

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Petition for an Order directing)
KCP&L Greater Missouri Operations Company to)
Record in a Regulatory Liability its Benefits from) Case No. EU-2019-XXXX
Certain Avoided Costs and Foregone Revenues)
Due to its Election to Prematurely Retire the Sibley)
Generation Units.)

PETITION FOR AN ACCOUNTING ORDER

COME NOW the Office of the Public Counsel (OPC or Public Counsel), and the Midwest Energy Consumers Group (MECG), (Collectively “the Petitioners) by and through their respective counsel, and request that the Public Service Commission (Commission) issue an accounting order under subdivisions (4) and (8) of section 393.140, RSMo. The Petitioners state as follows:

Background

1. KCP&L Greater Missouri Operations Company (GMO) is an electrical corporation engaged in the generation, transmission, and sale of electricity within Missouri, primarily serving the western half of the state.
2. GMO’s income for the fiscal year ending June 30, 2018, as shown in the Commission Staff’s True-up Accounting Schedule in its most recent rate case is \$160,169,593.¹
3. At the time of that true-up, GMO’s generation portfolio included Sibley units 1,² 2, 3, and common plant. All of the Sibley units used steam generation.

¹ *Staff True Up Accounting Schedules*, Case No. ER-2018-0146 Accounting Schedule 1 (Sept. 4, 2018).

² The Petitioners recognize that Sibley 1 was retired on June 1, 2017, with the exception of the boiler used for Sibley 3. *Exhibit 113, Direct Testimony of Burton Crawford*, Case No. ER-2018-0146 (January 30, 2018). The Petitioners include Sibley 1 in this application because costs associated with Sibley 1 were used to determine GMO’s rates in ER-2018-0146.

4. GMO requested a rate increase this year in Case Nos. ER-2018-0146. That case was resolved via Commission approved stipulations on October 31, 2018. The resolution of those cases approved rates that include the operation and maintenance costs, return on any investment, property taxes, and other sums associated with the Sibley units. The new rates became effective December 6, 2018.

5. The operation and maintenance costs alone for Sibley generation units 1, 2, 3, and common plant amount to over \$27 million annually.³ Annual depreciation expense for the Sibley units is \$10.4 million.⁴ The amount of property, payroll, and other Sibley related tax payments are not available at this time; and the Petitioners recognize that other heretofore unrecognized costs may also be associated with the Sibley units and common plant.

6. Press releases on January 20, 2015, June 2, 2017, and August 1, 2018, from both the Kansas City Power & Light Company and GMO announce the impending retirement of Sibley. The President and Chief Executive Officer of Evergy, Inc., GMO's parent company, declared that the Sibley generation units are planned to be retired by the end of 2018 during the Third Quarter Earnings Conference Call for investors on November 8, 2018.

7. Absent some action by the Commission, GMO's ratepayers will continue to pay rates that include nonexistent expenses attributed to these units.

Parties

8. Public Counsel and the MECG are the petitioners.

9. Public Counsel's address is Governor Office Building, P.O. Box 2230, 200 Madison Street, Suite 650 Jefferson City, Missouri 65102. Public Counsel is a Missouri state agency within

³ Response to OPC Data Request 8562, Case no. ER-2018-0146 (Aug. 17, 2018).

⁴ *Staff True Up Accounting Schedules*, Case No. ER-2018-0146 Accounting Schedule 5 (Sept. 4, 2018).

the Department of Economic Development, and is directed by Section 386.710, RSMo to “represent and protect the interests of the public” before the Commission.

10. MECG’s address is 308 E. High Street, Jefferson City, Missouri 65101. MECG is an incorporated entity formed to represent the interests of large commercial and industrial users of gas, electricity and water in the state of Missouri. In this regard, MECG has been granted intervention in numerous GMO rate proceedings.
11. GMO is the respondent. GMO is a Delaware corporation with its principle office and place of business at 1200 Main Street Kansas City, Missouri 64105. GMO’s fictitious name registration was filed in Case No. EN-2009-0015.
12. The Staff of the Public Service Commission (Staff) is a party by rule 4 CSR 240-2.010(10). Staff’s address is Governor Office Building, P.O. Box 360, 200 Madison Street Jefferson City, Missouri 65102.
13. The OPC directly contacted GMO’s representatives before initiating this petition. The conversations did not absolve the necessity of this filing.

Jurisdiction

14. GMO is a an “electrical corporation” and “public utility” as defined by Section 386.020, RSMo, and is hence subject to the Commission’s jurisdiction. This Commission has exclusive jurisdiction to hear and determine petitions against public utilities for matters within the Commission’s jurisdiction and purview.

Petition for an Accounting Order

15. The Petitioners request that the Commission order GMO to defer to a regulatory liability account all revenues associated with non-existent costs and return on Sibley investments associated with GMO's Sibley generation units 1, 2, 3, and common plant that were included in the revenue requirement used to set rates.

16. Missouri courts endorse the Commission creating regulatory deferrals to account for extraordinary costs and events.⁵ The Missouri Court of Appeals has held that regulatory deferrals for extraordinary events are not retroactive ratemaking, and thus authorized them outside of a general rate case proceeding.⁶ Indeed, the Sibley units now owned by GMO have previously been the subject of accounting orders to capitalize capital improvement costs,⁷ and to defer reconstruction and coal conversion costs.⁸

17. Along with the Missouri Courts, the Uniform System of Accounts also endorses the utilization of deferral accounting for extraordinary events. In fact, Commission rules provide that Missouri electrical corporations shall use the Uniform System of Accounts Prescribed for Public Utilities and Licensees.⁹

18. The General Instructions for the Uniform System of Accounts explains that an electrical utility's income should reflect profits and losses during the test period of the most recent general rate case, and that those:

“[I]tems 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

⁵ E.g., *State ex rel. Mo. Gas Energy v. Pub. Serv. Comm'n*, 210 S.W.3d 330, 335-36 (Mo. App. W.D. 2006); *Mo. Gas Energy v. Pub. Serv. Comm'n*, 978 S.W.2d 434, 438 (Mo. App. W.D. 1998).

