

BEFORE THE MISSISSIPPI PUBLIC SERVICE COMMISSION

MISSISSIPPI POWER COMPANY, INC.

DOCKET NO. 2017-AD-112

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

**ORDER APPROVING SECOND
AMENDED AND RESTATED STIPULATION**

I. INTRODUCTION

1. This matter is before the Mississippi Public Service Commission (“Commission”) on the Second Amended and Restated Stipulation filed on December 1, 2017 by Mississippi Power Company (“MPCo” or the “Company”), the Mississippi Public Utilities Staff (“Staff”), and other parties¹ in this docket (“Second Amended Stipulation”), purporting to resolve all pending issues related to MPCo’s integrated gasification combined cycle electric generating project in Kemper County, Mississippi (“Kemper Project” or “Kemper IGCC”).

2. As described in the Commission’s July 6, 2017 Order Opening a Docket and Requiring Settlement Proceedings for the Kemper Project (“Order Opening Docket”)² and the body of this Order, the Commission has reviewed evidence and testimony, and made decisions regarding the Kemper Project since 2009. During that time, the Commission focused on ensuring

¹ The Second Amended and Restated Stipulation is a settlement agreement by and among MPCo, Staff, Chevron Products Company, a division of Chevron USA Inc. (“Chevron”), the Federal Executive Agencies (“FEA”), and the Chemours Company FC, LLC (“Chemours”). The proposed stipulation was joined without any requests for modification by Wal-Mart Stores East, LP (“Wal-Mart”), Sam’s East, Inc. (“Sam’s East”), and Greenleaf CO₂ Solutions, LLC (“Greenleaf”). The Second Amended Stipulation is generally supported, with requests for conditions, by Liberty Fuels Company, LLC (“Liberty Fuels”) and Jim Hood, Attorney General of the State of Mississippi. The Sierra Club and the Steps Coalition (“Sierra”) made a filing stating that they do not object to approval of the Second Amended Stipulation. Intervenor Thomas A. Blanton, an individual, is opposed to the Second Amended Stipulation.

² Order Opening Docket, *In Re: Encouraging Stipulation of Matters in Connection with the Kemper County IGCC Project*, Docket No. 2017-AD-112, at ¶¶ 2-59 (July 6, 2017).

that any Kemper-related costs to be recovered from MPCo's customers are commensurate with the benefits those customers receive from the project.

3. In June 2017, after years of operational delays and billions of dollars in cost overruns, Southern Company (MPCo's parent company) and MPCo publicly announced that they were "beginning a process to suspend operations and start-up activities on the gasifier portion of the Kemper IGCC."³ MPCo acknowledged that resolution of the Kemper Project issues would likely require settlement without full cost recovery.⁴ To facilitate settlement, the Commission opened this docket ("Settlement Docket") to encourage a negotiated agreement.⁵ The Commission encouraged MPCo, Staff, and intervening parties to reach a settlement based on the following parameters:

- a. Any costs resulting from the settlement and assigned to MPCo customers shall result in, at a minimum, no rate increase to MPCo customers. The Commission encourages serious discussions that would lead to a rate reduction, with a particular focus on residential customers.
- b. The settlement should seek to remove the risk of ratepayers bearing any of the costs associated with the gasifier and related assets.
- c. The settlement should include modification or amendment of the certificate issued in Docket No. 2009-UA-014 to allow only for ownership and operation of a natural gas facility at the location of the Kemper County In-Service Assets.⁶

³ 8-K Current Report dated June 28, 2017 filed jointly with the Securities and Exchange Commission by MPCo and its parent, The Southern Company, at 4; *see also* MPCo letter filing with the Commission of June 28, 2017.

⁴ 2016 Mississippi Annual Report at p. 6 ("Although the 2017 Rate Case has not yet been filed . . . the Company also expects that timely resolution of the 2017 Rate Case will likely require a negotiated settlement agreement"), and at p. 33 ("in the event an agreement acceptable to both the Company and [Staff] (and other parties) can be negotiated and ultimately approved by the [Commission], it is reasonably possible that full regulatory recovery of all Kemper IGCC costs will not occur.").

⁵ Order Opening Docket at p. 1, ¶¶ 89, 92, 95-98.

⁶ *Id.* at ¶ 95.

4. The parties engaged in six months of negotiations, and multiple rounds of testimony, briefing, exchanges of supporting data and documents, and proposed stipulations and settlement offers. During that time, the Commission granted two (2) extensions of the original 45-day settlement period, and an additional three (3) day extension, to provide further opportunity for settlement. When the parties failed to reach agreement by September 8, 2017, the Commission set a hearing date of December 4, 2017 (“September 12 Order”) to receive testimony and other evidence supporting each party’s position.⁷ On December 1, 2017 (three (3) days before the scheduled hearing), MPCo, Staff, and a substantial majority of the active parties reached agreement on terms to resolve Kemper Project-related issues.⁸ The Commission held a hearing as to the Second Amended Stipulation on January 22, 2018 to develop additional information, permit public statements, admit evidence, and proffer all witnesses for cross-examination.

5. The Commission finds that the Second Amended Stipulation satisfies the settlement parameters set forth by the Commission in its Order Opening Docket and, as discussed below, serves the public interest and will lead to just and reasonable rates that are fair to ratepayers while providing a fair return to the Company, consistent with the Mississippi Public Utility Act (the “Act”)⁹ and the Commission’s Public Utilities Rules of Practice and Procedure.

II. BACKGROUND AND PROCEDURAL HISTORY

6. The Order Opening Docket provides a detailed procedural history of Kemper Project-related proceedings between January 16, 2009 and July 6, 2017.¹⁰

⁷ Order Setting Hearing and Scheduling Order, *In Re: Encouraging Stipulation of Matters in Connection with the Kemper County IGCC Project*, Docket No. 2017-AD-112 (Sep. 12, 2017).

⁸ See note 1.

⁹ Miss. Code Ann. § 77-3-1, *et seq.*

¹⁰ Order Opening Docket at ¶¶ 2-59. This Order only summarizes that history.

A. Kemper Project Certificate Proceeding (Docket No. 2009-UA-14)

7. On January 16, 2009, MPCo filed a petition, testimony and supporting documents in Docket No. 2009-UA-14 (“Certificate Proceeding”) seeking a certificate of public convenience and necessity (“CPCN”) authorizing the Company to construct, acquire, operate, and maintain a new electric generating facility in Kemper County, Mississippi (“Certificate Petition”).¹¹ The following briefly summarizes these proceedings.

8. MPCo’s Certificate Petition described the Kemper Project as consisting of:

(i) a lignite-fueled two-on-one (2-on-1) integrated gasification combined-cycle (IGCC) baseload electric generating facility with a net summer output capacity of 582 megawatts (MW) (Plant), (ii) environmental equipment for the reduction of various emissions from the Plant, including without limitation, equipment and facilities for the capture and sequestration of approximately 50% of the carbon dioxide (CO₂) emissions from the Plant; (iii) sixty miles of electric transmission lines with voltages varying from 115 kilovolts (kV) to 230 kV; (iv) three new transmission substations; (v) approximately five miles of natural gas transportation facilities to accommodate natural gas deliveries to the Plant; and (vi) the related facilities necessary for the efficient and effective construction, acquisition, operation, repair, and maintenance of the Plant (collectively referred to as the Kemper County IGCC Project or the Project).¹²

¹¹ Petition of Mississippi Power Company for a Certificate of Public Convenience and Necessity Authorizing the Acquisition, Construction, and Operation of an Electric Generating Plant, Associated Transmission Facilities, Associated Gas Pipeline Facilities, Associated Rights-of-Way, and Related Facilities in Kemper, Lauderdale, Clarke, and Jasper Counties, Mississippi, Docket No. 2009-UA-14 (Jan. 16, 2009) (“January 2009 Petition”). MPCo amended and supplemented its initial filing with supplemental filings in Docket No. 2009-UA-14 as follows: (i) Supplemental Filing for Phase One—Need, filed July 8, 2009; (ii) Rebuttal Filing for Phase One—Need, filed July 28, 2009; (iii) Second Supplemental Filing for Phase One—Need, filed August 28, 2009; (iv) Third Supplemental Filing, filed December 7, 2009; (v) Phase Two Rebuttal Filing, filed January 5, 2010; and (vi) Phase Two Supplemental Filing, filed January 25, 2010. These filings are collectively referred to herein as MPCo’s “Certificate Petition.”

¹² January 2009 Petition at ¶ 7 (footnote omitted).

9. After extensive discovery and hearings in both phases of the proceedings, the Commission sought proposals from the parties to mitigate customer risk of the novel and untested proposed IGCC technology.¹³

10. On April 29, 2010, after review of the proposals, the Commission approved certification of the Kemper Project, subject to significant conditions.¹⁴ The Commission found that, as filed, the Certificate Petition did not meet the “public convenience and necessity” requirement,¹⁵ and so conditioned its approval on MPCo assuming all risks and uncertainties associated with Kemper Project construction and operating costs. The Commission imposed on MPCo a continuing obligation “to ensure that Kemper remains consistent with the public convenience and necessity, in light of feasible alternatives.”¹⁶ The Commission provided MPCo a twenty-day window to file a motion accepting the conditions set forth in the Order.

11. Instead, MPCo’s responsive motion claimed¹⁷ that some of the conditions imposed in the April 2010 Order prevented MPCo from proceeding with the Kemper Project. The Motion for Rehearing included exhibits demonstrating that some of the risks of the Kemper Project had either been mitigated or eliminated. MPCo proposed alternative conditions that it asserted would allow the Kemper Project to proceed. The Commission invited comments on MPCo’s Motion for Rehearing and held several open meetings before issuing its May 26, 2010 response.¹⁸

¹³ This technology was not tested at the proposed scale of the Kemper Project.

¹⁴ Order, *In Re: Petition of Mississippi Power Company for a Certificate of Public Convenience and Necessity*, Docket No. 2009-UA-14 (Apr. 29, 2010) (“April 2010 Order”).

¹⁵ *Id.* at p. 36.

¹⁶ *Id.* at p. 46.

¹⁷ MPCo’s Motion in Response, or in the Alternative, Motion for Alternation or Rehearing, *In Re: Petition of Mississippi Power Company for a Certificate of Public Convenience and Necessity*, Docket No. 2009-UA-14 (May 10, 2010) (“Motion for Rehearing”).

¹⁸ Order, *In Re: Petition of Mississippi Power Company for a Certificate of Public Convenience and Necessity*, Docket No. 2009-UA-14 (May 26, 2010) (“May 2010 Order”).

12. Based on the information provided by the parties, the Commission found that modifications to the conditions imposed in the April 2010 Order were warranted. Specifically, the Commission (i) imposed a construction cost cap of \$2.88 billion, representing a 20% cap above MPCo's approved Kemper Project estimate; (ii) removed a financial incentive mechanism that would have rewarded the Company for cost underruns; and (iii) provided 100% construction work in progress ("CWIP") financing cost recovery in years 2012, 2013 and 2014, while requiring that MPCo establish annually that the recovery of financing costs was needed and in the public interest. The Commission again emphasized that a balance of risk and benefits of the Kemper Project between the Company and customers remained paramount, noting that construction and operating costs "exceeding the level for which [MPCo's] experts have expressed confidence do not satisfy the 'public convenience and necessity' test, unless the Company can demonstrate to this Commission the prudence of and necessity for such variations."¹⁹

13. MPCo agreed to the modified conditions in the May 2010 Order with the Commission issuing its Final Certificate Order on June 3, 2010.²⁰

14. Subsequently, intervenor Sierra Club appealed the Final Certificate Order to the Chancery Court for Harrison County, Mississippi, in Case No. C2401-10-02580(1). Although the Chancery Court affirmed the Final Certificate Order, on subsequent appeal by Sierra Club, the Mississippi Supreme Court reversed the Chancery Court's judgment and remanded the Commission's Final Certificate Order.²¹

¹⁹ *Id.* at p. 14.

²⁰ Final Order, *In Re: Petition of Mississippi Power Company for a Certificate of Public Convenience and Necessity*, Docket No. 2009-UA-14 (Jun. 3, 2010) ("Final Certificate Order").

²¹ *Sierra Club v. Mississippi Pub. Serv. Comm'n*, 2011-CA-00350-SCT (¶ 2) (Miss. 2012). By reversing the Final Certificate Order, the Mississippi Supreme Court also voided the April 29, 2010 and May 26, 2010 certificate orders, which were incorporated by reference in the Final Certificate Order.

15. On April 24, 2012, the Commission issued its Final Order on Remand,²² granting MPCo's petition for a CPCN. The Commission found that the record in the proceeding, compiled as of June 3, 2010, was complete, obviating the need for additional hearings, evidence, or supplements to the record.

16. The Commission set MPCo's construction estimate of \$2.4 billion as a soft cost cap; the "first measure of cost recovery protection for ratepayers."²³ The Commission noted that:

the Company cannot recover any amounts in excess of \$2.4 billion until such time as this Commission has scrutinized those costs for prudence, which will occur, at the Commission's discretion, upon petition of MPCo at such time after the Plant has been completed and entered into commercial operation. Estimates, although not required with great precision or detailed design, do have consequences for the Company. To recover anything beyond the estimated \$2.4 billion, the Company must demonstrate to the Commission the prudence and necessity for such variation. If a cost estimate is conservative and if MPCo is confident in those estimates then exceeding the estimate should not be a necessity.²⁴

17. In recognition of the increased costs and risks associated with the Kemper Project's new technology (compared to other base load facilities), the Commission also imposed a hard cost cap to "insulate customers from large construction cost overruns by shifting this risk to the utility at a certain total cost level beyond which customers are no longer responsible, even if the costs are found to be prudent."²⁵ The hard cost cap set an upper bound on Kemper Project costs, beyond which MPCo would not be able to recover even prudently-incurred costs.²⁶ Based on its

²² Final Order on Remand Granting a Certificate of Public Convenience and Necessity, Authorizing Application of Baseload Act, and Approving Prudent Pre-Construction Costs, Docket No. 2009-UA-014, issued April 24, 2012 ("Final Order on Remand").

²³ *Id.* at ¶ 172.

²⁴ *Id.*

²⁵ *Id.* at ¶¶ 9-10.

²⁶ *Id.* at ¶ 173.

consideration of expert analysis,²⁷ the Commission set the hard cost cap at 20% over \$2.4 billion (which excluded the lignite mine and CO₂ pipeline),²⁸ making the total construction cost recoverable from ratepayers no more than \$2.88 billion (net of government construction cost incentives estimated at \$296 million) unless the Commission decided later to a further increase.²⁹

18. In addition to the cost caps, the Commission imposed additional customer safeguards. The Commission concluded: “[I]f Kemper doesn’t perform as advertised then the ratepayers will not pay for it.”³⁰

19. The Commission noted that nothing in the Final Order on Remand or in the Base Load Act undercut the Commission’s authority to ensure that ratepayers pay only for MPCo’s investments that are “used and useful.”³¹

20. The Commission addressed concerns about the binding effect under the Base Load Act of any preliminary prudence determinations made during construction; namely, that such determinations would not diminish the Commission’s authority under Miss. Code Ann. § 77-3-105(l)(e), which provides that, in the context of an abandonment or cancellation without Commission approval, the Commission shall:

determine whether the public interest will be served to allow (i) the recovery of all or part of the prudently incurred preconstruction, construction and related costs in connection with the generating facility and related facility, (ii) the recovery of a return on the unrecovered balance of the utility’s prudently-incurred costs at a just and reasonable rate of return to be determined by the commission, or (iii) the

²⁷ The Commission’s deliberation process and discussion of the expert findings relied on by the Commission is detailed in paragraphs 170-184 of the Final Order on Remand.

²⁸ *Id.* at ¶ 183.

²⁹ *Id.* at ¶ 184(a).

³⁰ *Id.* at ¶ 179 on p. 108. *Note:* the Final Order on Remand included a paragraph numbering mistake, wherein the paragraph numbers went from ¶ 184 at the conclusion of section VI.A to ¶ 179 at the beginning of section VI.B.

