



BEN H. STONE  
t: (228) 214-0402  
f: (888) 201-0157  
e: [bstone@balch.com](mailto:bstone@balch.com)

September 15, 2017

VIA E-MAIL  
VIA U.S. MAIL

Katherine Collier, Esq., Executive Secretary  
Mississippi Public Service Commission  
501 North West Street, Suite 201A  
Jackson, MS 39201

In Re: **Encouraging Stipulation of Matters in Connection with the Kemper County IGCC Project  
Docket No. 2017-AD-112**

Dear Katherine:

On behalf of Mississippi Power Company I have enclosed the original and twelve (12) copies of the Company's Motion for Reconsideration in the above-referenced matter. I have also included a copy of this letter, which I appreciate you file-stamping and returning to me in the enclosed, self-addressed, stamped envelope.

Thank you for your assistance in this matter.

Very truly yours,

BALCH & BINGHAM LLP

A handwritten signature in black ink, appearing to read "Ben H. Stone".

Ben H. Stone

BHS:hr

Attachment

cc: All Parties of Record  
Mr. Virden Jones  
Frank Farmer, Esq.  
Chad Reynolds, Esq.  
Mr. Billy Thornton  
Mr. Stephen Stiglets  
Mr. Ben Vance

**BEFORE THE MISSISSIPPI PUBLIC SERVICE COMMISSION**

**MISSISSIPPI POWER COMPANY  
EC-120-0097-00**

**DOCKET NO. 2017-AD-112**

**IN RE:           ENCOURAGING STIPULATION OF MATTERS IN CONNECTION  
                    WITH THE KEMPER COUNTY IGCC PROJECT**

**MISSISSIPPI POWER COMPANY’S MOTION FOR RECONSIDERATION**

COMES NOW, Mississippi Power Company (“MPC” or the “Company”) and, pursuant to MISS. CODE ANN. § 77-3-65 and RP 12 of the Mississippi Public Service Commission’s (“Commission”) Public Utilities Rules of Practice and Procedure (“Rules”), submits this its Motion for Reconsideration of the Commission’s Order Setting Hearing and Scheduling Order and, specifically, for reconsideration of the Commission’s finding that no appropriate settlement was reached. MPC would show as follows:

1.       The Kemper County IGCC Project (“Kemper Project”) was approved based upon support from many parties—not just MPC—who expected it would be a success. The Commission relied upon testimony and evidence presented by the Staff, intervenors, and its own independent experts and consultants, while finding that the Kemper Project was the best alternative to meet the Company’s needs. All parties considered the Project’s risks (which were acknowledged by the Commission, Staff, and their experts during the Project’s approval process) before the Project was actually built subject to Commission-imposed protections.

2.       The Kemper Combined Cycle (the “Kemper CC”) has now reliably served MPC’s customers since 2014. MPC has taken full responsibility for all of the gasification-related portions of the Project, and seeks only recovery for the Kemper CC and related assets. The fact that MPC is seeking recovery for only the costs of the Kemper CC is, by itself, a significant concession.

3. Up until June 21, 2017, MPC was on a course to seek recovery of approximately \$3.4 billion in costs related to the entire Project, which MPC believed would soon be placed into service. If the Project was not placed in-service as planned, MPC also intended to seek its stranded costs; there are strong legal arguments to support this request. In either case, MPC's recovery of the entire Project's cost would have required significant additional rate increases (a fact recognized and acknowledged by the Commission during the Project's approval process), and MPC believed these costs were prudent. The entire Kemper Project had been built, maintained, and operated under the watch of the Commission's and Staff's own Independent Monitors. On June 21, 2017, the Company's plans changed.

4. On June 21, 2017, the Commission took decisive action and directed MPC to reach a settlement of all Kemper-related issues. The Commission mandated that any settlement accomplish several goals: (i) MPC should only recover the costs associated with operating the Kemper CC on natural gas, (ii) any settlement should result in no recovery of the billions of dollars of stranded costs related to the gasifier, and (iii) MPC should keep its rates at current levels. This directive—essentially requiring that MPC sell or suspend the gasifier—prompted hard and expensive decisions.

