BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Eighth Prudence Review of Costs Subject to the Commission-Approved Fuel Adjustment Clause of KCP&L Greater Missouri Operations Company	))))	**File: EO-2019-0067**
In the Matter of the Second Prudence Review of Costs Subject to the Commission-Approved Fuel Adjustment Clause of Kansas City Power and Light Company	))))	**File: EO-2019-0068**
In the Matter of the Application of KCP&L Greater) Missouri Operations Company Containing Its Semi-Annual Fuel Adjustment Clause True-Up	))	**File: ER-2019-0199**

INITIAL BRIEF OF STAFF

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KANSAS CITY POWER AND LIGHT COMPANY
KCP&L GREATER MISSOURI OPERATIONS COMPANY
CASE NOS. EO-2019-0067, EO-2019-0068, & ER-2019-0199

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INITIAL BRIEF OF STAFF

Introduction

These cases, EO-2019-0067, EO-2019-0068, and ER-2019-0199 involve the Fuel Adjustment Clauses ("FACs") of Kansas City Power & Light Company ("KCPL") and KCP&L Greater Missouri Operations Company ("GMO"). More specifically, Case No. EO-2019-0067, which is the lead case of these consolidated cases, involves the Eighth Prudence Review of GMO's Fuel Adjustment Clause ("FAC"). EO-2019-0068, which was consolidated with EO-2019-0067, involves the Second Prudence Review of KCPL's FAC. Finally, ER-2019-0199, which was also consolidated with EO-2019-0067, involves GMO's FAC true-up filing, which the Office of the Public Counsel ("OPC") challenged in ER-2019-0199 and the parties agreed to address in the consolidated docket.

GMO's tariff provides that as part of its FAC, there "shall be prudence reviews of costs" that "shall occur no less frequently than at 18-month intervals",[1] which is consistent with Commission Rule 4 CSR 240-20.090[2] and § 386.266.5(4). Staff filed its *Notice of Start of Eighth Prudence Review* on September 7, 2018, advising the Commission, GMO, and all interested parties that it intended to audit the period December 1, 2016, through May 31, 2018. Thereafter, Staff filed its *Staff Report* on February 28, 2019, in which Staff found no evidence of imprudence for the items it examined for the applicable review period. On March 11, 2019, OPC filed a Response to Staff's Eighth Prudence Review Report, Request for Evidentiary Hearing and Request for Consolidation.[3]

KCPL's tariff likewise provides that as part of its FAC there "shall be prudence reviews of costs" that "shall occur no less frequently than at 18-month intervals",[4] which is consistent with Commission Rule 4 CSR 240-20.090[5] and § 386.266.5(4). Staff filed its *Notice of Start of Second Prudence Review* on September 7, 2018, advising the Commission, KCPL, and all interested parties that it intended to audit the period January 1, 2017, to June 30, 3018. Thereafter, Staff filed its *Staff Report* on February 28, 2019, in which Staff found evidence of imprudence by KCPL when KCPL failed to take any action that would have allowed it to generate revenue from the sale of 722,628 renewable energy credits ("RECs") that were not needed to satisfy its RES compliance and simply allowed

[1] KCP&L Greater Missouri Operations Company Tariff P.S.C. Mo No. 1, 1st Revised Sheet No. 126.2 (Applicable to Service Provided November 8, 2016 through February 21, 2017) and Original Tariff Sheet 127.11 (Applicable to Service Provided February 22, 2017 and Thereafter). *See* EO-2019-0067, EFIS Item No. 1, *Staff's Notice of Start of Eighth Prudence Review*.
[2] As of August 28, 2019, this rule is referenced as 20 CSR 4240-20.090.
[3] The Request for Consolidation related to Case No. ER-2019-0198, which involved a FAC tariff filing for a fuel adjustment rate. As noted in this Introduction Section, that file was closed and the remaining issue(s) were addressed in ER-2019-0199, which was consolidated into EO-2019-0067.
[4] Kansas City Power and Light Rider FAC Second Revised Tariff Sheet No. 50.9. *See* EO-2019-0068, EFIS Item No. 1, *Staff's Notice of Start of Second Prudence Review*.
[5] As of August 28, 2019, this rule is referenced as 20 CSR 4240-20.090.

them to expire during the Review Period. On March 11, 2019, KCPL filed a Request for Hearing.