³¹ Final Order on Remand at ¶ 12.

implementation of credits, refunds or rebates to ratepayers to defray costs incurred for the generating facility.

21. In imposing the requirement that MPCo continue to periodically evaluate the Kemper Project, the Commission stated:

MPCo has a continuing obligation to ensure that Kemper is in the public interest. Pursuant to Miss. Code Ann. § 77-3-33 and applicable case law, MPCo has an obligation to take all actions necessary to serve its retail ratepayers at a just and reasonable cost. That obligation includes using its expertise to ensure that the path that it has urged continues to be the best path. The Commission's granting of a certificate does not diminish this obligation. The first-of-a-kind nature of this project, its unprecedented size and cost, and the uncertainty concerning the cost of alternatives to Kemper, call for special measures to ensure that the certificate issued is consistent with the public convenience and necessity. The Commission therefore makes explicit what is implicit: MPCo has a continuing obligation to ensure that Kemper remains consistent with the public convenience and necessity, in light of feasible alternatives.³²

B. Certified New Plant ("CNP") Rate Case (Docket No. 2011-UN-135)

22. On April 27, 2011, MPCo filed a Kemper Project rate plan to recover project financing costs over several years during the construction period consistent with the Final Certificate Order.³³ The CNP Rate Schedule Filing sought approval of the proposed CNP-A Rate Schedule mechanism only; it did not seek adjustment to MPCo's revenues.

23. On May 24, 2012, as amended June 1, 2012, MPCo and Staff jointly filed a stipulation with the Commission to resolve the CNP-A filings.

24. The Commission held an evidentiary hearing on MPCo's CNP Rate Schedule Filing and the 2012 CNP-A Annual Filing on June 22, 2012. At the conclusion of the evidentiary

³² *Id.* at ¶ 185 on pp. 111-12.

³³ Notice of Intent to Establish the Certified New Plant, Rate Schedule CNP-A, Docket No. 2011-UN-135 (Apr. 27, 2011) ("CNP Rate Schedule Filing").

hearing, the Commission denied MPCo's CNP-A Rate Schedule and implementation of rates because the Final Order on Remand was pending appeal.³⁴

25. MPCo appealed to the Mississippi Supreme Court, and Mr. Thomas Blanton intervened.³⁵ MPCo and the Commission ultimately settled ("CNP Settlement Agreement"); Mr. Blanton's appeal remained before the Court.

C. Mirror CWIP Proceeding (Docket No. 2013-UN-14)

26. On January 25, 2013, pursuant to the terms of the CNP-A Settlement Agreement, MPCo filed for an approximately 21% rate adjustment consistent with the "Mirror" CWIP provisions.³⁶ Specifically, MPCo requested authority to recover funds through rates (during the construction period) that would later be used to offset some future increases in rates; increases that would otherwise occur after the project was placed into service. On March 5, 2013, the Commission approved Mirror CWIP ("Mirror CWIP Order"); Mr. Blanton appealed. The appeal was consolidated with the CNP-A cross appeal pending before the Mississippi Supreme Court.

27. On February 12, 2015, the Mississippi Supreme Court reversed the Mirror CWIP Order, required that the Commission fix by order the rates in existence prior to issuance of the Mirror CWIP Order, ordered a refund of all revenue collections under the Mirror CWIP Order, voided the CNP Settlement Agreement, and remanded to the Commission for further proceedings.

³⁴ Order Denying CNP-A Filing, *In Re: Notice of Intent to Establish the Certified New Plant, Rate Schedule CNP-A*, Docket No. 2011-UN-135, at ¶ 11 (Jun. 22, 2012). The Commission held that "it would not be prudent to allow [MPCo] to recover costs associated with the Kemper Project during the pendency of the appeal before the Mississippi Supreme Court or other appellate tribunal." *Id.*

³⁵ See *Mississippi Power Company, Inc. v. Mississippi Public Service Comm'n*, Mississippi Supreme Court Case No. 2012-UR-01108-SCT, consolidated with *Blanton v. Mississippi Power Co., et al.*, Mississippi Supreme Court Case No. 2013-UR-0047-SCT.

³⁶ *Notice of Intent of Mississippi Power Company for a Change in Rates Related to the Kemper County IGCC Project*, Docket No. 2013-UN-14 (Jan. 25, 2013). The request for Mirror CWIP treatment was consistent with Financial Accounting Standards Board Accounting Standards Codification Topic 980.

28. On July 7, 2015, the Commission issued its Mirror CWIP Remand Order directing MPCo to lower customer rates by removing the Mirror CWIP treatment beginning with the first billing cycle of August 2015.³⁷

D. Seven-Year Plan Filing (Docket No. 2013-UN-039)

29. On February 26, 2013, MPCo filed its Notice of Intent to establish a rate mitigation plan governing Kemper Project-related rates for the first seven (7) years of operations. MPCo later revised its plan to comply with the Mirror CWIP Order in Docket No. 2013-UN-14. On December 14, 2015, MPCo moved to retire the plan because changed circumstances rendered the plan assumptions obsolete. The Commission's Executive Secretary issued an Order Retiring to File on January 5, 2016.

E. Prudence Case Docket (Docket No. 2013-UA-189)

30. On June 28, 2013, MPCo filed a petition seeking a prudence finding ("Prudence Case Docket").³⁸ MPCo's petition sought a prudence review of all Kemper Project costs incurred as of March 31, 2013.³⁹ The Commission issued a Scheduling Order establishing discovery procedures and setting a hearing for March 4, 2014.⁴⁰ Because the Kemper Project was not fully operational, the Commission decided to "limit any prudence determination made in this docket by reserving final judgment or determination of the used and usefulness of the Kemper Project for

³⁷ Order on Remand, *In Re: Notice of Intent of Mississippi Power Company for a Change in Rates Related to the Kemper County IGCC Project*, Docket No. 2013-UN-14 (Jul. 7, 2015).

³⁸ Petition of Mississippi Power Company for Finding of Prudence in Connection with the Kemper County Integrated Gasification Combined Cycle Generating Facility, Docket No. 2013-UA-189 (Jun. 28, 2013) ("Prudence Petition").

³⁹ *Id.* at ¶ 8.

⁴⁰ Scheduling Order, *In Re: Petition of Mississippi Power Company for Finding of Prudence in Connection with the Kemper County Integrated Gasification Combined Cycle Generating Facility*, Docket No. 2013-UA-189 (Jul. 26, 2013).

furnishing electric service in the manner and for the purpose for which it was certificated.”⁴¹ The Commission reserved its right to:

review any aspect of the Kemper Project for prudence and may revisit any prudence determination, including if at any point after the Kemper Project enters commercial operation it is determined or declared that all or any portion of the Project is not used and useful or will not be used or useful in furnishing electric service as intended.”⁴²

31. The Prudence Case Docket generated voluminous documentation, including MPCo’s responses to data and document requests and reports of the detailed investigation of the Kemper Project costs conducted by the Commission’s and the Staff’s Independent Monitors. The Commission cancelled the scheduled prudence hearing on August 5, 2014, making it clear that it would not consider whether Kemper Project costs were prudent until the assets were operational: “no prudence hearings will be conducted until such time as the Kemper Project is placed in commercial operation and demonstrates, for a reasonable period, its availability, as indicated by the Commission and Public Utilities Staff in consultation with the Independent Monitors.”⁴³ After that order, the Commission directed the Executive Secretary of the Commission to close the docket.⁴⁴

F. Kemper Combined Cycle Proceeding (Docket No. 2014-UA-195)

32. The combined cycle component of the Kemper Project (“Kemper CC”) first synchronized to the grid on September 7, 2013. MPCo then conducted eleven months of start-up,

⁴¹ *Id.* at p. 3.

⁴² *Id.*

⁴³ Order Cancelling Hearing, *In Re: Petition of Mississippi Power Company for Finding of Prudence in Connection with the Kemper County Integrated Gasification Combined Cycle Generating Facility*, Docket No. 2013-UA-0189, at p. 2 (Aug. 5, 2014).

⁴⁴ *See infra* Section G.

testing and commissioning activities using natural gas as a fuel as the integrated gasification component of the unit was still non-operational. Effective 12:01 a.m. (Central) on August 9, 2014, MPCo declared the Kemper CC and related assets to be in-service for accounting and tax purposes. On August 18, 2014, pursuant to Commission order in the Certificate Proceeding,⁴⁵ the Company filed its Report and Analysis to the Commission Supporting MPCo's Decision to Place the Combined Cycle Generating Facilities and Related Portions of the Kemper County IGCC Project in Service ("Kemper CC Filing").⁴⁶ MPCo asserted that placing the plant in service at that time would allow MPCo to qualify for bonus depreciation tax treatment on qualifying assets placed in service by December 31, 2014, resulting in substantial tax benefits to MPCo, to be shared with ratepayers over the life of the facilities. MPCo's Kemper CC Filing estimated the total capital cost of the Kemper CC to be approximately \$882 million.

33. The Commission continued this proceeding during the pendency of Kemper Project-related appellate litigation.

G. 2015 In-Service Asset Rate Case (Docket No. 2015-UN-80)

34. On May 15, 2015, MPCo filed an initial Notice of Intent including three (3) separate proposals for changes in rates. On July 10, 2015, after the Mississippi Supreme Court ruled on appeal of certain Mirror CWIP-related issues, MPCo amended its rate request to include a fourth proposal, the "In-Service Asset Proposal." This proposal limited the scope of the rate change to only those Kemper-related assets that were then currently serving customers; *i.e.*, the Kemper CC;

⁴⁵ Order Requiring Filing, *In Re: Petition of Mississippi Power Company for a Certificate of Public Convenience and Necessity Authorizing the Acquisition, Construction, and Operation of an Electric Generating Plant, Associated Transmission Facilities, Associated Gas Pipeline Facilities, Associated Rights-Of-Way, and Related Facilities in Kemper, Lauderdale, Clarke, and Jasper Counties, Mississippi*, Docket No. 2009-UA-14, at p. 2 (Aug. 5, 2014)

⁴⁶ With that order, the Commission opened Docket 2014-UA-195.

all transmission projects, including two 230 kilovolt lines and substations supporting the Kemper CC; and the wastewater and natural gas pipelines.

35. MPCo also requested temporary, emergency rate relief, which the Commission granted under bond pursuant to the Commission's authority under Miss. Code Ann. § 77-3-41 to authorize temporary interim rates when necessary to prevent injury to the business or interest of the people or a public utility.

36. Prior to an evidentiary hearing on MPCo's request held on November 10, 2015, the Staff and MPCo reached a full settlement-in-principle, resulting in a formal stipulation on November 17, 2015 ("2015 Stipulation"). The 2015 Stipulation allowed MPCo to begin recovering only costs of assets actually in service and that had been providing benefits at that time to MPCo's customers for more than a year.⁴⁷

37. The Commission adopted the 2015 Stipulation between MPCo and Staff and incorporated it by reference in its December 3, 2015 order ("Final Rate Order").⁴⁸ The Commission directed MPCo to file a subsequent rate request within 18 months of the Final Rate Order to prevent the Company from "over-collecting" from customers after its regulatory asset accounts became fully amortized. Importantly for subsequent proceedings (including this Settlement Docket), the Commission noted that nothing in the Final Rate Order limited "the Commission's right under the law to request that [MPCo] show cause, at any time, why its current rates related to the Kemper Project should remain unchanged."⁴⁹

⁴⁷ See Order Opening Docket at ¶ 46 for a summary of the 2015 Stipulation.

⁴⁸ Final Order, *In Re: Notice of Intent of Mississippi Power Company for a Change in Rates Supported by a Conventional Rate Filing or, in the Alternative, by a Rate Mitigation Plan in Connection with the Kemper County IGCC Project*, Docket No. 2015-UN-80 (Dec. 3, 2015).

⁴⁹ Final Rate Order at ¶ 91.

38. In compliance with the Final Rate Order, on June 5, 2017 MPCo made its Compliance Rate Filing (“Compliance Rate Filing”).⁵⁰ That filing was limited to rate recovery of the In-Service Assets; it did not seek rate treatment for the full Kemper IGCC as originally anticipated. Seeking a modification of its amortization schedule for certain assets associated with the In-Service Assets, MPCo asked the Commission to (1) treat the Compliance Rate Filing as a routine filing pursuant to Miss. Code Ann. § 77-3-37 and RP 9.100; (2) apply the revenue being used to amortize the accelerated debt and equity carrying costs (amortization of those items ended on July 31, 2017) to pay off the other seven regulatory asset accounts which have depreciation schedules of 7-10 years pursuant to the Commission’s Final Rate Order; (3) authorize acceleration of the seven accounts to provide for full amortization over 11 months; (4) issue an order allowing for the new amortization to begin on August 1, 2017; (5) find that the Company’s current rates will not change as a result of the requests; and (6) direct MPCo to make a new rate filing relating to the Kemper Project no later than March 2, 2018.⁵¹

39. Subsequently, on June 28, 2017, Southern Company and MPCo publicly announced that they were “beginning a process to suspend operations and start-up activities on the gasifier portion of the Kemper IGCC.”⁵² MPCo has continued to wind down IGCC operations since that time.

⁵⁰ Mississippi Power Company Compliance Rate Filing Requesting a Change in the Amortization Schedule for Certain Regulatory Asset Accounts Accrued in Connection With the Kemper Project In-Service Assets, *In Re: Notice of Intent of Mississippi Power Company for a Change in Rates Supported by a Conventional Rate Filing or, in the Alternative, by a Rate Mitigation Plan in Connection with the Kemper County IGCC Project*, Docket No. 2015-UN-80 (Jun. 5, 2017) (“Compliance Rate Filing”).

⁵¹ Compliance Rate Filing at pp. 3-4.

⁵² Order Opening Docket at ¶ 81 (citing 8-K Current Report dated June 28, 2017 filed jointly with the Securities and Exchange Commission by MPCo and its parent, The Southern Company, at 4).

40. On August 23, 2017, the Commission issued a temporary stay of the Compliance Filing proceeding pending the outcome of this Settlement Docket.⁵³

H. Settlement Docket

41. The Commission opened this Settlement Docket to facilitate a negotiated settlement between the parties.⁵⁴

42. The Order Opening Docket (i) provided the parties 45 days to negotiate and file one or more stipulations with the Commission; and (ii) stated that if a suitable settlement was filed, the Commission would hold a public hearing, subject to a scheduling order, within 45 days of the settlement filing. The Order Opening Docket further provided that if the parties did not reach an appropriate stipulation, the Commission reserved the “right to exercise full authority to resolve all issues associated with the Kemper Project”⁵⁵

43. One of the issues to be resolved in any settlement was the recovery of capital costs and operations and maintenance (“O&M”) costs originally expected to be covered by Cooperative Energy (formerly South Mississippi Electric Power Association) (“SMEPA”) as co-owner of the Kemper Project. At the time MPCo filed its In-Service Assets Proposal with the Commission in July 2015, MPCo was under contract to sell 15% of the Kemper Project to SMEPA (“SMEPA Share”).⁵⁶ SMEPA subsequently terminated the agreement. The 2015 Stipulation specifically

⁵³ Temporary Stay Order, *In Re: Notice of Mississippi Power Company for a Change in Rates Supported by a Conventional Rate Filing or, in the Alternative, by a Rate Mitigation Plan in Connection with the Kemper County IGCC Project*, Docket No. 2015-UN-80 (Aug. 23, 2017) (“Temporary Stay Order”).

⁵⁴ Order Opening Docket at p.1.

⁵⁵ *Id.* at p.34.

⁵⁶ Effective November 9, 2016, SMEPA changed its name to Cooperative Energy.

excluded from the stipulated retail revenue requirement the SMEPA Share, with the understanding that MPCo reserved its right to seek recovery in a future proceeding.