5. MPC did not question the Commission's authority to mandate such stringent conditions without even hearing evidence; instead, the Company took immediate efforts to comply with the Commission's guidance. The Company agreed not to seek the entire \$3.4 billion in prudent, recoverable costs related to the Project and, therefore, guaranteed the protection for customers required by the Commission. As a result, MPC took an additional loss and write-off of approximately \$3 billion, resulting in a total loss of roughly \$6.5 billion.

6. In addition to taking immediate financial losses, the Company's settlement efforts also required that MPC forego seeking tens of millions of dollars in annual revenue. MPC has calculated an annual revenue requirement for the recovery of only its Kemper CC costs: \$209 million. While MPC's actual revenue requirement would have been significantly higher than that if MPC had sought its stranded costs, which may be recovered under Mississippi Law, the Company agreed to keep its rates constant and to not seek stranded costs. The Company has now presented a settlement to the Commission which would allow MPC to maintain its annual Project revenue requirement of \$126 million, consistent with the Commission's guidance.

7. While MPC did not reach a settlement agreement with every party, MPC did reach an agreement entirely consistent with the Commission's July 6<sup>th</sup> Order. MPC filed a multi-party stipulation agreement and, to date, MPC's stipulation has been joined by the City of Gulfport; the City of Meridian; Denbury Onshore, LLC; the East Mississippi Business Development Corporation; the Ministerial Alliance Partnership; and the Central Mississippi Building and Construction Trades Council. In addition, important non-profits and trade associations have issued resolutions or submitted correspondence with the Commission expressing support for the Company's filed agreement. Stakeholders with broad interests representing residential, commercial, and industrial customers have voiced their support for MPC's agreement. Almost unanimously, those stakeholders have acknowledged the Company's willingness to honor its commitment to protect customers from the Kemper Project's risks (by writing off more than \$6 billion to date) and the importance of maintaining the Company's ability to provide reliable service in the future.

8. While not stating the justification for its decision, it does not appear that the Commission considers MPC's stipulation agreement to be compliant with the Commission's July



6<sup>th</sup> Order. Shortly after MPC's Agreement was filed, the Commission extended this docket's August 21<sup>st</sup> settlement deadline until September 5. Thereafter, the Commission issued another order again extending the settlement deadline—this time, until September 8<sup>th</sup>. Between August 21, 2017, and September 8, 2017, additional parties continued to join or otherwise voice their support for MPC's settlement agreement. Nevertheless, on September 12, the Commission issued its Order Setting Hearing and Scheduling Order noting that "the parties had still failed to reach a joint stipulation." That Order, *inter alia*, provided a schedule for additional discovery and required testimony by the Staff and Company supporting the terms of "its most recent proposed stipulation offer and why it opposes the most recent rejected stipulation offer from each party." MPC now asks that the Commission reconsider its decisions finding that no settlement was reached in compliance with the Commission's guidance.

#### **ARGUMENT**

9. MPC requests that the Commission reconsider its Order Setting Hearing and Scheduling Order (the "Scheduling Order") on the grounds that the Staff is not an "indispensable party" to a settlement agreement, therefore there is no basis to treat the Staff as necessary to any settlement. Motions for Reconsideration are proper under MISS. CODE ANN. § 77-3-65.

##### **I. The Staff is not a Necessary or Indispensable Party to an Agreement**

10. The Commission's July 6<sup>th</sup> Order opening this docket did not indicate that the Staff was a "necessary" or "indispensable" party to any agreement. The Order provided: "any settlement shall be filed with the Commission no later than 45 days from the effective date of this order. If a settlement is filed, a hearing will be set 45 days from the date of the settlement's filing." A settlement was filed, within the appropriate time period, and no hearing has been set,

apparently because the Commission believes the Staff is necessary to (but lacking from) any agreement. MPC would ask that the Commission reconsider its position.

