

# BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

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

## DISSENTING OPINION OF COMMISSIONER WILLIAM P. KENNEY IN THE REPORT AND ORDER

I respectfully dissent from the majority opinion in this case because I believe it reaches the wrong conclusion in granting the Accounting Authority Order (AAO) when the record supports denial of such an AAO because the retirement of coal facilities is not an extraordinary event. Traditionally, the Commission has been reluctant to grant requests for AAOs, finding a rate case is the more appropriate venue to consider all costs and revenues at one time, rather than this unique exception to otherwise prohibited single-issue ratemaking. I believe Evergy Missouri West<sup>1</sup> (Evergy West or Company) followed applicable rules and laws by making appropriate filings with the Commission and proper public announcements about the future retirements of Sibley Units 2 and 3, including Sibley Unit 1 boiler and common plant.<sup>2</sup> (Sibley Units). Additionally, the Company made a sound business management decision when it decided to

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<sup>1</sup> Known at the time of filing as Kansas City Power & Light Greater Missouri Operations Company.

<sup>2</sup> When Sibley Units 2 and 3 were retired, the Sibley Unit 1 boiler and common plant were also retired and are included when Sibley Units are used in this document.

retire Sibley Units based on state policy, economic analysis, and national trends. The retirement of coal facilities is a management decision, it is not unusual in nature or infrequent in occurrence, and therefore is not extraordinary to qualify for AAO treatment. In finding that such a retirement does qualify for AAO treatment, the Majority decision creates inconsistency with how the Commission has treated requests for AAOs in the past and created regulatory uncertainty for the utilities in Missouri.

### **Timeline of Events**

It is first important to identify the timeline of the discussions related to the Sibley Units. Those discussions about the Sibley Unit retirements began more than two and a half years prior to the actual retirements. On January 20, 2015, the Company formally known as KCP&L Greater Missouri Operations announced that Sibley Unit 1 and Unit 2 would stop burning coal by the end of 2019.<sup>3</sup> This announcement cited the company's commitment to a sustainable energy future and balanced generation portfolio as reasons for these expected retirements.<sup>4</sup> The Company also stated that it will make final decisions in the coming years whether to retire the units at Montrose and Sibley or convert them to alternative fuel sources.<sup>5</sup> On June 2, 2017, the Company announced its plans to retire the Montrose and Sibley units by December 31, 2018, instead of 2019 as previously announced.<sup>6</sup> In that announcement, the Company stated that the contributing factors to deciding to retire the Sibley Units included: (1) the reduction in wholesale electricity market prices, (2) a reduction in the required reserve generation capacity; (3) a decline in near-term capacity needs, (4) the age of the Sibley plants and (5) expected environmental

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<sup>3</sup> Ex 24, Ives Rebuttal, DRI-2, Page 2.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at DRI-3 at 1.

compliance costs.<sup>7</sup> This information was released more than one and a half years before the units were actually retired. In addition to the Company announcements about future retirements, the Company filed its Integrated Resource Plan 2017 Annual Update on June 1, 2017, and presented that the IRP analysis determined that the retirement of Sibley Units 2 and 3 by 2019 should occur.

On January 30, 2018, Evergy Missouri Metro<sup>8</sup> and Evergy Missouri West filed general rate cases separately that were ultimately consolidated into one case.<sup>9</sup> The decision to file a rate case was driven by the desire to reflect the efficiencies gained from the merger of Greater Plains Energy Incorporated and Westar Energy and a new customer billing system.<sup>10</sup> At the time of the rate case, Evergy West's position was that while it anticipated the Sibley Units would be retired by December 31, 2018, a final decision had not yet been made and therefore it could be delayed due to an unforeseen circumstance.<sup>11</sup> Additionally, the Companies elected to use Plant In Service Accounting (PISA) pursuant to Section 393.1400(5) RSMo, and as a result, its rates are currently frozen by the terms of Section 393.165.2 RSMo, and new rates cannot be effective before December 6, 2021.<sup>12</sup>

The rate case used a historical test year ending June 30, 2017, with a true-up date of June 30, 2018.<sup>13</sup> At that time, the Sibley Units were operating and thus those operation costs were

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<sup>7</sup> *Id.* at DRI-2 at 1-2.

<sup>8</sup> Known at the time of filing as Kansas City Power & Light.

<sup>9</sup> Commission File Nos. ER-2018-0145 and 0146.

<sup>10</sup> Ex 6, page 1, Schallenberg Surrebuttal, RES-S-I.