44. On August 21, 2017, MPCo and certain intervenors⁵⁷ filed an offer to settle the rate issues associated with the Kemper Project based on parameters acceptable to MPCo (“MPCo’s August 21 Stipulation”), and Staff filed its proposed term sheet. Despite several deadline extensions, MPCo and Staff did not reach agreement. On September 12, 2017, the Commission set a hearing in the Settlement Docket to commence December 4, 2017.⁵⁸

45. On October 23, 2017, the following parties filed direct testimony: Liberty Fuels; Sierra Club and the Steps Coalition (together, “Sierra”); Greenleaf; Chevron, FEA, and Chemours; MPCo; and Staff. MPCo stated that intervenor Thomas A. Blanton (“Mr. Blanton”) intended to rely on testimony filed in Docket 2015-UN-080 by Charles Grayson and Paul B. Johnson, III, but not filed in this proceeding.⁵⁹ On November 17, 2017, the Commission granted MPCo’s October 27, 2017 motion to strike the testimony of Mr. Grayson and Mr. Johnson (“November 17 Order”) noting that neither their testimony nor any indication that Mr. Blanton intended to rely on their testimony in Docket 2015-UN-80 was filed in this Settlement Docket.⁶⁰ Nevertheless, the

⁵⁷ The intervenors who joined MPCo’s August 21 Stipulation are: 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. The Commission notes that these intervenors did not significantly participate in any of the proceedings relating to the Kemper Project.

⁵⁸ Order Setting Hearing and Scheduling Order, *In Re: Encouraging Stipulation of Matters in Connection with the Kemper County IGCC Project*, Docket No. 2017-AD-112 (Sep. 12, 2017) (“September 12 Order”).

⁵⁹ See MPCo Motion to Strike, *In Re: Encouraging Stipulation of Matters in Connection with the Kemper County IGCC Project*, Docket No. 2017-AD-112, at ¶ 30 (Oct. 27, 2017).

⁶⁰ See Order Granting in Part and Denying in Part Mississippi Power Company’s Motion to Strike, *In Re: Encouraging Stipulation of Matters in Connection with the Kemper County IGCC Project*, Docket No. 2017-AD-112, at ¶¶ 18-20 (Nov. 17, 2017) (“We have not identified any filings in this Docket where Mr. Blanton formally expressed an intent to rely on this testimony, and certainly not before the deadline for filing of direct testimony in this Docket on October 23, 2017.” *Id.* at ¶ 7, n. 6).

Commission reviewed their testimony and determined that it was not relevant to these proceedings.⁶¹ The Commission declined to strike the testimony of the Staff witnesses.⁶²

46. Also on October 23, 2017, MPCo filed the direct testimony and exhibits of Mr. Moses H. Feagin, Mr. David F. Schmidt, Mr. Larry J. Vogt, Mr. Steven M. Fetter, and Dr. James Vander Weide, and submitted a Supplemental Filing (“October 23 Supplemental Filing”). MPCo’s October 23 Supplemental Filing objected at length to proposals to adopt “fair-value” ratemaking as a basis for a determination in this proceeding because it asserted that such ratemaking principles have largely become disfavored and are no longer in use.⁶³ Staff replied to MPCo’s October 23 Supplemental Filing on November 6, 2017.

47. On November 6, 2017, MPCo rebutted Staff’s and Intervenors’ testimony (“November 6 Rebuttal Filing”).⁶⁴ On November 10, 2017, MPCo moved to file limited supplemental rebuttal testimony, primarily to respond to Staff’s testimony that was the subject of MPCo’s October 27 Motion to Strike.⁶⁵ On November 22, 2017, the Commission denied MPCo’s motion.⁶⁶

⁶¹ *Id.* at ¶¶ 20-22.

⁶² *Id.* at ¶ 9.

⁶³ MPCo Supplemental Filing, *In Re: Encouraging Stipulation of Matters in Connection with the Kemper County IGCC Project*, Docket No. 2017-AD-112, at ¶¶ 18-25 (Oct. 23, 2017).

⁶⁴ MPCo Rebuttal Filing, *In Re: Encouraging Stipulation of Matters in Connection with the Kemper County IGCC Project*, Docket No. 2017-AD-112, at ¶¶ 18-25 (Nov. 6, 2017). MPCo addressed the testimony filed by the Staff, and Intervenors Chevron, FEA and Chemours, collectively; Sierra Club/Steps; Liberty; and Greenleaf. *Id.* at ¶ 2.

⁶⁵ MPCo Motion for Leave to File Supplemental Rebuttal, *In Re: Encouraging Stipulation of Matters in Connection with the Kemper County IGCC Project*, Docket No. 2017-AD-112, at ¶¶ 3-4 (Nov. 10, 2017).

⁶⁶ Order Denying Mississippi Power Company’s Motion for Leave to File Limited Supplemental Rebuttal Testimony, *In Re: Encouraging Stipulation of Matters in Connection with the Kemper County IGCC Project*, Docket No. 2017-AD-112 (Nov. 22, 2017).

48. On November 22, 2017, MPCo filed an Amended and Restated Stipulation (“MPCo’s November 22 Stipulation”), revising the proposed terms of MPCo’s August 21 Stipulation. Chevron, FEA, and Chemours joined in that stipulation.⁶⁷

49. On November 28, 2017, the Commission issued an Order Clarifying Proceedings and Scope of December 4 Hearing.⁶⁸ That order clarified that this Settlement Docket was opened to promote settlement among MPCo and active parties, including Staff, as a means to develop just and reasonable rates in connection with the Kemper CC. If the parties were unable to reach a negotiated stipulation, the Commission stated it would lift the temporary stay in Docket No. 2015-UN-80 to consider MPCo’s Kemper-related rates in that docket.⁶⁹

50. On December 1, 2017, three days before the scheduled hearing, MPCo filed the Second Amended Stipulation, which was joined by the Staff, Chevron, Chemours, and the FEA (“Settling Parties”).⁷⁰ Also, the Commission issued an order canceling the December 4, 2017 hearing to allow for consideration of the Second Amended Stipulation.⁷¹

51. On December 5, 2017, the Commission issued a scheduling order, setting forth a comment date (December 31, 2017) and reply date of (January 10, 2018) (the “December 5

⁶⁷ Amended and Restated Stipulation, *In Re: Encouraging Stipulation of Matters in Connection with the Kemper County IGCC Project*, Docket No. 2017-AD-112 (Nov. 22, 2017) (“MPCo’s November 22 Stipulation”).

⁶⁸ Order Clarifying Proceedings and Scope of December 4 Hearing, *In Re: Encouraging Stipulation of Matters in Connection with the Kemper County IGCC Project*, Docket No. 2017-AD-112 (Nov. 28, 2017) (“Clarifying Order”).

⁶⁹ Clarifying Order at p. 10, ¶¶ 35-36.

⁷⁰ Wal-Mart, Sam’s East, and Greenleaf joined the Second Amended Stipulation on December 14, 2017, and Sierra filed a statement of no objections January 19, 2018, and are included in the term “Settling Parties.”

⁷¹ Order Canceling Hearing, *In Re: Encouraging Stipulation of Matters in Connection with the Kemper County IGCC Project*, Docket No. 2017-AD-112 (Dec. 1, 2017).

Scheduling Order”).⁷² The December 5 Scheduling Order set a hearing regarding the Second Amended Stipulation to commence on January 22, 2018.⁷³

III. SECOND AMENDED STIPULATION

A. Key Elements of the Second Amended Stipulation

1) Rate Base

52. The Settling Parties stipulate as follows: (i) the total MPCo capital investment in the Kemper CC (*i.e.*, average net rate base) equals \$853,918,600;⁷⁴ (ii) all of the available capacity of the Kemper CC, including the SMEPA Share (“Kemper CC Capacity”) and the associated cost is included in MPCo’s retail rate base. The inclusion of the Kemper CC Capacity in retail rate base will be subject to an allocation between the retail and wholesale jurisdictions pursuant to MPCo’s periodic cost of service studies, which must be approved by the Commission to become effective.⁷⁵ MPCo’s retail and wholesale customers will receive the energy from the Kemper CC Capacity consistent with the Southern Company Intercompany Interchange Contract, which is subject to the jurisdiction of the Federal Energy Regulatory Commission.

53. MPCo will permanently remove from retail rate base and rates all costs of the integrated gasification equipment and associated components of the Kemper Project (“Kemper Gasifier”) to insulate customers from any and all past, current, and future capital and operational

⁷² Scheduling Order, *In Re: Encouraging Stipulation of Matters in Connection with the Kemper County IGCC Project*, Docket No. 2017-AD-112 (Dec. 5, 2017) (“December 5 Scheduling Order”).

⁷³ December 5 Scheduling Order at p. 3.

⁷⁴ Based on a Gross Plant in Service of \$1,100,999,076. Second Amended Stipulation at ¶ 6(a) (citing Exhibit 2, p. 1, line 18). This discussion is based on the numbers contained in the Second Amended Stipulation prior to the application of the Tax Cuts and Jobs Act. *See infra* Section V. D., ¶140; *see also* Hearing Tr. at 47, 167-168.

⁷⁵ *Id.* at ¶ 6(f).

costs and risks associated with Kemper Gasifier and lignite operations. The Second Amended Stipulation specifies that the Kemper Gasifier facilities include:

- (a) Gasifier Trains A and B;
- (b) Liberty Fuels Mine;
- (c) Lignite Delivery Facility;
- (d) Gas Clean-up Facilities;
- (e) Lignite Dryers and Feed Systems;
- (f) Ash Removal System;
- (g) Ash Storage Unit; and
- (h) CO₂ Pipeline.⁷⁶

54. No party to the settlement will challenge the prudence of MPCo's Kemper CC capital investment and O&M costs projected to be incurred through 2018, as shown in Exhibit 2 to the Second Amended Stipulation, if the stipulation (i) is accepted by the Commission without material modification and (ii) survives any appellate challenges (if applicable) without material modification.⁷⁷ MPCo may seek recovery of any Kemper CC O&M costs incurred post-2018 and/or any capital investment not included in the 2018 revenue requirement through ordinary regulatory filings with the Commission.⁷⁸

2) Depreciation for Rate Base

55. Rate base for the Kemper CC, excluding certain regulatory assets and liabilities, will be depreciated using standard practices for depreciation of plant, property, and equipment.

3) Regulatory Assets

56. Regulatory asset amounts and the amortization period approved by the Commission in the In-Service Asset Order will be reset to an eight-year amortization period to begin January 2018. The following are appropriately related to the In-Service Assets: a December 31, 2017

⁷⁶ *Id.* at ¶ 8.

⁷⁷ *Id.* at ¶ 16.

⁷⁸ *Id.* at ¶ 17.

ending balance of \$115,878,266 (\$85,082,186 retail) for all regulatory assets and \$26,465,501 (all retail) for all regulatory liabilities. All regulatory liabilities will be amortized over a six-year amortization period, beginning January 2018.

4) Operations & Maintenance (“O&M”)

57. The annual budgeted O&M costs to be included in the 2018 revenue requirement are \$25,532,679, and are necessary and reasonable. Interested parties are not precluded from challenging MPCo’s future proposed O&M expense recovery for years following 2018.

5) Resulting Revenue Requirement

58. The resultant estimated overall annual retail revenue requirement is approximately \$99.3 million,⁷⁹ which is a reduction from the current rates in place for the Kemper CC set in the In-Service Assets Docket. MPCo shall file compliance rates with the Commission to implement the new revenue requirement within thirty (30) days of Commission approval of the Second Amended Stipulation.

59. The stipulated revenue requirement includes the anticipated 2018 expenses associated with MPCo’s planned conversion of the Kemper CC combustion turbines to Ultra Low NOx and F6 hot gas path components to improve the plant’s efficiency by reducing combustion turbine maintenance costs, water treatment costs, and lowering the heat rate.⁸⁰

⁷⁹ Subsequent to the date of the Second Amended Stipulation but prior to the hearing scheduled for January 22, 2018, the United States Congress enacted, and the President signed into law, the Tax Cuts and Jobs Act of 2017, P.L. 115-97 (the “TCJA”), which among other things, reduced the federal corporate tax rate from 35% to 21%. This resulted in the Company and Staff agreeing at the hearing to a reduction in the revenue requirement for 2018 from \$112.60 million to \$99.3 million. Transcript of the January 22, 2018, Hearing (“Hearing Tr.”) at 47.

⁸⁰ Direct Testimony of Bruce C. Harrington, Docket No. 2017-AD-112 (Oct. 23, 2017).

6) Rate of Return

60. The Company's cost of equity for regulatory years 2018 and 2019 will be derived using an agreed-to formula based on the MPCo's annual Performance Evaluation Plan rate schedule (PEP-5) (without any performance adjustment).⁸¹ For all subsequent regulatory years, the return on equity shall be equal to the performance-adjusted cost of equity approved by the Commission in MPCo's annual PEP-5 filings, or to any other return on equity approved in a future retail rate schedule or retail rate order establishing MPCo's cost of equity.⁸²

61. For regulatory year 2018, the embedded cost of debt shall be 4.620%. The embedded cost of debt for all subsequent years shall be equal to the embedded cost of debt included in the Company's latest annual PEP-5 filing.

62. For 2018 and 2019, MPCo shall target a 50% average equity capital structure (common and preferred).

7) Amendment of the Kemper Project CPCN

63. Consistent with the Commission's direction in the Order Opening Docket,⁸³ the Commission will amend the Kemper Project CPCN issued in Docket No. 2009-UA-14 as follows:

(a) to allow for operation of the Kemper Project as only a natural gas combined cycle; (b) to remove the authority for [MPCo] to continue development or maintenance of the Kemper Gasifier *with the expectation of cost recovery or any other financial support from retail customers*; (c) to deem satisfied, such that they have no effect, any and all "Conditions to Certificate"; and (d) to remove the "Monitoring Plan" set out in the Kemper certificate as no longer required, provided that if any Independent Monitor costs are incurred in 2018, [MPCo] shall defer those costs for inclusion in the next rate filing including Kemper-related costs.⁸⁴

⁸¹ Second Amended Stipulation at ¶ 6(c).

⁸² *Id.*

⁸³ Order Opening Docket at ¶ 95(c).

⁸⁴ Second Amended Stipulation at ¶ 13 (emphasis in original).

8) Additional Ratepayer Protections

64. Costs associated with the Kemper Gasifier, including the lignite mine operations, will be permanently removed from rate base “to insulate customers from any and all past, current and future operational and cost risk associated with the Kemper Gasifier and lignite operations.”⁸⁵ Neither MPCO nor its successors may ever seek recovery of the Kemper Gasifier and associated facilities, including the lignite mine operations.

65. MPCo shall work in good faith to sell any Kemper Project land that it determines is not needed for present or future needs of the Kemper CC. In any such land divestiture, MPCo will defer and include any sales proceeds (gain or loss) in its next Kemper-related rate filing for Commission consideration.⁸⁶

66. Consistent with the commitment to permanently remove the Kemper Gasifier and lignite mine operations from MPCo’s rate base, the Company assumes full responsibility for any risk and/or reward associated with the Kemper Gasifier going-forward. MPCo retains full rights to determine whether and how to use or dispose of the Kemper Gasifier, subject to its obligations, including the commitment not to recover from its customers any costs associated with the Kemper Gasifier.⁸⁷

67. If it decides to permanently abandon the Kemper Gasifier, MPCo will not seek recovery from its customers for any costs associated with abandonment (e.g., dismantlement, demobilization, environmental remediation, mine reclamation, or any other costs necessary to safely

⁸⁵ *Id.* at ¶ 8.

⁸⁶ *Id.* at ¶ 10.

⁸⁷ *Id.* at ¶ 11.

and permanently shut down the Kemper Gasifier equipment and facilities in accordance with the applicable laws and regulations).⁸⁸

9) MPCo's Commitment to File a Reserve Margin Plan

68. MPCo has generating capacity in excess of the Company's long-term targeted reserve margin.⁸⁹ To address that situation, MPCo commits to "develop, complete, and file with the Commission a Reserve Margin Plan" to provide an opportunity for the Commission and all interested parties to conduct a "fully informed and transparent review of [MPCo's] reserve margin."⁹⁰ The Second Amended Stipulation provides a detailed proposal for the Reserve Margin Plan components and process.⁹¹

IV. RESPONSES TO THE SECOND AMENDED STIPULATION

A. Initial Response to Second Amended Stipulation

1) Joining Parties

69. The Second Amended Stipulation was filed by MPCo on behalf of itself and Staff, Chevron, Chemours, and the FEA.

70. On December 14, 2017, Wal-Mart, Sam's East, and Greenleaf⁹² filed joinders adopting the Second Amended Stipulation without modification.