11. MPC would make clear that while the Staff may at times function as an advisor to the Commission rather than as a party, that is not the case in this proceeding, at least insofar as the Staff has been involved in the negotiation of various settlement offers. The Act contains two distinct provisions regarding ex parte communications. These provisions establish the potential dual functions of the Staff. MISS. CODE ANN. § 77-2-13(1) relates to staff employees assisting the commission in investigating, compiling, evaluating and analyzing the record. For these employees, certain restrictions apply. MISS. CODE ANN. § 77-2-13(2) relates to staff employees investigating, compiling, evaluating and analyzing the record in a public advocacy or prosecutorial capacity. For these employees, a separate set of restrictions applies.

12. The Commission clearly intended for the Staff to act in a public advocacy or prosecutorial capacity in this case—and the Staff has in fact done so. In fact, in its July 6, 2017 Order, the Commission noted that the Staff, “as a body ‘completely separate and independent from the Public Service Commission and the Public Service Commission staff,’ is free to communicate with MPC and other parties regarding settlement of any issues relating to the Kemper Project. Nothing in this Order implicates any of the concerns noted by the Mississippi Supreme Court in *Mississippi Power Co. v. Mississippi Public Service Comm’n*, 168 So. 3d 905 (Miss. 2015).” Because the Staff has acted as an adversary to MPC, the Staff is simply another party. There is no legal basis to require MPC to reach an agreement with the Staff, or to treat the Staff as an “indispensable” or “necessary” party to any agreement. MPC would ask that the Commission continue to a hearing on MPC’s August 21, 2017 Agreement.

13. Moreover, MPC would submit that any process allowing for other parties—including but not limited to the Staff—to submit competing “settlement offers” which may be acted upon by the Commission is unnecessary. In light of the fact that MPC has submitted a stipulation agreement that satisfies all of the Commission’s concerns, there is no need to continue seeking “an appropriate settlement” in this docket. The Commission has already been presented with one. To the extent the Commission disagrees, and intends to continue according to the Scheduling Order issued on September 12, 2017, MPC reserves its right to seek recovery of additional costs not included in MPC’s Stipulation Agreement (and which, as part of its agreement, MPC would never seek recovery of). MPC also fully reserves its rights under Mississippi and Federal law to protect the Company and its investors from unlawful or confiscatory rate actions by the Staff or Commission.

#### CONCLUSION

14. MPC has taken significant steps to deliver the Commission an agreement resolving all identifiable Kemper Project issues. This resolution has come at great cost to MPC, but has been offered to the Commission as part of a compromise, in order to achieve finality. The Commission has not acknowledged MPC’s concessions, has not acted upon MPC’s filing, and apparently does not believe the Company’s settlement is consistent with the Commission’s guidance. For all of the reasons stated herein, MPC would ask that the Commission reconsider.

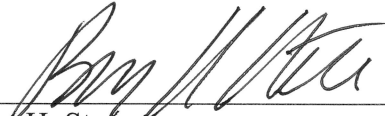
WHEREFORE, PREMISES CONSIDERED, Mississippi Power Company respectfully moves this Commission to reconsider its treatment of the Company’s and joining parties’ settlement agreement as out of compliance with the Commission’s Order Opening Docket and, consequently, to reconsider its Order Setting Hearing and Scheduling Order. MPC would also

move the Commission to set a hearing on the Company's Settlement Rate Filing, as initially contemplated by the Commission's July 6, 2017 Order.

Respectfully submitted on this, the 15<sup>th</sup> day of September, 2017.