<sup>11</sup> Transcript, Page 404, Lines 3-15.

<sup>12</sup> Transcript page 296, lines 17-22; Ex. 24, Ives Rebuttal, Page 26, lines 12-12.

<sup>13</sup> *Order Granting Motion to Consolidate and Order Setting Procedural Schedule*, ER-2018-0145 and 0146, P. 3 (March 13, 2018).

appropriately included in rates that went into effect on December 6, 2018.<sup>14</sup> On October 31, 2018, the Commission issued an Order Approving Stipulations and Agreements, which reduced base rates by \$24 million with an effective date of November 10, 2018.<sup>15</sup> The Commission approved tariffs consistent with its Order on November 26, 2018, with an effective date of December 6, 2018.<sup>16</sup>

On September 5, 2018, the Sibley Unit 3 unit suffered a forced outage as a result of turbine vibrations and ceased generation electricity at that time.<sup>17</sup> Rather than repair Sibley 3, Evergy West retired all three units on November 13, 2018, with the only remaining part of Sibley 1 unit in operation being the boiler.<sup>18</sup> This occurred after the Commission approved the Stipulations and Agreements in the rate case.<sup>19</sup>

On December 28, 2018, the Office of the Public Counsel (OPC) and the Midwest Energy Consumers Group (MECG) filed what they denominated as a Petition for an Accounting Order. The Commission determined that the Petition should be considered a complaint and this case proceeded from there, with the Commission issuing its Report and Order on October 17, 2019.

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<sup>14</sup> Transcript, Page 404, Lines 3-15.

<sup>15</sup> *In the Matter of Kansas City Power & Light Company's request for Authority to Implement a General Rate Increase for Electric Service, File No ER-2018-0145*, Order Approving 2018 Rate Case Stipulations, October 31, 2018.

<sup>16</sup> *In the Matter of Kansas City Power & Light Company's request for Authority to Implement a General Rate Increase for Electric Service, File No ER-2018-0145*, Order Approving Tariffs, November 26, 2018.

<sup>17</sup> Transcript, page 377, Lines 7-11, Ex 26, and Transcript, page 379, Lines 12-17.

<sup>18</sup> Ex 21, Spanos Rebuttal, page 6 fn 1.

<sup>19</sup> *In the Matter of KCP&L Greater Missouri Operations Company's Request for Authority to Implement a General Rate Increase for Electric Service, File No ER-2018-0146*, Order Approving Stipulations and Agreements, October 31, 2018.

### *Not Extraordinary*

A utility company's decision to retire plant assets is a routine decision and standard operating procedure for any utility.<sup>20</sup> All tangible assets placed in service are expected to have a finite service life and will likely be retired at some point.<sup>21</sup> Retirement of facilities is not an extraordinary event.<sup>22</sup> Generating facilities are not assumed to have an infinite life and would be expected to be retired at some future point.<sup>23</sup> It is not extraordinary.<sup>24</sup> Other Missouri utilities have retired, or announced plans to retire, coal or other fossil fuel generating units.<sup>25</sup> In my tenure at the Commission no utility or party has requested an AAO for such retirements.

The evidence in this case does not meet the legal standard used when evaluating whether or not to grant an AAO. Historically, the Commission has only allowed AAOs for costs associated with an extraordinary event that is unusual or unique in nature.<sup>26</sup> The standard the Commission uses when it analyzes request for AAOs is based on the Uniform System of Accounts (USOA). Commission Rule 20 CSR 4240-20.030(1) requires Missouri utilities to keep all accounts in conformity with the USOA as prescribed by the Federal Energy Regulatory Commission, as published at 18 CFR Part 101. Instruction number 7 of the General Instructions for the Uniform System of Accounts provides that a utility's net income should generally reflect all items of profit and loss during the period. However, that instruction allows for special treatment of certain items. In the words of the instruction:

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<sup>20</sup> *Id.* at Page 4, lines 14-16.

<sup>21</sup> *Id.* at Page 4 lines 12-13.

<sup>22</sup> *Id.* at Page 6, line 7.

<sup>23</sup> *Id.* at Page 4, Lines 19-21.

<sup>24</sup> *Id.* at Page 4, lines 14-16.

<sup>25</sup> *Id.* Page 5 lines 8-10.

<sup>26</sup> Ex. 17, Cross-Rebuttal Testimony of Mark Oljischlaeger Page 3, lines 17-18.

