meyer points out, whether an event was anticipated is not recognized within the Uniform System of Accounts definition of extraordinary.[22] Rather, the Uniform System of Accounts definition of extraordinary is entirely focused on whether an event is of "unusual nature and infrequent occurrence" to the Company.[23] Recognizing that the Sibley units have never previously been retired and that GMO has not retired any generating units in over 30 years, the Sibley retirement certainly qualifies as of "unusual nature and infrequent occurrence."[24]

Indeed, GMO's past actions prove that the fact that an event was "anticipated and communicated well in advance" is entirely irrelevant to whether the event is extraordinary to a utility. Specifically, GMO has repeatedly sought and received deferral treatment of costs for events that it readily acknowledges were anticipated. For instance, the Commission has previously granted deferral treatment to GMO of costs associated with both constructing and

[19] Exhibit 22, Klote Rebuttal, page 24.
[20] GMO Brief, page 1.
[21] GMO Brief, page 4.
[22] In fact, GMO acknowledges that whether an event is "anticipated and communicated well in advance" is not contained within the Uniform System of Accounts and has never been considered in previous Commission accounting authority order decisions. Exhibits 23 and 25.
[23] Exhibit 2, Meyer Surrebuttal, page 19.
[24] Exhibit 1, Meyer Direct, page 9.

renovating a generating unit.[25] Nevertheless, GMO acknowledges that the event was "anticipated and communicated well in advance."[26] Still again, while acknowledging that the promulgation of renewable energy standards were "anticipated and communicated well in advance,"[27] GMO nonetheless sought and was granted deferral treatment to GMO for these costs.[28] Again, GMO sought and was granted deferral treatment for AM / FM mapping costs,[29] even though that event was "anticipated and communicated well in advance."[30] Other examples of anticipated events that were granted deferral accounting[31] include: Y2K costs;[32] cold weather rule costs;[33] and gas pipeline safety costs.[34] Clearly then, based upon the Uniform System of Accounts as well as previous Commission decisions, the fact that an event was "anticipated and communicated well in advance" does not preclude the deferral of cost / savings associated with the event. GMO's attempt to limit the extraordinary standard is self-serving and contradicted by its own repeated requests for deferral of costs.

C. GMO'S EARNINGS ARE IRRELEVANT

Next, GMO suggests that deferral of savings may not be appropriate because MECG did not consider GMO's earnings at the time that it made the deferral request.[35] Again, GMO's argument is disingenuous.[36] Repeatedly, the Commission has found that a utility's earnings are

[25] See, Case No. EO-91-358 and EU-2011-0034.
[26] Exhibit 25, page 3.
[27] *Id.* at page 2.
[28] See, Case No. EU-2012-0131.
[29] Case No. EO-91-247.
[30] Exhibit 2, Meyer Surrebuttal, page 21.
[31] *Id.*
[32] Case No. GO-99-258.
[33] Case No. GU-2007-0138.
[34] Case Nos. GR-01-292; GR-99-315; GR-98-140; GO-97-301; GR-96-193; GO-94-234; GR-94-220; GO-94-133; GO-92-67; GO-91-359; GR-91-291; GO-90-215; GO-90-115; and GO-90-51.
[35] GMO Initial Brief, pages 17-19.
[36] Interestingly, in response to several MECG data requests, GMO asserted that any discovery related to earnings were irrelevant. "GMO objects to data requests [related to earnings] as they seek information that is not relevant and not reasonable calculated to lead to the discovery of admissible evidence." Exhibit 2, Meyer Surrebuttal, page 25.

irrelevant to a request for an AAO and that the only relevant inquiry is whether the underlying event is extraordinary. For instance, while considering GMO's request to defer costs associated with the renovation of the Sibley unit in 1991, the Commission rejected Staff's suggestion that GMO was overearning and held that "whether the utility was earning above its authorized rate of return is a "rate case issue and best left for rate case review."[37]

Staff agrees. In data request responses, Staff acknowledges that a company's earnings are not "an appropriate consideration for the determination of whether a deferral is appropriate."[38] In fact, when GMO was questioned regarding any instances in which "the Commission considered a utility's earnings in determining whether an event is extraordinary", GMO could not provide a single instance.[39]

While irrelevant to the immediate inquiry, Mr. Meyer nevertheless questions GMO's suggestion that it is not earning its authorized return. Specifically, Mr. Meyer points out that GMO completed a rate case at the end of 2018. That rate case resulted in a $24 million rate reduction. As Mr. Meyer concludes therefore, "[i]t is hard to reconcile agreeing to a recent rate reduction while also arguing an inability to earn an authorized return on equity."[40] Further Mr. Meyer points out that GMO currently operates with the existence of a fuel adjustment clause and the enactment of plant in service accounting.[41] As such, "a significant portion of KCPL-GMO's cost of service" is protected from regulatory lag.[42] Finally, GMO "has recently made a presentation to the Commission discussing the significant level of cost savings that has resulted