71. On January 19, 2018, Sierra Club/Steps filed a statement of no objection to approval of the Second Amended Stipulation.⁹³

⁸⁸ *Id.* at ¶ 12.

⁸⁹ *Id.* at ¶ 14.

⁹⁰ *Id.* at ¶ 15.

⁹¹ *See id.* at ¶ 15(a)-(c).

⁹² Greenleaf also filed a Notice of Withdrawal of Pleadings and Testimony.

⁹³ Sierra Club/Steps included in its Statement of No Objections a withdrawal of all prefiled testimony.

2) Parties Requesting Modification or Conditions

72. On December 21, 2017, Liberty Fuels filed comments (“Liberty Comments”), addressing one “narrow issue” in the Second Amended Stipulation.⁹⁴ Liberty, which operates the lignite mine which was intended to supply lignite to MPCo for use in its gasifying operations at the Kemper Project,⁹⁵ objected to the portion of the Second Amended Stipulation which asks the Commission to amend the Kemper CPCN to only allow for operation of a natural gas combined cycle unit. Liberty argued that no amendment to the Kemper CPCN is necessary to allow the Kemper CC to operate only on natural gas or to protect ratepayers because paragraphs 8-12 of the Second Amended Stipulation prohibit MPCo from passing through any costs to ratepayers that are associated with the Kemper Gasifier.⁹⁶ Liberty recommended that the Commission allow the Kemper CPCN to continue permitting operation using both natural gas and syngas generated by the Kemper Gasifier, and to permit MPCo to purchase syngas as a generation fuel if MPCo demonstrates that it is in the best interests of MPCo ratepayers to do so.⁹⁷

73. On December 22, 2017, Mississippi Attorney General Jim Hood filed comments to the Second Amended Stipulation (“Attorney General Comments”).⁹⁸ The Attorney General commended the resolution of issues and concerns surrounding the Kemper Project and supported

⁹⁴ Liberty Fuels Company, LLC’s Comments to Mississippi Power Company’s Second Amended and Restated Stipulation, *In Re: Encouraging Stipulation of Matters in Connection with the Kemper County IGCC Project*, Docket No. 2017-AD-112, at ¶ 1 (Dec. 21, 2017).

⁹⁵ See Direct Testimony of Lavern K. Lund on Behalf of Liberty Fuels Company, LLC, *In Re: Encouraging Stipulation of Matters in Connection with the Kemper County IGCC Project*, Docket No. 2017-AD-112, at p. 1 (Oct. 23, 2017) (“Lund Direct Testimony”).

⁹⁶ Liberty Comments at ¶ 1.

⁹⁷ *Id.* at ¶¶ 1-2.

⁹⁸ Attorney General’s Comments to Second Amended and Restated Stipulation, *In Re: Encouraging Stipulation of Matters in Connection with the Kemper County IGCC Project*, Docket No. 2017-AD-112 (Dec. 22, 2017).

the creation of the Reserve Margin Plan to evaluate energy needs and MPCo resources, and to ensure consumers do not pay for excess capacity.⁹⁹ However, the Attorney General reiterated the recommendation made in its 2010 Post Hearing Brief¹⁰⁰ that MPCo include facility performance standards, because, among other things, of the possibility that the Kemper CC may not function as well as a natural gas generating facility that was originally designed to be run solely on natural gas.¹⁰¹

3) Objecting Parties

74. On December 28, 2017, intervenor Thomas A. Blanton filed comments to the Second Amended Stipulation.¹⁰² Mr. Blanton objected to the Second Amended Stipulation and raised arguments: (i) that the Commission does not have statutory authority to approve a stipulation that is not entered into by all the parties;¹⁰³ (ii) that the Kemper CC has not been found to be used and useful, and that the Kemper CC is not prudent as a stand-alone facility;¹⁰⁴ (iii) that the agreed-to capital cost of \$853,918,600 is not justified;¹⁰⁵ (iv) that the \$1.1 billion included in Gross Plant

⁹⁹ *Id.* at p. 1.

¹⁰⁰ *Id.* at p. 2 (citing Attorney General's Office Post-Hearing Brief and Response to Commission's February 26th Order, *Petition of Mississippi Power Company for a Certificate of Public Convenience and Necessity Authorizing the Acquisition, Construction, and Operation of an Electric Generating Plant, Associated Transmission Facilities, Associated Gas Pipeline Facilities, Associated Rights-of-Way, and Related Facilities in Kemper, Lauderdale, Clarke, and Jasper Counties, Mississippi*, Docket No. 2009-UA-14 (March 12, 2010)).

¹⁰¹ Attorney General Comments at p. 2.

¹⁰² Blanton's Objections to Second Amended and Restated Stipulation, *In Re: Encouraging Stipulation of Matters in Connection with the Kemper County IGCC Project*, Docket No. 2017-AD-112, at pp. 1-3 (Dec. 28, 2017) ("Blanton Comments").

¹⁰³ *Id.* at p. 1.

¹⁰⁴ *Id.* at pp. 1-2.

¹⁰⁵ *Id.* at p. 2.

in Service is not itemized;¹⁰⁶ and (v) that a new CPCN (not an amended version) is required for Kemper to operate as a CC rather than an IGCC.¹⁰⁷

75. On January 2, 2018, the Sierra Club and the Steps Coalition jointly filed comments to the Second Amended Stipulation¹⁰⁸ which they subsequently withdrew.¹⁰⁹

B. Supplemental Responses to Second Amended Stipulation

1) Mississippi Power Company

76. On January 10, 2018, MPCo submitted rebuttal comments in response to Mr. Blanton and Sierra, and filed supplemental direct testimony in support of the Second Amended Stipulation.¹¹⁰

a. Mississippi Power Company Rebuttal Comments

77. The MPCo Rebuttal Comments included the following responses to the arguments raised by Mr. Blanton.

78. MPCo refuted Mr. Blanton's argument that the Commission does not have authority to approve a "partial" stipulation, noting that the Commission is authorized to approve the Second Amended Stipulation, not only by Mississippi statute, but also by longstanding regulatory practice and policy encouraging settlements.¹¹¹ MPCo also noted that the Second

¹⁰⁶ *Id.* at pp. 2-3.

¹⁰⁷ *Id.* at p. 3.

¹⁰⁸ The Sierra Club's and The Steps Coalition's Comments, *In Re: Encouraging Stipulation of Matters in Connection with the Kemper County IGCC Project*, Docket No. 2017-AD-112 (Jan. 2, 2018).

¹⁰⁹ Statement of No Objection, *In Re: Encouraging Stipulation of Matters in Connection with the Kemper County IGCC Project*, Docket No. 2017-AD-112, at p. 1 (Jan. 19, 2018).

¹¹⁰ Mississippi Power Company's Rebuttal Comments and Second Supplemental Direct Testimony, *In Re: Encouraging Stipulation of Matters in Connection with the Kemper County IGCC Project*, Docket No. 2017-AD-112 (Jan. 10, 2018) (hereinafter "MPCo Rebuttal Comments" and "MPCo Second Supplemental Testimony," respectively).

¹¹¹ MPCo Rebuttal Comments at 2 (quoting Miss. Code Ann. § 77-3-39(6) providing that "the Commission may accept and adopt as its own, the agreements between any or all interested parties of record, or any

Amended Stipulation is supported by substantial evidence, found in the detailed testimony and discovery provided by the parties.¹¹²

79. In response to Mr. Blanton's argument that the Kemper CC has not been, and should not be, found to be used and useful, MPCo explained that the Commission's prior order in Docket No. 2015-UN-80 does not prohibit a future finding that the Kemper CC is used and useful.¹¹³ MPCo notes (1) it has agreed to amend the Kemper CPCN to provide for the Kemper CC as a stand-alone, completed facility,¹¹⁴ (2) that it provided evidence that the Kemper CC is efficient – it has the third-lowest dispatch price of MPCo's generating units,¹¹⁵ and (3) the Kemper CC is used and useful – it has generated over 10.6 million MWh (net) through July 2017.¹¹⁶ MPCo explained that costs of converting the Kemper CC to a natural gas facility were stipulated by the Settling Parties to be reasonable and recoverable and actually result in a rate decrease for customers.¹¹⁷

80. MPCo responded to Mr. Blanton regarding prudence, arguing that the Kemper CC is a prudent stand-alone facility: (a) all costs approved for recovery as part of the Second Amended Stipulation are prudent and (b) no party has presented evidence to support a finding of

portion thereof, resulting from the prehearing conference and allow such changes in rates, without requiring any further proceedings, to become effective immediately.”).

¹¹² *Id.* at pp. 2-3.

¹¹³ *Id.* at p. 3.

¹¹⁴ *Id.*

¹¹⁵ *Id.* (citing Direct Testimony of David F. Schmidt, MPSC Docket No. 2017-AD-112, p. 8 (Oct. 23, 2017) (“Schmidt Direct”)).

¹¹⁶ *Id.* at pp. 3-4 (citing Direct Testimony of Bruce C. Harrington, MPSC Docket No. 2017-AD-112, p. 4 (Oct. 23, 2017) (“Harrington Direct”)).

¹¹⁷ *Id.* at p. 4.

imprudence.¹¹⁸ MPCo explained that prudence is demonstrated by making a *prima facie* case showing, in summary: (a) an overview of management procedures and controls over the project; (b) an overview of accounting procedures and controls for the cost of the project; and (c) a review of cost variances between Commission-sanctioned estimates and incurred amounts.¹¹⁹ MPCo stated that it has provided testimony to support a *prima facie* case, and no other party has rebutted that testimony.¹²⁰ MPCo further stated that record evidence provided by the Staff's expert consultants supports its *prima facie* case of prudence,¹²¹ and noted that the prudence doctrine prohibits the application of hindsight.¹²²

81. MPCo responded to Mr. Blanton's argument on the appropriateness of the capital costs by stating that the stipulated recovery of \$853,918,600 in capital costs is justified. MPCo stated that Mr. Blanton improperly interprets the Commission's prior order in Docket No. 2015-UN-80 as prohibiting MPCo from recovering more than \$575 million,¹²³ noting that the Commission expressly deferred consideration of additional expenditures.¹²⁴ MPCo believes it is entitled to recover far more than \$853,918,600, based on its prudently incurred costs, and that the stipulated recovery amount is a significant concession.¹²⁵

¹¹⁸ *Id.*

¹¹⁹ *Id.* at pp. 4-5 (citing Order, MPSC Docket No. 2013-UA-189, p. 9 (Oct. 15, 2013); *see also* In-Service Asset Order, MPSC Docket No. 2015-UN-80, p. 21 (Dec. 3, 2015)).

¹²⁰ *Id.* at pp. 5-7.

¹²¹ *Id.* at pp. 5-6 (citing the testimony of Staff's construction expert, Mr. Donald Grace).

¹²² *Id.* at pp. 6-7 (quoting *State ex rel. Pittman v. Miss. Pub. Serv. Comm'n*, 538 So. 2d 387, 394 (Miss. 1989): "[i]t always has been a guiding principle of rate regulation that costs should be allowed unless managerial decisions are found to have been imprudent when evaluated in the light of the circumstances existing at the time the decisions were made, without the benefit of hindsight.").

¹²³ *Id.* at p. 7-8 (citing Final Rate Order at p. 16).

¹²⁴ *Id.* at p. 8 (citing Final Rate Order at p. 30).

¹²⁵ *Id.* at p. 8-9 (further citations omitted).

82. MPCo responded to Mr. Blanton's arguments regarding gross plant itemization by explaining that its gross plant in service of \$1.1 billion has already been itemized in the MPCo Second Supplemental Testimony submitted with the MPCo Rebuttal Comments.¹²⁶ MPCo argues that Mr. Blanton has failed to rebut MPCo's *prima facie* showing.¹²⁷

83. MPCo responded to Mr. Blanton's argument that the Kemper CC needs a new CPCN by explaining that that Commission already determined that operation of the Kemper CC does not require a new certificate,¹²⁸ stating that the Commission can amend a utility generating facility's certificate if amendment is in the public interest, and in this case, amendment is proper and in the public convenience and necessity as contemplated by the Second Amended Stipulation.¹²⁹

84. MPCo explained that, contrary to Mr. Blanton's claims, the Commission has not conducted any business in private,¹³⁰ and that approval of the Second Amended Stipulation will not violate the principles of law described in the Mississippi Supreme Court's decision in *Mississippi Power Co. v. Mississippi Public Service Commission*.¹³¹ MPCo noted that the Commission has only encouraged settlement and conducted a public hearing,¹³² and did not negotiate with any parties behind closed doors.¹³³ While the parties have at times conducted

¹²⁶ *Id.* at p. 9.

¹²⁷ *Id.*

¹²⁸ *Id.* at p. 10 (citing Order Denying Motion to Dismiss, MPSC Docket No. 2015-UN-80, pp. 12-15 (Sept. 1, 2015); Order, MPSC Docket No. 2015-UN-80, p. 8 (Nov. 3, 2015) ("Further, certificates granted by the Commission are not typically limited to use of one fuel source.")).

¹²⁹ *Id.* at pp. 10-13 (further citations omitted).

¹³⁰ MPCo Rebuttal Comments, at p. 13.

¹³¹ 168 So. 3d 905 (Miss. 2015).

¹³² MPCo Rebuttal Comments, at p. 13.

¹³³ *Id.*

negotiations subject to confidentiality agreements, MPCo explained that this was necessary to allow the parties to discuss topics which could affect MPCo's financial statements and confidential financial or commercial information and trade secrets, as protected by Mississippi law.¹³⁴ MPCo noted that Mr. Blanton could have participated in those discussions, but refused to sign the confidentiality agreement.¹³⁵ Confidential settlement discussions *between parties* are not prohibited by the Mississippi Supreme Court,¹³⁶ and the entire Second Amended Stipulation is publicly available.¹³⁷

b. Mississippi Power Company Second Supplemental Testimony

85. MPCo's Second Supplemental Testimony was provided by Moses H. Feagin, MPCo's Vice-President, Treasurer and Chief Financial Officer.¹³⁸ Mr. Feagin's testimony provides further detail regarding the Second Amended Stipulation to address certain intervenors' initial comments on the proposed settlement.¹³⁹ MPCo's Second Supplemental Testimony also includes Exhibit ____ (MHF-6 Supp), a Comparison of August 21, 2017 and December 1, 2017 Stipulated Revenue Requirement Assumptions,¹⁴⁰ which details the following differences between the Second Amended Stipulation and MPCo's initial settlement proposal (rejected by Staff and other parties):

¹³⁴ *Id.*

¹³⁵ *Id.* at pp. 13-14.

¹³⁶ *Id.*

¹³⁷ *Id.* at p. 14.

¹³⁸ Second Supplemental Direct Testimony of Moses H. Feagin on behalf of Mississippi Power Company, *In Re: Encouraging Stipulation of Matters in Connection with the Kemper County IGCC Project*, Docket No. 2017-AD-0112 (Jan. 11, 2018) ("Feagin Second Supplemental Direct").

¹³⁹ *Id.* at p. 1.

¹⁴⁰ *Id.*, Exhibit ____ (MHF-6 Supp).