⁶ See *Mo. Gas Energy*, 210 S.W.3d at 336.

⁷ *State ex rel. Aquila, Inc. v. Pub. Serv. Comm'n*, 326 S.W.3d 20, 27 (Mo. App. W.D. 2010).

⁸ *State ex rel. Mo. Off. Of Pub. Counsel v. Pub. Serv. Comm'n*, 858 S.W.2d 806, 808 (Mo. App. W.D. 1993).

⁹ 4 CSR 240-20.030.

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...*¹⁰

19. Electric utilities may then account for the associated costs of “extraordinary items” in the Uniform System of Accounts number 254, which is specifically designated for regulatory liabilities.¹¹ What amounts may be allocated to Account 254 will come from various other accounts, but the failure to identify every account in this petition does not foreclose any inclusion of costs within the requested regulatory liability.¹²

20. The retirement of a generation facility will also implicate accumulated deferred taxes, either protected or unprotected, and the return on the Sibley investments, which GMO will have to identify and account for in a regulatory liability account.

21. The premature retirement of the Sibley generation units is an extraordinary event within the scope of Missouri case law as well as the Uniform System of Accounts. Indeed, the

¹⁰ 18 CFR Part 101 (1993) (emphasis added).

¹¹ *Id.*

¹² Within the Uniform System of Accounts, electric utilities record depreciation expense in Account 403. Account 414 addresses revenues and expense incurred in the operation of an electric plant. Accounts 500, 502, 505, 506, 507, 510, 511, 512, 513, and 514 address the operation and maintenance costs of steam power generation. Sibley’s electrical energy generation is steam based. Account 557 speaks to miscellaneous charges from the purchase of electricity. Accounts 920 and 921 catalogue administrative costs. Accounts 924 and 925 address property insurance injuries to the utility’s property. Account 926 involves employee pension and benefits, and Account 930 records miscellaneous general expenses. All of these accounts, and potentially more, document the costs and revenues associated with generating electricity at Sibley. The loss of Sibley thereby implicates at least these accounts. The loss of Sibley also possibly implicates the recordings in Accounts 408.1 and 408.2 regarding taxes other than income; 440 through 451, 456, and 457 regarding the sale of electricity; and 560 through 574 regarding operation and maintenance expenses related to transmission.

retirement of the Sibley units is of an unusual nature and infrequent occurrence justifying an accounting order.

22. The premature retirement of the Sibley units is unusual because electric utilities do not retire generating units regularly or frequently. The Commission and Court of Appeals previously determined that costs to *renovate* the Sibley units were subject to an accounting deferral because that activity was “unusual and not recurring.”¹³ Renovating generation units occurs more frequently than retiring the unit altogether, which occurs only once. Therefore, the premature retirement of the Sibley units is unusual.

23. The premature retirement of the Sibley units is also unusual due to the circumstances underlying its currently ordered rates. The Commission set the current rates for GMO in Case No. ER-2018-0146 assuming that the Sibley units would remain operational during the subject rates effective period. Consequentially GMO’s ratepayers will be paying for non-existent expenses, while at the same time no longer benefitting from Sibley’s revenues. Such a result for ratepayers is beyond the norm, and warrants accounting thereof.

24. The premature retirement of the Sibley units also represents an infrequent occurrence because it is a one-time occurrence. The test period used to determine GMO’s rates did not contemplate repeated or common retirements of generation units. The test period also did not take into account the change in costs or savings from such retirements. Rather, the test period presumed such events would not occur when setting GMO’s future rates.

25. Sibley units 1, 2, 3, and common plant costs constitute over five percent of GMO’s income. As indicated, while Sibley costs are roughly \$23 million annually, GMO’s annual income is \$160.17 million. Therefore, dividing Sibley’s operations and maintenance costs into GMO’s

¹³ *Pub. Serv. Comm’n*, 858 S.W.2d at 811

income alone accounts for approximately 17% of GMO's income. That said, however, the specific amount of property, payroll, and other taxes associated with Sibley are not ascertainable at this time. However, those numbers combined with operations and maintenance and depreciation expense, clearly impact more than five percent of GMO's income.

26. The Petitioners have attached further justification for their Application hereto in the form of the affidavits of OPC witnesses John A. Robinett and Robert E. Schallenberg.

27. The request for an accounting order does not preclude future arguments regarding the prudence of GMO's decision to retire Sibley and relinquish its associated revenues from selling generation into the SPP Integrated Marketplace.

28. The OPC, GMO, and Staff met on several occasions recently to discuss the retirement of Sibley. On December 20, 2018, OPC counsel advised GMO counsel of the intention to file this Petition, and the two parties discussed the Petition again on December 26, 2018. Those discussions were unsuccessful in resolving this matter.

WHEREFORE, the Petitioners pray that the Commission order 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 operation and maintenance costs, taxes including accumulated deferred income taxes, and all other costs associated with Sibley units 1, 2, 3, and common plant. The Petitioners are not asking for an accounting order addressing depreciation expense as the Commission has already approved a stipulation requiring GMO to record it as a regulatory liability.

Respectfully,

OFFICE OF THE PUBLIC COUNSEL

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on this 28th day of December, 2018, with notice of the same being sent to all counsel of record.

/s/ Caleb Hall