On March 18, 2019, the parties filed a Joint Proposed Procedural Schedule and Motion to Consolidate Cases, which in part requested consolidation of Case Nos. EO-2019-0067, EO-2019-0068, ER-2019-0198, and ER-2019-0199. However, the Commission had closed the file for ER-2019-0198, as the substitute tariff had gone into effect, and the Commission noted that the remaining issues were for a future true-up filing or for the suspended timeline in ER-2019-0199. As such, the Commission consolidated EO-2019-0068 and ER-2019-0199 into EO-2019-0067. The Commission also established a procedural schedule that set an evidentiary hearing for August 27, 2019, and set dates for periodic discovery conferences, the filing of prepared testimony, a list of issues and witnesses, and parties' position statements. Pursuant to the procedural schedule, the parties filed a *Joint List of Issues*, stating the issues to be determined by the Commission. This brief will address the issues as set forth in the List of Issues filed in this case.

Argument

Issue (1)

A. Was it imprudent, or in violation of its Rider FAC tariff, for KCPL to allow 722,628 renewable energy credits ("RECs") to expire during the review period of File EO-2019-0068 rather than take action which would have allowed KCPL to generate revenues from those RECs?

B. If it was [imprudent or a violation of tariff], what if any adjustment should the Commission order?

The simple answer to the first question posed under Issue (1) is "Yes." Staff contends that KCPL was both imprudent in its management of RECs and in violation of its Rider FAC Tariff by not even attempting to sell unused RECs which it did not need to meet

the renewable energy standard and simply allowed those RECs to expire.[6] However, it should be noted that the Commission does *not* need to find that KCPL was *both* imprudent in its management of RECs *and* that it violated its FAC tariff.[7] Rather, a finding of *either* imprudence *or* tariff violation is sufficient for ordering the adjustment recommended by Staff. Furthermore, the Commission has previously found that the purposeful violation of its FAC tariff by a utility is imprudent.[8]

KCPL's Rider FAC Tariff provides specific language and treatment of revenues received from the sale of RECs. For example, KCPL's Second Revised Sheet No. 50.11 provided during the prudence review period as follows:

> COSTS AND REVENUES: Costs eligible for the Fuel and Purchased Power Adjustment ("FPA") will be the Company's allocated jurisdictional costs for the fuel component of the Company's generating units, purchased power energy charges including applicable Southwest Power Pool ("SPP") charges, emission allowance costs and amortizations, cost of transmission of electricity by others associated with purchased power and off system sales - all as incurred during the accumulation period. **These costs will be offset by** jurisdictional off-system sales revenues, applicable SPP revenues, and **revenue from the sale of Renewable Energy Certificates or Credits ("REC").** . . .(Emphasis added)[9]

Similarly, KCPL's Second Revised Sheet No. 50.14 provided:

> R = Renewable Energy Credit Revenue:
>
> Revenues reflected in FERC account 509000 from the sale of Renewable Energy Credits that are **not needed to meet the Renewable Energy Standards.** (Emphasis added)[10]

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[6] See Ex. 200, Boustead Rebuttal, p. 3, and Schedule KJB-r2, p. 2 lines 3-9 and pp. 24-26.

[7] On August 29, 2019, Staff submitted late-filed Staff Exhibit 202, which consists of KCPL Tariff Sheets 50 through 50.20 which contain KCPL's Rider FAC Tariff applicable to service during the FAC Prudence Review period. *See* EFIS Entry 41. As of this date, Staff is not aware of a Commission ruling on whether to receive this Exhibit.

[8] ***In the Matter of Ameren Missouri's First FAC Prudence Review,*** Case No. EO-2010-0255 (***Report & Order,*** issued April 27, 2011), p. 2 ("Ameren Missouri acted imprudently, improperly and unlawfully when it excluded revenues derived from power sales agreements with AEP and Wabash from off-system sales revenue when calculating the rates charged under its fuel adjustment clause").

[9] Ex. 202.

[10] Ex. 200, Boustead Rebuttal, p. 3 lines 3-8.