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**. ... To be considered as extraordinary under the above guidelines, an item should be more than approximately 5 percent of income, computed before extraordinary items. Commission approval must be obtained to treat an item of less than 5 percent, as extraordinary.<sup>27</sup>

The Commission has authority to defer extraordinary costs of a utility for consideration in a later period. In doing so, it is not engaging in single-issue rate making.<sup>28</sup> The purpose of an AAO is to defer a final decision on current extraordinary costs until a rate case is in order. In that subsequent rate case, the Commission is not bound by the terms of the AAO in setting new rates.<sup>29</sup> An AAO is a deferral mechanism that allows a utility to “defer and capitalize certain expenses until it files its next rate case”.<sup>30</sup> For accounting purposes, the consistent meaning of an extraordinary item is an event that is considered unique, unusual and nonrecurring.<sup>31</sup>

In a 1991 decision involving a request for an AAO, the Commission held that an AAO was appropriate where “events occur during a period which are extraordinary, unusual and unique, and not recurring.” This has been described as “the Sibley standard.”<sup>32</sup>

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<sup>27</sup> 18 CFR Ch. 1, Pt. 101, General Instruction 7. (Emphasis added.) That regulation is in the record as Ex. 4.

<sup>28</sup> *State ex rel. Office of Pub. Counsel v. Pub. Serv. Com'n of Mo.* 858 S.W. 2d 806 (Mo. App. W.D. 1993).

<sup>29</sup> *Missouri Gas Energy v. Pub. Serv. Com'n of Mo.*, 978 S.W. 2d 434 (Mo. App. W.D. 1998).

<sup>30</sup> *Mo. Gas Energy v. Pub. Serv. Comm'n*, 978 S.W.2d 436 (Mo.App W.D. 1998).

<sup>31</sup> *Kan. City Power & Light Co.'s Request for Auth. To Implement a General Rate Increase for Elec. Serv.* 7, 769-770 (Mo.App. W.D. 2016).

<sup>32</sup> *In the Matter of the Application of Missouri Public Service for the Issuance of an Accounting Order Relating to its Electrical Operations*, Case No. EO-91-358, Report and Order, 1 Mo. P.S.C. 3d 200, 205, 1991.

Previously, Missouri-American Water Company (MAWC) requested an AAO for property taxes because it was faced with a large change in its property taxes due to administrative changes in two Missouri counties and mistaken amounts paid by MAWC.<sup>33</sup> In the Commission's Order denying the request, the Commission stated, "Property taxes are an expected cost of operating a business in the State of Missouri. It is an obligation borne by all investor-owned utilities, including MAWC ... There is nothing unusual or extraordinary about paying property taxes to warrant AAO. It is a recurring expense."<sup>34</sup>

There is nothing extraordinary or unusual about the retirement of coal plants. Retiring coal plants may be equated to paying property taxes in that it is part of the ordinary course of business. I do not distinguish MEGC and OPC's request in this complaint case from MAWC's request for an AAO to address higher than usual property taxes in a previous case. Therefore, I do not believe that this Commission should reach a different result.

Coal retirements are part of the ordinary course of utility business. This point was well supported in the record. From October 2013 through September 2018, GMO retired \$90 million of generation plan.<sup>35</sup> From 1949 to 2019, Westar Energy, Inc. (or its predecessors) retired 38 generating units, five of which were retired in 2018.<sup>36</sup> Evergy Missouri Metro's Montrose Unit 1 was retired on April 16, 2016, and no party asked for an accounting authority order.<sup>37</sup> Sibley Unit 1 except the boiler was retired on June 30, 2017 and no party asked for an accounting

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<sup>33</sup> *In the Matter of the Application of Missouri-American Water Company for an Accounting Authority Order Related to Property Taxes in St. Louis County and Platte County, Case No. WU-2017-0351*, Report and Order, page 15-16. December 20, 2017.

<sup>34</sup> *Id.*

<sup>35</sup> Ex. 22, Klote Rebuttal, Page 25, lines 13-14.

<sup>36</sup> Ex 24, Ives Rebuttal, Page 13, Lines 17-19.