- (1) Annual retail revenue requirement was reduced from \$126 million to \$112.6 million.¹⁴¹
- (2) Recoverable Gross Plant in Service was reduced by \$85 million,¹⁴² along with adjustments to accumulated depreciation and accumulated deferred income taxes.
- (3) Cost of capital was reduced to reflect removal of the equity performance adjustment and to incorporate adjustment to the cost of long-term debt.
- (4) Recoverable regulatory asset costs were reduced by \$70 million.
- (5) Regulatory liability costs of \$16.8 million, previously deferred in Docket No. 2015-UN-80, were included.
- (6) Amortization for stipulated regulatory assets was shortened from 20 years to 8 years.¹⁴³

86. In rebuttal to Mr. Blanton, Mr. Feagin testified that MPCo presented substantial evidence through testimony and data request responses to permit any party to evaluate the terms and calculations of the Second Amended Stipulation.¹⁴⁴ Mr. Feagin noted that the Second Amended Stipulation does not identify discrete assets or costs associated with the \$85 million disallowance because it is a negotiated total amount that resolves arguments regarding Kemper CC's costs for recovery.¹⁴⁵ Mr. Feagin testified that MPCo agreed in the Second Amended Stipulation to fund the cost of consultants hired by the Staff to review the Reserve Margin Plan contemplated under the Stipulation, and take good-faith steps to divest land not required for Kemper CC's present and future needs.¹⁴⁶

¹⁴¹ MPCo subsequently reduced the revenue requirement to \$99.3 million at the hearing held on January 22, 2018, which reduced amount was verified and accepted by Staff. Hearing Tr. at 47, 167-168.

¹⁴² Mr. Feagin notes that this and certain other figures summarized here are approximated.

¹⁴³ Feagin Second Supplemental Direct at p. 2.

¹⁴⁴ *Id.* at pp. 2-3.

¹⁴⁵ *Id.* at pp. 3-4.

¹⁴⁶ *Id.* at p. 4. *See id.* at pp. 4-5 for MPCo's rebuttal to Sierra Club/Step's argument.

87. Mr. Feagin testified that to meet the stipulated revenue requirement, MPCo removed \$85 million in Kemper CC gross plant in service and approximately \$2 million in regulatory assets.¹⁴⁷ Despite the potential negative financial impact to MPCo, Mr. Feagin testified that MPCo agreed to these additional charges to earnings because the Second Amended Stipulation represented the “lesser of two evils” when compared to protracted litigation.¹⁴⁸

88. Mr. Feagin concludes that the Second Amended Stipulation represents a fair and reasonable compromise of the contested issues in this case and will result in just and reasonable rates.¹⁴⁹

2) Three Sets of Supplemental Direct Testimony Were Filed on Behalf of the Staff

a. Donald Grace, Critical Technologies Consulting, LLC¹⁵⁰

89. Mr. Grace provided supplemental testimony on behalf of Staff to support the Second Amended Stipulation.¹⁵¹

90. Mr. Grace explained that Critical Technologies Consulting, LLC (“CTC”) conducted an independent “as built” cost estimate (“Independent Estimate”) of the Kemper CC, based on, among other things: a typical engineering/design, procurement and construction (“EPC”) contract approach, actual prices of major equipment, bulk quantities as derived from the MPCo-

¹⁴⁷ *Id.* “The charge to earnings associated with these additional disallowances was recorded following execution of the Stipulation.” *Id.*

¹⁴⁸ *Id.* at pp. 5-6.

¹⁴⁹ *Id.* at pp. 6-8.

¹⁵⁰ Supplemental Direct Testimony in Support of Settlement by Critical Technologies Consulting, LLC on behalf of the Mississippi Public Utilities Staff, *In Re: Encouraging Stipulation of Matters in Connection with the Kemper County IGCC Project*, Docket No. 2017-AD-112 (Jan. 10, 2018) (“CTC Supplemental Direct Testimony”).

¹⁵¹ CTC Supplemental Direct Testimony at p. 3.

developed plant model, and local labor prices, as described in Exhibit A to the testimony. He noted that the Independent Estimate quantifies the costs of EPC and then adds the Owners' Cost. The estimate does not include Allowance for Funds Used During Construction ("AFUDC"), related Regulatory Assets, credits provided by the U.S. Department of Energy ("DOE Credits") or other external funding sources, tax credits, prior write-downs of the assets or any other such accounting entries.¹⁵²

91. Mr. Grace testified that the Independent Estimate was to independently form an opinion as to the reasonableness of the amount of Kemper CC costs to be recovered in rates.¹⁵³ He noted that CTC made a previous independent "as built" cost estimate for the Kemper CC ("Previous Estimate") of \$776.6 million, comprised of \$647.2 million for EPC costs and \$129.4 million for Owners' Costs.¹⁵⁴ CTC determined that the cost estimate of \$647.2 million for EPC costs should be increased by \$29 million, resulting in \$676.2 million for EPC costs.¹⁵⁵ This EPC cost increase results in an increase in the Owners' Cost because CTC used the EIA approach of assuming Owners' Costs to be 20% of the EPC costs, resulting in a revised figure for EPC plus Owners' Costs of \$811 million.¹⁵⁶ Mr. Grace noted that CTC's Independent Estimate was corrected by removing the costs of water and gas pipelines from EPC costs, and instead including

¹⁵² *Id.*

¹⁵³ *Id.* at p. 4.

¹⁵⁴ *Id.* at p. 4. CTC used the U.S. Energy Information Administration ("EIA") approach of assuming Owners' Costs to be 20% of the EPC costs. *Id.*

¹⁵⁵ CTC Supplemental Direct Testimony at p. 4. CTC made two corrections to the EPC portion of the cost estimate: (1) certain calculation errors were discovered resulting in an increase to the estimate of \$1.49 million; and (2) EPC Contractor and Subcontractor costs were revised to include missed contractor costs and adjust subcontractor costs, resulting in \$55,792,111 included in the revised cost estimate (as opposed to the prior figure of \$27,443,046). These two adjustments result in the previous \$647.2 million becoming \$676.2 million. *Id.*

¹⁵⁶ *Id.* at pp. 4-5.

those costs as part of the 20% Owners' Costs, per discussions with EIA.¹⁵⁷ To avoid "double counting," CTC started with the \$676.2 million starting point and added in the MPCo actuals for Owners' Costs that are not accounted for in the \$676.2 million, resulting in \$799 million.¹⁵⁸ CTC concluded that the amount of the Kemper CC included in rate base for recovery proposed in the Second Amended Stipulation is just and reasonable.¹⁵⁹

b. Ralph C. Smith and Mark S. Dady, Larkin & Associates, PLLC ("Larkin & Associates")¹⁶⁰

92. The Staff requested that Larkin & Associates provide (a) an explanation of certain amounts included in the revenue requirement in the Second Amended Stipulation; (b) an opinion as to whether the proposed settlement is reasonable and fair to MPCo and its ratepayers, and (c) a preliminary comment on revising the 2018 settlement revenue requirement to pass onto MPCo's customers impacts of the TCJA that reduce the federal corporate income tax rate from 35% to a new flat rate of 21% effective January 1, 2018.¹⁶¹

93. Larkin & Associates discussed the following elements of the Stipulation:

- (1) Cost for Combined Cycle Plant: The Second Amended Stipulation includes a cost of the combined cycle plant of \$981.6 million, comprised of Gross Plant in Service of \$819.2 million and an additional amount of \$162.4

¹⁵⁷ *Id.* at p. 5.

¹⁵⁸ *Id.* This is still an estimate. Per Mr. Grace, differences between estimated and actual costs should be relatively small (5%). *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ Supplemental Direct Testimony in Support of Settlement of Ralph C. Smith and Mark S. Dady on behalf of the Mississippi Public Utilities Staff, *In Re: Encouraging Stipulation of Matters in Connection with the Kemper County IGCC Project*, Docket No. 2017-AD-112 (Jan. 10, 2018) ("Larkin & Associates Supplemental Direct Testimony").

¹⁶¹ Larkin & Associates Supplemental Direct Testimony at 1-2, 3. Larkin & Associates included with their Supplemental Direct Testimony Exhibit LA-17, a listing of the Kemper CC costs as of December 31, 2017 that are included in the 2018 retail revenue requirement that is reflected in the Second Amended Stipulation. *Id.* at p. 3, Exhibit LA-17.

million.¹⁶² This cost is higher than amounts previously proposed by Staff in its August 21, 2017 settlement offer (\$814.0 million) and September 8, 2017 settlement offer (\$930.0 million), but is lower than the \$1.066 million cost included in the November 22, 2017 settlement between MPCo and intervenors Chevron, Walmart, Chemours, FEA and First Chemical.¹⁶³

In the earlier Staff settlement offers, Staff and MPCo were generally in agreement regarding many components of the Kemper CC costs, except for approximately \$247.4 million of those costs centered around three items: (a) Clean Coal Power Initiative 2 (“CCPI2”) funding (Portion of \$245 million transferred to Gasifier); (b) Loss (Portion of total Loss transferred to Gasifier); and (c) Additional Department of Energy (“DOE”) funding (Portion of \$137 million transferred to Gasifier).¹⁶⁴ This issue was resolved between Staff and MPCo when MPCo agreed to take an additional write-down of \$85 million (a negotiated amount), which reduced the \$247.4 million to \$162.4 million.¹⁶⁵ Exhibit LA-17 contains a listing of the details of the components of the Kemper CC plant cost as of December 31, 2017.¹⁶⁶

The 2018 rate base amount for Kemper CC includes some plant additions for the Kemper CC that are projected to occur in 2018, including monthly incremental plant additions and a plant addition related to low NOx burners. The low NOx burners are projected to have a cost of \$23.4 million in October 2018. There is also a retirement related to the low NOx burners of \$13.5 million, reflected as both an adjustment to accumulated depreciation and offset against the corresponding \$23.4 million plant addition, resulting in a net plant addition of \$9.9 million in October 2018.¹⁶⁷

- (2) Cost for Transmission Plant: The Second Amended Stipulation includes \$114 million for cost of Kemper Transmission Plant. This is the same amount as included in the Staff settlement offers on August 21, 2017 and September 8, 2017. The transmission plant is being used to provide service to MPCo’s customers.¹⁶⁸

¹⁶² *Id.* at p. 4.

¹⁶³ *Id.* at p. 5.

¹⁶⁴ *Id.* at p. 6.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* at p.7.

¹⁶⁷ *Id.* (footnotes omitted).

¹⁶⁸ *Id.* at p. 8.

- (3) Land Costs: The Second Amended Stipulation includes \$18.35 million of land costs.¹⁶⁹ This is a compromise amount.¹⁷⁰
- (4) Regulatory Assets Not Recorded on MPCo's Books: The Second Amended Stipulation includes \$55.5 million of regulatory assets net of regulatory liabilities as of December 31, 2017, on a retail basis, with regulatory assets amortized over 8 years and regulatory liabilities amortized over 6 years.¹⁷¹ This is the same treatment for Regulatory Assets and Liabilities reflected in the November 22, 2017 Settlement between MPCo and intervenors Chevron, Walmart, Chemours, FEA and First Chemical.¹⁷² Some of the regulatory asset amounts that had been requested by MPCo are not recorded on its books, including items listed on MPCo Exhibit ____ (MHF-1), page 8, in the "Retail" column (listing certain deferred depreciation and amortization, debt carrying costs, and equity carrying costs).¹⁷³ Staff included those amounts in its August 21, 2017 settlement offer as an inducement to MPCo to settle, but those amounts were excluded from the Staff Coalition settlement offer of September 8, 2017.¹⁷⁴ MPCo has agreed to remove those amounts, as well as a regulatory asset of about \$1.5 million for debt carrying costs that MPCo had recorded on its books, from the 2018 Kemper CC revenue requirement in the Second Amended Stipulation.¹⁷⁵
- (5) Return and No Performance Adjustment: The Second Amended Stipulation includes a return of 6.622% based on a cost of common equity of 8.576% and a capital structure ratio of 48.597% Debt, 0.949% Preferred Stock, and 50.454% Common Equity.¹⁷⁶ This return is lower than the return proposed in Staff's August 21, 2017 settlement offer (which was 6.729%, based on cost of common equity of 9.225% and a capital structure ratio of 49.301% Debt, 0.699% Preferred Stock, and 50.000% Common Equity).¹⁷⁷ The

¹⁶⁹ *Id.* at p. 9. Larkin & Associates includes two different dollar figures as included in the Stipulation -- \$18.35 million and \$18.83 million. *Compare* Larkin & Associates, at p. 9 (lines 14-18) *with* Larkin & Associates, at p. 10 (line 5). This appears to be a typographic error in the Larkin & Associates testimony.

¹⁷⁰ *Id.* at pp. 8-10. MPCo originally sought to recover \$32.28 million of land costs for the Kemper IGCC, which included about 2,900 acres. *Id.* at 8. Staff witnesses testified as to the amount of land needed for a typical combined cycle plant, and the amount of land that should be allowed for the Kemper CC, and proposed that no more than about \$6 million be included as land costs. *Id.* at pp. 9-10.

¹⁷¹ Larkin & Associates, at p. 10.

¹⁷² *Id.*

¹⁷³ *Id.* at pp. 10-11.

¹⁷⁴ *Id.* at p. 11.

¹⁷⁵ *Id.* at pp. 11-12.

¹⁷⁶ *Id.* at p. 12.

¹⁷⁷ *Id.* (citing Exhibit LA-1, p. 12).

Second Amended Stipulation return is also lower than the return used in Staff's September 8, 2017 settlement offer (which was 6.793%, based on cost of common equity of 8.652%, and a capital structure of 48.597% Debt, 0.949% Preferred Stock, and 50.454% Common Equity).¹⁷⁸ The Second Amended Stipulation return excludes the performance adjustment from the ROE used to compute the Kemper CC revenue requirement for 2018 and 2019.¹⁷⁹

- (6) Capital Cost True-up: The Commission's Final Order in Docket No. 2015-UN-80 required MPCo to submit a true-up calculation for the cost of capital at the end of the test period, and annually thereafter, for as long as the rates remain in effect.¹⁸⁰ The true-up calculations show that MPCo has over-collected the cost of capital.¹⁸¹ The Second Amended Stipulation reflects the \$9.6 million regulatory liability amount that MPCo filed with its witness Feagin's August 21, 2017 Direct Testimony that reflects capital cost over-collection estimated to occur through December 31, 2017.¹⁸²
- (7) Over-Collection of Amortization Expense: The Second Amended Stipulation reflects a flow-back to ratepayers of an approximately \$16.8 million over-collection of certain regulatory asset items that MPCo was required to amortize over a two-year period by the Commission's Final Order in Docket No. 2015-UN-80.¹⁸³

94. Finally, Larkin & Associates explained that the TCJA (a) reduces the federal corporate income tax rate to a new flat rate of 21% effective January 1, 2018; (b) increases the 50% bonus depreciation to 100% through 2022 (or 2023 for longer production period property); and (c) applies to property acquired and placed in service after September 27, 2017.¹⁸⁴ Larkin &

¹⁷⁸ *Id.* at p. 13 (citing Exhibit LA-2, p. 14).

¹⁷⁹ *Id.* at p. 13.

¹⁸⁰ *Id.* at pp. 13-14.

¹⁸¹ *Id.* at p. 14.

¹⁸² *Id.* at pp. 14-15 (citing Exhibit ____ (MHF-1), p. 8, line 37).

¹⁸³ *Id.* at pp. 15-16.

¹⁸⁴ *Id.* at pp. 16-17. For a taxpayer's first taxable year ending after September 27, 2017, the taxpayer may elect to apply a 50% allowance instead of the 100% allowance. *Id.* at p. 17.

Associates noted that provisions of the TCJA should result in reductions to the 2018 Kemper revenue requirement that was included in the Second Amended Stipulation.¹⁸⁵

c. Craig R. Roach, Ph.D., Consultant to the Staff¹⁸⁶

95. Dr. Roach asserted that the most important achievement of the Second Amended Stipulation is that MPCo ratepayers will bear none of the costs of the Kemper Gasifier and related assets including future costs for dismantlement, removal or environmental compliance.¹⁸⁷ This was a goal the Commission set for settlement negotiations and has resulted in MPCo's writing off \$6 billion of capital costs incurred.¹⁸⁸ While Dr. Roach acknowledged that he had previously argued against recovery of the cost of the Kemper IGCC, he explained that there was litigation risk if MPCo had decided to litigate instead of settle this case, because MPCo maintained that the costs of the gasification facilities were prudently incurred.¹⁸⁹ Dr. Roach noted that MPCo had argued that using a traditional revenue requirement including the application of well-accepted ratemaking principles to the actual, prudently-incurred costs associated with the Kemper CC alone would yield a first year revenue requirement of approximately \$209 million,¹⁹⁰ a revenue

¹⁸⁵ *Id.* At the hearing on January 22, 2018, Larkin & Associates agreed with MPCo's estimate that the TCJA would reduce the Kemper CC annual revenue requirement to \$99.3 million. Hearing Tr. At 167-168.