Therefore, pursuant to KCPL's FAC tariff, customers are to receive the benefit of revenues from the sale of RECs which are not needed for compliance with the renewable energy standard requirement through KCPL's FAC as an off-set to fuel costs. However, during the FAC Prudence Review Period applicable to CaseNo. EO-2019-0068 (i.e., January 1, 2017 through June 30, 2018) KCPL failed to take any action to generate revenues from 722,628 RECs which it did not need to satisfy its renewable energy standard requirement and simply allowed those RECs to expire, to the detriment of its customers. It is undisputed on the record of this case that not only did KCPL fail to sell those RECs, it *did not even attempt to sell them*.[11]

In a prudence case, the party or parties challenging the utility's action or inaction bear the burden of making an initial showing of imprudence:

> The Federal Power Act imposes on the Company the "burden of proof to show that the increased rate or charge is just and reasonable." Edison relies on Supreme Court precedent for the proposition that a utility's cost are [sic] presumed to be prudently incurred. However, the presumption does not survive "a showing of inefficiency or improvidence." As the Commission has explained, "utilities seeking a rate increase are not required to demonstrate in their cases-in-chief that all expenditures were prudent . . . However, where some other participant in the proceeding creates a serious doubt as to the prudence of an expenditure, then the applicant has the burden of dispelling these doubts and proving the questioned expenditure to have been prudent."[12]

However, as stated above, once the presumption of prudence is dispelled, the utility has the burden of showing that the challenged action or inaction was indeed prudent.[13]

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[11] *Id.* at p. 2 line 11 through p. 3 line 18 and Schedule KJB-r2 pp. 24-26.
[12] In the Matter of Union Electric Company, 27 Mo.P.S.C. (N.S.) 183, 193 (1985) (quoting Anaheim, Riverside, etc. v. Federal Energy Regulatory Commission, 669 F.2d 779, (D.C. Cir. 1981)) (citations omitted).
[13] State ex rel. Associated Natural Gas Company v. Public Service Commission, 954 S.W.2d 520, 528-529 (Mo. App., W.D. 1997).

So what is the "prudence standard" in Commission cases? The Commission has adopted a standard of reasonable care requiring due diligence for evaluating the prudence of a utility's conduct.[14] The Commission has described this standard as follows:

> The Commission will assess management decisions at the time they are made and ask the question, "Given all the surrounding circumstances existing at the time, did management use due diligence to address all relevant factors and information known or available to it when it assessed the situation?"[15]

Similarly, the Western District Court of Appeals has stated that:

> the PSC noted that this test of prudence should not be based upon hindsight, but **upon a reasonableness standard**:
>
> > [T]he company's conduct should be judged by asking whether the conduct was reasonable at the time, under all the circumstances, considering that the company had to solve its problem prospectively rather than in reliance on hindsight. In effect, **our responsibility is to determine how reasonable people would have performed the tasks that confronted the company**.[16] (Emphasis added)

In the Associated Natural Gas case the court also stated that in order to make a prudence adjustment, a regulatory agency must also find that the imprudence resulted in harm to the ratepayers; in other words, the agency must find both that (1) the utility acted imprudently and (2) such imprudence resulted in harm to the utility's ratepayers.[17] The court concluded that "ultimately" the prudence standard arises from the PSC's statutory mandate that all charges made by a utility company be just and reasonable.[18]

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[14] In the Matter of Union Electric Company, 27 Mo.P.S.C. (N.S.) 183, at 194 (1985).
[15] *Id.*
[16] State ex rel. Associated Natural Gas Company v. Public Service Commission, 954 S.W.2d 520 at 529 (Mo. App., W.D. 1997) (citing In the Matter of Union Electric Company, 27 Mo.P.S.C. (N.S.) 183 at 194 [quoting Consolidated Edison Company of New York, Inc. 45 P.U.R. 4th 331 (1982)]).
[17] *Id.* at 529-530.
[18] *Id.* at 530.

In the present case there is no dispute that KCPL did not even try to sell the RECs at issue. KCPL made a conscious decision to not make any attempt at all to sell the RECs – to not do *anything* with them except move them into the expired REC subaccount of the REC tracking system.[19] As stated at the hearing by Mr. Clizer of the Office of the Public Counsel, "They've [KCPL] literally just left money sitting on the table. That's not something that any reasonable person would do."[20] In addition, it is noteworthy that KCPL witness Linda Nunn, on page 7 of her surrebuttal testimony,[21] states that KCPL's FAC tariff was based on its affiliate GMO's FAC tariff. However, Ms. Nunn fails to mention that in the Commission's Report and Order in Case No. ER-2012-0175, issued January 9, 2013, the Commission found on page 63 that "If GMO has more RECs than it needs to satisfy the requirements of law ("excess RECs"), **it is prudent practice to sell them**" (Emphasis added). This is equally true of KCPL, GMO's affiliate, and encapsulates Staff's position in a nutshell.