[37] Meyer Surrebuttal, pages 22-23.
[38] Exhibit 19, page 1.
[39] Exhibit 25, page 1.
[40] Exhibit 2, Meyer Surrebuttal, page 23.
[41] GMO opted in to the plant in service accounting provision immediately after the conclusion of the 2018 rate case. As such, the benefits of this mechanism are not included in the outcome of the 2018 rate case. The PISA mechanism should increase earnings by allowing GMO to defer the depreciation and carrying costs on invested capital that would otherwise depress earnings.
[42] *Id*. at page 24.

from the merger of Great Plains Energy and Westar."[43] Since GMO is protected from any rate changes for a period of three years,[44] GMO is permitted to keep the entirety of these merger savings. Given all of these factors, Mr. Meyer concludes that "it is hard to imagine why KCPL-GMO could not earn its authorized rate of return."[45]

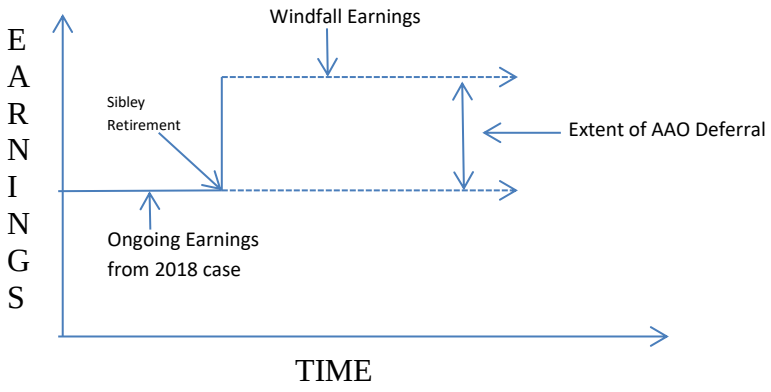
Continuing its irrelevant earnings argument, GMO claims that the grant of this AAO may "imperil" its ability to offer "safe and adequate service to its customers."[46] Specifically, without providing any workpapers or evidentiary support, GMO falsely claims that the AAO would "reduce GMO's earnings substantially below the levels reasonably expected to result from the 2018 rate case."[47]

It is important to understand that granting the requested AAO will not eliminate any of the earnings authorized in the recently completed rate case. Rather, the AAO will defer for consideration in a future rate case only the windfall profits resulting from the retiring the Sibley units. As such, contrary to GMO's unsupported assertion, the granting of the requested AAO will not affect any of the expected level of net income ordered by the Commission in the last case.

As the following diagram indicates, by approving rates in the last case, the Commission approved a certain level of net income. With the retirement of the Sibley units, however, significant levels of costs suddenly disappeared. Recognizing that revenues continued and costs disappeared, net income suddenly increased. The issue to be decided is whether the Commission will defer this sudden windfall savings or allow GMO to keep these savings. Importantly,

[43] *Id.*
[44] Section 393.1655.2
[45] Exhibit 2, Meyer Surrebuttal, pages 23-24.
[46] GMO Initial Brief, page 18.
[47] *Id.*

however, nothing in this case will affect the ongoing level of net income ordered by the Commission in the last case.



Given this, it is ludicrous for GMO to suggest that any action in this case could would "reduce GMO's earnings substantially below the levels reasonably expected to result from the 2018 rate case" or affect its ability to offer "safe and adequate service." GMO's assertion is a scare tactic that should not be condoned.

D. THE DEFERRAL REQUEST IS NOT VAGUE

While GMO raises a number of misplaced arguments in opposition to the MECG request for an AAO, it is important to recognize the argument that GMO has seemingly dropped. In its rebuttal testimony, GMO suggested that MECG's deferral request was "vague".[48] That assertion was not included in GMO's Initial Brief and was seemingly dropped by GMO after seeing MECG's responsive testimony. As Mr. Meyer pointed out in his surrebuttal testimony, however, the request to defer savings associated with the Sibley retirement is crystal clear. Specifically, MECG seeks the deferral of all savings associated with the retirement of this unit including "operating and maintenance costs, property taxes, depreciation, and return on investment."[49] Clearly then, the MECG request is not "vague" as GMO once suggested.

[48] Exhibit 22, Klote Rebuttal, page 4.
[49] Exhibit 2, Meyer Surrebuttal, page 5.