¹⁸⁶ Supplemental Direct Testimony in Support of Settlement by Craig R. Roach, Ph.D. on behalf of the Mississippi Public Utilities Staff, *In Re: Encouraging Stipulation of Matters in Connection with the Kemper County IGCC Project*, Docket No. 2017-AD-112 (Jan. 10, 2018) ("Roach Supplemental Direct Testimony").

¹⁸⁷ Roach Supplemental Direct Testimony at p. 3 (citing Stipulation, ¶¶ 3(b), 8).

¹⁸⁸ *Id.* at pp. 3-4 (further citations omitted).

¹⁸⁹ *Id.* at p. 4.

¹⁹⁰ *Id.* at p. 5 (citing Feagin Direct Testimony, p. 21, lines 13 to 16).

requirement for the Kemper CC that is 86% higher than the first-year revenue requirement in the Second Amended Stipulation.¹⁹¹

96. Dr. Roach explained that Staff's top priority throughout this process was to protect customers from bearing over \$6 billion of gasifier and related costs. He asserted that Staff and the consultants determined that securing that customer protection would justify compromising on other elements of cost recovery and rates.¹⁹² Dr. Roach explained that these "other elements" are the costs of the Kemper CC, which has been generating power since August 9, 2014.¹⁹³

97. Dr. Roach asserted that the level of capital cost recovery for the Kemper CC allowed in the Second Amended Stipulation is a reasonable compromise, as seen by examining its three parts: production, transmission, and regulatory assets.¹⁹⁴ In his previous testimony, Dr. Roach defined a range of capital costs for production for a generic, stand-alone combined cycle plant that had a midpoint of approximately \$894 million, with a high end of \$984 million¹⁹⁵ while the Second Amended Stipulation provides \$986 million for production capital cost recovery.¹⁹⁶ Dr. Roach noted that the transmission portion of capital cost recovery is \$114 million; the actual investment for the Kemper site and one area of reasonable compromise.¹⁹⁷ The regulatory asset portion is about \$78 million (net of regulatory liabilities and prior to retail allocation), which is

¹⁹¹ *Id.* at p. 5.

¹⁹² *Id.*

¹⁹³ *Id.* at p. 6.

¹⁹⁴ *Id.* at p. 7.

¹⁹⁵ *Id.* (citing Roach Direct Testimony, p. 20, lines 5 to 6; p. 16, lines 13 to 20).

¹⁹⁶ *Id.* (citing Stipulation, Exhibit 2, p. 2, line 12).

¹⁹⁷ *Id.* at p. 7.

lower than the approximately \$161 million in regulatory assets that MPCo sought to recover.¹⁹⁸ Dr. Roach concluded that the total Kemper CC capital cost recovery in the Second Amended Stipulation is about \$1.178 billion, which is a 12.5% reduction from MPCo's first proposed stipulation (to which Staff was not a party) – resulting in a capital cost reduction of approximately \$168 million.¹⁹⁹

98. Dr. Roach stated that the Second Amended Stipulation's first-year revenue requirement of \$112.6 million²⁰⁰ – a reduction of 10.9% from MPCo's first proposed stipulation – is within the range Dr. Roach presented as reasonable options and reflects a reasonable compromise.²⁰¹

99. Dr. Roach stated that three (3) other parts of the Second Amended Stipulation support a finding that it is a reasonable compromise:

- (1) Capital cost recovery includes an investment to lower the heat rate of the Kemper CC to a value comparable with conventional natural gas-fired combined cycle plants.²⁰²
- (2) The Reserve Margin Plan will provide a transparent look at alternatives for dealing with MPCo's excess capacity and further optimize the contribution made by the Kemper CC.²⁰³
- (3) The Second Amended Stipulation explicitly acknowledges that it does not set precedent.²⁰⁴

¹⁹⁸ *Id.* at p. 8. Dr. Roach states: "The stipulation cuts this requested recovery in half – it is a compromise reflecting a 50/50 split." *Id.*

¹⁹⁹ *Id.* at p. 8 (further citations omitted).

²⁰⁰ Reduced to \$99.3 million at hearing due to the TCJA.

²⁰¹ *Id.*

²⁰² *Id.* at p. 9 (citing Second Amended Stipulation ¶ 6(g)).

²⁰³ *Id.* at p. 9 (citing Second Amended Stipulation ¶¶ 14, 15).

²⁰⁴ *Id.* at p. 9 (citing Second Amended Stipulation ¶ 18).

100. Finally, Dr. Roach stated that the alternative to an agreement between Staff and MPCo was administrative and appellate litigation that would be protracted, costly for ratepayers, and problematic for MPCo's cost of capital.²⁰⁵

3) The Attorney General's Supplemental Comments

101. On January 10, 2018, the Attorney General filed supplemental comments,²⁰⁶ noting that after he filed his initial comments, MPCo provided additional information elaborating on its plans to address inefficiencies including, but not limited to, improving the Kemper CC plant's heat rate through the Ultra Low-NOx conversion in 2018 to complete the Kemper Project's full conversion to natural gas operations.²⁰⁷ The Attorney General stated that his current concerns with Kemper CC inefficiencies will be largely satisfied as long as the Commission is able to adequately address inefficiencies, as part of the Stipulation or separately, and urged the Commission to require reporting and independent auditing of plant performance and to retain the authority to address any remaining inefficiencies.²⁰⁸

4) Chevron's Rebuttal Comments

102. Chevron, an initial signatory to the Second Amended Stipulation, filed rebuttal comments in response to the objections filed by Mr. Blanton.²⁰⁹ Chevron argued that with the

²⁰⁵ *Id.* at pp. 9-10. According to Dr. Roach, although those reasons would not justify accepting an unreasonable settlement offer, in the context of MPCo's large write-off of Kemper gasifier costs, they are additional reasons to accept and approve the Stipulation. *Id.* at p. 10.

²⁰⁶ Attorney General's Supplemental Comments to Second Amended and Restated Stipulation, *In Re: Encouraging Stipulation of Matters in Connection with the Kemper County IGCC Project*, Docket No. 2017-AD-112, at 1 (Jan. 10, 2018).

²⁰⁷ *In Re: Encouraging Stipulation of Matters in Connection with the Kemper County IGCC Project*, "Attorney General's Supplemental Comments to Second Amended and Restated Stipulation," Docket No. 2017-AD-112, at p. 1 (Jan. 10, 2018) (hereinafter, "Attorney General Supplemental Comments").

²⁰⁸ Attorney General Supplement Comments at p. 2.

²⁰⁹ Chevron's Rebuttal Comments in Support of Second Amended and Restated Stipulation, *In Re: Encouraging Stipulation of Matters in Connection with the Kemper County IGCC Project*, Docket No.

exception of Mr. Blanton (and Sierra Club/Steps), all active parties have joined the Second Amended Stipulation.²¹⁰ Chevron encouraged the Commission to approve the Second Amended Stipulation, which it stated (1) is widely supported and the product of months of good faith negotiations and compromises, (2) provides a reasonable compromise on customer rates attributable to the Kemper Project's natural gas-related assets, and (3) takes significant steps toward resolving these highly contentious matters within Commission-established guidelines.²¹¹

5) Sierra Statement of No Objection

103. On January 19, 2018 Sierra filed their joint Statement of No Objection to the Second Amended Stipulation. Sierra stated that they have had further substantive discussions with MPCo, reached agreement, are withdrawing their prefiled testimony, and no longer object to the Second Amended Stipulation.²¹²

C. January 22, 2018 Hearing in the Settlement Docket

104. On January 22, 2018, the Commission convened an open and public hearing in the Settlement Docket to hear testimony and receive evidence relating to the Second Amended Stipulation. The public was given every opportunity to comment, and all parties were provided an opportunity to testify and cross-examine all witnesses.

105. Notwithstanding the opportunity for public comment at the hearing, the only comments received were from the Reverend Eric Dickey of the Ministerial Alliance Partnership,

2017-AD-112, at p. 1 (Jan. 10, 2018) (hereinafter, "Chevron Comments"). Chevron noted that it joined the Stipulation. *Id.* at pp. 1, 2.

²¹⁰ *Id.* at p. 2.

²¹¹ *Id.* at pp. 2-3.

²¹² Statement of No Objection, *In Re: Encouraging Stipulation of Matters in Connection with the Kemper County IGCC Project*, Docket No. 2017-AD-112, at p. 1 (Jan. 19, 2018).

an intervenor in this Settlement Docket.²¹³ Reverend Dickey expressed no concerns or objections to the Second Amended Stipulation.²¹⁴

106. Mr. Blanton raised the following objections at the hearing: (1) that MPCo and other parties should not be allowed to enter into “side agreements” relating to a stipulation; (2) that no party should be allowed to withdraw prefiled testimony; (3) that MPCo’s residential customers should not be bound by a stipulation executed by MPCo and its commercial customers; and (4) the Commission improperly excluded testimony from witnesses sponsored by Mr. Blanton in a different docket – namely Docket 2015-UN-080 – in this docket.²¹⁵ The Commission has reviewed and considered Mr. Blanton’s objections and will address each of them in turn.

107. First, as it relates to Mr. Blanton’s objection that parties are not allowed to reach “side agreements” relating to a stipulation, Mr. Blanton’s objection is overruled. The Commission has broad settlement discretion, subject only to its obligation to ratepayers to ensure that the resulting rates are just and reasonable. The Commission has no right to dictate to parties what their respective settlement positions should be, especially when any agreement reached between two or more parties has no effect on rates. Indeed, MPCo’s first witness panel consisting of Ms. Shaw, Mr. Feagin, and Mr. Vogt, confirmed that none of the agreements MPCo made with any party joining the Second Amended Stipulation would have any effect on the rates that would be charged to the ratepayers.²¹⁶ The side agreements of which Mr. Blanton complains were simply settlement negotiations between private parties. Therefore, because those agreements do not affect ratepayers, the Commission will not disrupt them.

²¹³ Hearing Tr. at 12-16.

²¹⁴ *Id.*

²¹⁵ *Id.* at 17-20.

²¹⁶ *Id.* at 89, 124.

108. Much to that same point, the Commission overrules Mr. Blanton's objection relating to the withdrawal of prefiled testimony. There is simply no rule that prohibits parties from withdrawing their prefiled testimony before it is entered into the record at a hearing. To allow Mr. Blanton to rely on prefiled testimony that is neither adopted by a witness nor subject to cross examination at hearing would be manifestly unfair to the other parties. If Mr. Blanton intended to rely on particular prefiled testimony, he could have co-sponsored the witness, calling the witness at hearing where the witness would then be subject to cross-examination.

109. The Commission also overrules Mr. Blanton's objection relating to the alleged inadequacy of the residential ratepayers' representation in these proceedings. According to Mr. Blanton, the Commission cannot accept the Second Amended Stipulation because the current list of intervenors is not a sufficient representation of the ratepayers that will be affected by the Second Amended Stipulation. First, and most importantly, the Commission (as opposed to MPCo and the intervenors) determines whether rates are just and reasonable. In doing so, the Commission analyzes what is in the best interest of all ratepayers—not just those that have intervened in the case. Moreover, the Special Assistant Attorney General representing the Consumer Protection Division of the Office of the Attorney General of the State of Mississippi was present at the hearing and acknowledged in response to a direct question from Chairman Presley that the Attorney General had participated in the proceedings relating to the Kemper Project on behalf of the residents of the State of Mississippi, including MPCo residential customers.²¹⁷ Finally, all ratepayers (including residential) had the opportunity to intervene in the Kemper proceedings, and many chose not to. Mr. Blanton's objection, therefore, is misplaced.

²¹⁷ *Id.* at 70-71.

110. Lastly, the Commission previously addressed Mr. Blanton's final objection in its the November 17 Order. In the November 17 Order, the Commission held that Mr. Blanton's reliance on witness testimony from 2015-UN-080 was (1) procedurally improper because Mr. Blanton never made any filing in this Settlement Docket indicating that he intended to rely on the testimony filed in Docket 2015-UN-80 in this docket, and (2) substantively improper because the testimony was and is irrelevant to the current proceedings. Even though the first reason was sufficient to exclude that testimony from this docket, the Commission reviewed the proposed testimony and determined that it is not germane to the issues to be decided in this Settlement Docket.

111. Each of the witnesses that had prefiled testimony on behalf of MPCo, the Staff, Chemours and Liberty Fuels testified at the hearing, in each case except one adopting the witness's prefiled testimony as testimony at the hearing.²¹⁸ The one exception was a witness for the Staff who made a minor adjustment in his pre-filed testimony.²¹⁹

112. As a result of the TCJA, MPCo submitted a revised "Calculation of Total Retail Kemper Revenue Requirement" (the "Revised Revenue Requirement Calculation") evidencing a reduction in revenue requirement from \$112.6 million as provided in the Second Amended Stipulation to \$99.3 million and requested the lower figure to be set as the annual revenue requirement for the Kemper CC for 2018.²²⁰ Staff agreed,²²¹ and no party joining the Second

²¹⁸ *Id.* at 22-27, 111-115, 135-140, 160-165, 171-174.

²¹⁹ *Id.* at 163-64 (Larkin & Associates added the following to the sentence ending on line 22, page 16 of its January 19, 2018 testimony: "but public utility property is generally not eligible.").

²²⁰ Hearing Ex. 5; Hearing Tr. at 100-04.

²²¹ *Id.* at 101; 167-68.

Amended Stipulation objected to the use of this figure, which further reduces the costs to customers.

113. Each party was given the opportunity to cross-examine all other parties' witnesses. Additionally, the Commission questioned witnesses and other representatives of the parties.

114. Acknowledging the significance of this proceeding to both the future of the Company as well as to the ratepayers of Mississippi, this Commission questioned witnesses on the fairness of the Second Amended Stipulation to ratepayers and to the Company, questioned the Company on whether it entered into the Second Amended Stipulation voluntarily, and whether the Second Amended Stipulation would result in the Company's bankruptcy or otherwise adversely affect service to customers.

115. On behalf of the Company, Mr. Feagin, Ms. Shaw and Mr. Vogt all agreed that the Second Amended Stipulation was fair to and in the best interest of the Company,²²² and that all write-offs taken by the Company in reaching the settlement embodied in the Second Amended Stipulation were voluntarily taken by the Company and not at the direction of the Commission.²²³ These witnesses testified that the Second Amended Stipulation would not adversely affect service,²²⁴ nor lead to bankruptcy for the Company.²²⁵

116. No party offered any testimony or evidence to show that the Second Amended Stipulation was not fair to the Company or to ratepayers, that any resulting rates would be unjust or unreasonable, that any of the costs to be recovered under the Second Amended Stipulation were

²²² *Id.* at 73, 75-81.

²²³ *Id.* at 28-30, 95-96.

²²⁴ *Id.* at 77-89.

²²⁵ *Id.* at 75-81.

not prudently incurred, or that any of the facilities covered by the Second Amended Stipulation were not used and useful in the providing of electrical service to ratepayers in Mississippi.

117. At the close of the hearing, the Commission took the matter under advisement.

V. DISCUSSION AND DECISION

118. The Commission concludes that the Second Amended Stipulation is just and reasonable and in the public interest. The Commission's decision is based on substantial evidence in the record. The Commission addresses below the relevant issues raised in this proceeding.