Rather than deny that it made no attempt whatsoever to sell the expired RECs, KCPL attempts to excuse its imprudence by pointing to its purported justifications, none of which withstand scrutiny as explained in the rebuttal testimony[22] of Ms. Boustead. KCPL's primary excuse is that, according to Mr. Martin, if KCPL was to sell the expired RECs KCPL could no longer claim that the power was generated from a renewable source.[23] In addition to being baffling on its face,[24] Mr. Martin, on behalf of KCPL, bases this excuse not on any binding legal authority, but on nothing more than the Renewable Corporate

[19] Hrg. Tr. Vol. 1, 92:13-18.
[20] Hrg. Tr. Vol. 1, 25:24-26:1.
[21] Ex. 4, Nunn Surrebuttal, p. 7.
[22] Ex. 200, Boustead Rebuttal.
[23] Hrg. Tr. Vol. 1, 73:20-25.
[24] Mr. Martin also testified that although wind power existed before RECs, if there was no REC associated with that wind power the wind power was not renewable energy. Hrg. Tr. Vol. 1, 74:10-20.

Buyers' Principles Guide attached to his testimony, which is simply a document developed by a group of large utility customers.[25] Mr. Martin further admitted that FERC Form 1 does *not* consider renewable energy resources as defined by the Renewable Corporate Buyers' Principles Guide.[26]

By leaving money "just sitting on the table" – money which would otherwise have flowed-through KCPL's FAC as an off-set to fuel costs for the benefit of its customers – it should be clear that KCPL was imprudent. So, did this imprudence result in harm to KCPL's ratepayers? This brings us to the second question posed under Issue (1): What adjustment should the Commission order?

This question – what adjustment should the Commission order – is closely intertwined with the question of whether KCPL's imprudence resulted in harm to its ratepayers *and* with the question posed at the hearing by Commissioner Hall regarding whether the issue is ripe. Therefore, they will be addressed together.

The FAC prudence review period applicable to KCPL in Case No. EO-2019-0068 was from January 1, 2017 through June 30, 2018.[27] Staff contends that KCPL's ratepayers were in fact harmed by KCPL's imprudence during the FAC prudence review period,[28] and that the Commission should order an adjustment in the amount of $357,308 which is equal to 722,628 expired RECs times $0.48483 per REC, plus interest at KCPL's short-term borrowing rate.[29] Staff's recommendation is based on an average of market prices for RECs during the FAC prudence review period at issue.[30]

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[25] Hrg. Tr. Vol. 1, 74:7-74:8.
[26] Hrg. Tr. Vol. 1, 75:21-25.
[27] Ex. 200, Boustead Rebuttal Schedule KJB-r2, p. 1 lines 21-22.
[28] Hrg. Tr. Vol. 1, 95:3-4.
[29] Ex. 200, Boustead Rebuttal, p. 2 lines 11-14; Ex. 201, Boustead Cross-Rebuttal, p. 2 lines 13-16.
[30] Hrg. Tr. Vol. 1, 96:13-25. The existence of a market price for RECs demonstrates that there is in fact a market for RECs, contrary to KCPL's implication.

One of KCPL's excuses for its decision to not pursue the sale of RECs is that it is immaterial. Staff disagrees, because although Staff's proposed adjustment may be only $357,308 for this FAC prudence review period, there is the potential for larger adjustments in the future. Starting in 2021, the company will be producing RECs in excess of what it needs to comply with the renewable energy standard, resulting in the potential for an even larger number of RECs to expire annually; furthermore, the market value of RECs does change over time.[31] At the hearing, Dr. Geoff Marke of the Office of the Public Counsel testified that "RECs become less valuable over time. The ability to sell the RECs [is] hindered the longer that they're out there."[32]