E. ALL RELEVANT FACTORS IN A SUBSEQUENT CASE WOULD NOT INCLUDE SAVINGS FROM PREVIOUS PERIODS

At pages 33-35, GMO attempts to mislead the Commission into believing that an AAO is "not necessary" in order to address the savings "related to the Sibley retirement."[50] GMO claims that the Commission has the ability "to consider all relevant factors" in the next rate case which GMO implies would include the savings associated with the "Sibley retirement."[51]

GMO is well aware that the doctrine against retroactive ratemaking provides a significant legal impediment to the Commission considering and including the Sibley retirement savings in rates in the next GMO rate case. In 1979, the Missouri Supreme Court considered the Commission's use of a fuel adjustment clause.[52] In the course of its decision, the Supreme Court addressed the doctrine against retroactive ratemaking.

> The utilities take the risk that rates filed by them will be inadequate, or excessive, each time they seek rate approval. To permit them to collect additional amounts simply because they had additional past expenses not covered by either clause is retroactive rate making, i.e., the setting of rates which permit a utility to recover past losses or which require it to refund past excess profits collected under a rate that did not perfectly match expenses plus rate-of-return with the rate actually established. Past expenses are used as a basis for determining what rate is reasonable to be charged in the future in order to avoid further excess profits or future losses, but under the prospective language of the statutes, *§§ 393.270(3)* and 393.140(5) they cannot be used to set future rates to recover for past losses due to imperfect matching of rates with expenses.[53]

Thus, as the Supreme Court held, and contrary to GMO's current assertion, the Commission may not use the past Sibley retirement savings "to set future rates." Absent a Commission decision deferring such savings into a future rate period, the Commission is powerless to utilize the

[50] GMO Brief, page 33.
[51] *Id.*
[52] The Supreme Court considered the use of the fuel adjustment clause prior to the specific statutory authorization that was enacted in 2005 (Section 386.266.1).
[53] *State ex rel. Utility Consumers Council of Missouri v. Public Service Commission*, 585 S.W.2d 41, 59 (Mo. Banc 1979).

windfall profits associated with the Sibley retirement in the context of setting rates for GMO in the future.

Indeed, in a pending appeal from a recent Commission decision, Spire is challenging the Commission's authority to even consider such savings absent a deferral order. In its Report and Order in Case No. GR-2017-0215, the Commission considered the gain associated with the sale of a Spire facility that occurred in a prior period. There, the Commission held that this prior period gain should be utilized to "offset the cost of the more expensive replacement facility."[54]

Immediately, Spire argued that the Commission was estopped, by the doctrine against retroactive ratemaking, from considering the prior period gain. Recently, the Supreme Court granted transfer of the appeal in this matter in order to consider whether the Commission's decision violates the doctrine against retroactive ratemaking.[55] Therefore, it is apparent that GMO's assertion that the Commission may consider the Sibley retirement savings as part of its authority to consider "all relevant factors" is legally questionable. The only way that the Commission may ensure that it may consider such savings is through the issuance of the requested Accounting Authority Order.

F. AN EARNINGS COMPLAINT DOES NOT PROVIDE AN ADEQUATE OR TIMELY REMEDY

At pages 34-35, GMO suggests that the Commission deny the requested accounting authority order and, instead, order Complainants "to file an earnings complaint."[56] GMO's suggestion, that the Complainant's resort to an earnings complaint, is self-serving. After all, as GMO readily acknowledges, GMO is currently operating under a rate freeze that precludes the

[54] *Report and Order*, Case No. GR-2017-0215, issued February 21, 2018, at page 22.
[55] See, Case No. SC97834.
[56] GMO Brief, page 35.

Commission from making any changes to GMO's "base rates" for approximately 27 months.[57] Therefore, while GMO suggests that there is no "impediment to filing an earnings complaint", such a complaint would be largely moot with regards to much of the savings associated with the Sibley retirement as the Commission would be limited in the complaint to only capturing the savings occurring within the test year of that case.

GMO's suggestion demonstrates its increasing hypocrisy with the manner in which it has approached this case. As MECG suggested in its initial brief, GMO seeks to reduce deferral accounting to a "heads GMO wins; tails ratepayers lose" proposition.[58] Specifically, in Case No. EO-91-358, the Commission considered the appropriate treatment for costs associated with the renovation of the Sibley units. While ratepayers suggested that GMO should simply file a rate case to consider these costs, GMO sought to avoid a rate case and defer the costs associated with the renovation of the Sibley units. Among other things, GMO argued that the deferral accounting was beneficial in that it permitted GMO to delay the filing of a rate case from August 1991 until August 1992.[59] Ultimately, the Commission rejected the ratepayers' suggestion that GMO simply file a rate case and authorized the requested deferral of costs.

