

BEFORE THE MISSISSIPPI PUBLIC SERVICE COMMISSION

MISSISSIPPI 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

**FILED**

AUG 13 2015

MISS. PUBLIC SERVICE  
COMMISSION

TEMPORARY RATE ORDER

THIS matter is before the Commission on the First Supplemental Filing of Mississippi Power Company ("MPC") wherein MPC has petitioned the Mississippi Public Service Commission ("Commission") for interim and emergency rate relief. An evidentiary hearing on MPC's petition was held on Thursday, August 6, 2015, in the hearing room of the Commission located on the First Floor of the Woolfolk State Office Building in Jackson, Mississippi. At such hearing, certain parties presented opening statements, and witnesses for MPC offered testimony and were subjected to cross-examination. At the conclusion of the evidentiary hearing, the Commission took the matter under advisement and announced that it would meet again in the Commission hearing room on Thursday, August 13, 2015 at 10:30 a.m. to consider issuing an order related to the proceedings. The Commission, being fully apprised in the premises and having considered the documents and record before it does hereby find and order as follows:

The undisputed evidence reveals that MPC stands on the brink of bankruptcy. Equally compelling, the evidence reveals that MPC has had assets in

service since 2013 that are used and useful and that the combined cycle facility has provided substantial savings to customers in the year since going into operation. Given the evidence of MPC's near insolvency, the Commission finds that MPC is in a state of financial emergency and that its rates are insufficient, justifying providing interim and emergency relief of \$159 million to prevent further injury. The Commission highlights the following findings of fact, among others made in this Order:

\* A company on the edge of bankruptcy presents a financial emergency, and the Commission does not think, at this time, that bankruptcy should serve as the remedy to MPC's financial emergency.

\* In the two years that the Mirror CWIP matter was pending before the Supreme Court, facts and circumstances have changed.

\* MPC placed the transmission facilities into service in 2013, followed by the combined cycle facilities in 2014. The combined cycle units have been economically dispatched and have delivered savings to consumers in excess of \$15.6 million. MPC has received no rate recovery on those used and useful assets.

\* MPC faces an impending cash shortfall, in which it will run out of funds in November 2015. MPC has lost access to the unsecured credit markets, and existing crediting facilities and secured financing are either insufficient or lack capacity to satisfy MPC's funding needs. MPC's credit rating and credit worthiness have been downgraded and are on a negative watch.

\* MPC's impending financial woes will soon not allow it to fund its day-to-day operations and continue construction of the Kemper Project, jeopardizing its ability to provide safe, reliable service at reasonable rates. A lack of funds and access to funds is particularly concerning as we enter hurricane season, and the possibility of other damaging storms.

\* MPC's emergency rate request is premised on assets that are presently, and have been, used and useful in providing service to its customers. The interim rate is not the same as Mirror CWIP, which was allowed in 2013.

\* MPC is presently using company revenue to fund the Kemper Project; that is, MPC is taking money out of the business to fund Kemper construction. MPC funds its entire business through roughly equal parts debt and equity and utilizes revenue and funds to operate its entire business. MPC will use revenue generated from the interim rates to fund, in part, the Kemper Project, the same as it does with rates in effect related to other parts of MPC's operations.

\* Pursuant to its authority under the Public Utility Act, the Commission is not required to make a prudence determination prior to granting interim and emergency relief. The Commission, however, has established procedures and set a hearing on November 10, 2015, in which prudence, among other things, related to the In-Service Asset Proposal will be considered and ultimately decided no later than December 8, 2015.

# I.

1. On June 11, 2015, the Mississippi Supreme Court issued its substituted opinion reversing the Mirror CWIP Order, ordering a refund of all revenue collections under the Mirror CWIP Order, voiding the 2013 Settlement Agreement reached between MPC and the Commission and remanding the case back to the Commission for further proceedings.<sup>1</sup> The Court issued its mandate on July 2, 2015, transferring jurisdiction back to the Commission.

2. On July 7, 2015, the Commission issued its Order on Remand in Docket No. 2013-UN-14, wherein it, *inter alia*, directed MPC to lower customer rates to remove the Mirror CWIP rate approved in 2013, beginning with the first billing cycle of August 2015. This resulted in no rate recovery related to the Kemper Project after July 20, 2015. The Commission's Order on Remand also directed MPC to file a Refund Plan to govern the refund of the Mirror CWIP proceeds. Interested parties were provided an opportunity to comment on the Refund Plan, and, on August 7, 2015, the Commission approved MPC's proposed Refund Plan, with modifications, such that the refund of the Mirror CWIP collections, in total approximately \$350 million, shall be completed no later than December 4, 2015.

3. This docket was initiated on May 15, 2015, by the Company's Notice of Intent to Change Rates Supported by a Conventional Rate Filing or, in the alternative, a Rate Mitigation Plan in Connection with the Kemper County IGCC

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<sup>1</sup> See *Miss. Power Co., Inc. v. Miss. Pub. Serv. Comm'n*, \_\_\_ So. 3d \_\_\_, 2015 WL 3823153 (Miss. 2015).

Project (“Notice of Intent”). The Notice of Intent proposed three alternative rate proposals for the Commission’s consideration.<sup>2</sup>

4. Subsequent to the Supreme Court’s mandate and this Commission’s Order on Remand, MPC filed its First Supplemental Filing on July 10, 2015. The First Supplemental Filing offered a fourth alternative, termed the In-Service Asset Proposal, which was to take the place of the previously proposed 2019 RMP Proposal. MPC’s First Supplemental Filing also requested an expedited order granting MPC “interim” rate relief until such time as the Commission can render a final decision on the In-Service Asset Proposal.

5. MPC filed its Notice of Intent on May 15, 2015. Notice of the filing was given as required by law to all persons interested therein by mailing such notice to each public utility which may be affected and all parties of record in the last proceeding in which MPC sought a major change in rates.<sup>3</sup> MPC also mailed a notice to each customer pursuant to RP 9.101 of the Rules.<sup>4</sup> In addition, notice of the Company’s filing was provided by publication on June 3, 2015, in the Sun Herald, a newspaper of general circulation in Gulfport, Mississippi and in the

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<sup>2</sup> The first option, the “Traditional Rate Filing,” (Traditional Proposal) proposed an initial increase of \$114,042,196 in annual retail revenue requirements from the rate level that existed as of May 15, 2015. The second option, the “2017 Rate Mitigation Filing,” (2017 RMP Proposal) proposed an initial increase of \$24,980,924 in annual retail revenue requirements from the rate level that existed as of May 15, 2015. The third option and the one preferred by MPC, the “2019 Rate Mitigation Filing,” (2019 RMP Proposal) would not result in a change in current base rates for Kemper, except for anticipated securitization of certain Kemper Project costs to be requested later in a separate docket. These latter two options constitute rate mitigation plans authorized by Section 77-3-106.

<sup>3</sup> MPC’s last major change in rates was granted in Docket No. 2013-UN-14.

<sup>4</sup> MPC filed a Verification of Notice on July 2, 2015, confirming MPC mailed a notice of filing via U.S. Mail, postage prepaid, on May 16, 2015, and via email on May 18, 2015, to all of the Company’s customers, including special contract customers, in compliance with the provisions of Commission Rule 9.101.

Meridian Star, a newspaper of general circulation in Meridian, Mississippi; and on June 4, 2015, in The Clarion Ledger, a newspaper of general circulation in Jackson, Mississippi and in the Hattiesburg American, a newspaper of general circulation in Hattiesburg, Mississippi. This Commission entered a Suspension Order concerning the Notice of Intent on May 27, 2015.

6. MPC filed its First Supplemental Filing on July 10, 2015. MPC mailed a notice of the First Supplemental Filing to each customer pursuant to RP 9.101 of the Rules.<sup>5</sup> In addition, notice of the First Supplemental Filing was provided by publication on July 23, 2015, in the Meridian Star, on July 25, 2015, in the Sun Herald, and on July 26, 2015, in the Clarion Ledger and the Hattiesburg American. This Commission entered a Suspension Order concerning the First Supplemental Filing on July 17, 2015.