<sup>37</sup> *Id.* at Page 12, lines 15-18.



authority order.<sup>38</sup> On December 31, 2018, Evergy Missouri Metro retired Montrose Units 2 and 3, including common plant, and no party asked for an accounting authority order.<sup>39</sup> In the case of Montrose Units 2 and 3 and common plant retiring, the Evergy Missouri Metro is deferring depreciation expense, just as Evergy West and other parties agreed in the First Stipulation in its most recent rate case.<sup>40</sup> MCEG and OPC did not file a similar case in regard to Montrose Units 2 and 3, even though it has the same language as the stipulation with Evergy West. This leads to entirely inconsistent treatments and requirements for two very similar utilities serving similar territories.

Additionally, Staff's witness provided a method in which this matter could be considered in the next rate case without the creation of an AAO.<sup>41</sup> Under the "mass asset" accounting procedure, Evergy West should gradually receive rate recovery of the unrecovered balance through ongoing application of depreciation rates to the remaining investment over an extended period.<sup>42</sup> The Company's witness testified more specifically as to how the Company records plant retirements following the USOA accounting rules for mass asset accounting by removing the original gross cost amount from both plant in service account 101 and accumulated depreciation reserve account 108.<sup>43</sup> The entry that is booked is a credit to account 101 which removes the original gross cost amount from plant in service, and a debit to account 108 which reduces the accumulated depreciation reserve in a like original gross cost amount. After this entry, the

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<sup>38</sup> Ex 24, Ives Rebuttal, Page 11, lines 4-11.

<sup>39</sup> *Id.* at Page 12, lines 19-20 and Page 13 lines 2-4.

<sup>40</sup> *Id.* at Page 12, line 23, and Page 13, lines 1-2.

<sup>41</sup> Ex. 17, Cross-Rebuttal Testimony of Mark Oligschlaeger, Page 7, lines 18-22.

<sup>42</sup> *Id.* Page 7, lines 7-10.

<sup>43</sup> Exhibit 22, Klote Rebuttal, Pages 24, lines 21-23.



resulting net plant (plant in service less accumulated depreciation) is identical as before the entry is recorded.<sup>44</sup>

The Company based its treatment of the Sibley Units, in part, on the method retirements have historically been handled. Every utility asset has a finite service life and will likely retire at some point.<sup>45</sup> Sibley Units 2 and 3, and the boiler from Unit 1, were all part of the Company's rate base when that case was resolved. The retirements had not occurred by the end of the rate case. The parties discussed the potential retirements and accounted for them in the First Stipulation and Agreement by specifically addressing how to account for the accumulated depreciation of the plants.<sup>46</sup>

Allowing an AAO in this case changes that historic treatment of plant retirement. For several years, the Company put the public and the parties on notice that the Sibley Units would likely be retired in the next few years. The retirement was not sudden. Finally, it is important to note that the GMO and Staff witnesses provide an appropriate avenue for handling these retirements in the next rate case. The company would create a mass asset accounting procedure which would allow a future Commission to evaluate the appropriate treatment; there is no need for an AAO to be granted in this case. The retirements of the Sibley Units were not extraordinary.

### ***FUTURE COMMISSION***

In discussing this case, there has been much discussion about leaving the ultimate decision to a future Commission, but the Majority's decision leaves that future Commission in a bind in several ways. The retirement will not be in the test year. This case will be seen as an

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<sup>44</sup> *Id.* at Page 25, lines 1-5.

<sup>45</sup> Ex. 17, Cross-Rebuttal Testimony of Mark Oligschlaeger, page 4, lines 12-13.

<sup>46</sup> *In the Matter of KCP&L Greater Missouri Operations Company's Request for Authority to Implement a General Rate Increase for Electric Service, File No ER-2018-0146*, Non-Unanimous Partial Stipulation and Agreement, Page 9; Transcript, page 182, lines 7-14.

exception to the Commission's analysis and treatment of requests for an AAO. This present Commission reviewed the evidence in the rate case, approved the stipulations in the rate case, and heard the arguments for the AAO request in this case, therefore this Commission should make the decision. The Majority should not kick the proverbial can down the road to avoid making a tough, and perhaps unpopular, decision now. As a result of the Majority's decision, no final resolution will be made until the end of Evergy Missouri West's next rate case, which they are prohibited from filing for 3 years.<sup>47</sup> That means, it will be that much further removed from the 2018 retirement than it is today, and because the regulatory world is quickly changing who knows what the regulatory landscape will look like then and there is not finite resolution. It is unfair to place this burden on a future Commission.