The hypocrisy in GMO's approach is apparent. When GMO seeks to defer costs, it lauds the avoidance of a rate case. When ratepayers seek to defer savings, however, GMO seeks to avoid the deferral accounting and, instead, require the ratepayers to file a complaint case. Ultimately, the Commission should, as Staff has previously suggested, treat the deferral of costs

[57] Section 393.1655.2 provides that "an electrical corporation's base rates shall be held constant for a period starting on the date new base rates were established in the electrical corporation's last general rate proceeding concluded prior to the date the electrical corporation gave notice under subsection 5 of section 393.1400 and ending on the third anniversary of that date." Given that GMO has filed its notice under section 393.1400, the Commission may not change GMO's base rates until December 6, 2021.
[58] MECG Initial Brief, page 9.
[59] *Report and Order*, Case No. EO-91-358, issued December 20, 1991, page 3.

and savings in a "consistent" manner.[60] Therefore, just as it was beneficial to avoid a rate case by utilizing deferral accounting for costs associated with an extraordinary event, it is also beneficial to avoid an earnings complaint by utilizing deferral accounting for savings associated with an extraordinary event. The Commission should not countenance GMO's use of deferral accounting to avoid a rate case and then seek to impose an earnings complaint for ratepayers attempting to use deferral accounting.

G. GMO REPEATLY USES USE DEFERRAL ACCOUNTING TO AVOID THE HISTORICAL RATE REGULATION APPROACH, BUT WANTS TO PRECLUDE RATEPAYERS FROM USING THE SAME APPROACH

At pages 29-32 of its Initial Brief, GMO suggests that the Commission should reject MECG's requested Accounting Authority Order because it is allegedly "contrary to the rate regulation approach of this Commission."[61] Instead, GMO suggests that the use of AAO's "violate the matching principle" by deferring costs or savings from one period to a future period.[62]

As mentioned previously, it is surprising the level of hypocrisy that GMO has demonstrated in this case. As MECG has previously mentioned, more than any other utility, KCPL and GMO have relied on the Commission's generosity with regards to the use of deferral of costs.[63] For KCPL-GMO alone, the Commission has made a finding that an event is extraordinary and allowed the deferral of costs associated with the enactment of the Missouri renewable energy standard[64]; the construction of a generating facility[65], the renovation of a

[60] "Extraordinary events can lead to a financial benefit [savings] to a utility as well as to a financial detriment [costs]. Consistent treatment of both financial benefits and detriments is appropriate when considering deferrals." Exhibit 2, Meyer Surrebuttal, page 4 (citing to Oligschlaeger Direct, Case No. EU-2015-0094).
[61] GMO Initial Brief, page 29.
[62] *Id.*
[63] See, MECG Initial Brief, page 5. During cross-examination, Staff agreed that utilities like GMO have pushed the envelope in recent years with regard to deferral accounting to include ordinary costs and expenses. Tr. 347.
[64] Case No. EU-2012-0131.
[65] Case No. EU-2011-0034.

generating facility[66]; ice storms[67]; floods[68]; and the installation of AM / FM mapping software.[69] In those cases, GMO repeatedly asked that the Commission reject the rate regulation approach historically used by the Commission (i.e., reliance of rate cases with no deferral of past costs), in favor of the deferral of costs for recovery in future cases.

GMO's historical attitude towards the deferral of costs is not surprising. The practical effect of a utility deferring costs from one period for recovery in a subsequent rate case is beneficial to utility shareholders and detrimental to ratepayers. Specifically, since a cost is deferred, it is not recognized in the current period. Therefore, current earnings are inflated. On the other hand, when the deferred cost is recovered in a future case, rates are increased. Thus, "the AAO works to the benefit of the utility shareholders by increasing current profits as well as future rates."[70]

So, GMO has been very insistent in the past that the Commission should utilize more deferral accounting for costs. Now, however, when ratepayers seek to utilize the same deferral accounting for the treatment of savings associated with an extraordinary event, GMO insists that deferral accounting is "contrary to the rate regulation approach of this Commission." As MECG has previously indicated, GMO seeks to limit deferral accounting solely to the deferral of costs for the benefit of shareholders. With regards to the deferral of savings for the benefit of ratepayers, GMO suddenly cries foul. In essence, GMO seeks to reduce deferral accounting to "heads GMO wins; tails ratepayers lose" proposition.[71]

[66] Case No. EO-91-358.
[67] Case No. EO-95-193.
[68] Case No. EO-94-35.
[69] Case No. EO-91-247. Similarly, for KCPL, the Commission has authorized the deferral of costs associated with a flood (Case No. EU-2012-0130); renewable energy standard costs (Case No. EU-2012-0131); an ice storm (Case No. EU-2002-1048); storms (EO-97-224)
[70] Meyer Direct, page 5.
[71] MECG Initial Brief, page 9.

