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July 24, 2015

FILED
JUL 24 2015
MISS. PUBLIC SERVICE
COMMISSION

Katherine Collier
Executive Secretary/MSPSC
Woolfolk State Office Building
501 North West Street, Suite 201A
Jackson, Mississippi 39201

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

Dear Ms. Collier:

Greenleaf CO2 Solutions, LLC filed today, electronically, a Motion to Dismiss in the
above styled Docket. Enclosed please find the original and twelve (12) copies of this Motion.
A copy of the first page of the Response is also enclosed. I would appreciate your file-stamping
this page and returning it to me in the stamped, addressed envelope.

Thank you for your assistance.

Sincerely,



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All parties of record

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JUL 24 2015

BEFORE THE MISSISSIPPI PUBLIC SERVICE COMMISSION
MISS. PUBLIC SERVICE
COMMISSIONMISSISSIPPI POWER COMPANY
EC-120-0097-00

DOCKET NO. 2015-UN-80

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

MOTION TO DISMISS

Pursuant to RP 6.121 of the Public Utilities Rules of Practice and Procedure ("Rules") of the Mississippi Public Service Commission ("Commission"), Greenleaf CO2 Solutions, LLC ("Greenleaf"), moves to dismiss the above-numbered Docket. Mississippi Power Company's ("MPC's") Notice of Intent to Change Rates ("Application") is in direct violation of prior Commission decisions and orders. Moreover, material changes have occurred since MPC submitted its Notice of Intent. Continuing to apply the relevant statutory deadlines in light of these materials changes would deprive parties of their due process rights. For these reasons, the Commission should dismiss MPC's Application.

In support of this Motion, Greenleaf would show the following:

I. INTRODUCTION

Mississippi law entitles its citizens and businesses to just and reasonable utility rates and services, insulated from the financial consequences of unreasonable and imprudent actions by regulated monopoly utilities.¹ This case presents perhaps the starkest *prima facie* example of utility mismanagement and imprudence, and MPC's ratepayers are entitled to protection from MPC's actions. Before rates can be increased under Mississippi law, the Commission must find that MPC acted prudently in planning, constructing, and commissioning the Kemper County Integrated Gasification Combined Cycle Generating Facility ("Kemper Project" or "Project.") This is a heavy standard—critical to protecting Mississippi ratepayers—and the Commission's review should not be based on incomplete or partial information.

¹ Miss. Code Ann. § 77-3-33.

Recognizing this, the Commission has already ruled that prudence will not be reviewed piecemeal, and that the Commission will not address prudence until after the Kemper Project has been operational long enough to properly judge the Project's success and MPC's management of it.² This was a wise decision, properly ordered by the Commission, and MPC's Application directly violates it. Moreover, Mississippi law and the requirements of due process demand that customers not be required to adjudicate a moving target. Much has changed since MPC filed its Notice of Intent. These changes merit dismissal to ensure the preservation of Commission resources, and to protect the rights of Mississippi citizens and ratepayers.

Adhering to Mississippi law and prior Commission orders designed to protect ratepayers is particularly critical given the magnitude of the Kemper Project cost overruns, and the economic destruction these costs will cause for the State. The cost of the Kemper Project has ballooned from an initial estimate of \$2.2 billion to well over \$6 billion. The project is already years behind schedule, and it is widely speculated that the schedule could slip further. South Mississippi Electric Power Association (SMEPA) has withdrawn from the project, potentially shifting additional risk onto MPC's customers.³

To put the current project costs in perspective, *the Kemper Project is likely the most expensive utility-scale power plant ever built on a per-megawatt basis*. Based on the Kemper Project's reported nameplate capacity of 540 MW, the unit cost of the Kemper Project would exceed \$11,000 per kW of capacity. Yet even as to the combined cycle, the prudence of MPC is severely in doubt.⁴ On this point, the Commission should compare the economics of the Kemper Project combined cycle (\$1,100/kW) to other recent combined cycle purchases by utilities in

² *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, Order Cancelling Hearing at 1 (Aug. 5, 2014).

³ See First Supp. Filing, at 8 (July 10, 2015); Supplemental Direct Testimony of Moses H. Feagin at 8 (July 10, 2015) (MPC reserves the right to seek recovery of the retail portion of this remaining investment in subsequent rate proceedings).

⁴ Greenleaf is also filing a response in opposition to MPC's request for interim rate relief which will address MPC's failure to establish prudence in more detail.