Regarding the matter of "ripeness," as stated above the FAC prudence review period applicable to KCPL in this case was from January 1, 2017 through June 30, 2018. For purposes of its analysis, Staff looked at the decision KCPL made during the period under review – the conscious decision to not make any attempt at all to sell the RECs and not do anything with them except move them into the expired subaccount of the tracking system.[33] Staff calculated its recommended adjustment based on an average of market prices for RECs during the FAC prudence review period at issue.[34] As also stated above, "RECs become less valuable over time."[35] In other words, KCPL made the decision to designate the RECs as expired during this prudence review period by moving them into the expired subaccount; Staff's recommended adjustment is based on the average value of the RECs during the period they were moved; and the RECs become less valuable over

[31] Ex. 200, Boustead Rebuttal, p. 3 lines 13-18.
[32] Hrg. Tr. Vol. 1, 101:1-3.
[33] Hrg. Tr. Vol. 1, 92:11-18.
[34] Hrg. Tr. Vol. 1, 96:13-25.
[35] Hrg. Tr. Vol. 1, 101:1-2.

time. A prudence review, at intervals no greater than 18 months, is required by KCPL's tariff,[36] Commission Rule 4 CSR 240-20.090[37] and § 386.266.5(4). If the issue is not ripe for decision now, when will it be?

Issue (2)

A. Has GMO appropriately allocated the costs associated with auxiliary power between the electric operations and the steam operations at GMO's Lake Road plant?

B. If not, what if any adjustment should the Commission order for the review period of File EO-2019-0067?

Staff found no indication that GMO imprudently included steam auxiliary power costs in the FAC during the Review Period, as stated in Staff's Report of the Eighth Prudence Review of Costs Related to the Fuel Adjustment Clause for the Electric Operations of GMO in File No. EO-2019-0067.[38]

GMO has allocated the costs associated with auxiliary power between the electric operations and steam operations at GMO's Lake Road plant in accordance with agreements contained in Stipulations and Agreements from previous general rate cases, which have been approved by the Commission.[39] GMO provided testimony that the only

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[36] Kansas City Power and Light Rider FAC Second Revised Tariff Sheet No. 50.9. *See* EO-2019-0068, EFIS Item No. 1, *Staff's Notice of Start of Second Prudence Review*.

[37] As of August 28, 2019, this rule is referenced as 20 CSR 4240-20.090.

[38] Hrg. Tr. Vol. 1, 191:13-192:17; *see also* Staff Statements of Position, EFIS Item No. 33.

[39] *See* Ex. 4, Nunn Surrebuttal, 2:6-13. *See also* Ex. 3, Nunn Direct, 4:1-6:

> **Q. Has the allocation methodology changed since the 2005 case?**
> A. Yes. More recently, in Case Nos. ER-2009-0090 and HR-2009-0092 ("2009 cases"), the Company proposed to allocate its costs, both rate base and cost of service, for its L&P jurisdiction (what SJPL was called after being acquired by Utilicorp/Aquila), between its electric and industrial steam businesses using seven allocation factors.

See also Ex. 3, Nunn Direct, 4:16-18:

> **Q. How were these cases [the 2009 cases] resolved?**
> A. Case No. ER-2009-0090 was resolved by the Commission's approval of Non-Unanimous Stipulations and Agreements.

See also Ex. 3, Nunn Direct, 5:14-6:7:

> **Q. Has GMO filed an electric case since Case No. ER-2009-0090?**

change to the calculation of allocation factors "was to accommodate for the consolidation of the MPS and L&P jurisdictions into one GMO jurisdiction", and that "[o]therwise, the calculation of the factors has remained consistent from the 2009 cases forward."[40] GMO proposed in its most recent general rate case an allocation methodology involving direct assignment of auxiliary power costs "more akin to the methodology from EO-94-36",[41] but "Staff objected and the electric/steam allocations issue was resolved by the Company's continued use of the allocators developed by Staff in the immediately preceding general rate case (Case No. ER-2016-0156)."[42]

Staff witness Charles Poston testified at the evidentiary hearing that "the method that is currently in use and that was in use following the 2016 electric rate case was deemed to be appropriate once it was agreed to by parties and approved by the Commission."[43] When asked whether the methodology was prudent, Mr. Poston responded, "[i]f the company follows what they have been directed to do, then yes."[44] Stated differently, GMO is doing what it has agreed to do since 2009; further, in terms of

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A. Yes. GMO has filed a number of general rate cases for its electric operations since June 10, 2009 (the date on which the Commission issued its orders in the 2009 cases). The rates finally established for electric service in each general rate case for GMO's electric operations since 2009, have been based on the seven-allocation factor methodology proposed by GMO in the 2009 cases which did not involve direct assignment of auxiliary power costs to the steam operations as set forth in the Allocation Procedures manual from EO-94-36.