7. The following parties petitioned the Commission for and were granted leave to intervene in this proceeding all in accordance with RP 6 of the Rules:

- (a) Thomas Blanton;
- (b) Gulf Coast Business Group<sup>6</sup>
- (c) Mississippi Manufacturers Association
- (d) Mississippi Economic Council
- (e) Gulf Coast Business Council

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<sup>5</sup> MPC filed a Verification of Notice on August 11, 2015, confirming MPC mailed a notice of filing via U.S. Mail, postage prepaid, and via email on or before July 18, 2015, , to all of the Company's customers, including special contract customers, in compliance with the provisions of Commission Rule 9.101.

<sup>6</sup> The Gulf Business Group is a coalition of the following business with operations in MPC's service territory: Gulf Coast Produce, American Shrimp Processors Association and Omega Protein.

- (f) City of Biloxi, Mississippi
- (g) City of D'Iberville, Mississippi
- (h) Harrison County, Mississippi
- (i) Gulfside Casino Partnership
- (j) Federal Executive Agencies
- (k) Wal Mart Stores East, LP & Sam's East, Inc.
- (l) Greenleaf CO<sub>2</sub> Solutions, LLC
- (m) Chevron Products Company

8. Pursuant to the schedule set out by this Commission, Greenleaf CO<sub>2</sub> Solutions, LLC submitted pre-filed testimony on July 24, 2015, but later withdrew such testimony on August 5, 2015. The Staff also provided comments on the same day, but did not submit pre-filed testimony. MPC submitted its rebuttal testimony on August 3, 2015.

9. An evidentiary hearing, limited in scope to only address MPC's emergency request for interim rates, was held in the hearing room of the Commission on the 1<sup>st</sup> Floor of the Woolfolk Building in Jackson, Mississippi, on August 6, 2015, immediately after the Commission's previously scheduled regular Open Meeting, which began at 10:00 a.m. On July 14, 2015, the Commission provided proper notice of the hearing in this cause to all persons entitled to such notice, in the manner, form and time required by the Mississippi Public Utility Act, Sections 77-3-1, *et seq.*, of the *Mississippi Code of 1972, as amended*, and by the Commission's Rules. Given the interest in the Kemper proceedings, the additional

step was taken of publishing notice of the evidentiary hearing in the Clarion Ledger, the Sun Herald and the Meridian Star.

10. At the hearing, all parties had a fair and full opportunity to be heard, to present testimony, and to cross-examine all witnesses.<sup>7</sup> Upon conclusion of the hearings, the Commission took the matter under advisement and noticed all parties and the public of a special Commission open meeting to be held on August 13, 2015, to discuss the Company's request for emergency interim rates.

11. This interlocutory order only addresses the Company's request for emergency, temporary rates. This order does not in any way relate to the merits of the four rate proposals currently pending in this case. This Commission has established, by separate order, a schedule by which the Company's In-Service Asset Proposal will be reviewed and ruled upon in a final Commission order. The scheduling order provides that hearings will begin on November 10, 2015, and that a final order is expected no later than December 8, 2015. This procedure will consider MPC's In-Service Asset Proposal and make corresponding prudence determinations. All parties of record and the general public will be provided adequate opportunity to be heard concerning any issues that may be raised concerning the Company's various rate proposals.

12. The following procedural motions remain pending<sup>8</sup> before the Commission at this time:

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<sup>7</sup> By separate order, all parties were invited to submit by August 11, 2015, proposed findings of fact and conclusions of law for the Commission's consideration.

<sup>8</sup> The Commission notes that Greenleaf CO<sub>2</sub> Solutions, LLC filed a Motion to Dismiss on July 24, 2015, that was later voluntarily withdrawn by Greenleaf on August 4, 2015.



(a) Motion to Stay Notice of Intent filed by Mr. Blanton on June 1, 2015;

(b) Motion to Dismiss Notice of Intent filed by Mr. Blanton on July 6, 2015;<sup>9</sup>

(c) Motion to Deny MPC's Proposed In-Service Asset Proposal as an Interim Rate filed by Mr. Blanton on July 14, 2015;<sup>10</sup> and

(d) Supplemental Motion to Deny filed by Mr. Blanton on July 23, 2015.

13. Mr. Blanton's Motion to Stay and Motion to Dismiss both concern the various rate proposals offered by MPC in this matter, and, therefore, the Commission declines to rule on these motions at this time. For the reasons expressed in Part III of this Order, the Commission hereby denies Mr. Blanton's Motion to Deny and Supplemental Motion to Deny.

## II.

14. MPC was the only party to pre-file testimony and to offer witnesses at the evidentiary hearing. Mr. G. Edison Holland, Jr., President and CEO of MPC, and Mr. Moses H. Feagin, Vice-President, Treasurer and CFO of MPC, presented testimony to the Commission and were cross-examined.

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<sup>9</sup> This motion was joined separately by Gulf Business Group, the City of Biloxi, Gulfside Casino Partnership d/b/a Island View Casino Resort, the City of D'Iberville, and Harrison County, Mississippi.

<sup>10</sup> This motion was joined separately by Gulf Business Group, the City of Biloxi, Gulfside Casino Partnership d/b/a Island View Casino Resort, the City of D'Iberville, and Harrison County, Mississippi.

15. In his pre-filed testimony, Mr. Holland stated that MPC is seeking interim rates due to emergency circumstances and “that if not addressed quickly will cause injury to the business or interest of MPC and its customers.”<sup>11</sup> Mr. Holland further stated that the rates in effect for MPC are unjust and unreasonable because MPC has not recovered any costs related to the In-Service Assets.<sup>12</sup> Mr. Holland explained that continued regulatory uncertainty surrounding cost recovery, particularly of the In-Service Assets, prevents MPC from being able to obtain outside financing on reasonable terms and that the Commission’s failure to grant a rate increase associated with the In-Service Assets is unfair and confiscatory because the In-Service Assets have been operating for nearly a year with customers receiving all of the benefits but none of the costs.<sup>13</sup>

16. Mr. Holland also offered an overview of the emergency facing MPC. Mr. Holland bluntly testified that MPC “can no longer obtain financing to fund day-to-day activities of the business as well as continue start-up activities at the Kemper Project.”<sup>14</sup> Because MPC no longer has access to the traditional unsecured debt markets, Southern Company has become MPC’s only potential lender; yet, Southern Company is an investor, a shareholder, not a bank.<sup>15</sup> Moreover, MPC, not Southern Company, holds the certificate to construct the Kemper Project and has

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<sup>11</sup> Rebuttal Testimony of G. Edison Holland, Jr., p. 2 (hereafter referred to as “Holland Rebuttal”).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 3.

<sup>14</sup> *Id.* at 4.

<sup>15</sup> *Id.* at 5.

the obligation to safely, reliably and cost-effectively serve Mississippians, which MPC cannot do with Southern Company as a sole-source lender.<sup>16</sup> Mr. Holland noted that MPC has already taken charges to earnings for over \$2.1 billion, borrowed \$301 million from Southern Company to provide the refund to SMEPA when it ended its pursuit of ownership interest in the Kemper Project, and is again forced to borrow \$350 million from Southern Company to refund to customers amounts collected pursuant to Mirror CWIP.<sup>17</sup>

17. Given these facts, Mr. Holland warned that bankruptcy should be considered a last resort<sup>18</sup> but recognized that MPC's financial condition has worsened even since its May 15 rate filing, with MPC facing a near-term cash shortfall, limited ability to obtain unsecured financing with Southern Company its sole lending option, eroding credit metrics, and an increasingly uncertain ability to provide safe, reliable and affordable energy.<sup>19</sup> Yet, as Mr. Holland contends, more than a billion dollars of assets are currently in service and have for the last year provided MPC ratepayers over 3 billion kilowatt-hours of electricity and over \$15 million of energy savings, without any rate recovery for MPC.<sup>20</sup>

18. At the evidentiary hearing, Mr. Holland's opening statement reiterated what he had asserted in pre-filed testimony:

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<sup>16</sup> Holland Rebuttal, p. 5.

<sup>17</sup> *Id.* at 10.

<sup>18</sup> *Id.* at 13-14.

<sup>19</sup> *Id.* at 15.

<sup>20</sup> *Id.* at 4, 15.