Mississippi, including purchases by SMEPA (\$332/kW),⁵ Entergy Mississippi, Inc. (\$458/kW),⁶ and the Tennessee Valley Authority (\$448/kW).⁷ It is highly doubtful that this Commission would have granted a certificate of convenience and necessity (“CCN”) for a combined cycle plant costing approximately two-to-three times what an entity could purchase a similar facility for.⁸ If MPC ultimately succeeds in adding any of these costs to rates before they are determined to be prudent, the harm to Mississippi would be immense and the Commission should take all necessary and lawful steps to avoid this outcome.⁹

Based on these facts, and the requirements of Mississippi law, the Commission should enforce its prior order delaying the prudence decision until a full and complete record can be developed, and should dismiss this proceeding.¹⁰ Dismissal is also appropriate because material facts have changed since MPC filed its Application. These facts are only now being slowly disclosed to the parties, while statutory deadlines loom. Without a complete and accurate application, parties will be deprived of their due process rights to effectively scrutinize MPC’s request. Accordingly, MPC’s request should be dismissed.

II. DISCUSSION

⁵ See “South Mississippi Electric Purchases Batesville Plant,” Dec. 19, 2012, found at: http://www.smeпа.coop/news/News%20Releases/South_Mississippi_Electric_Purchase_Batesville_Plant.pdf.

⁶ See “Entergy Mississippi Purchases Hinds Energy Facility,” Nov. 30, 2012, found at: http://www.entropy.com/news_room/newsrelease.aspx?NR_ID=2615.

⁷ See D. Flessner, “TVA to Buy Gas Plant for \$340 Million,” TIMES FREE PRESS (Feb. 12, 2015), found at: <http://www.timesfreepress.com/news/business/aroundregion/story/2015/feb/12/tva-buy-gas-plant-mississippi-solar-power-alabama/288039/>.

⁸ Of course, MPC was never granted a CCN for a combined cycle facility. See Commission Orders, dated April 29, 2010, May 17, 2010, May 26, 2010, June 3, 2010, and April 24, 2012; see also Thomas A. Blanton’s Motion to Deny Mississippi Power Company’s Proposed In-Service Asset Proposal as an Interim Rate, Docket No. 2015-UN-80 at 3, July 14, 2015 (“The original proposal by Mississippi Power Company did not include the importation of natural gas into the Kemper plant as its primary fuel. The original proposal was based on the ‘gasification’ process, to create syngas, as opposed to the operation of a natural gas facility. In fact, operation of Kemper as a natural gas facility flies in the face of the very reasons Mississippi Power Company gave to the Commission for constructing Kemper IGCC - to provide ‘fuel diversity and greater price stability’ as an alternative to natural gas, which Mississippi Power Company maintained in its original permit filing as being an expensive fuel and highly volatile as to costs.”).

⁹ As further evidence of its imprudence, the Commission should note that MPC’s delays have voided the manufacturers’ guarantees on the combined cycle plant to operate on syn gas. These warranties expired in November 2014. See First Supp. Filing at Exhibit A, “Report of Mississippi Power Company Regarding MPC’s Decision to Place the Combined Cycle Plant and Related Portion of the Kemper Project into Service,” at 10, fn. 16.

¹⁰ Docket No. 2013-UA-0189, Order Cancelling Hearing, Aug. 5, 2014 (“... [T]hese ongoing uncertainties counsel the Commission to delay a decision on prudence until such time as it may consider a more fully developed record, which should allow the Commission to more efficiently address prudence in a single rate proceeding, rather than in phases.”)

A. MPC's Application violates the Commission's Order in Docket No. 2013-UA-0189, requiring that the Kemper Project be in commercial operation for a reasonable period before prudence review.

The Commission should dismiss MPC's Application because it is contrary to the Commission's explicit orders regarding cost recovery for the Kemper facility. In its Application, MPC requests that the Commission provide "pre-commercial operation rate relief" for portions of the Kemper facility, as well as enter a final prudence finding.¹¹ Under Mississippi law, such a prudence finding is a *prerequisite* to recovery of these costs.¹²

This Commission has already rejected a prior request from MPC for prudence findings related to the Kemper costs because the facility was not yet in service. There is no reason for a different outcome here. In its August 5, 2014 Order in Docket No. 2013-UA-0189, the Commission ordered unequivocally that any prudence hearings on the Kemper Project should be delayed 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 Independent Monitors.*"¹³ These conditions have not been met, and will not be met until some time in 2016 at the earliest. MPC is again asking this Commission to make a prudence determination when the Kemper Project is not in service and has not demonstrated reliable operations for any period of time. MPC's Application directly contradicts the Commission's August 5, 2014 Order, and should be dismissed pursuant to Rule 125.2.¹⁴ In reaching its 2014 decision to delay the Kemper Project's prudence determination, the Commission noted that the Kemper Project "continues to face concerns and uncertainties related to cost, schedule and operational availability."¹⁵ These concerns and uncertainties are even more pronounced today.