MISSISSIPPI POWER COMPANY

BY: BALCH & BINGHAM LLP

BY:   
Ben H. Stone

BEN H. STONE  
Mississippi Bar No. 7934  
RICKY J. COX  
Mississippi Bar No. 9606  
LEO E. MANUEL  
Mississippi Bar No. 101985  
MICHAEL P. MALENFANT  
Mississippi Bar No. 104590  
BALCH & BINGHAM LLP  
P.O. Box 130  
Gulfport, MS 39502-0130  
Telephone: (228)864-9900  
Facsimile: (228)864-8221



STATE OF MISSISSIPPI  
COUNTY OF HARRISON

PERSONALLY appeared before me, the undersigned authority in and for the said County and State, within my jurisdiction, the within named BEN H. STONE, who after being duly sworn on oath acknowledged that he is Attorney for MISSISSIPPI POWER COMPANY and that for and on behalf of the said MISSISSIPPI POWER COMPANY and as its act and deed, he signed and delivered the above and foregoing instrument of writing for the purposes mentioned on the day and year therein mentioned, after first having been duly authorized by said MISSISSIPPI POWER COMPANY so to do, and that the statements contained in the foregoing instrument are true and correct to the best of his knowledge, information and belief.

  
BEN H. STONE

SWORN TO AND SUBSCRIBED BEFORE ME, this the 15<sup>th</sup> day of August, 2017.

  
NOTARY PUBLIC

My Commission Expires:



**CERTIFICATE OF SERVICE**

I, Ben H. Stone, counsel for MPC in the above and foregoing filing with the Mississippi Public Service Commission on even date herewith, do hereby certify that in compliance with Rule 6.112 of the Mississippi Public Service Commission's Public Utilities Rules of Practice and Procedure:

(1) An original and twelve (12) copies of the filing have been filed with the Commission by delivery of the same to:

Katherine Collier, Esq., Executive Secretary  
Mississippi Public Service Commission  
501 North West Street, Suite 201A  
Jackson, MS 39201

(2) An electronic copy of the Notice has been filed with the Commission via e-mail to the following address:

efile.psc@psc.state.ms.us

(3) A copy of the filing has been mailed via U.S. Mail and electronic mail to all parties of record as detailed below:

Frank Farmer, Esq.  
Mississippi Public Service Comm.  
501 North West Street, Suite 201A  
Jackson, MS 39201

Michael Adelman, Esq.  
Adelman & Steen, LLP  
P. O. Box 368  
Hattiesburg, MS 39403-0368

Mr. Virden Jones  
Mississippi Public Utilities Staff  
501 North West Street, Suite 301B  
Jackson, MS 39201

Michael F. Cavanaugh, Esq.  
P. O. Box 1911  
Biloxi, MS 39533

Chad Reynolds, Esq.  
Mississippi Public Utilities Staff  
501 North West Street, Suite 301B  
Jackson, MS 39201

Gerald Blessey, Esq.  
City of Biloxi  
P. O. Box 429  
Biloxi, MS 39533

Cathy Beeding Mackenzie, Esq.  
Gulfside Casino Partnership  
P. O. Box 1600  
Gulfport, MS 39564

Robert P. Wise, Esq.  
Suzanne Sharpe, Esq.  
Sharpe & Wise, PLLC  
120 N. Congress Street, Suite 902  
Jackson, MS 39201

Steve W. Chriss  
Energy Regulatory Analysis  
Wal-Mart Stores, Inc.  
2001 S. E. 10th Street  
Bentonville, AR 72716-0550

W. F. Hornsby, III, Esq.  
Hornsby Watts, PLLC  
1025 Howard Avenue  
Biloxi, MS 39533

John H. Geary, Jr., Esq.  
Copeland, Cook, Taylor and Bush  
P. O. Box 6020  
Ridgeland, MS 39158-6020

W. David Ross, Esq.  
Greenleaf CO2 Solutions  
602 Crescent Place  
Ridgeland, MS 39157

Phillip G. Oldham, Esq.  
Katherine L. Coleman, Esq.  
Thompson & Knight, LLP  
98 San Jacinto Blvd., Suite 1900  
Austin, TX 78701

