BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSISSIPPI

MISSISSIPPI POWER COMPANY
EC 120009700

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

INTERVENER BLANTON'S MOTION FOR REHEARING

COMES NOW Intervener Thomas A. Blanton in the above-entitled and numbered docket and, pursuant to §77-3-65 of the Mississippi Code of 1972, as amended requests a rehearing in the above-entitled and numbered docket, and further request that the Commission reconsider and set aside its Final Order dated December 3, 2015, and in support of this Motion for Rehearing, Intervener would state as follows:

I. CUSTOMERS OF MISSISSIPPI POWER COMPANY DID NOT HAVE ADEQUATE NOTICE.

Customers of Mississippi Power Company have not had adequate notice regarding MPCO's First Supplemental Filing ("The In-Service Asset Proposal") or the hearings held pursuant to said supplemental filing, including but not limited to the Stipulation between the Staff and MPCO.

In *Blanton*, the Mississippi Supreme Court addressed the issue of notice where a public utility such as MPCO seeks a rate increase. The Court unequivocally stated as follows:

> "*Ab Initio*, the Commission deprived ratepayers of procedural due process by failing to require notice to ratepayers. No notice of the original filing was provided to the ratepayers in the overwhelming majority of the southeastern Mississippi counties constituting MPC's service area. MPC sought and obtained approval for CWIP recovery that would result in rate increases. When MPC pursued rate increases as part of its certificate filing, all of its customers were entitled to notice. Few if any, received it. The ratepayers are "interested parties" in this proceeding. We read these statues, rules, and regulations to require that the Commission, on remand, is to order that notice be provided to all ratepayers regarding all future proceedings related to rate base, rates, rate of return, and prudency hearings." See 168 So. 3d 905 (Miss. 2015) (¶ 21)

In its Orders in 2015-UN-80, the Public Service Commission relies on the fact that it published notice in several newspapers as to each of the hearings in this matter. The dates and newspapers where such notices were placed are set forth in the Commission's Temporary Rate Order and Order denying Blanton's *Motion to Deny Mississippi Power Companyy's Proposed In-Service Asset Proposal as a Permanent Rate*. Unfortunately, the Supreme Court's decision in *Blanton* requires something more, i.e. individual notice to each MPCO customer. The notices provided by MPCO in this case do not meet that requirement. Regarding the May 2015 filing, the notice provided by MPCO "to each customer" was not a notice of hearing but a broadside attack on the Supreme Court's initial, February 2015 ruling in *Blanton* as well as notice that MPCO had submitted not one, but three alternative rate increase proposals to the "PSC." MPCO's notice provided no mention of a hearing and was clearly designed to give the customer the impression that the ratepayer was entitled to little, if any, role in the process.

The notice provided by MPCO was not a "notice of hearing" but a notice of a *fait accompli.*

The "notice" provided "to each customer" regarding the First Supplemental Filing is, if anything, more egregious than MPCO's original individual notice regarding the May 2015 filing. Again, there is no notice of an actual evidentiary hearing, a hearing date or place, or the role which the ratepayer might play in the process. Once again, the ratepayer is provided with notice of a *fait accompli.*

After the Commission issued its Temporary Rate Order, it issued an Order on August 31, 2015 scheduling a final hearing on MPCO's First Supplemental Hearing, on November 10, 2015. The Commission also issued a Scheduling Order and Amended Scheduling Order, stating that the Commission would issue its decision on the "In-Service Asset Proposal" on or before December 8, 2015. As noted *supra,* the Commission issued its Final Order in 2015-UN-80 on December 3, 2015.

In its notice regarding the November 10, 2015 hearing, published "in the Commission hearing room in the Woolfolk State Office Building, Jackson, Mississippi, the Commission states that the hearing will address the *First Supplemental Filing,* including "prudency" determinations. The notice was also published in *The Meridian Star,* the *Hattiesburg American, The Clarion Ledger* and the *Sun Herald.* Most importantly, there is no allegation that notice was provided to individual ratepayers by MPCO regarding the November 10, 2015 hearing and, in fact, no such notice was given. Once again, the due process requirements set forth in *Blanton* were disregarded.