¹¹ Notice of Intent to Change Rates at 3-6 (May 15, 2015).

¹² See, e.g., *Mississippi Power Co., Inc. v. Mississippi Public Service Comm'n*, -- So. 3d --, 2015 WL 3823153 at ¶ 13 (June 11, 2015) (stating that the Baseload Act "permits the Commission to include CWIP only if the costs are determined to be 'prudently incurred'" and "[i]n the absence of prudency hearings, we fail to discern how a rate can be arbitrarily declared as 'fair, just, and reasonable' and/or 'just and reasonable.'").

¹³ Docket No. 2013-UA-0189, Order Cancelling Hearing at 1 (Aug. 5, 2014) (emphasis added).

¹⁴ Rule 125.2 (providing that the "Commission may, upon its own motion or upon a motion by the Staff or by motion made by any other party, dismiss or remand to the files a proceeding for failure of the filing party to prosecute or to comply with any relevant provision of these rules, the Act *or any Order of the Commission.*") (emphasis added).

¹⁵ Docket No. 2013-UA-0189, Order Cancelling Hearing at 1.

MPC's Application flies in the face of the Commission's well-reasoned decision to delay the prudence findings on the Kemper Project until it is in commercial operation and has demonstrated its availability for a reasonable period of time. Consistent with the Commission's prior decision, MPC's Application should be dismissed.

B. MPC's Application is a "moving target" and should be dismissed to protect due process.

Given the statutory deadlines under which the Commission must operate, both the Commission and interested parties are entitled to an accurate filing that contains the key elements of the utility's request and an accurate recitation of the facts at the start of the case. Since MPC made its filing, however, significant changes have occurred that render its Application flawed and inaccurate. For instance, this past May, SMEPA, the entity that procures power for many Mississippi electric cooperatives, announced that it was withdrawing from a deal to purchase 15 percent of the Kemper Project.¹⁶ In its public statements, SMEPA particularly noted that "there have been multiple changes in the project."¹⁷ SMEPA has apparently been provided a refund of \$301,000,000.00.¹⁸ None of these important developments are accurately set forth in MPC's Application.

Recent judicial and procedural actions make MPC's Application even more of a moving target such that dismissal is warranted. On July 2, 2015, the Mississippi Supreme Court issued the mandate on its revised opinion requiring refunds of approximately \$353 million¹⁹ in unlawful collections.²⁰ The connection between the refunds and this case is made plain in MPC's First Supplemental Filing, which now adds an entirely new request, entitled the "In-Service Asset Proposal," that appears to contemplate a new rate proposal (and an interim rate proposal) to offset

¹⁶ *SMEPA Pulls Out of Kemper Power Plant Deal* (May 20, 2015), available at <http://www.hattiesburgamerican.com/story/news/local/2015/05/20/smepa-kemper-plant-deal/27695975/>

¹⁷ *Id.*

¹⁸ J. Amy, "Mississippi Power seeks to keep 18 percent rate increase," found at: <http://www.greenwichtime.com/news/article/Mississippi-Power-seeks-to-keep-18-percent-rate-6378568.php> (July 10, 2015) (MPC CEO states Southern Co. provided the \$301 million that it paid back to South Mississippi Electric Power Association after SMEPA dropped its plan to buy 15 percent of Kemper).

¹⁹ First Supp. Filing at 6.

²⁰ To the extent that MPC is seeking recovery of the combined cycle costs, the Commission ordered that issue to be addressed in a separate docket, which is still pending. *See* Miss. Pub. Serv. Comm'n, Docket No. 2009-UA-0014, Order Requiring Filing, Aug. 5, 2014 ("MPC shall file with the Commission, in a new docket, analyses supporting MPC's decision to place the CCGT, and related portion, of the Kemper Project into service."). Until the combined cycle docket is resolved, this case should be dismissed.

the impact of the Supreme Court's decision.²¹ This new option appears to be a repackaging of MPC's first attempts to recover these costs, which were ruled unlawful. MPC admits as much in the First Supplemental Filing, and Mr. Feagin's supporting testimony, when it states that the In-Service Asset Proposal is equal to Test Period 1 of the 2019 RMP Proposal and would result in an equivalent increase in revenue requirement in replacement for the unlawful Mirror CWIP.²² MPC's requested increase is so close to what the Supreme Court ruled unlawful that it raises serious doubts about its legality. This uncertainty counsels further for dismissal of this case: the request continues to be a moving target with inherent risks for customers and the Commission alike.