Q. Has the same allocation methodology been used in every GMO rate case since the 2009 cases?

A. Yes. For each of the following rate cases, ER-2010-0356, ER-2012-0175, ER-2016-0156 and ER-2018-0146, the same seven factor allocation methodology has been used to allocate electric and steam costs.

[40] Ex. 3, Nunn Direct, 6:3-13.

[41] Ex. 3, Nunn Direct, 8:11-14. The Office of the Public Counsel in testimony advocates that an adjustment to ANEC (Actual Net Energy Costs) should be calculated based on the allocations manual from the EO-94-36 case, which is sometimes called the 1995 allocations procedures manual. Ex. 101, Mantle Rebuttal, 8:14-15*; see also* Ex. 4, Nunn Surrebuttal, 2:19-21 ("The use of the 1995 allocations procedures manual, which resulted in a direct assignment of costs, is no longer used based on the agreement of all parties, including OPC, in the last six GMO rate cases.").

[42] Ex. 3, Nunn Direct, 8:14-17.

[43] Hrg. Tr. Vol. 1, 190:9-17.

[44] Hrg. Tr. Vol. 1, 190:18-21.

opportunities for revising allocations in the future, GMO has agreed to work with Staff, OPC and MECG to develop new allocation procedures prior to GMO's next electric general rate case.[45]

C. Should the Commission order GMO to calculate the fuel cost of the steam operations auxiliary power that was recovered through the FAC since July 1, 2011, and return that amount plus interest at its short-term borrowing rate back to GMO's customers?

GMO has had seven (7) Prudence Reviews from June 1, 2007, through November 30, 2016.[46] Those cases have been closed.[47] Where there is not a proper challenge to a Commission order,[48] that order is final and conclusive under Section 386.550.[49] Further, Staff found no indication that GMO imprudently included steam auxiliary power costs in the FAC during the Review Period, as stated in Staff's Report of the Eighth Prudence Review of Costs Related to the Fuel Adjustment Clause for the Electric Operations of GMO in File No. EO-2019-0067.[50]

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[45] Ex. 3, Nunn Direct, 7:9-18 (citing Order Approving Stipulations and Agreements, Case No. ER-2018-0146 (consolidated with Case No. ER-2018-0145) issued October 31, 2018, Stipulation and Agreement 1, page 5, paragraph 10).
[46] Hrg. Tr. Vol. 1, 209:21-210:4.
[47] Hrg. Tr. Vol. 1, 210:13-15.
[48] For example, Section 386.500, RSMo., addresses motions for rehearing before the Commission and Section 386.510 addresses requesting review by the appellate court. *See* MO. REV. STAT. § 386.500 and § 386.510; *see also Staff of Missouri Pub. Serv. Comm'n v. Suburban Water and Sewer Co. and Gordon Burnam*, No. WC-2007-0452, 2007 WL 2285427 at *3 (July 19, 2007).
[49] "Section 386.550, which has long been held by Missouri appellate courts to be 'declaratory of the law's solicitude for the repose of final judgments,' states: 'In all collateral actions or proceedings the orders and decisions of the commission which have become final shall be conclusive.'" *Staff of Missouri Pub. Serv. Comm'n v. Suburban Water and Sewer Co. and Gordon Burnam*, No. WC-2007-0452, 2007 WL 2285427 at *3 (July 19, 2007) (quoting *State ex rel. Harline v. Public Serv. Comm'n*, 343 S.W.2d 177, 184 (Mo. App. W.D. 1960) and *StopAquila.Org v. Aquila, Inc*., 180 S.W.3d 24, 39 (Mo. App. W.D. 2005)). "Accordingly, the courts have held that 'final Commission orders are conclusive in all collateral actions or proceedings.'" *Id.*
[50] Hrg. Tr. Vol. 1, 191:13-192:17; *see also* Staff Statements of Position, EFIS Item No. 33.

D. Should the Commission Order GMO to make adjustments to the method by which it allocates auxiliary power between the electric operations and the steam operations at GMO's Lake Road plant for the 23rd Accumulation Period and/or any future FAC rate change cases?