We have no access to traditional debt markets, and we have been repeatedly downgraded and placed on negative outlook by credit rating agencies. The Kemper combined cycle will complete its first full year of operation this Sunday. Yet, we have not received one dime to cover the investment in and the cost to operate that facility. Our rates are not adequate to meet the continuing cash needs to complete the Kemper project and to operate the rest of our business at the same time. Without relief from this Commission, we are on a pace to have negative cash position before the end of this year. Immediate emergency relief i[s] required to avoid serious financial harm to Mississippi Power and ultimately, to our customers.<sup>21</sup>

19. Continuing, Mr. Holland attributed MPC's financial emergency to four factors:

[First] of this [is] we have an impending cash shortfall. We will run out of cash . . . before the end of the year. We have lost - - secondly, we have lost access to traditional outside financing. Third, our credit ratings continue to degrade. And fourthly, and very importantly, we have not collected any permanent rates related to Kemper.

This is our emergency. We are in dire need of rate relief . . . .<sup>22</sup>

20. On cross-examination, Mr. Holland was pressed to defend MPC's request for increased revenue of \$159 million or 18% on the grounds that this was the very same revenue increase that had been awarded by the Commission in the Mirror CWIP proceedings but had been struck down by the Supreme Court in the Mirror CWIP Appeal.<sup>23</sup> Mr. Holland noted that the revenue increase sought as emergency relief was the same amount as Mirror CWIP but testified that even \$159 million was not sufficient to cash flow MPC through next year or even to fully

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<sup>21</sup> Transcript (Not Proofed) of August 6, 2015, evidentiary hearing, pp. 4-5 (referred to hereafter as "Tr.").

<sup>22</sup> Tr., p. 7.

<sup>23</sup> *Id.* at 18-21.

alleviate the financial needs of MPC.<sup>24</sup> Mr. Holland explained that MPC chose to pursue only \$159 million due to regulatory efficiency, as the calculations for such a filing had been done as part of the original filing, leaving MPC only needing to supplement its filing, as opposed to filing a new case.<sup>25</sup> Mr. Holland further pointed out that the interim rate would not be the Mirror CWIP rate, and the interim rate would be premised on assets already used and useful and with a prudence determination related to those assets occurring this year in conjunction with permanent rate treatment for the In-Service Assets.<sup>26</sup> That is, the interim rates “are designed to recover the cost of the plant in service at the Kemper facility.”<sup>27</sup>

21. Mr. Holland was also questioned on whether any of the revenue generated by emergency, temporary rates would be used to fund any construction at Kemper, essentially whether MPC was just seeking to recover construction costs for Kemper.<sup>28</sup> Although Mr. Holland referred to Mr. Feagin to answer the question fully, Mr. Holland emphasized that money is being taken out of MPC’s business, its earnings, now, to support Kemper construction that would otherwise go to shareholders. “So [I] think to answer your question, it’s the opposite of what you are insinuating.”

22. Mr. Holland was not certain whether any of the emergency funds would be devoted to Kemper construction, but he did testify that “the money goes

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<sup>24</sup> *Id.* at 18-19, 37.

<sup>25</sup> Tr., pp. 19, 40.

<sup>26</sup> *Id.* at 21, 23.

<sup>27</sup> *Id.* at 27.

<sup>28</sup> *Id.* at 27, 33.

into various accounts and is used for various purposes. . . . [W]e don't identify the funds for a particular purpose, but we have a basis upon which to seek recovery of these dollars.”<sup>29</sup> That is, MPC funds its entire business with various funds, including debt and equity, and Kemper is part of MPC's business.<sup>30</sup> In Mr. Holland's own words, “It is money that we need to finish the plant and to operate the business in a reliable way. . . . Has nothing to do with mirror CWIP.”<sup>31</sup>

23. Toward the end of Mr. Holland's time on the stand, Commissioner Renfroe elicited the following pertinent evidence regarding reliability. Commissioner Renfroe recounted that Mr. Holland had stated in his opening remarks that Mississippi Power Company was nearing the point where it cannot reliably fund day-to-day operations.<sup>32</sup> Commissioner Renfroe then asked Mr. Holland to address whether MPC's financial situation would impact its ability to respond after a hurricane.<sup>33</sup> Mr Holland responded that “we do have storm damage reserve, but that money is just like all of the Kemper money and other money in operations. . . . But that is used in day-to-day operations, so that if we, in fact, did get to a point where we did not have cash on hand and we had a storm, we would be in a true emergency situation from that perspective.”<sup>34</sup>

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<sup>29</sup> *Id.* at 34-35.

<sup>30</sup> Tr., pp. 37-38.

<sup>31</sup> *Id.* at 40.

<sup>32</sup> *Id.* at 38.

<sup>33</sup> *Id.* at 39.

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

24. After Mr. Holland was excused, Mr. Moses H. Feagin took the stand. Mr. Feagin had also submitted pre-filed testimony. Mr. Feagin's pre-filed testimony and witness testimony supported MPC's filing and Mr. Holland's testimony and offered greater detail. Mr. Feagin's Supplemental Direct Testimony described MPC's current financial position as "dire" and explained that with over \$1 billion of capital investment in service with no rate recovery, MPC cannot fund its operations, and even with an emergency rate increase MPC would not be able to independently sustain operations.<sup>35</sup> Lack of recovery, or regulatory support, and diminished credit metrics have resulted in MPC being unable to borrow money from outside sources, but, according to Mr. Feagin, allowing rate recovery now, while not sufficiently providing cash flow, would send a positive signal to both the credit rating agencies and Southern Company, which in turn would likely lead to access to additional funding.<sup>36</sup>

25. Exhibit \_\_\_\_ (MHF-14) to Mr. Feagin's Supplemental Direct Testimony reveals the depths of MPC's financial woes. Without funding from Southern Company to support the Mirror CWIP refund, to which Southern Company has committed, MPC would run out of money sometime in October or November 2015; and even with support from Southern Company for the refund and an emergency

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<sup>35</sup> Supplemental Direct Testimony of Moses H. Feagin, pp. 2-3 (hereafter referred to as "Feagin Supplemental").

<sup>36</sup> Feagin Supplemental, pp. 3-4.

rate increase, MPC will still run out of cash in March 2016.<sup>37</sup> MHF-14 highlights the importance of access to external sources of funding.

26. Mr. Feagin's Rebuttal Testimony noted the breadth of MPC's acute cash needs across the company's business, testifying, as follows:

MPC's cash reserves are nearly depleted and available credit facilities will not be sufficient to fill this need. The Mirror CWIP refunds, recent SMEPA deposit refund, Kemper start-up activities, Daniel Scrubber start-up activities and normal business operations all combine to increase MPC's cash needs over the next several months well beyond current resources. Additional outside funding is necessary, but MPC has been unable to obtain reasonable financing from traditional unsecured credit markets.<sup>38</sup>

27. Mr. Feagin's testimony thoroughly explains the importance of credit quality and credit metrics and how these relate to MPC's access to and cost of external financing, or a lack of access as MPC's case indicates.<sup>39</sup> As did Mr. Holland, Mr. Feagin filed testimony that MPC could no longer raise additional funds from traditional debt resources, essentially leaving Southern Company as the lender of last resort.<sup>40</sup> Mr. Feagin went on to explain specific difficulty MPC has had obtaining capital over the last year, including restricted access to unsecured capital markets, insufficient and expiring credit facilities, a lack of capacity and undesirability of secured financing, lack of equity from Southern Company due to

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<sup>37</sup> *Id.* at 25-26.

<sup>38</sup> Rebuttal Testimony of Moses H. Feagin, p. 3 (hereafter referred to as "Feagin Rebuttal").

<sup>39</sup> *Id.* at 12-21.