A. The Commission Has Broad Authority to Settle Rate Proceedings

119. Contrary to Mr. Blanton's arguments,²²⁶ the Commission has broad statutory authority to accept the Second Amended Stipulation, subject only to its obligation to ensure that the resulting rates are just and reasonable and in the public interest.²²⁷ Mississippi Code Annotated § 77-3-39(6) authorizes the Commission to accept full or partial settlements, between one or more parties, without requiring a full evidentiary hearing:

The commission may accept and adopt as its own, the agreements between *any or all interested parties of record*, or any portion thereof, resulting from the prehearing conference and allow such changes in rates, *without requiring any further proceedings*, to become effective immediately.²²⁸

²²⁶ Blanton Comments at pp. 1-2, 8.

²²⁷ See Miss. Code Ann. § 77-3-33(1) ("No rate made, deposit or service charge demanded or received by any public utility shall exceed that which is just and reasonable."); see Miss. Code Ann. §§ 77-3-41 and 77-3-43(1); see *GEO Petroleum Energy Transmission, Ltd; In Re: Notice of GEO Petroleum Energy Transmission, Ltd of Intent to Change Rates for Gas Service in its Certificated Area in Pearl River County, Mississippi*, Order Approving Joint Stipulation, Commission Docket No. 02-UN-0116, at ¶ 6 (Jul. 9, 2002) (rates resulting from settlement are "just and reasonable and in the public interest").

²²⁸ Miss. Code Ann. § 77-3-39(6) (emphasis added).

120. The Commission has promulgated rules that “encourage agreement, settlements and stipulations between the parties,”²²⁹ which provide the Commission broad discretion to deny requests for additional process to non-settling parties.²³⁰ “Parties failing to stipulate to matters agreed upon by the filing utility and the Staff may, *in the Commission’s discretion*, be afforded an opportunity to cross-examine and to submit written briefs, documentation, or additional prefiled testimony”²³¹

121. The Commission has noted and memorialized the breadth of its settlement authority in orders, including the 2015 Final Rate Order, which provided for rate recovery of the Kemper CC assets. That order was the result of a settlement without a hearing:

Both state law and Commission Rules unequivocally provide for and promote settlements between and among parties and have been a long-established practice at the Commission. By statute, the Commission may accept any agreement between the parties, forego a hearing, and allow corresponding rate changes to take effect immediately.²³²

122. As explained in the Commission’s October 5, 2017 Order Denying Motion for Reconsideration in this Docket (the “October 5 Order”): “While the Commission’s settlement authority is expansive, it is not without limits. In accepting a settlement, the Commission must review the proposed stipulation and the entire record in the proceeding, and find that the rates proposed in the stipulation do not exceed what is just and reasonable and in the public interest.”²³³

²²⁹ Miss. PSC Rules of Procedure (“RP”) 13.103(1).

²³⁰ RP 13.103(2).

²³¹ *Id.* (emphasis added).

²³² Final Rate Order at ¶¶ 31-32 (citing Miss. Code Ann. § 77-3-39(6) and RP 13.102 and 13.103).

²³³ Order Denying Motion for Reconsideration at ¶ 22 (citing Miss. Code Ann. § 77-3-33(1), 77-3-41, 77-3-43(1); GEO Petroleum Energy Transmission, Ltd; *In Re: Notice of GEO Petroleum Energy Transmission, Ltd of Intent to Change Rates for Gas Service in its Certificated Area in Pearl River County, Mississippi*, Order Approving Joint Stipulation, Commission Docket No. 02-UN-0116, at ¶ 6 (Jul. 9, 2002)).

B. Staff and a Majority of Intervening Parties Have Joined the Second Amended Stipulation

123. Unlike earlier proposed settlements in this proceeding, the Second Amended Stipulation represents a negotiated, arms-length compromise between MPCo, the Staff, and a majority of parties who have been significantly involved in the Kemper-related proceedings. With the exception of Mr. Blanton, no other parties object to the settlement.²³⁴

124. Throughout the Order Opening Docket, the Commission emphasized that Staff would be a party to any acceptable stipulation. In Paragraph 90 of the Order Opening Docket the Commission stated that “[a]ny agreement or stipulation entered into *between Staff, MPCo and any other parties* shall be considered by the Commission after a stipulation is filed” (emphasis added). In Paragraph 91, the Commission reserved its “rights and powers with respect to any and all matters negotiated *between MPCo, the Staff and other parties*” (emphasis added). In Ordering Paragraph 95, the Commission stated that “the following areas should be resolved, or largely resolved, *by MPCo, Staff, and intervening parties* in any settlement that is presented to the Commission” (emphasis added) (citing the three goals for settlement quoted in the Introduction to this Order and repeated in ¶ 128 below).

125. MPCo’s August 21 Stipulation was not joined by Staff or any party with interests not aligned with MPCo.²³⁵ The Commission held that “the limited stipulation provided by MPCo [on August 21, 2017] does not satisfy the Order Opening Docket.”²³⁶

126. In contrast, the Second Amended Stipulation represents a negotiated compromise between MPCo, the Staff, Chevron, Chemours, and the FEA. Wal-Mart, Sam’s East, and

²³⁴ Notably, although given the opportunity, no non-party voiced any objections to the Second Amended Stipulation during the Public Comment Period at the commencement of the hearing on January 22, 2018.

²³⁵ October 5 Order at ¶ 17.

²³⁶ *Id.* at ¶ 13.

Greenleaf filed joinders agreeing to the Second Amended Stipulation without modification. These active parties entered into this negotiation process with interests and positions different from MPCo's. Liberty and the Attorney General commented on but did not object to the Second Amended Stipulation. The Attorney General later confirmed in supplemental comments and at the hearing on January 22, 2018, that its concerns regarding Kemper CC inefficiencies were largely satisfied as long as the Commission addresses inefficiencies, as part of the Stipulation or separately as part of a rate proceeding or other procedure.²³⁷ Sierra Club/Steps filed a statement of no objection to approval of the Second Amended Stipulation.²³⁸

127. Combined with the substantial record evidence and testimony in this Settlement Docket, and the Commission's findings and determinations regarding the record, this "critical mass" of Settling Parties supporting or not objecting to the Second Amended Stipulation is a basis for the Commission's conclusion that the stipulation presents a resolution to this matter that is fair to the public and to the Company, will result in just and reasonable rates, and should be adopted by the Commission.

C. The Second Amended Stipulation Meets the Parameters of the Order Opening Docket

128. The Commission established this Settlement Docket to "encourag[e] a settlement of all issues associated with the Kemper Project."²³⁹ The Order Opening Docket set forth three (3) goals to be satisfied "by MPCo, Staff, and intervening parties in any settlement that is presented to the Commission:

²³⁷ Attorney General Supplemental Comments at p. 2.

²³⁸ Sierra Statement of No Objection, at p. 1.

²³⁹ Order Opening Docket at ¶ 92 (emphasis added). *See also* October 5 Order at ¶¶ 13-17 (explaining in detail that this Docket was established with the express purpose of promoting settlement between MPCo, Staff, and other intervenors).

- a) Any costs resulting from the settlement and assigned to MPCo customers shall result in, at a minimum, no rate increase to MPCo customers. The Commission encourages serious discussions that would lead to a rate reduction, with a particular focus on residential customers.
- b) The settlement should seek to remove the risk of ratepayers bearing any of the costs associated with the gasifier and related assets.
- c) The settlement should include modification or amendment of the certificate issued in Docket No. 2009-UA-014 to allow only for ownership and operation of a natural gas facility at the location of the Kemper County In-Service Assets.”²⁴⁰

129. The Second Amended Stipulation satisfies each of these goals. As to the first goal, the Second Amended Stipulation will result in no rate increases for MPCo customers, and lowers rates from those established for the Kemper CC in the In-Service Assets docket. It stipulates to an estimated overall retail annual revenue requirement of approximately \$99.3 million, based on the values and methodologies shown in Exhibit 2 of the Stipulation (reduced from \$112.6 million as a result of the TCJA). The Commission discusses this revenue requirement in further detail below.

130. As to the second goal, the Second Amended Stipulation does not permit MPCo to recover any costs of the gasifiers and related gasification assets from customers. MPCo “agrees to permanently remove from retail rate base and rates all costs of the Kemper Gasifier to insulate customers from any and all past, current and future operational and cost risk associated with Kemper Gasifier and lignite operations.”²⁴¹ MPCo commits to shield its customers from all costs associated with the potential dismantlement, demobilization, environmental remediation, mine reclamation, and all others costs necessary to effectuate the safe and permanent shutdown of the Kemper Gasifier equipment and facilities, should it decide to permanently abandon the Kemper

²⁴⁰ Order Opening Docket. at ¶ 95.

²⁴¹ Second Amended Stipulation at ¶ 8.

Gasifier assets. The Company, during the hearing, confirmed repeatedly that it will never seek recovery for the costs of the Kemper Gasifier from customers.²⁴² MPCo's commitment is part of the record and is a condition of the Commission's approval of this settlement.

131. MPCo commits to work in good faith to divest plant site acreage that it determines is not required for the future needs of the Kemper CC. In any divestiture, MPCo agrees that any sales proceeds (gain or loss) will be deferred and included in the next rate filing including Kemper related costs for Commission consideration. This is a reasonable approach to reduce the footprint of land needed to operate the Kemper CC from what was originally anticipated when the site was planned for gasification operations.

132. As to the third goal, the Second Amended Stipulation requires modification or amendment of the CPCN issued in Docket No. 2009-UA-014 to limit MPCo's ownership and operation to a natural gas facility at the location of the Kemper County In-Service Assets.

The Parties stipulate and request that the Commission amend the certificate issued in Docket No. 2009-UA-14 as follows: (a) to allow for operation of the Kemper Project as only a natural gas combined cycle; (b) to remove the authority for [MPCo] to continue development or maintenance of the Kemper Gasifier with the expectation of cost recovery or any other financial support from retail customers; (c) to deem satisfied, such that they have no effect, any and all "Conditions to Certificate"; and (d) to remove the "Monitoring Plan" set out in the Kemper certificate as no longer required, provided that if any Independent Monitor costs are incurred in 2018, [MPCo] shall defer those costs for inclusion in the next rate filing including Kemper related costs.²⁴³

133. Liberty Fuels' contention that the Kemper CPCN should not be modified so that MPCo can maintain dual fuel capability at the Kemper Plant²⁴⁴ is inconsistent with the record evidence, and the Commission's stated goals and objectives in establishing the Settlement Docket.

²⁴² Hearing Tr. at 31-32, 34-35, 124.

²⁴³ Second Amended Stipulation at ¶ 13.

²⁴⁴ Lund Direct Testimony at p. 3.

Liberty Fuels argues that MPCo should continue to be able to operate the Kemper CC on syngas if it is in the best interest of ratepayers (if, for example, natural gas prices rise significantly in the future).²⁴⁵ However, the record provides abundant evidence that under the Kemper CC's current configuration, it operates less efficiently on syngas than other, newly-deployed natural gas-fired CC units.

134. The Second Amended Stipulation requires, and the Commission agrees, that the Kemper Project should be optimized to run only on natural gas to maximize efficiency. MPCo has moved forward with plans to implement that conversion. MPCo's witness, Bruce Harrington, testified that MPCo plans to optimize the Kemper CC turbines for full-time operation on natural gas in 2018,²⁴⁶ and stated that the planned conversion will reduce maintenance costs and improve efficiency, bringing them operationally in line with other similar CCs.²⁴⁷ The planned conversion makes economic sense and demonstrates to the Commission that MPCo has abandoned efforts to make the Kemper CC operate on syngas. Nothing precludes MPCo, however, from seeking Commission approval to operate the Kemper CC on syngas in the future to the benefit of MPCo customers. The Second Amended Stipulation provides for that,²⁴⁸ and MPCo acknowledged at the hearing that if it ever became economically beneficial, it could petition the Commission to allow the use of syngas.²⁴⁹ While the Commission today is firmly closing the door on the past and existing gasification activities at the Kemper Project site for which the Company may recover from ratepayers, the Commission does not preclude MPCo, or any utility, from making a filing that is

²⁴⁵ *Id.*

²⁴⁶ Harrington Direct at pp. 8-9; Harrington Rebuttal at p. 4.

²⁴⁷ *Id.*

²⁴⁸ Second Amended Stipulation at ¶ 12.

²⁴⁹ Hearing Tr. at 40-44.

based upon new or changed circumstances. Should that occur, the Commission has experience with the Kemper Project to inform its review of those new facts. The Commission finds that Paragraph 13 of the Second Amended Stipulation satisfies the Commission's expectation in the Order Opening Docket regarding the Kemper CPCN. This Order amends the Kemper CPCN as provided in the Second Amended Stipulation.²⁵⁰

D. The Second Amended Stipulation Results in Rates that are Just and Reasonable and in the Public Interest

135. This Commission is charged with "exclusive and original jurisdiction" over the intrastate business and property of public utilities.²⁵¹ Under Mississippi law, public utilities are entitled to "collect and receive fair, just and reasonable rates" in exchange for furnishing reasonable and reliable service,²⁵² and the Commission is authorized to "establish rates that are just and reasonable to the taxpayers and which will yield a fair rate of return to the utility for its services."²⁵³ "A fair return is one which, under prudent and economical management, is just and reasonable to both the public and the utility."²⁵⁴

136. Mississippi Code Section 77-3-43 sets forth requirements in setting a utility's rate base:

In regulating the rates of any public utility subject to the provisions of this chapter, the commission shall, on hearing after reasonable notice, ascertain and fix the rate base of the property of the public utility in such manner as to be fair both to the public utility and to the consumer when the same is relevant or material to the exercise of the jurisdiction of the commission. The commission shall make readjustments from time to time, and ascertain the cost of all new construction,

²⁵⁰ A copy of this Order and the Second Amended Stipulation shall be incorporated into the record in the Certificate Proceeding, Docket No. 2009-UA-14.

²⁵¹ Miss. Code Ann. § 77-3-5.

²⁵² Miss. Code Ann. § 77-3-33(1).

²⁵³ *Mississippi Public Service Comm'n. v. Mississippi Power Co.*, 429 So. 2d 883, 886 (Miss. 1983).

²⁵⁴ *Id.* (quoting *Southern Bell Tel. & Tel. Co. v. Mississippi Public Service Comm'n.*, 237 Miss. 157, 113 So. 2d 622 (1959)).

extensions and additions to the property of every public utility. In arriving at such rate base, the commission shall give due consideration to: (a) the reasonable original costs of the property used and useful, or to be used and useful within a reasonable time after the test period; (b) the portion of the cost which has been consumed by previous use recovered by depreciation expense; (c) the allowance for funds used during construction, not to exceed on borrowed funds the true net interest cost of such funds, computed according to the actuarial method, and, on the equity component thereof, a rate of return granted on common equity in the last rate proceedings before the commission, or if such rate has not been established within the preceding three (3) years, then the average rate of return actually earned on equity during the preceding three (3) years; (d) any other elements deemed by the commission to be material in determining the rate base for rate-making purposes.

137. The Commission has significant discretion to determine reasonable rates. “The reasonableness of rates charged, or to be charged, by a public utility is not determined by definite rule or legal formula, but is a fact question requiring the exercise of sound discretion and independent judgment in each case.”²⁵⁵ As the courts have noted, the legal principles relating to the Commission’s authority to establish rates include the authority to weigh the evidence and accept or reject recommendations of any witness.²⁵⁶

138. Since 2009, the Commission has focused on ensuring that the Kemper Project provides value to MPCo’s customers. The Commission finds that the Second Amended Stipulation provides value to customers, as noted above, by (i) ensuring customers will never pay the costs of the Kemper gasification and associated facilities, a condition of the Commission’s approval of the settlement; and (ii) reducing the Kemper CC 2018 annual revenue requirement to \$99.3 million.

²⁵⁵ *Mississippi Pub. Serv. Comm’n v. Mississippi Power Co.*, 337 So. 2d 936, 938 (Miss. 1976) (citing *Southern Bell T. & T. Co. v. Mississippi Pub. Serv. Comm’n*, 237 Miss. 157, 113 So. 2d 622 (1959)).