C. Phillip Buffington, Jr., Esq.  
Benjamin B. Morgan, Esq.  
Adams and Reese LLP  
1018 Highland Colony Pkwy, Ste. 800  
Ridgeland, MS 39157

Mr. Ashley Edwards  
Gulf Coast Business Council  
11975 Seaway Road, Suite A120  
Gulfport, MS 39503

Mr. Jay C. Moon  
Mississippi Manufacturers Assoc.  
P. O. Box 22607  
Jackson, MS 39225-2607

Andrew J. Unsicker, Maj, USAF  
Lanny L. Zieman, Capt, USAF  
AFLOA/JACE-ULFSC  
139 Barnes Drive, Suite 1  
Tyndall Air Force Base, Florida 32403

Thomas A. Jernigan, GS-14, USAF  
AFCEC/JA  
139 Barnes Drive, Suite 1  
Tyndall Air Force Base, Florida 32403

James L. Halford, Esq.  
Curtis L. Hebert, Jr., Esq.  
William D. Drinkwater, Esq.  
Brunini, Grantham, Grower & Hewes  
P. O. Drawer 119  
Jackson, MS 39205

Evelyn Kahl, Esq.  
33 New Montgomery Street  
Suite 1850  
San Francisco, CA 94105

Tim C. Holleman, Esq.  
Patrick T. Guild, Esq.  
1720 23rd Avenue  
Gulfport, MS 39501

Peter C. Abide, Esq.  
Currie Johnson Griffin & Myers, P.A.  
925 Tommy Munro Drive, Suite H  
Biloxi, MS 39532

Lisa Williams McKay, Esq.  
G. Spencer Beard, Jr., Esq.  
Currie Johnson Griffin & Myers, P.A.  
P. O. Box 750  
Jackson, MS 39205-0750

Robert Wiygul, Esq.  
Waltzer Wiygul & Garside  
1011 Iberville Drive  
Ocean Springs, MS 39564

Stephen B. Jackson, Esq.  
Mr. Nathan Brown  
Cooperative Energy  
P. O. Box 15849  
Hattiesburg, MS 39404-5849

Patricia S. Francis, Esq.  
Ms. Tina S. Hardy  
569 Brookwood Village, Suite 749  
Birmingham, AL 35209

Mr. Charles R. Grayson  
101 Sandpiper Road  
Brandon, MS 39047-6463

Mr. David Newell  
CMBCTC  
P. O. Box 821535  
Vicksburg, MS 39182

Rev. Eric Dickey  
Ministerial Alliance Partnership  
P. O. Box 7314  
D'Iberville, MS 39540

John A. Brunini, Esq.  
Butler Snow LLP  
P. O. Box 6010  
Ridgeland, MS 39157

Crystal Utley Secoy, Esq.  
Office of the Attorney General  
P. O. Box 22947  
Jackson, MS 39225

Dennis W. Miller, Esq.  
Jones Walker  
P. O. Box 427  
Jackson, MS 39205-0427

Jeff Bruni, Esq.  
City of Gulfport  
P. O. Box 1780  
Gulfport, MS 39502

Mayor Percy Bland  
City of Meridian Mississippi  
601 23rd Avenue  
Meridian, MS 39301

Lee Thaggard, Esq.  
Barry Thaggard May & Bailey LLP  
P. O. Box 2009  
Meridian, MS 39302-2009

J. Jeffrey Trotter, Esq.  
Timonthy J. Anzenberger, Esq.  
Adams & Reese LLP  
1018 Highland Colony Pkwy, Suite 800  
Ridgeland, MS 39157

Mr. William Hannah  
East MS Development Corp.  
200 22nd Avenue  
Meridian, MS 39301



This the 15<sup>th</sup> day of September, 2017.

  
BEN H. STONE