<sup>40</sup> Feagin Supplemental, pp. 22-23.



regulatory uncertainty, and rising intercompany loans that skew MPC's capital structure and risks debt recall.<sup>41</sup>

28. Mr. Feagin observed that emergency rate relief would not immediately restore MPC's credit metrics; but it would begin the process of restoration, and any continued deprivation of rate relief would further deteriorate MPC's financial condition and creditworthiness.<sup>42</sup> As Mr. Feagin stated:

Regulatory support in the form of rate relief is crucial to preserving Mississippi Power's financial viability. It is needed to provide additional cash flows to support continued operations. It is critical to demonstrate regulatory support in order to improve Mississippi Power's access to capital and cost of financing.<sup>43</sup>

...  
Put simply, lenders are not willing to lend when a utility is not even able to recover its current costs of service, much less the additional interest that would be incurred by issuing additional debt. Emergency interim rates are absolutely necessary to provide the Company the minimum financial support needed to maintain current operations and to begin the process to restore the metrics needed to improve the Company's financial strength.<sup>44</sup>

29. Mr. Feagin's pre-filed testimony also explained the reason MPC sought \$159 million in revenue increase, which also happened to be the revenue requirement approved in the Mirror CWIP proceedings but overturned by the Supreme Court. Mr. Feagin explained that the \$159 million revenue increase is still insufficient, but because rapid action is needed MPC opted to limit its request to an In-Service Asset Proposal that was derived from the previously existing RMO

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<sup>41</sup> *Id.* at pp. 24-25; Feagin Rebuttal, pp. 3-4.

<sup>42</sup> *Id.* at 25.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 26-27.

2019 scenario that had already been filed in this docket and would avoid rate shock as customers had been paying the same rate level since 2013.<sup>45</sup>

30. Mr. Feagin's testimony at the evidentiary hearing reflected his pre-filed testimony. At the hearing, Mr. Feagin explained that the Mirror CWIP rate was for recovery of costs for construction work in progress, while the emergency rate "is comprised of assets that was placed in service under the tax and accounting rules, used and useful. And so what we're asking for here is recovery of those assets that are in service."<sup>46</sup> Mr. Feagin frankly admitted that, as he explained in his pre-filed testimony, the \$159 million was by design and not a coincidence.<sup>47</sup> Mr. Feagin identified a need for additional yearly cash flow of \$200 million.<sup>48</sup>

31. Mr. Feagin further testified that some of the revenue collected would be used to complete the Kemper Project construction, noting that the additional revenue "would aid in helping pay expenditures for not only that plant, but for also the rest of the - - the rest of the company."<sup>49</sup> The revenue collected for emergency rates, like all revenue and sources of funds such as equity infusions, would be available for general operations, including Kemper construction.<sup>50</sup> Such treatment

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<sup>45</sup> Feagin Rebuttal, pp. 8-9.

<sup>46</sup> Tr., pp. 44, 46.

<sup>47</sup> Tr., p. 45.

<sup>48</sup> *Id.* at 52.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at 48.

is consistent with how other company revenue, such as revenue from MPC's standard PEP rate, is treated.<sup>51</sup>

32. Both Mr. Holland's and Mr. Feagin's pre-filed and evidentiary hearing testimony support the request for interim and emergency rates presented in MPC's First Supplemental Filing. Therein, MPC explained its basis for seeking a \$159 million revenue increase and implementing emergency rates, including the utilization of used and useful assets to produce customer benefits without rate recovery, MPC's deteriorating financial conditions and restricted access to outside funding, and the need for regulatory speed. As set out in the filing and the testimony, harm to MPC's cash position and credit metrics also, by extension, harms the customer because MPC is unable to reinvest in the business to maintain reliable service or access capital at reasonable terms leading to higher debt service and higher rates.

### III.

33. MPC's First Supplemental Filing alleges first that its current rates (specifically the rates being collected after July 20, 2015, which were lowered to pre-Kemper levels) are unjust, unreasonable and insufficient. The Company's assertions are premised upon the fact that certain "In-Service Assets" (primarily the Kemper combined cycle facilities) are and have been operating and serving customers for nearly a year without any "permanent" rate relief. In addition, MPC has requested an immediate rate increase on an "interim" or "emergency" basis

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<sup>51</sup> *Id.* at 61.

until such time as the In-Service Asset rate proposal can be addressed by this Commission.

34. The Commission finds that MPC has carried its burden of proving that the company faces a financial emergency and that the rates it presently collects are insufficient. That to prevent injury to the business and interest of MPC and the ratepayers it serves, the Commission finds that interim and temporary rates should be fixed. Part A sets out and explains the factual findings of the Commission that MPC faces a financial emergency requiring and fixing temporary rates. Part B sets out the Commission's legal reasoning and conclusions and rejects those legal arguments asserting that the Commission does not have authority to fix temporary rates in the face of a financial emergency. Part C identifies certain conditions and expectations, subjects the temporary rate to refund, and sets the bond amount.

**A. MPC faces a financial emergency, and its rates are insufficient.**

35. MPC has shown that its present cash flow will soon be insufficient to reliably operate the company on a day-to-day basis and that this, coupled with MPC's inability to access the credit market, has led to a financial emergency that will harm its business and interests and those of the ratepayers MPC serves. The Commission may consider such matters and make such findings pursuant to the Public Utilities Act.

36. This Commission is charged with “exclusive and original jurisdiction” over the intrastate business and property of public utilities.<sup>52</sup> Under Mississippi law, public utilities are entitled to “collect and receive fair, just and reasonable rates” in exchange for furnishing reasonable and reliable service.<sup>53</sup> “Rates prescribed by the commission shall be such as to yield a fair rate of return to the utility furnishing service, upon the reasonable value of the property of the utility used or useful in furnishing service.”<sup>54</sup>

37. The entirety of MPC’s temporary rate request is governed by the provisions of Miss Code Ann. Section 77-3-41, which states:

Whenever the commission, after hearing had on reasonable notices, finds that the existing rates in effect and collected by any public utility are unjust, unreasonable, materially excessive or insufficient or unreasonably discriminatory, or in anywise in violation of any provision of law, the commission shall determine, and fix by order, the just and reasonable rates which will yield a fair rate of return to the utility for furnishing service, which rates will thereafter be observed and in force. Said rates shall thereupon become the legal rates to be charged and paid until changed.

The commission shall have power, when deemed by it necessary to prevent injury to the business or interest of the people or any public utility of this state in case of any emergency, to permit any public utility to alter, amend or suspend temporarily any existing rates, schedules and orders relating to or affecting any public utility or part of any public utility in this state except as provided in Section 77-3-42.<sup>55</sup>

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<sup>52</sup> MISS. CODE ANN. § 77-3-5.

<sup>53</sup> MISS. CODE ANN. § 77-3-33.

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

<sup>55</sup> MISS. CODE ANN. § 77-3-41 (emphasis added). Section 77-3-42 relates to rate increases resulting from fuel adjustment clauses or riders and to audits of fuel purchases, and is not relevant to this case.

38. Section 77-3-41 contains two independent sources of rate authority. The first paragraph permits the Commission, after hearing and notice, to adjust rates if they are determined to be unjust, unreasonable or insufficient.<sup>56</sup> The second paragraph provides the Commission separate emergency authority to implement temporary interim rates when it is necessary to prevent injury to the business or interest of the people or any public utility.<sup>57</sup> MPC's request herein invokes both authorities.

39. These two rate authorities are necessarily different and require different procedure and findings in support. The first paragraph specifically requires reasonable notice and hearing, while the second paragraph does not. This is logically consistent given that requiring potentially time-consuming and restrictive procedures prior to invoking emergency rate authority would seem to run counter to policy underling the authority, which is to act quickly in order to prevent injury to the business or public. The fact that the emergency temporary rates are required to be temporary in nature tends to protect the public from long-term adverse consequences of quick, but nonetheless necessary regulatory action in order to prevent imminent harm until a more permanent solution can be investigated. In this case, these issues are moot given that all customers received personal notice of the Company's First Supplemental Filing, constructive notice through publication in four different newspapers and hearings were held upon reasonable notice to the parties and the public.

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<sup>56</sup> Interim Order, docket no. U-4620, pp. 3-4 (MPSC Jan. 17, 1985).

<sup>57</sup> *Id.*

40. When invoking emergency rate authority, the Commission must make two factual findings. First, we must find that rate action is, in fact required, to “prevent injury to the business or interest of the people or any public utility of this state in case of any emergency.” Second, we must determine the specific rate relief sufficient to avert the injury or emergency. It is important to note the statutory language is forward looking, meaning it does not require a finding of past or current injury or emergency. On the contrary, the statutory language makes clear the Commission should seek to “prevent” injury or avoid emergency. Thus, a finding of impending, potential future injury or emergency is sufficient, although in this instance, the Company has offered evidence of past, current and future injury to its business and the public.