No matter what the motive or sense of desperation, the proposal of a Stipulation at the eleventh hour, immediately prior the hearing itself, shows an utter disregard by the Commission,

the Staff and Mississippi Power Company regarding notice and flies in the face of the basic due process requirements set forth in *Blanton.* Ultimately, the Commission in its Final Order approved and adopted a Stipulation dated November 17, 2015 between the Mississippi Public Utilities Staff and MPCO. In its Final Order, the Commission opines at Page 15, that contrary to Blanton's objection (filed on November 24, 2015), "additional notice and hearing on the Stipulation are not required before the Commission can accept or reject the agreement." In support of this position, the Commission cites Sec. 77-3-39(6) of the Mississippi Code of 1972, as amended, which provides as follows:

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

Appellant submits that this language is inconsistent with this Court's holding in *Blanton* regarding notice, i.e. that every customer of MPCO should receive individual notice as to any proceedings related to the rate base, rates, rate of return or prudence. Further, even assuming *per arguendo* that notice as to the Stipulation was not required, NO individual notice was given to MPCO ratepayers as to the November 10, 2015 hearing despite the fact that this hearing pertained to the rate base, rate, rate of return and prudence. This omission is not surprising in light of the earlier individual notices that were delivered to MPCO customers. As noted, those notices were not notices that an evidentiary hearing would be held on a certain date at a certain place. These earlier notices were, in effect, propaganda by MPCO in opposition to this Court's decision in *Blanton* and in support of a rate increase designed to almost immediately replace the

rate increase erased by *Blanton*. These earlier notices defied the Court's ruling regarding notice in *Blanton*.

II. SEPARATE CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY IS REQUIRED FOR KEMPER CC (THE IN-SERVICE ASSET).

The certificate ordered by the Commission is for an Integrated Gasification Combined Cycle (IGCC) facility. The facility at present does not gasify anything, nor is it integrated. The scrubber system has never been tested under operational conditions as no lignite has been run through the system. The CO_2 capture system has never operated at design conditions as well. The product transport and sales systems remain untested under operational conditions as well. Based on both this lack of development and lack of testing, the In-Service Asset Proposal remains unreasonable. Without a separate certificate for the In-Service Asset at Kemper CC, the Public Service Commission has once again gone outside of its authority and authorized costs that go far beyond the requirements of a natural gas facility.

In *State Ex. Rel Pittman v. Mississippi Public Service Commission,* 520 So. 2d 1355 (Miss. 1987), the Mississippi Supreme Court declared no authority exists for the Commission to "grant a rate increase for power never delivered." *Pittman,* 520 So. 2d at 1363. Nevertheless, the Final Order allows extensive wastewater and natural gas pipeline costs which are based on the entire Kemper IGCC and not necessary for the In-Service Asset or Kemper CC. These include water and water treatment equipment with a "current view" of cost at Fifty-Two Million Six Hundred Thirty-Six Thousand Dollars ($52,636,000.00); water lateral contractor with a "current view" cost of Fifty-Eight Million Nine Hundred Seventy-Three Thousand Dollars ($58,973,000.00) (pipeline from Meridian, Mississippi to Kemper for waste water); and water

storage pond contractor (Meridian grey water) with a "current view" cost of Ten Million Three Hundred Seventy-Seven Thousand Dollars ($10,377,000.00). These items total One Hundred Twenty-One Million Nine Hundred Eighty-Six Thousand Dollars ($121,986,000.00). They are allowed as part of the rate recovery costs. None of the witnesses, either in pre-filed testimony or during cross examination, testified that these expenses were necessary for the Kemper CC standing alone. In fact, Mississippi Power Company's own expert admits that the power company could have drilled a water well to satisfy the needs of Kemper CC. The operating cost of the Meridian Wastewater System was never considered and will exceed any reasonable cost associated with the water well. The failure to consider the operating cost of the Meridian Wastewater System is *prima facie* evidence of a lack of prudence. These grey water system components presume that the lignite gasification "chemical plant" will become operational in 2016 and the volume of water provided by this system will be needed in the future. But, the lignite gasification "chemical plant" is not presently operational. Thus, the approximate fifteen percent (15%) rate increase constitutes a rate increase for power never delivered. This concept is also true regarding the amount of land which was included in the Stipulation approved by the Final Order. (See Exhibits A and B attached hereto). The Stipulation is based on the assumption that the IGCC will in fact work. However, that assumption is not based on science. It is a presumption and a fabrication based on a false reality.