In any event, GMO's assertion that deferral accounting is contrary to the "rate regulation approach of this Commission" is patently incorrect. Rather, the rate regulation approach of this Commission is to rely on historical test year ratemaking with regards to ordinary costs and savings. For extraordinary costs and savings, the Commission has repeatedly indicated a willingness to engage in deferral accounting. The Commission's approach in this regard has been steadfast for approximately 30 years. Given the Commission's historical willingness to utilize deferral accounting in these situations, as well as GMO's repeated insistence that the Commission should engage in deferral accounting, the Commission should reject GMO's misplaced claims.

H. GMO'S ENDORSEMENT OF STAFF'S POSITION IS NOT SURPRISING

1. Staff Lacks Objectivity in Recent KCPL and GMO Cases

At pages 21-23, GMO applauds Staff's position in this case. GMO points the Commission towards the testimony of Mark Oligschlaeger, which GMO claims is "Staff's most experienced expert on the topic of AAOs."[72] GMO approves Staff's position because, as GMO readily points out, Mr. Oligschlaeger "recommends that the Commission reject the request for an AAO."[73]

Staff's recommendation, agreeing with the position of GMO, is not surprising. In recent years, Staff's recommendations in GMO and KCPL cases has been one of complete acceptance of virtually any position advanced by those utilities.[74] For instance, in the recent KCPL and GMO rate cases, on several of the largest issues in the case, Staff blindly acceded to KCPL and

[72] GMO Initial Brief, page 21.
[73] *Id.*
[74] In fact, in this case, Staff reached its conclusion agreeing with GMO's position after issuing a total of only four data requests, a number that Staff's witness characterized as "several." Tr. 319-320.

GMO's positions. For instance, on the issue of stub period tax benefits,[75] Staff idly sat back while KCPL and GMO sought to keep the entirety of these benefits. Specifically, while the General Assembly set forth a policy mandating the return of these benefits in whole to ratepayers and while other Missouri utilities were returning the stub period benefits, Staff turned a blind eye towards KCPL and GMO's request to retain these benefits for the purposes of offsetting alleged past losses.[76]

Staff's submissive approach to KCPL and GMO's position in the last case was not limited to simply the return of stub period tax benefits. On the largest issue in a rate case (return on equity), Staff meekly acquiesced in the return on equity requested by KCPL and GMO. Specifically, while KCPL and GMO sought a profit margin of 9.85%, Staff simply agreed with the KCPL and GMO position, much as it has done in this case.

The Staff's acquiescence in KCPL and GMO positions were not limited to the recent rate case. In 2016, KCPL and GMO's parent company (Great Plains Energy) announced an agreement to purchase Westar Energy. Immediately, Great Plains Energy notified the Missouri Commission that it had not jurisdiction over the transaction. On July 25, 2016, Staff filed its report asserting that the Commission should "exercise its jurisdiction over GPE and order GPE to seek Commission approval prior to acquiring Westar."[77] Rather than file a complaint asking the Commission to exercise the authority that it had previously asserted was appropriate, the Staff

[75] As Mr. Oligschlaeger points out, the stub period benefits are those benefits which resulted during the period of January 1, 2018 and December 6, 2018 (the date on which rates in the last GMO rate case became effective). Tr. 311.

[76] Tr. 311-313. It is interesting that Staff simply accepted KCPL and GMO's assertion of past losses when both KCPL and GMO executed a settlement requiring a rate reduction. A rate reduction is generally not symptomatic of a utility that has been experiencing recent losses.

[77] Case No. EM-2016-0324, Staff Investigative Report, issued July 25, 2016, at page 73.

instead engaged in settlement talks with Great Plains Energy without any consideration of the "public interest" the Staff is supposed to protect.[78]

On October 12, 2016, Staff and Great Plains Energy submitted a stipulation which, while resolving Staff's concerns with the proposed transaction, ultimately proved to be utterly inadequate in protecting customers.[79] Before the Missouri Commission could consider that settlement, the Kansas Corporation Commission ("KCC") issued its decision on the same matter. Specifically, based upon a recommendation of the more thorough KCC Staff,[80] the Kansas Commission issued its decision rejecting the merger and finding that proposed conditions were incapable of alleviating the detriment the merger had on ratepayers.[81]

Subsequently, Great Plains Energy executed a modified proposal to acquire Westar Energy. In the interim, tired of watching Staff sit idly by, MECG filed its own complaint alleging Commission jurisdiction.[82] In response to that complaint, Staff filed its comment indicating that it "does not support a complaint concerning the proposed acquisition of Westar Energy, Inc." and instead simply approve the previous settlement.[83] Ultimately, as it should do here, the Commission rejected the settlement that resulted from Staff's cozy relationship with KCPL and GMO. Instead, the Commission, in a unanimous decision, issued its Report and

[78] The standard applicable to a merger case is whether the merger is "not detrimental to the public interest." Without fail, the Commission has determined this public interest by accepting applications to intervene from entities affected by the merger. Therefore, it is questionable how Staff could consider the "public interest" if it acted prior to having the opportunity to hear about the public interest.