41. As the party seeking interim and emergency relief, MPC bears the burden of proving that an emergency exists that will likely cause injury to its business or interests or that MPC’s rates are unjust, unreasonable and/or insufficient.<sup>58</sup>

42. The Commission is no stranger to requests for interim and emergency rate relief, and MPC is not the first electric utility to face a financial emergency stemming from construction of a base load electric generating facility. In 1984-85, Mississippi Power & Light Company (“MP&L”)<sup>59</sup> sought rate relief deriving from the completion of Grand Gulf Unit I, a nuclear facility, and its acquisition of an ownership interest in and purchased power from the Independence Steam Electric

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<sup>58</sup> *State ex rel. Pittman v. Miss. Pub. Serv. Comm’n*, 538 So. 2d 387, 394 (Miss. 1989).

<sup>59</sup> Now operating as Entergy Mississippi, Inc.

Station, a coal-burning facility in Arkansas.<sup>60</sup> Ownership of these facilities were the result of MP&L's strategy to diversify its fuel sources by moving its base load generation away from oil and gas and transitioning to coal and nuclear.<sup>61</sup>

43. Then, as now, rate recovery was no simple matter, and MP&L sought interim and emergency rate relief for its Independence acquisition, noting a revenue deficiency in excess of \$56 million.<sup>62</sup> In its Interim Order, the Commission noted its general authority over ratemaking and its specific authority under Section 77-3-41 to fix interim or temporary rates in cases where utility rates are insufficient, under paragraph one, or where there exists an emergency, under paragraph two.<sup>63</sup> The Commission declined to treat MP&L's request as resulting from an emergency but rather, a request to adjust rates due to the fact that

the Company's existing rates and charges are insufficient considering the Company is incurring cost in connection with both its ownership and purchased portion of Independence Unit 2 and the fact that the Company's retail customers are receiving the benefits of substantial fuel savings from the unit.<sup>64</sup>

44. Even though the Commission did not characterize the request as an emergency, the Commission did note that MP&L witnesses characterized the request as one born "of equity and of financial necessity."<sup>65</sup> Given this, the Commission examined the financial impact on the company, particularly the

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<sup>60</sup> Mississippi Power & Light Company, Notice of Intent to Change Rates, docket no. U-4620 (MPSC Nov. 16, 1984).

<sup>61</sup> Interim Order, docket no U-4620, pp. 5-6 (MPSC Jan. 17, 1985).

<sup>62</sup> *Id.* at 4.

<sup>63</sup> *Id.* at 3-4.

<sup>64</sup> Interim Order, docket no U-4620, at 4.

<sup>65</sup> *Id.* at 7.



projected decline in MP&L's return on equity absence interim rates and concluded that while "the Company is not in a financial emergency at the present time . . . evidence was presented that the Company's financial condition could deteriorate during the time before the Commission is required to issue a final order."<sup>66</sup> After noting this and the previously described revenue deficiency and fuel savings enjoyed by customers, the Commission allowed MP&L to begin to collect immediately additional revenue through interim rates.<sup>67</sup>

45. The Interim Order, however, did not end the saga. On June 14, 1985, the Commission entered a Final Order denying MP&L any rate relief for the Grand Gulf Nuclear Station, although allowing other rate relief.<sup>68</sup> Approximately six weeks after the June 14 Final Order, MP&L filed for emergency rate relief citing Grand Gulf Unit 1 costs.<sup>69</sup> The Commission held a hearing on August 12, 1985, and denied relief.<sup>70</sup> On August 30, 1985, the Commission learned that certain lines of credit for the Company had been canceled, and the Commission set a rehearing conducted on September 9-10, 1985.<sup>71</sup> The Commission then issued its Final Order on Rehearing reversing its prior decision to disallow rate relief for Grand Gulf,

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<sup>66</sup> *Id.* at 9.

<sup>67</sup> *Id.* at 9-14.

<sup>68</sup> Final Order, docket no. U-4620, pp. 48-49 (MPSC June 14, 1985).

<sup>69</sup> Final Order on Rehearing, docket no. U-4620, p. 7 (MPSC Sept. 16, 1985).

<sup>70</sup> *Id.* at 7-8.

<sup>71</sup> *Id.* at 8.

ultimately providing for recovery of additional yearly revenue of over \$326 million above what was previously granted.<sup>72</sup>

46. The Commission noted “the fact that the Company got itself into its present predicament,” but even so, the Commission found as fact that “minimal increases to lessen the impact on Mississippi ratepayers are insufficient to provide the Company with a means of financing sufficient to avoid insolvency.”<sup>73</sup> In granting rate relief to MP&L, the Commission considered financial facts strikingly similar to those facing MPC, today: A cash shortfall that would impact its ability to operate at a level sufficient to guarantee reliable service; unavailability of short term debt; bond and charter coverages below minimum requirements to issue debt and preferred stock to support ongoing operations; and rating agency downgrades.<sup>74</sup> Considering these financial conditions, the Commission granted retail rate relief.

47. There are also, at least, two more recent examples of the Commission granting interim rate relief. In 2011, Entergy Mississippi, Inc. (“EMI”), acquired the Hinds Energy Facility, and in 2012 sought to recover interim rates associated with the acquisition pending the filing of and final determination in a general rate case.<sup>75</sup> The Commission found that the Hinds acquisition presented a unique opportunity for EMI to acquire a new efficient power plant that could displace aging steam resources, meet load growth, and reduce fuel costs to achieve customer

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<sup>72</sup> *Id.* at 25.

<sup>73</sup> *Id.* at 3.

<sup>74</sup> *Id.* at 9-12.

<sup>75</sup> Entergy Mississippi, Inc., Notice of Intent, docket no. 2011-UN-2011 (MPSC July 15, 2011).

savings.<sup>76</sup> In granting interim rates, the Commission concluded that the unique circumstances, timing and size of the Hinds acquisition could not be accommodated under EMI's formula rate plans in place; therefore, the Commission authorized rate recovery outside this process under a rider but provided that the interim rates would provide EMI "sufficient time within which to file a general rate case to recover the Annual Ownership Costs of the Hinds Facility."<sup>77</sup> That rate case was resolved in 2014.

48. The second example of the Commission recently granting interim rates involved Southeast Utilities, LLC ("Southeast"), a natural gas utility.<sup>78</sup> In June 2013, Southeast filed its Notice to Change Rates. During the pendency of the rate case, Southeast and the Staff entered into a Stipulation on January 30, 2014, allowing Southeast to recover temporary rates during the pendency of the rate case.<sup>79</sup> Although the Staff needed more information before making a final recommendation, Staff's investigation revealed that "the current rate schedule does not provide Southeast sufficient funds to operate and believes adjustments are appropriate . . . to support the implementation of a temporary rate[.]"<sup>80</sup> Based on the Stipulation, the Commission, through a hearing examiner, approved the

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<sup>76</sup> Order, docket no. 2011-UN-2011, pp. 4-6 (MPSC Aug. 9, 2012).

<sup>77</sup> *Id.* at 3.

<sup>78</sup> Southeast Utilities, LLC, Notice to Change Rates, docket no. 2013-UN-180, (MPSC June 27, 2103).

<sup>79</sup> Stipulation, docket no. 2013-UN-180 (MPSC Jan. 30, 2014).

<sup>80</sup> *Id.* at 2.

Stipulation and temporary rates, which remain in effect during the still-pending rate case.<sup>81</sup>

49. The grant of interim or emergency rate relief is neither unusual nor unreasonable, and in addition to the examples discussed above, there are multiple instances nationwide of regulatory commissions granting regulated utilities immediate rate relief in the face of substantial economic hardship.<sup>82</sup> Several states have similar emergency rate statutes as Mississippi.<sup>83</sup>

50. The Commission finds that it has jurisdiction over the parties and subject matter in this proceeding. The Commission also finds that MPC has adequately complied with the requirements of the applicable law and this Commission's Rules, and has provided all of the information relevant and necessary for the Commission to evaluate the Company's request herein and support this order. Therefore, for good cause shown, the Commission hereby waives each and every other filing requirement that may be prescribed by the Public Utility Act and the Commission's Rules.

51. The evidence in the Commission's record overwhelming supports a finding that MPC is in or nearing financial crisis. MPC has testified, and no

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<sup>81</sup> Order Adopting Joint Stipulation, docket no. 2013-UN-180 (MPSC Feb 7, 2014).