Given these major developments and the tight statutory deadlines, fundamental notions of fairness and due process dictate that MPC's Application be dismissed. Requiring parties to attempt to analyze and litigate an ever-changing application under pre-determined statutory deadlines does not comport with due process. As the United States Supreme Court has explained, "[p]rocedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property."²³ The fundamental elements of due process "minimize substantively unfair or mistaken deprivations" by allowing one to contest a rate increase, for example.²⁴ As the Mississippi Supreme Court recently noted, "Government's power must be exercised in satisfaction of due process, including adequate notice and the opportunity to be heard."²⁵ Given recent developments, MPC's Application is no longer accurate. The Commission should dismiss the Application to avoid the impending deadlines, which will deprive intervenors of effective notice and participation, in violation of Mississippi Supreme Court precedent.²⁶

III. CONCLUSION

MPC's Application is patently inconsistent with the Commission's prior decision to delay prudence review until the Kemper plant is in-service for long enough to assess its availability and

²¹ First Supp. Filing at ¶¶3-4 (In-Service Asset Proposal would replace the Mirror CWIP).

²² First Supp. Filing at 3; Supplemental Direct Testimony of Moses H. Feagin at 6.

²³ *Carey v. Phipps*, 435 U.S. 247, 259 (1978).

²⁴ *Fuentes v. Shevin*, 407 U.S. 67, 81 (1972).

²⁵ *Mississippi Power Co., Inc. v. Mississippi Public Service Comm'n*, -- So. 3d --, 2015 WL 3823153 at ¶ 27.

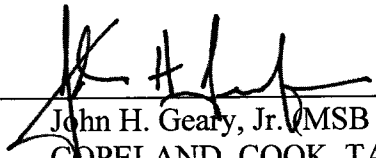
²⁶ *See id.* at ¶¶ 20-22.

reliable operation. The Application should be dismissed pursuant to Rule 125.2. Further, continuing to enforce applicable statutory deadlines when material developments have occurred since the Notice of Intent was filed would deprive interested parties of due process, waste Commission resources, and deprive the Commission of a full and complete record on which to base its decision.

WHEREFORE, PREMISES CONSIDERED, Greenleaf requests that the Commission enter an order dismissing MPC's Application.

Respectfully submitted on July 24, 2015.

GREENLEAF CO2 SOLUTIONS, LLC

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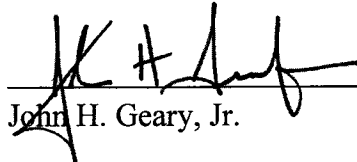
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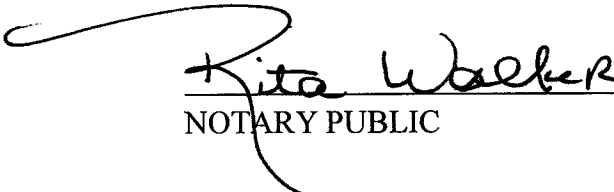
AFFIDAVIT

COMES NOW, John H. Geary, Jr., who after being duly sworn, certifies that he is one of the attorneys for Greenleaf CO2 Solutions, LLC, and as such is authorized to make this affidavit and that the facts and matters set forth in the above and foregoing Motion to Dismiss are true and correct as stated therein, to the best of his knowledge, information and belief.



John H. Geary, Jr.

SWORN TO and subscribed before me on July 24, 2015.



NOTARY PUBLIC



CERTIFICATE OF SERVICE

I, John H. Geary, Jr., counsel for Greenleaf CO2 Solutions, LLC in the foregoing filing of even date herewith do hereby certify that pursuant to Rule 6.102(d) of the Mississippi Public Service Commission Public Utility Rules of Practice and Procedure, the foregoing was this day filed electronically with the Commission via website at www.psc.state.ms.us, and that in compliance with Rule 6.112, an original and twelve (12) copies of the filing will be furnished within three (3) business days to:

Katherine Collier
Executive Secretary
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Woolfolk State Office Building, Suite 201A
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And a true and correct copy has been mailed by U.S. Mail, postage paid, to the following:

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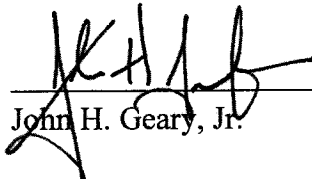
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This the 24th day of July, 2015.



John H. Geary, Jr.