

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 3rd day of April, 2019.

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

ORDER REGARDING MOTION TO COMPEL

Issue Date: April 3, 2019

Effective Date: April 3, 2019

On December 28, 2018, the Office of the Public Counsel and the Midwest Energy Consumers Group (MECG) filed what they denominated as a Petition for an Accounting Order. The Commission, on its own motion, re-designated that petition as a complaint. That complaint asks the Commission to order KCP&L Greater Missouri Operations Company (GMO) to record as a regulatory liability in Account 254 the revenue and the return on the Sibley unit investments collected in rates for non-fuel operations and maintenance costs, taxes including accumulated deferred income taxes, and all other costs associated with Sibley units 1, 2, 3, and common plant.

The complaint alleges that GMO would be retiring units 1, 2, and 3 of its Sibley coal-fired electric production facility at the end of 2018. GMO's rates were recently established

by the Commission in a general rate case, ER-2018-0146, and the operation and maintenance costs associated with those units, as well as a return on the company's investment in these units, was included in those newly established rates. The complaint contends that the retirement of the units will reduce GMO's costs below the amounts considered when its rates were established, resulting in a windfall for GMO. Thus, the complaint asks the Commission to establish an accounting authority order (AAO) to require GMO to defer that alleged windfall for possible adjustment in the company's next general rate case.

Discovery has proceeded regarding the complaint, and on March 20, 2019, the Office of the Public Counsel filed a motion asking the Commission to compel GMO to respond to certain data requests. GMO responded to Public Counsel's motion on March 27, arguing that Public Counsel's data requests are not related to the issues that will be addressed in this complaint.

Commission regulation 4 CSR 240-2.090(1) provides that discovery in cases before the Commission "may be obtained by the same means and under the same conditions as in civil actions in the circuit court." Therefore, the Commission will look to the Missouri rules of civil procedure for guidance.

Civil Rule 56.01(b) establishes the permissible scope of discovery. That provision allows parties to "obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action." The rule further provides that "it is not ground for objection that the information sought will be inadmissible at trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." GMO does not assert that any of the information sought by Public Counsel is privileged, so

the question is simply whether that information is relevant to the complaint. Civil Rule 56.01(b) places the burden of establishing relevance on the party seeking discovery, so Public Counsel bears that burden in this circumstance. Keeping those standards in mind, the Commission will review each of the data requests for which Public Counsel seeks to compel answers.

DR. 8505: *Please provide a narrative explanation for how GMO will meet its resource adequacy requirements from the Southwest Power Pool following the closure of the Sibley Station.*

DR. 8506: *Please provide a narrative explanation justifying GMO's decision to retire the Sibley Station.*

DR. 8507: *Identify the resources that make up for the capacity lost by the retirements of Sibley units 1, 2, and 3.*

GMO objects to these data requests, contending they are not relevant to the narrow issues before the Commission in this complaint. According to GMO, the only issue before the Commission in this action regarding the issuance of an AAO are the factors the Commission must consider when deciding whether to issue an AAO: whether the subject of the AAO request is an extraordinary item that is of an unusual nature and infrequent occurrence. GMO contends Public Counsel's data requests are relevant to the prudence of GMO's decision to retire the Sibley Station units and the adequacy of GMO's remaining resources, not to the question of whether an AAO is appropriate.

Public Counsel counters that the information sought through these data requests is relevant to the question of whether retirement of the Sibley Station is unusual, abnormal, or

extraordinary. Further, Public Counsel contends the data requests could lead to the discovery of additional costs that could be encompassed within an AAO.

The Commission finds that DRs 8505 and 8507 seek information about resource adequacy after the retirement that is relevant, or at least could lead to information that is relevant to the question of whether retirement of the Sibley Station is unusual, abnormal, or extraordinary, and thus, whether an AAO is appropriate. On the other hand, DR 8506, which requests a narrative justification of GMO's decision to retire the Sibley Station, is aimed solely at the prudence of GMO's decision and is not relevant to the AAO issue. Consequently, the Commission will direct GMO to respond to DR 8505 and 8507, but will not require it to respond to DR 8506.

DR. 8508: *Please provide the results of GMO's most recent GMO fuel run that includes Sibley units 2 and 3.*

DR. 8509: *Please provide the results of any fuel run of GMO without Sibley unit 2, but with all other inputs being the same as the model requested in DR 8508.*

DR. 8510: *Please provide the results of any fuel run of GMO without Sibley units 2 and 3, but with all other inputs being the same as the model requested in DR 8508.*

GMO again argues that the information Public Counsel is seeking through these requests is relevant to the company's FAC process through which fuel-related costs might be recovered, but is not relevant to the AAO issue. Public Counsel contends the information sought through these data requests is relevant because it could reveal costs and revenues that could be tracked through an AAO.

The Commission agrees with GMO that fuel costs and revenues are already tracked through the FAC process, but that does not necessarily mean those costs could not be

included in an AAO. At least Public Counsel should be able to make that argument at the appropriate time, and the Commission is not willing to preclude that possibility through its ruling on a discovery dispute. As a result, the Commission will direct GMO to respond to DRs 8508, 8509, and 8510.

DR. 8514: *How are the stranded costs of Sibley 3 handled in GMO's 2017 resource plan?*

GMO again objects that the information Public Counsel seeks through this data request is not relevant to the issues regarding the issuance of an AAO. In addition, GMO points out that its 2017 Integrated Resource Plan (IRP) documents are freely available to the public, including Public Counsel. For that reason, GMO contends it should not be required to answer this data request. Public Counsel argues the requested information is relevant to show whether GMO has consistently planned to recover depreciation on the Sibley units despite plans to retire them at the end of 2018.

The Commission agrees with Public Counsel that GMO's plans for handling the stranded costs of Sibley 3 may be relevant to the question of whether the retirement is an extraordinary event. However, the language of this data request merely asks GMO to describe how stranded costs are handled in the company's resource plan. That plan is available to Public Counsel, and its experts can review the plan and draw their own conclusions about how those costs are handled without the broad assistance demanded by this data request. The Commission will not require GMO to answer DR. 8514.

THE COMMISSION ORDERS THAT:

1. The Office of the Public Counsel's Motion to Compel is granted as to DRs 8505, 8507, 8508, 8509, and 8510. KCP&L Greater Missouri Operations Company shall answer those data requests no later than April 12, 2019.
2. The Office of the Public Counsel's Motion to Compel is denied as to DRs 8506 and 8514.
3. This order shall be effective when issued.

BY THE COMMISSION



Morris L. Woodruff

Morris L. Woodruff
Secretary

Silvey, Chm., Kenney, Hall, Rupp, and
Coleman, CC., concur.

Woodruff, Chief Regulatory Law Judge

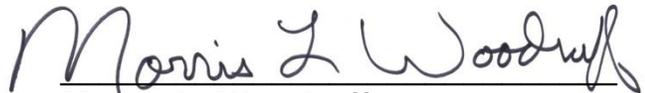
STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

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

**WITNESS my hand and seal of the Public Service Commission,
at Jefferson City, Missouri, this 3rd day of April 2019.**




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

April 3, 2019

File/Case No. EC-2019-0200

Missouri Public Service Commission

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Midwest Energy Consumers Group

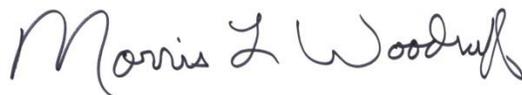
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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,



Morris L. Woodruff
Secretary

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.