<sup>82</sup> See e.g., Order, FERC Docket No. ER80-315, 11 FERC ¶ 61,220 (1980)(Although FERC did not grant emergency rate relief in this Order, but rather set the matter for hearing as a request for CWIP relief, this Order notes that the utility "has filed for and received emergency rate relief in its Missouri retail jurisdiction and had requested permanent, emergency, and interim rate relief in its Kansas retail jurisdiction."); Order, Pennsylvania Public Utility Commission, Case No. R-2008-2073938 (Dec. 18, 2008); see also Sally W. Bloomfield, *Emergency Rate Making for Ohio Public Utilities*, 37 OHIO ST. L. J. 108 (1976)(in which Ohio Public Utility Commissioner discusses history and application of Ohio emergency ratemaking authority).

<sup>83</sup> See e.g., OHIO REV. CODE ANN. § 4909.16; CC PA. CONS. STAT. § 1308(e); IND. CODE ANN. § 8-1-2-42 & 8-1-2-113.

contrary testimony has been provided, that significant business injury has already been suffered. MPC has been operating the Kemper combined cycle units for a year for the benefit of customers and has received no permanent rate recovery.<sup>84</sup> It is undisputed that the combined cycle facilities have already commercially generated billions of kilowatt hours of electricity without MPC receiving any permanent cost recovery.<sup>85</sup> MPC testified that customers are receiving the benefits of substantial savings from the In-Service Assets; since its August, 2014 in-service date, the Kemper Combined Cycle has provided savings to customers of approximately \$15.6 million, a fact which was also not contested.<sup>86</sup> For these reasons alone, the Kemper Project's combined cycle facilities, and the other assets used to calculate the rate relief requested in this filing, are certainly "used and useful" in the traditional sense.

52. MPC has already experienced several credit rating downgrades.<sup>87</sup> Currently, S&P has issued a stand-alone credit rating profile for MPC of bb+, which is below investment grade.<sup>88</sup> The Company has lost access to traditional credit markets.<sup>89</sup> These injuries have already been endured.

53. MPC faces further injury if rate relief is not granted to alleviate the Company's impending cash shortfall. Mr. Feagin testified the Company currently

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<sup>84</sup> Holland Rebuttal, p. 4.

<sup>85</sup> *Id.* at 4.

<sup>86</sup> First Supplemental Filing, docket no. 2015-UN-80, p. 7; Holland Rebuttal, p. 4.

<sup>87</sup> Feagin Rebuttal, p. 2.

<sup>88</sup> Feagin Supplemental, p. 12.

<sup>89</sup> Feagin Rebuttal, pp. 3-4.

expects to be in a negative cash position by the end of this year if the status quo persists.<sup>90</sup> On July 8<sup>th</sup>, one day following the Commission's Order on Remand requiring the Mirror CWIP collections be refunded, S&P issued a CreditWatch Negative Report indicating further downgrades are likely in the near future.<sup>91</sup> Moody's has placed MPC on review for downgrade.<sup>92</sup> MPC remains on negative outlook with Fitch, even after a recent downgrade to BBB+ this June.<sup>93</sup> None of this evidence was rebutted or discredited by the Staff or any other party. MPC has experienced and faces continued business injury without some financial support.

54. Customers also face potential harm from MPC's financial condition. To illustrate this concern, hurricane season still threatens our State and region, and customers could face great hardship if MPC's current financial condition does not improve prior to a storm event. Access to sufficient capital is crucial to fund the vital storm restoration efforts following a hurricane. The risk to customer health and business interruption caused by prolonged storm-related outages must be mitigated to the greatest extent reasonably possible. The Company also correctly pointed out that the lower its credit ratings, the higher cost any borrowings that can be obtained will be. These higher costs of capital are ultimately borne by customers through future rates.

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<sup>90</sup> Feagin Supplemental, pp. 25-26.

<sup>91</sup> *Id.* at 12-13.

<sup>92</sup> *Id.* at 13.

<sup>93</sup> *Id.*

55. At least one intervenor argued that even though an emergency situation may exist, the Commission should decline any emergency relief because the emergency situation was caused by the Company's own actions. MPC testified the emergency situation materialized as a result of a culmination of several factors, including but not limited to, the cost and schedule issues related to the Kemper Project, this Commission's failure to grant CWIP relief in 2012, and the Supreme Court's recent reversal of the Mirror CWIP Order.<sup>94</sup> The issue of causation is unnecessary under Section 77-3-41.<sup>95</sup> Our review of the statute confirms this Commission is not required to address fault to utilize the emergency rate authority granted by the statute. Although we may agree that several factors combined to create the current financial crisis for MPC, not all of which were the fault of MPC, we decline to address the issue further in this order and note that the Commission has previously granted rate relief even where the company petitioning for relief had caused its own predicament.<sup>96</sup>

56. Others have argued that no emergency exists because Southern Company either already intends or could be forced to financially support MPC. The Company admitted that Southern Company had already provided a loan to MPC to pay the SMEPA deposit earlier this year and has committed to loan the funds necessary to complete the Mirror CWIP refund.<sup>97</sup> But both Mr. Holland and Mr.

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<sup>94</sup> Holland Rebuttal, pp. 3-9; Feagin Rebuttal, pp.4-5.

<sup>95</sup> Equally, Section 77-3-41 does not define what constitutes an emergency.

<sup>96</sup> Final Order on Rehearing, docket no. U-4620, p. 3 (MPSC Sept. 16, 1985).

<sup>97</sup> Holland Rebuttal, p. 10.

Feagin made clear that Southern Company has made no future commitments to provide additional equity and that continued financial support by Southern Company through intercompany loans was both unfair and not absolute.<sup>98</sup> Despite argument to the contrary, neither MPC nor this Commission possess a direct legal means to force Southern Company to provide financial support to MPC. MPC, not Southern Company, holds the certificate of public convenience and bears the obligation to serve. Southern Company's financial support to date is noted, but we cannot guarantee that it will continue. Regardless of the potential for financial support from Southern Company, this Commission is extremely concerned about the financial constraints and risks posed by a public utility that has no meaningful access to outside capital, especially during hurricane season.

57. The Staff agrees that the Commission's consideration of emergency rate relief is appropriate: "The Staff believes it is important for the Commission to consider the projected financial condition of the Company without any interim rate relief. Evidence indicates that the Company's financial condition is likely to deteriorate before the Commission can issue a final decision in this matter, because the Company's current rates are not adequate to support its revenue requirement. Therefore, under the Public Utilities Act, interim rate relief could be appropriate."<sup>99</sup>

58. Based upon the foregoing, this Commission finds that emergency temporary rates are required to prevent injury to the business or interest of the

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<sup>98</sup> Holland Rebuttal, p. 11-12; Feagin Rebuttal, p. 6.

<sup>99</sup> Staff's Response to Mississippi Power Company's Petition for Interim Rates Pursuant to Miss. Code Ann. § 77-3-41, MPSC Docket No. 2015-UN-80, p. 2 (July 24, 2015) [hereinafter "Staff Response"].



people or any public utility of this state in case of an emergency and that the present rates supporting the revenue requirement are insufficient.

59. Mr. Feagin testified that approximately \$200 million annually would be required to support the cash needs until after the Kemper Project commercial operation date.<sup>100</sup> However, MPC requested that the temporary rate be equal to the previous rate approved by the Mirror CWIP Order, which was sufficient to collect approximately \$159 million annually. Mr. Feagin testified that although this amount was not sufficient to fully address the Company's cash needs, this rate level was proposed only because the rate design had already been done, saving weeks of required calculation and testing, and minimizing the impact to customers, because it would have resulted in no rate change had the emergency relief been granted prior to July 20<sup>th</sup>.<sup>101</sup>

60. In addition to offering the Company's \$159 million proposal, the Staff offered four different alternatives in its response to MPC's petition: \$89 million annual revenue collection; \$100 million annual revenue collection; \$115 million annual revenue collection; \$125 million of annual revenue collection.<sup>102</sup> All of the Staff's different alternatives varied by changing the amortization period for the Kemper Project regulatory assets balance.<sup>103</sup> The Staff's response also raised several other fact and policy issues concerning the calculation of the revenue

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<sup>100</sup> Tr., p. 53; see Feagin Rebuttal, p. 9.