Similar to other sub-issues contained in Issue Two, a Stipulation and Agreement squarely answers this question. The parties have agreed to work out a methodology before the next rate case. As stated in GMO witness Linda Nunn's direct testimony:

> In Case No. ER-2018-0146, the Commission approved a number of Stipulations and Agreements. The Stipulation and Agreement filed on September 19, 2018 was approved by the Commission and included the following language in paragraph 10:
>
> > GMO will use the allocations numbers used in Staff's model filed in Case No. ER-2016-0156. These allocation numbers shall be used by GMO in its FAC, QCA and surveillance reporting. **GMO agrees to work with Staff, OPC and MECG to develop new steam allocation procedures prior to GMO's next electric general rate case**.[51]

This testimony was discussed at the evidentiary hearing and OPC indicated its willingness to discuss cost allocations between electric and steam service and further indicated that agreed-upon revised allocation procedures would be implemented in a future GMO rate case.[52]

Based on the foregoing, the parties involved in this case have already agreed to develop new allocations prior to GMO's next electric general rate case.

Issue (3)

A. Was it prudent for GMO to have entered into Purchase Power Agreements with the Rock Creek and Osborn Wind Projects under the terms of the contracts as executed?

[51] Ex. 3, Nunn Direct, 7:9-18 (citing Order Approving Stipulations and Agreements, Case No. ER-2018-0146 (consolidated with Case No. ER-2018-0145) issued October 31, 2018, Stipulation and Agreement 1, page 5, paragraph 10) (emphasis added).
[52] Hrg. Tr. Vol. 1, 212:10-213:4.

B. If it was not prudent, what adjustment should the Commission order?

Staff found no indication that GMO imprudently entered into Purchase Power Agreements with the Rock Creek and Osborn Wind Projects, as stated in Staff's Report of the Eighth Prudence Review of Costs Related to the Fuel Adjustment Clause for the Electric Operations of GMO in File No. EO-2019-0067.[53]

1. Osborn Wind Energy Purchased Power Agreement

As stated in Staff's Prudence Review, the Osborn Wind Energy PPA is "creating a significant amount of additional costs compared to the revenue received."[54] However, "Staff notes this is a long-term PPA and the performance of this contract should be viewed on a long-term basis and not just from the results during this Review Period."[55] Staff will continue to review the prudency of the Osborn Wind Energy PPA in future prudence reviews, but at this time continues to recommend that costs be allowed to flow through the FAC.

2. Rock Creek Wind Project Purchased Power Agreement

As stated in Staff's Prudence Review, the Osborn Wind Energy PPA is "creating a significant amount of additional costs compared to the revenue received."[56] However, "Staff notes this is a long-term PPA and the performance of this contract should be viewed on a long-term basis and not just from the results during this Review Period."[57] Staff will continue to review the prudency of the Osborn Wind Energy PPA in future prudence

[53] Hrg. Tr. Vol. 1, 224:4-5; *see also* Staff Statements of Position, EFIS Item No. 33.
[54] Staff's Report of the Eighth Prudence Review of Costs Related to the Fuel Adjustment Clause for the Electric Operations of GMO, 33:2-3; *see also* Hrg. Tr. Vol. 1, 225:5-7.
[55] *Id*, 33:3-5; *see also* Hrg. Tr. Vol. 1, 225: 8-10.
[56] *Id*, 34:4-5; *see also* Hrg. Tr. Vol. 1, 225:5-7.
[57] *Id*, 34:5-7; *see also* Hrg. Tr. Vol. 1, 225: 8-10.

reviews, but at this time continues to recommend that costs be allowed to flow through the FAC.

Staff would also like to note that any disallowances at this point would be based on hindsight, and go against the prudence standard employed by Staff during these reviews, which is based not upon hindsight, but rather a reasonableness standard.[58] It is because of this focus that Staff does not identify the two PPAs as imprudent, and does not recommend an adjustment.

WHEREFORE Staff prays for an order from the Commission finding in its favor on each of the issues as set forth above, and making such further findings as to the Commission seem just and proper in the circumstances.

Respectfully submitted,

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[58] *Id*, 4:17-5:15; *see also State ex rel. Associated Natural Gas Co. v. Public Service Com'n of State of Mo.*, 954 S.W.2d 520 (Mo. App. W.D. 1997).

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to counsel of record this 23rd day of September, 2019.

/s/ Jeffrey A. Keevil