²⁵⁶ *Mississippi Pub. Serv. Comm’n v. Mississippi Power Co.*, 429 So. 2d at 887; accord *Rankin Utility Co., Inc. v. Mississippi Pub. Serv. Comm’n*, 585 So. 2d 705, 709 (Miss. 1991).

139. The Second Amended Stipulation ensures that MPCo's customers will not pay for the Kemper Project's unsuccessful gasifier technology and related assets now or in the future, including a specific commitment for MPCo to bear any future costs associated with dismantlement, removal, or any environmental issues.²⁵⁷ MPCo has permanently written off over \$6 billion of capital costs that it incurred for the Kemper Project gasification facilities and related assets, and has committed not to seek recovery for those costs later. The approval and adoption of the Second Amended Stipulation by the Commission is conditioned on this commitment. If MPCo violates the settlement by later seeking recovery, the Commission has plenary authority to deny such a request.²⁵⁸

140. Second, the Second Amended Stipulation reduces the rates in place as a result of the 2015 In-Service Asset Order to \$99.3 million²⁵⁹ (for 2018) from \$126 million currently in rates. To get to this result, MPCo agreed to a production plant figure that is \$85 million less than it originally sought.²⁶⁰ It similarly agreed to a net figure for regulatory assets and liabilities that is \$70 million less than its original position.²⁶¹ These are significant concessions and, as Dr. Roach testified in his supplemental direct testimony on behalf of Staff, the overall revenue requirement agreed to in the Second Amended Stipulation is reasonable.²⁶² It becomes even more reasonable with the tax savings included.

²⁵⁷ Second Amended Stipulation at ¶¶ 3(b), 8.

²⁵⁸ See Miss. Code Ann. § 77-3-41; *Mississippi Pub. Serv. Comm'n v. Mississippi Power Co.*, 337 So. 2d 936, 940 (Miss. 1976).

²⁵⁹ Based on the testimony MPCo presented at the hearing relative to how MPCo plans to implement the changes to federal tax laws implemented by the TCJA.

²⁶⁰ Larkin & Associates at pp. 5-6; Feagin Second Supplemental Direct at p. 2.

²⁶¹ Feagin Second Supplemental Direct at p. 2.

²⁶² Roach Supplemental Direct Testimony at p. 8.

141. While the reduced rate base includes capital cost recovery of an anticipated \$23 million cost associated with MPCo's plan to convert the Kemper CC turbines to run only on natural gas, this is intended to increase the plant's efficiency and reduce operating costs on a going-forward basis.

142. The Commission finds that the cost of MPCo's planned upgrades to convert from syngas to natural gas are includable in the stipulated rate base. Mississippi courts have interpreted Miss. Code Ann. § 77-3-43(1) as allowing the Commission to include future useable assets in rate base, so long as there is a definite plan to use them to benefit ratepayers in a reasonable time. In *South Hinds Water Company v. Mississippi Public Service Commission*, for example, the Supreme Court noted that "[a] public utility company is entitled to a fair return only upon the value of such of its property as is useful and being used in service for the customers' benefit," and found:

if the property will be employed within a reasonable time, and if the utility's management can show a definite plan as to how the property will be employed for public service, then the property's value may be included in the rate base.²⁶³

As with assets currently being used, however, the decision to include any future (but planned) assets as used and useful is subject to the Commission's exercise of sound discretion, weighing the benefits of the future assets to the ratepayers. The Commission finds that the planned

²⁶³ *South Hinds Water Company v. Mississippi Pub. Serv. Comm'n*, 422 So. 2d 275, 283 (Miss. 1982):

It should be recognized, however, that property is not necessarily used and useful only when it is currently being used to produce the utility's product. Time lag and costs associated with development must be considered so that utilities are encouraged to maintain and increase adequate service to the public. Thus, if the property will be employed within a reasonable time, and if the utility's management can show a definite plan as to how the property will be employed for public service, then the property's value may be included in the rate base.

Accord Rankin Utility Co., Inc. v. Mississippi Pub. Serv. Comm'n, 585 So. 2d 705, 709 (Miss. 1991) (overturning a Commission order permitting certain generating sites planned for future use to be included in rate base because the utility failed to produce evidence of how or when the property would be employed).

conversion costs will provide benefits to MPCo's customers through increased efficiencies, and is appropriate for inclusion and recovery in the stipulated rate base.

143. The rates resulting from the Second Amended Stipulation will provide MPCo with a fair rate of return, allowing it to financially recover and continue to serve customers while providing certainty to MPCo's investors and the credit ratings agencies to improve MPCo's access to capital.

E. The In-Service Assets are Used and Useful, and the Related Costs were Prudently Incurred

144. The Mississippi Supreme Court has interpreted the "used and useful" standard to require that assets (1) are currently being used, or (2) will be employed within a reasonable time and the utility has produced evidence to that effect.²⁶⁴

145. The Commission made a determination in the Temporary Rate Order²⁶⁵ and the Final Rate Order that the Kemper CC had been in service for more than a year and had been producing energy and savings to customers of approximately \$15.6 million, thus finding that the In-Service Assets were "'used and useful' in the traditional sense."²⁶⁶ Focusing on the In-Service Assets, the Commission held: "[A]s currently configured and as construction and startup

²⁶⁴ See *South Hinds Water Co.* at 283 (holding that a utility could not recover costs associated with purchasing a piece of property because there "was no evidence produced as to when the land would be placed into public service" and "in the absence of such evidence, it was proper to exclude the value of the land from the rate base total.").

²⁶⁵ Temporary Rate Order, *In Re: Notice of Intent of Mississippi Power Company for a Change in Rates Supported by a Conventional Rate Filing or, in the Alternative, by a Rate Mitigation Plan in Connection with the Kemper County IGCC Project*, Docket No. 2015-UN-80 (Aug. 13, 2015) (the "Temporary Rate Order").

²⁶⁶ Temporary Rate Order at ¶ 51; see also Final Rate Order at ¶ 56.

continues, the Kemper CC, and other assets related to the Stipulation, [are] prudent and used and useful.”²⁶⁷

146. The Commission reserved its right to review the used and usefulness of the Kemper Project, including the In-Service Assets:

The Commission explicitly reserves the right to make the review and determination noted above, if ever necessary, and to hold [MPCo] responsible to ratepayers for any amounts the Commission determines should not have been recovered. The Commission is in no way waiving its authority to continue its ongoing evaluation of and continuing jurisdiction to determine the used and usefulness of the Kemper Project (including the In-Service Assets approved in this Order) both in its performance and in the burning of syngas for purposes of producing electricity.²⁶⁸

147. Although the Commission reserved its rights to reconsider the Kemper Project if MPCo decided that the plant would no longer operate as an IGCC, there have been no changes to the fundamental operations of the Kemper CC facilities since the In-Service Asset Order to cause the Commission to reverse its finding that those assets are not used and useful. MPCo’s plan to modify the Kemper CC to run on natural gas does not dictate a finding that the facilities are not currently used and useful. In fact, the undisputed testimony is that the Kemper CC is used and useful in providing service to MPCo’s customers and, with the increased efficiencies from the planned conversion, is likely to become even more used and more useful in serving MPCo’s customers.

148. As to Mr. Blanton’s objection that MPCo has not provided an adequate accounting of the costs of the Kemper CC, this Commission finds that the Company has provided sufficient information regarding the costs of the Kemper Project, all of which have been monitored by consultants to the Commission and the Staff since the inception of the Kemper Project, coupled

²⁶⁷ Final Rate Order at ¶ 56.

²⁶⁸ *Id.* at ¶ 58.

with the testimony of witnesses for the Staff and Chevron regarding the reasonableness of the settlement, to determine that the costs for the Kemper CC in the Second Amended Stipulation fairly reflect and itemize the cost of the facilities that serve the ratepayers of Mississippi.

149. The Commission's approval and adoption of the Second Amended Stipulation is not, however, a determination that the Kemper CC assets are used and useful forever. The Settling Parties have stipulated to a used and useful finding through 2018. After that, the Kemper CC will be treated like every other asset owned by the Company; subject to periodic review (when MPCo files to recover its costs) to determine whether the assets remain used and useful.²⁶⁹ Considering the data and testimony presented in this Settlement Docket, especially when considered with the protections in the Second Amended Stipulation, the Commission finds that the Kemper CC facilities are used and useful through 2018.

150. The Commission described the applicable prudence standard in the In-Service Asset Order when it made its first prudence decision on the Kemper CC: "Prudency requires that a public utility demonstrate that it went through a reasonable decision making process to arrive at a course of action and, given the facts as they were or should have been known at the time, responded in a reasonable manner."²⁷⁰

151. As observed in the Prudence Case Docket, the court explained prudence as follows:

prudent decision-making may be demonstrated in one of two ways: [T]o recover costs in rates, a utility may show either that its decisionmaking process was prudent, or that the same decision is in the select range of options that would have resulted had prudent decisionmaking been employed.

Under the first method, a utility presents contemporaneous documentation of its decision-making process, thereby enabling the Commission to review the actual investigations and analyses leading to the utility's decision. When there is no

²⁶⁹ See Miss. Code Ann. § 77-3-43.

²⁷⁰ Final Rate Order at ¶ 21; *see also* Prudence Case Docket, October 15, 2013 Order at p. 4.

evidence of contemporaneous investigation and analysis, a utility may employ the second method, analyzing the prudence of the decision after-the-fact.²⁷¹

152. Similar to its findings with respect to the In-Service Assets being used and useful, the Commission found that the In-Service Assets were prudently incurred: “Here, as currently configured and as construction and startup continues, the Kemper CC, and other assets related to the Stipulation, is prudent and used and useful, as the Project continues along its certificated path.”²⁷² In the stipulation that established the settlement rates in that docket, Staff and MPCo stated that costs associated with the in-service facilities and included in the revenue requirement were prudently incurred. No party provided any evidence in this proceeding that might lead this Commission to a contrary decision.

153. The Commission finds nothing in the Second Amended Stipulation or this record to conclude that the Kemper CC costs were not prudently incurred. Throughout the life of the Project the Commission has closely followed and ruled on a variety of cost-impacting issues related to the Kemper CC. The Company has satisfied its burden of making a *prima facie* case of prudence in the development and construction of the Kemper CC, and no party has provided any evidence to rebut the presumption of prudence.

154. As a further ratepayer protection, the Second Amended Stipulation includes a requirement for MPCo to “develop, complete, and file with the Commission a Reserve Margin Plan” to provide an opportunity for the Commission and all interested parties to conduct a “fully informed and transparent review of [MPCo’s] reserve margin.”²⁷³ The record shows that MPCo currently has more generating capacity than the Company’s long-term targeted reserve margin,

²⁷¹ Prudence Case Docket, October 15, 2013 Order at pp. 3-4 (citing *Gulf States Utilities Co. v. Pub. Util. Comm’n of Texas*, 841 S.W.2d 459, 475-76 (Tex. Ct. App. 1992) (internal citations omitted)).

²⁷² Final Rate Order at ¶ 56.

²⁷³ Second Amended Stipulation at ¶ 15.

including the additional capacity associated with the 15% of the Kemper Project that was initially going to be owned by SMEPA. In response to the concerns raised by the Attorney General, MPCo has also committed to include facility performance standards to ensure Kemper runs as efficiently on natural gas as a combustion turbine designed to use natural gas fuel. The Commission hereby requires MPCo to file a Reserve Margin Plan that includes the SMEPA Share, as well as performance standards for the Kemper CC, not later than six (6) months following the date of this Order. The Commission retains authority to require reporting and independent auditing of plant performance and to address any remaining inefficiencies upon review of that filing.

VI. CONCLUSION

155. The Commission and all parties have had the opportunity to engage in motion practice, conduct discovery, present testimony and other evidence, cross-examine adverse witnesses and participate in public hearings. As a result, the Commission has been presented with substantial evidence upon which to base its Order. Having reviewed that evidence, this Commission now finds that the Second Amended Stipulation results in an appropriate annual revenue requirement for the Kemper CC. The Second Amended Stipulation results in a revenue requirement that is just, reasonable and in the public interest and will reduce the revenue requirement currently collected through rates. This rate will also allow the Company to recover the cost of assets which have been in-service and which have been benefitting MPCo's customers (without any associated rate recovery) since 2014.

156. It has been nine (9) years since the Kemper Project first came to the Commission. With this order, arrived at through a difficult but fair process of negotiation and collaboration, MPCo and its customers will move forward with a beneficial asset that will provide customers

with energy and capacity at just and reasonable rates while enabling MPCo to provide reliable and economic electric service, improve credit ratings and provide access to capital markets.

VII. ORDER

IT IS, THEREFORE, ORDERED, based upon all of the above, including all of the prefiled testimony filed in this proceeding, the pleadings, exhibits, data request responses and all other documents contained in the record, and all of the oral testimony provided at the hearings in this matter, and as found by this Commission as more fully described in this Order, that the Second Amended and Restated Stipulation, is in the public interest, will result in just and reasonable rates that are fair to MPCo's customers while providing a fair return to the Company for its investment in the Kemper CC.

IT IS FURTHER ORDERED that the Commission does hereby accept and adopt in its entirety the Second Amended Stipulation dated December 1, 2017 and all attachments thereto (as amended at the hearing on January 22, 2018 to reflect the impact of the TCJA), as its own and hereby fully incorporates said Second Amended Stipulation into this Order. The Commission does hereby approve and allow the revenue adjustments reflected herein.

IT IS FURTHER ORDERED that Commission approval and adoption of the Second Amended Settlement is conditioned on compliance with the following:

1. MPCo's commitment not to use synthetic gas from any source at the Kemper CC, including the Kemper gasification facilities without first filing for and obtaining Commission authorization;
2. MPCo filing a Reserve Margin Study with the Commission that incorporates, among other things, the SMEPA Share of capacity and plant performance standards to ensure Kemper runs as efficiently on natural gas as a combustion turbine originally designed to use natural gas fuel; and
3. MPCo filing with the Commission, within 30 days from the date of this Order, a proposal to convert the stipulated revenue requirement to rates, by customer classes consistent with the Second Amended Stipulation. The proposal shall address any

necessary refund of revenues collected for federal taxes in light of enactment of the TCJA (effective January 1, 2018).

IT IS FURTHER ORDERED that a copy of this Order, as well as the Second Amended Stipulation, be filed in Docket No. 2009-UA-14 to reflect the amended CPCN for the Kemper CC.

IT IS FURTHER ORDERED that a copy of this Order, as well as the Second Amended Stipulation, be filed in Docket No. 2015-UN-80, after which that docket shall be closed.


IT IS FURTHER ORDERED that a copy of this Order, as well as the Second Amended Stipulation, be filed in Docket No. 2016-AD-161, after which that docket shall be closed.

IT IS FURTHER ORDERED that all filed and *ore tenous* motions that remain pending in this proceeding and the above-referenced three (3) dockets are hereby denied for the reasons set forth herein.


SO ORDERED, this the 6th day of February, 2018.

Chairman Brandon Presley voted aye; Vice Chairman Cecil Brown voted aye; and Commissioner Samuel F. Britton voted aye.

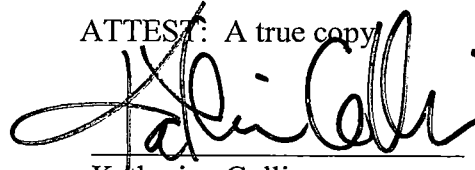
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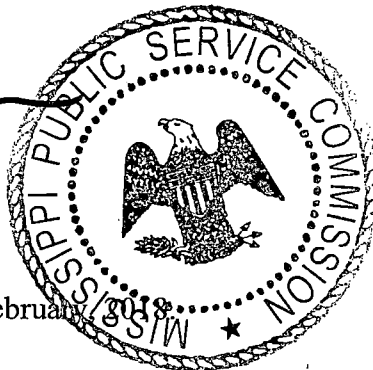

Brandon Presley, Chairman


Cecil Brown, Vice-Chairman


Samuel F. Britton, Commissioner

ATTEST: A true copy


Katherine Collier
Executive Secretary



Effective this the 6th day of February, 2018.