<sup>101</sup> Feagin Rebuttal, pp. 8-9.

<sup>102</sup> Staff Response, p. 8.

<sup>103</sup> *Id.* Notably, each of the Staff's potential alternatives appeared to lead to an earlier depletion of MPC's available cash.

requirement for the In-Service Asset. But as previously stated, these issues are irrelevant to the current scope of this order and will be addressed in subsequent hearings to be held on November 10, 2015.

61. The relevant fact at this juncture is what is the minimum required to avert the impending emergency. The Staff's response does not address this issue. In fact, Mr. Feagin's exhibits and testimony provide the only evidence on this issue. Exhibit\_\_\_\_(MHF-14) indicates that without any emergency rates, MPC will run out of cash as early as November of this year. Even with the requested rate increase, the Company projects to be cash negative after March of 2016.<sup>104</sup> However, Mr. Feagin testified that if the Commission rules on the In-Service Asset Proposal prior to this time, MPC expects lenders to begin to regain confidence in MPC and provide any necessary debt financing to operate the Company's business.<sup>105</sup>

62. Our primary concern in this proceeding is not with the rationalization of MPC or the Staff for how each derived its respective revenue calculations supporting temporary relief. We are primarily concerned with preventing further injury to the Company and its customers. We find, based upon the evidence, that a temporary rate based upon an annual collection of \$159 million, which will produce approximately \$13 million on average per month, should be sufficient to stabilize MPC's cash flow at least until this Commission can make a ruling on the In-Service Asset Proposal no later than December 8, 2015. It is important to this Commission

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<sup>104</sup> Feagin Supplemental, p. 26.

<sup>105</sup> Feagin Rebuttal, p. 8.

that MPC maintain adequate financial health and credit quality in order to allow continued reliable and cost-effective service to customers. The only evidence before this Commission demonstrates that the requested \$159 million annual revenue level represents the minimum necessary in the near term to address the Company's current financial crisis. Therefore, MPC is hereby authorized to implement, as temporary emergency rates and subject to the provisions of this order, the rates attached as Exhibits "C" and "D" to the Company's July 10<sup>th</sup> First Supplemental Filing beginning with the first billing cycle of September.

**B. The Commission has legal authority to grant interim and emergency rates.**

63. The Supreme Court rendered an opinion in June of 2015, reversing this Commission's Mirror CWIP Order. Mr. Blanton has raised several grounds for denial or dismissal based upon the language of the Supreme Court's decision, that are summarized below:<sup>106</sup>

(a) Whether the Commission is prohibited from ruling because we have not yet complied with the Supreme Court orders requirements on remand;

(b) Whether the Supreme Court's opinion prohibits MPC from using any funds collected from retail rates to fund construction of the Kemper Project;

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<sup>106</sup> The Commission acknowledges that Mr. Blanton has raised other grounds in his pleadings in this case but these issues do not relate to the Commission's exercise of emergency rate authority. Namely, whether the Kemper Project certificate authorizes the operation of the Kemper combined cycle on natural gas, whether the Kemper combined cycle is used and useful, and whether a rate mitigation plan can be approved prior to commercial operation of the entire Kemper Project are all issues that will be addressed, as necessary, when considering the In-Service Asset Proposal later this year.

(c) Whether a prudence determination is required prior to support a grant of emergency interim rates;

(d) Whether customers have been provided sufficient notice and opportunity to be heard.

64. Mr. Blanton consistently cites to the following provision of the Supreme Court decision to support his contention that Commission action in this case is premature:

On remand, the Commission is hereby instructed to (1) fix by order the rates in existence prior to its order of March 5, 2013; (2) fix no rate increases until the Commission is in compliance with this Court's opinion; and (3) enter an order refunding the monies attributable to the rate increases allowed by the March 5, 2013, Order.<sup>107</sup>

65. The Commission has fully complied with this mandate. Our Order on Remand issued on July 7, 2015, terminated the Mirror CWIP rates as of the first billing cycle of August. This directive went into effect on July 20<sup>th</sup> and the Company's witnesses confirmed their compliance to this provision at the August 6<sup>th</sup> hearings. Similarly, the Commission approved a Refund Plan by order issued August 6, 2015. As directed by the Commission, customers will receive their full refund, if desired, no later than December 4, 2015. Furthermore, the Supreme Court's opinion does not foreclose rate action until the refund is complete; the opinion merely requires the Commission "enter an order." This has been done. The Commission's required duties on remand have been fully satisfied.

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<sup>107</sup> *Miss. Power Co., Inc. v. Miss. Pub. Serv. Comm'n*, 2015 WL 3823153, at \*5.

66. Mr. Blanton's second issue suggests the Supreme Court decision forecloses MPC from using any funds collected from customers to support the construction of the Kemper Project. We disagree.

67. The Commission is granting temporary emergency rates in this case in order to avoid an impending emergency and potential injury to both MPC and customers. Without immediate action from this Commission, the Company will, based upon the evidence, develop a negative cash flow position in just a few months that is caused by many factors—not just the construction of the Kemper Project. MPC has operated the Kemper combined cycle unit for a year without rate recovery from customers. MPC was required just a few months ago to repay a substantial deposit to its largest customer SMEPA. The Company must now raise the funds necessary to complete the Mirror CWIP refund that has been ordered. Of course, MPC's entire business requires cash to operate and the Kemper Project construction remains underway. All of these negatively and materially impact MPC's cash position.

68. The fact that some of the money to be collected from customers under the temporary rate will be used to pay for Kemper construction is of no legal import. We do not read the Supreme Court's opinion to require that rate collections derived from any source must be restricted so as to prevent the cash collected from being used to pay Kemper construction costs, or any other costs incurred for that matter. Once money is collected by MPC, it is commingled with all other money for uses for whatever cash needs are present at the time. This means that cash collected as a

customer deposit, if not otherwise restricted for example, can still be used to pay vendors, buy fuel or pay employee salaries. As required by the accounting rules, however, the Company maintains a liability on its accounting books for the customer deposit collected so that a record is maintained as to exactly what the customer is owed. The Court's opinion was concerned with what costs are allowed to be included in rate base for purposes of calculating a rate under the Baseload Act. As explained below, such calculations are not the basis of the temporary rate approved in this order.

69. The temporary rates being granted by the Commission are not based upon MPC's Kemper financing costs; rather the rate level established is based upon the total current cash needs of the Company and the amount required to re-open the capital markets. If the Company was in a position to borrow the funds needed, no emergency would exist and the temporary rates would likely not be granted. The temporary rates are also not being granted to allow MPC a path around the Supreme Court's recent decision. Notably, MPC's In-Service Asset Proposal and the interim rate request are premised on assets that are and have been used and useful in providing service and benefits to ratepayers. This order is being issued to allow MPC to continue to provide reliable service to customers and to begin to repair its financial strength to a point at which it can once again borrow money.

70. Mr. Blanton argues a finding of prudence is required before the Commission can exercise *any* rate authority, including emergency rate authority. We do not read the opinion so broadly. The Supreme Court's opinion held that a

prudence determination was required before granting an increase in rates under the Baseload Act.<sup>108</sup> Specifically, the Court stated that “[t]he Act permits the Commission to include CWIP only if the costs are determined to be ‘prudently incurred.’ . . . In 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.’”<sup>109</sup> The Commission’s actions in this order are not dependent upon or even related to the Baseload Act or to the recovery of or on CWIP. The Commission’s emergency rate authority, which is embodied in Section 77-3-41, is not part of the Baseload Act. The authority relied upon in this order is a fundamental component of the Mississippi Public Utility Act of 1956 and has been in effect since its passage.

71. The Mississippi Supreme Court has long acknowledged that pre-determinations of prudence are not necessary under the Commission’s traditional source of authority, the Public Utility Act.<sup>110</sup> In upholding a utility’s statutory right to place rates in effect under bond without hearing, Justice Hawkins, specially concurring, wrote that “[a] decision on our part that no statute can be passed which permits a utility to raise rates prior to final hearing would put a straight-jacket on the Legislature that we might all rue.”<sup>111</sup> Neither Section 77-3-41 nor any other

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<sup>108</sup> *Miss. Power Co. v. Miss. Pub. Serv. Comm’n*, 2105 WL 3823153; see Pierce, J., specially concurring at \*14 (noting the Court could not at this juncture determine whether or how provisions of the Base Load Act and provisions of the Public Utility Act might “be squared”).