[79] See, *Stipulation and Agreement*, Case No. EE-2017-0113, filed October 12, 2016. Staff asserted that the deficient nature of the settlement was due in large part to litigation risk underlying concerns that the Missouri Commission would not actually assert authority over the transaction.

[80] The fact that the Kansas Commissions is more thorough and better prepared that the Missouri Staff cannot be seriously debated. Specifically, evidence in this case shows that while the Kansas Staff issued 625 data requests for the purpose of considering the detriment underlying the Westar acquisition, the Missouri Staff issues only 62 data requests.

[81] See, *Order*, KCC Case No. 16-KCPE-593-ACQ, issued April 19, 2017.

[82] *Complaint*, Case No. EC-2017-0107, filed October 11, 2016.

[83] See, *Staff's Comments*, Case No. EC-2017-0107, filed November 8, 2016.

Order finding that it had jurisdiction over the transaction and that Great Plains Energy should seek Commission approval of the transaction.[84]

While eliminating the litigation risk that Staff previously asserted was a consideration in execution its previous settlement, Staff nonetheless agreed to simply abide by that faulty settlement. Unable to muster the resources necessary to fully review the modified transaction, other parties simply took what they could get and executed follow-up settlements. Finally, presented with nothing but settlements, the Commission approved the modified transaction.

All of this is designed to demonstrate that, when it comes to matters involving KCPL and GMO, Staff has lost the "objectivity" that GMO now eagerly applauds.[85] The Commission needs to be aware of this lack of objectivity so that it may adequately consider whether Staff's position establishes an appropriate balancing of the interest of ratepayers and shareholders.[86]

The impact of Staff's recent comfort with KCPL and GMO positions is not surprising. As the evidence in this case shows, electric rates in Missouri have been increasing rapidly. Specifically, while the national average electric rate has increased by only 31.7% since 2006, the average electric rate in Missouri has increased by more than twice as much at 67.9%.[87] Positions such as that advanced by Staff in this case merely serve to exacerbate the problem with the affordability of Missouri rates.

2. Staff Position on Deferral Account is not Infallible

Concerns with Staff's objectivity aside, it is clear from recent cases that Staff's position is not infallible. Repeatedly, Staff has taken positions with regard to the use of deferral accounting that the Commission subsequently rejected.

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[84] *Report and Order*, Case No. EC-2017-0107, issued February 22, 2017.
[85] Tr. 315.
[86] The lack of Staff objectivity may also help to explain the need for the recent legislation authorizing a new Commission advisory group. See, Section 386.135, as recently amended by House Bill 355.
[87] Exhibit 2, Meyer Surrebuttal, page 3.

For instance, in the case addressing the use of deferral accounting for the Sibley renovation, Mr. Oligschlaeger asserted that the renovation was not extraordinary and that the matter should be dismissed.[88] Ultimately, the Commission rejected Mr. Oligschlaeger's position and granted GMO the requested Accounting Authority Order.[89]

More recently, the Commission again rejected Mr. Oligschlaeger's position. In Case No. ET-2018-0132, the Commission addressed Ameren Missouri's request to defer certain costs associated with the construction of certain electric vehicle charging stations. In that case, Mr. Oligschlaeger opposed Ameren's deferral request and, instead, suggested that the appropriate recovery mechanism was to file a rate case.[90] In its Report and Order, the Commission rejected Mr. Oligschlaeger's recommendation. Instead, the Commission held that Ameren should be allowed to defer such costs to a future rate case.[91]

Given the frequency with which the Commission has rejected Mr. Oligschlaeger's position with regard to Accounting Authority Orders, it is not surprising that Mr. Oligschlaeger agrees that his position is not "infallible."

Q. You're not infallible when it comes to your opinion on AAOs; is that correct?

A. Apparently in the Commission's view I am not.[92]

Recognizing that the Commission has rejected Mr. Oligschlaeger's position on the use of deferral accounting in the past, the Commission should take a skeptical view of Staff's position in this case even though GMO suggests that Mr. Oligschlaeger is "Staff's most experienced expert on the topic of AAOs."[93]

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[88] See, Case No. EO-91-358.
[89] *Report and Order*, Case No. EO-91-358, issued December 20, 1991.
[90] *Report and Order*, Case No. ET-2018-0132, issued February 6, 2019, page 24.
[91] *Id.* at page 28.
[92] Tr. 305.
[93] GMO Initial Brief, page 21.