### ***Business and Management Decision***

The utility retains the lawful right to manage its own affairs and conduct its business as it may choose, as long as it performs, legally, within the appropriate regulations and does not harm the public.<sup>48</sup> Retiring and controlling its electricity load are within the discretion of the utility's management team. Utilities should be aware of national and state policies. As my colleague, Commissioner Hall, stated in his Concurring Opinion, we are witnessing a massive shift away from coal generation to gas and renewables.<sup>49</sup>

Federal and state regulatory policy changes, technological and operational developments, and consumer demand for renewable energy have resulted in a significant transformation of the

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<sup>47</sup> Section 393.1655.2, RSMo provides that an electrical corporation's base rates are to be held constant for a period of three years after the utility gave notice of its election under section 393.1400(5), RSMo to make the plant in service deferrals allowed by that statute.

<sup>48</sup> *State ex rel. Harline v. Publ Serv Comm'n* 343 S.W.2d 177, 182 (Mo. App. 1960).

<sup>49</sup> Concurring Opinion of Commissioner Daniel Y. Hall in the Report and Order, page 2.

economics that affect the business of generating electricity.<sup>50</sup> As a result, coal plants have been retired more frequently and in the course of business across the country.<sup>51</sup> Coal retirements are becoming more common in the industry and routing in the last 10 years.<sup>52</sup> A total of 89, 731 MW of coal-unit capacity has been retired since 1969.<sup>53</sup> About 85% of that total, 76,526 MW, has been retired since 2010.<sup>54</sup> 4,548 fossil-fueled generating units have retired since 1969, and almost 70 percent of this capacity was retired in the last decade beginning in 2010.<sup>55</sup>

Changes in regulatory policy, consumer demand, technological breakthroughs, fallen prices in natural gas and renewable generation resources, and operational costs results in a shift in electric utility generation economics that made many coal plants too expensive to operate and caused a significant increase in the retirement of coal plants generally, and the Sibley Units in particular.<sup>56</sup> Coal units continue to face increasing O&M costs as a result of environmental and other regulations regarding emissions, fuel storage, fuel disposal, and related issues.<sup>57</sup> In light of the continuing regulatory, technological, consumer and economic trends, it would not be reasonable to describe the Sibley retirements as premature.<sup>58</sup> Retiring the Sibley Units reflects the realities of the electric generation business that all public utilities must face.<sup>59</sup>

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<sup>50</sup> Exhibit 20, Rogers Rebuttal, Page 6, lines 19-23.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at Page 10 lines 1-4.

<sup>53</sup> *Id.* at Page 8, lines 19-23.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at Page 9, lines 14-18.

<sup>56</sup> *Id.* at Page 13, lines 3-10.

<sup>57</sup> *Id.* at Page 17, lines 19-22.

<sup>58</sup> *Id.* at Page 20, lines 14-17.

<sup>59</sup> *Id.*

In this situation, the Company evaluated the national trends related to coal generation. The Company is also well aware of the State's preference to support renewable energy and often leads the state in that task. The Company is in the business of routinely evaluating its generating sources. Several witnesses testified that retirements are routine. As such, no one has ever requested, let alone been granted, an AAO for such routine retirements. The Commission should not now second-guess the Company's expert evaluation of when to retire coal generation and create a new regulatory avenue for second-guessing those decisions by parties to the rate case.

The Company likely avoided court costs, environmental costs, and ratepayer expenses by closing the Sibley Units and avoiding additional costs in repairing or retrofitting them and any litigation that would have resulted from such a decision. A final decision was not made in haste simply to meet the rate case timeline, it was made over time when the Company thought it best to make the decision. Every party to the rate case knew it was possible that the Sibley Units could be retired at any time after the rate case. The Company made a decision based on its regulatory history, experience, review of costs, analysis of generation, and awareness of national trends. The Commission should allow them to make such decisions. The Commission should not treat one retirement uniquely by granting an AAO request as the Majority did in this case.

The Company was up front about its intentions to retire the Sibley Units for over two years. It filed appropriate information with the Commission during the Integrated Resource Planning dockets and based its decision to retire on sound economic, environmental, and national considerations. Retiring a coal generating unit is a routine utility decision that does not warrant special accounting in the form of an AAO. The Company made a sound business and management decision to retire the Sibley Units and the Commission should support that decision.

I respectfully dissent from the Majority decision in this case.



**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 20<sup>th</sup> day of December 2019.**



  
**Morris L. Woodruff**  
**Secretary**

**MISSOURI PUBLIC SERVICE COMMISSION**

**December 20, 2019**

**File/Case No. EC-2019-0200**

**Missouri Public Service  
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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**

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