<sup>109</sup> *Id.* at 4.

<sup>110</sup> *Miss. Power Co. v. Goudy*, 459 So. 2d 257, 275 (Miss. 1984)(Hawkins, J., specially concurring).

<sup>111</sup> *Goudy*, at 272.

provision of the Public Utility Act requires a pre-determination of prudence prior to granting interim and emergency relief.<sup>112</sup>

72. This makes complete sense, particularly in emergency situations. To require notice, hearing and prudence prior to exercising emergency rate authority, especially since such authority is only temporary in nature, would frustrate the entire purpose of granting emergency authority in the first place. Emergency authority is necessary for exactly the situation within which MPC finds itself. As a regulated public utility, MPC does not have the autonomy to raise or lower rates or to drastically cut service to customers when it finds itself in financial crisis. Mississippi's regulatory framework does not afford MPC that type of unilateral authority. Because of these real constraints on MPC's business, the Commission must have the flexibility to act quickly to protect the Company and/or its customers in exigent circumstances.

73. The fact that the rates are both temporary and can be made subject to later refund (as is being done in this case) protects customers from the risk that they will be paying a rate ultimately determined to be too high. The *Goudy* case, relied upon extensively by the Supreme Court, appears particularly instructive in this instance:

I have a right (given me now by statute) to ultimate determination that the rate a utility charges is reasonable. But, when I walk in the electric company office at the first of the month to pay my bill, I have

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<sup>112</sup> This position also comports with past Commission actions. For example, in setting rates for the Grand Gulf Nuclear Station, the Commission found that prudence should be severed from the rate hearing and set for hearing at a later date. Final Order, docket no. U-4620, pp. 16-17 (MPSC June 14, 1985).



no right to have it legally predetermined that the amount I am required to pay for the month is fair and reasonable.<sup>113</sup>

74. The temporary rates authorized by this order are expected to be in place for only a few months, will be subject to later refund, will be secured by a surety bond to be issued by a licensed third-party surety and are necessary to avoid injury to both MPC and customers. Given these protections, no undue risk is being placed on customers by the fact that rates are being increased now to allow the additional time required to complete a prudence review of the In-Service Assets and render a final rate decision in this matter.

75. Finally, Mr. Blanton contends that MPC has not provided ratepayers notice and an opportunity to be heard. This challenge appears a particular stretch given the various proceedings and notices as recounted, herein.<sup>114</sup> Even so, the Commission will briefly restate the notice and hearings provided.

76. Notice of MPC's Notice of Intent and First Supplemental Filing were each published in the Clarion Ledger, the Sun Herald, the Meridian Star and the Hattiesburg American. Further, customers were individually noticed of each filing, including MPC's request for interim rates resulting in an 18% increase, in accordance with Rule 9.101. In response to these notices, thirteen parties filed for and were granted party intervenor status. On July 14, 2015, the Commission filed notice of the August 6<sup>th</sup> evidentiary hearing and allowed parties time to file responses to MPC's interim rate filing. In addition to filing the notice, the parties

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<sup>113</sup> *Goudy*, 459 So. 2d at 275 (Hawkins, J., specially concurring).

<sup>114</sup> *See, supra*, ¶¶ 5-10.

were twice emailed notice of the evidentiary proceeding. Further, even though notice had been previously published allowing any person an opportunity to intervene, the Commission took the additional step of publishing notice of the evidentiary hearing in the Clarion Ledger, the Sun Herald, and the Meridian Star. An evidentiary hearing was held on August 6, 2013, and all parties were given an opportunity to make an opening statement and cross-examine witnesses. Also, any member of the public who was present and a non-party was offered an opportunity to comment. One such member of the public made a comment. At the end of the evidentiary hearing, the Commission declared that it would set another meeting August 13, 2015, at 10:30 a.m. in the Commission's hearing room. Finally, the Commission has entered a scheduling order providing for further hearings associated with permanent rates and prudence concerning the In-Service Asset Proposal for November 10, 2015.

77. Given the facts recited above, the Commission concludes that Mr. Blanton and other ratepayers have been, and will be, afforded notice and an opportunity to be heard.

78. The Commission therefore finds that Mr. Blanton's Motions to Deny are without merit.

**C. The temporary rate is subject to conditions.**

79. The Company's continuing right to collect the temporary rates authorized in this order is subject to the following conditions:

(a) All revenue collected pursuant to this order is subject to refund, should this Commission deem a full or partial refund necessary to serve the public interest. This provision should not be interpreted as placing any restriction on the cash proceeds collected.

(b) As soon as practicable but no later than the start of the first billing cycle of September, MPC shall file a refunding bond with this Commission with Mississippi Power Company as the principal and a surety company duly authorized to do and doing business in Mississippi as the surety payable to the State of Mississippi, for the use and benefit of all interested customers of Mississippi Power Company in a total amount of Fifty Million Dollars (\$50,000,000.00).<sup>115</sup> In lieu of a refund bond, the Commission will accept Southern Company's guarantee that it will pay any refund ordered by the Commission in the subsequent consideration and final order to be issued on MPC's In-Service Asset proposal set for hearing on November 10, 2015.

(c) As testified to by MPC's witness, the Commission shares the strong expectation that Southern Company will provide a \$200 million equity infusion as projected by MPC.

(d) The Commission reserves the right, after reasonable notice and hearing, to modify or terminate the temporary rates based upon a material change in circumstances.

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<sup>115</sup> The \$50 million bond amount was calculated assuming \$13 million per month of collections (i.e. \$159 million annually) for 4 months, which is consistent with the schedule to be established by this Commission for consideration of the In-Service Asset Proposal.

(e) Although MPC has presented evidence of its dire and emergency financial situation, MPC has yet to present this Commission with evidence or a plan of the steps it has taken or will take, company-wide, to reduce expenses and its cost of service. The Commission expects to see such evidence presented in the proceedings set for hearing on November 10, 2015.

**IT IS, THEREFORE, ORDERED** that MPC is hereby authorized to implement, as temporary emergency rates and subject to the provisions of this order, the rates attached as Exhibits "C" and "D" to the Company's July 10<sup>th</sup> First Supplemental Filing beginning with the first billing cycle of September. It is further,

**ORDERED** that emergency temporary rates are required to prevent injury to the business or interest of the people or any public utility of this state in case of an emergency. It is further,

**ORDERED** that Mr. Blanton's Motion to Deny and Supplemental Motion to Deny filed on July 14, 2015 and July 23, 2015, respectively are hereby denied. It is further,

**ORDERED** that as soon as practicable but no later than the start of the first billing cycle of September, MPC shall file a refunding bond with this Commission with Mississippi Power Company as the principal and a surety company duly authorized to do and is doing business in Mississippi as the surety payable to the State of Mississippi, for the use and benefit of all interested customers of

Mississippi Power Company in a total amount of Fifty Million Dollars (\$50,000,000.00).

This order shall be deemed issued on the day it is served upon the parties herein by the Executive Secretary of this Commission who shall note the service date in the file of this Docket and shall become effective on the date of issuance.

Chairman Lynn Posey voted aye; Vice-Chairman R. Stephen Renfroe voted aye; and Commissioner Brandon Presley voted no.

SO ORDERED by the Commission on this the 13<sup>th</sup> day of August, 2015.

MISSISSIPPI PUBLIC SERVICE COMMISSION

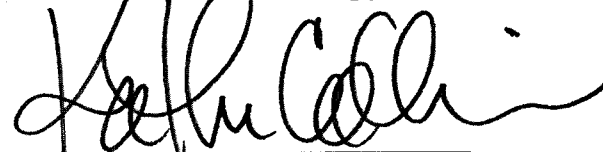


  
LYNN POSEY, CHAIRMAN

  
R. STEPHEN RENFROE, VICE-CHAIRMAN

  
BRANDON PRESLEY, COMMISSIONER

ATTEST: A True Copy

  
KATHERINE COLLIER, ESQ.  
Executive Secretary

Effective this the 13<sup>th</sup> day of August, 2015.