3. STAFF'S CONCLUSION IS ERRONEOUS

A. STAFF FAILS TO RECOGNIZE THAT THE RETIREMENT OF A GENERATING PLANT IS FUNDAMENTALLY DIFFERENT THAN THE RETIREMENT OF OTHER PIECES OF ELECTRIC PLANT.

As an initial matter, it is important to recognize that Staff agrees with MECG on a number of key points including:

- The deferred savings, associated with the retirement of Sibley, are "material".[94]
- The deferral of costs and savings are equally "appropriate" under the Uniform System of Accounts.[95]
- The fact that the previous rate case provided for a black box settlement does not make the quantification of savings associated with Sibley impossible.[96]
- GMO's earnings are not relevant to the AAO request.[97]
- The retirement of the Sibley units is extraordinary given certain circumstances. (Note, MECG claims the retirement of the Sibley units is extraordinary without consideration of these certain circumstances).[98]
- Contrary to GMO's assertion that AAOs should not be extended to events that are "anticipated and communicated well in advance," Staff agrees that AAOs should not be limited to "unanticipated costs."[99]

All of these points of agreement aside, however, Staff disagrees with MECG's ultimate conclusion that the retirement of Sibley is extraordinary and that the associated cost savings should be deferred for consideration in the next GMO rate case. Staff reaches its conclusion, that the retirement of the Sibley unit is not extraordinary, by conflating the addition and retirement of a generating unit, which has not occurred in over 30 years, with the day to day addition and retirement of electric plant including computers, distribution lines, pole transformers and general

[94] Tr. 61.
[95] Exhibit 19, page 2.
[96] Exhibit 2, Meyer Surrebuttal, page 28 (citing to Staff response to Data Request No. 52).
[97] *Id.* (citing to Staff response to Data Request No. 45) and Exhibit 19 (page 1).
[98] *Id.*
[99] *Id.* and Exhibit 19 (page 3) (as corrected at Tr. 102).

plant.[100] As Staff states, "[a]ny major utility is both constantly adding new plant items to its system and constantly retiring other plant items."[101]

As Mr. Meyer notes, however, the retirement of a computer and the final retirement of the Sibley unit after 49 plus years of operation are "not comparable by any means."[102] As support for this distinction, Mr. Meyer notes that the retirement of the Sibley units was communicated to investors via press releases. In contrast, Mr. Meyer ponders "when was the last time that the retirement of Company computers, power lines, pole transformers or even general plant was communicated well in advance" through a press release.[103] This fact alone demonstrates that the retirement of a generating unit is an extraordinary event.

Furthermore, GMO itself, in its reporting to the Federal Energy Regulatory Commission and the Missouri Public Service Commission also recognize that the retirement of Sibley is completely different than the retirement of other units of electric plant. As indicated, GMO is required to provide certain annual reports of financial data to the Federal Energy Regulatory Commission and the Missouri Public Service Commission. In that FERC Form 1 annual report, GMO quantifies its retirements to plant in service. Typically, as reflected in both its 2016 and 2017 annual reports, GMO quantifies these retirements, but provides no explanation of the quantification.[104] In 2018, however, given the extraordinary nature of the Sibley retirement, GMO took the unusual step of providing a footnote to describe the event that resulted in the plant retirements.[105] Clearly then, GMO recognizes that the retirement of Sibley was extraordinary as compared to the retirement of other more mundane pieces of electric plant.

[100] Tr. 325.
[101] Exhibit 17, Oligschlaeger Cross-Rebuttal, page 4.
[102] *Id.* at page 26.
[103] *Id.* at pages 26-27.
[104] See, Exhibits 7 and 8.
[105] See, Exhibit 9 ("Sibley Generating Units 1,2,3 and Common were retired from service on November 13, 2018").

Finally, the Commission itself has recognized a fundamental distinction between generating units, like Sibley, and other pieces of electric plant like transformers and computers. As Staff correctly notes, GMO is constantly adding new plant items, like computers and transformers, to its system. Despite this constant addition of plant items, the Commission nevertheless recognized that the addition of a power plant is "extraordinary" and allowed for the deferral of costs associated with the construction of Iatan 2.[106] If Staff is correct, that the addition and retirement of plant is a day to day activity of the electric utility, then it was inappropriate for the Commission to defer the costs associated with the addition of Iatan 2. Instead, the addition of Iatan 2 should have been held to be routine since the utility is constantly adding new pieces of plant like transformers and computers. The Commission, however, recognized a distinction. The addition of computers and transformers may be a typical activity of the electric utility, but the addition of a power plant is "extraordinary." For the same reason, while the utility may retire pieces of electric plant, like computers and transformers on a day to day basis, the retirement of a power plant is also inherently different. Staff completely fails to grasp the distinction that the Commission has clearly recognized, that the addition / retirement of a power plant is fundamentally different than the addition / retirement of other pieces of electric plant. Staff's position is contrary to the guidance provided by the Commission.

B. STAFF USES A DIFFERENT STANDARD WHEN ASSESSING THE USE OF DEFERRAL ACCOUNTING FOR GENERATING UNIT CONSTRUCTION AND RENOVATION THAN WHEN IT CONSIDERED GENERATING UNIT RETIREMENT

During the redirect questioning, Staff admitted that, while it steadfastly applied the extraordinary standard for the consideration of the deferral of savings in this case, it utilizes a radically different standard for the consideration of utility requests for the deferral of costs

[106] Case No. EU-2011-0034.

associated with construction projects. In fact, in those situations in which the utilities request the use of deferral accounting, Staff simply looked at the materiality of the event and not the extraordinary nature of the event.

> Q. Mr. Oligschlaeger, under what circumstances generally would staff support a construction AAO?
>
> A. I think in the past we have taken the position if the company can demonstrate a material financial detriment associated with a prolonged period of regulatory lag between when an asset goes into service and when it is able to be included in rates that we have generally been supportive of construction accounting.[107]

Recognizing that Staff readily acknowledges that the "savings associated with the Sibley retirement. . . are material",[108] it is apparent that Staff would agree with MECG's request for an Accounting Authority Order in this case if it applied the same standard here. Instead, while applying a more stringent standard for the deferral of savings for the benefit of ratepayers, Staff seemingly applies a much easier standard for the deferral of costs for the benefit of the utility.

ISSUE II: If the Commission determines that an AAO or other deferral accounting 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?[109]

4. THE PARTIES APPEAR TO BE IN AGREEMENT OVER HOW TO ADDRESS THE QUANTIFICATION OF SAVINGS

The List of Issues in this case included an issue regarding how amounts should "be recorded to the Regulatory Liability" in the event that the Commission determines that an AAO

[107] Tr. 347-348.
[108] Tr. 61.
[109] Similarly, at the conclusion of the evidentiary hearing, the Regulatory Law Judge asked the parties to address "how they believe the Commission should handle the question of establishing a baseline that we discussed at the beginning of the hearing, give me suggestions on how you think it should be handled." Tr. 408-409.

should be ordered. While included as an issue, MECG consistently argued that the issue was not timely. Rather, as MECG asserted in its Statement of Position:

> MECG does not believe that this is a necessary issue for Commission determination in this case. Rather, the Commission's determination of whether to grant deferral of savings is limited to whether the retirement of the Sibley unit is "extraordinary". As mentioned, once the Commission has ordered the deferral, the parties will conduct the necessary quantification.[110]

Now, it appears that GMO and Staff agree with MECG's position. In its Initial Brief, GMO concluded that, if the Commission grants an AAO, a separate docket be established, complete with prefiled testimony, discovery and an evidentiary hearing for the purpose of quantifying the savings associated with the retirement of Sibley.[111] Similarly, Staff suggested that "[i]n the event the Commission decides to grant the request for an AAO or other deferral accounting, Staff recommends that it should order the parties to meet to attempt to agree on an appropriate baseline for calculation of the deferral."[112]

Clearly then, despite being listed as an issue, there is no need for the Commission to quantify the amount of savings resulting from the retirement of the Sibley units. Instead, the Commission's determination in this case is limited solely to the question of whether the retirement is "extraordinary." Issues regarding the retirement of savings may be addressed at a later date. At that time, MECG, and the other parties, should demonstrate, based upon evidence in the last rate case, the amount of costs related to the Sibley units that are currently included in rates. When compared to the ongoing costs, the Commission should be able to easily quantify the actual savings.

[110] MECG Statement of Position, filed July 22, 2019, at page 13.
[111] GMO Initial Brief, page 37.
[112] Staff Initial Brief, page 8.

5. CONCLUSION

MECG urges the Commission to continue to recognize, for purposes of utilization of deferral accounting, a distinction between the generating units and other types of plant. While GMO may retire other types of plant more frequently, it is not disputed that GMO has not retired a generating unit in over 30 years. As such, the Commission should find that the retirement of the Sibley units is "unusual", "infrequent" and "abnormal". For the same reason, the Commission should find that the retirement of Sibley is "extraordinary" and that the savings resulting from that extraordinary event should be deferred for future consideration.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing pleading by email, facsimile or First Class United States Mail to all parties by their attorneys of record as provided by the Secretary of the Commission.

____/s/_David Woodsmall_____
David L. Woodsmall

Dated: August 29, 2019