The fact that the original certificate file remains sealed flies in the face of the Supreme Court's decision in *Blanton* and remains an impediment to the Commission's ability to determine prudence as to Kemper IGCC. Prudence can only be determined by comparing the original file for certification with the resulting facility and the actions taken to construct the facility in light

of the original design and certificate. Without the original file being opened, there simply can be no finding of prudence as to Kemper IGCC. It is an impossible task as long as the file remains "sealed." As long as the "sealed file" is withheld, any finding of prudence is moot and further evidence of the repeated and continued failure of the Commission to discharge its duties, a failure harshly criticized by the Supreme Court in *Blanton.*

The experts for Mississippi Power Company now aver that the system was designed from the beginning to run the combined cycle on natural gas. But, this testimony directly contradicts the sworn statements, affidavits and filings by Mississippi Power Company at the time it applied for the certificate. These experts now state that Mississippi Power always planned to "feather in" natural gas during syngas ramp up. However, the gas price forecasts in the company's first application models would have made such a system far too expensive. The gasification process with lignite as the fuel was "sold" as an alternative to natural gas. The record is clear in that regard. Mississippi Power Company was either intentionally misleading the Commission at the time it sought the certificate, or it is re-writing its position now. With any system designed to deliver electricity to the consumer, the goal obviously is to deliver electrical power as inexpensively as possible. Instead, Mississippi Power has created a six, possibly seven billion dollar monster – a two-headed monster -- which will remain a burden on the company's own rate payers for years to come.

III. MISSISSIPPI POWER COMPANY'S IN-SERVICE ASSET PROPOSAL IS DESIGNED TO OBTAIN ADDITIONAL FUNDS TO COMPLETE CONSTRUCTION OF KEMPER IGCC.

By ratifying the proposed Stipulation in its Final Order, the Public Service Commission

has approved construction work in progress (CWIP) without an underlying finding of prudence. See *Blanton,* at 908-909. From the outset in this docket, Mississippi Power Company has desperately attempted to reinstate the eighteen percent (18%) rate increase which it lost as a result of *Blanton.* This was obvious in the filing in May 2015. The In-Service Asset Proposal is a sophisticated attempt to obtain CWIP under the guise that the company is attempting to obtain payment for Kemper CC only. This obviously is not true from the testimony of Moses Feagin. The fifteen percent (15%) increase allowed by the Public Service Commission with its ratification of the Stipulation in effect, concedes prudence without a meaningful analysis of the operating costs.

For example, there is no discussion or analysis of the cost of pumping everyday approximately 6.5 million gallons of "grey water" from Meridian to the Kemper facility or the removal of dangerous and harmful elements from the water. Nor has the Staff or the Commission calculated what portion of this water volume is actually needed by the natural gas CC system to run as a stand alone generating facility. The Staff actually admits that it has raised questions about the costs incurred and then states the "the Commission should ultimately decide whether the Company has submitted sufficient evidence to establish a *prima facie* case regarding the costs incurred" for Kemper. Nevertheless, the Commission by ratifying the Stipulation concludes that there is sufficient evidence that Mississippi Power Company has established a *prima facie* case. This position is inconsistent with a rate increase of fifteen percent (15%). If the Staff had questions about the costs incurred, then the Staff should not have been sponsoring a rate increase that would result in a recovery by Mississippi Power Company of One Hundred

Twenty-Six Million Dollars ($126,000,000.00) in revenue. The Commission should not have ratified the fifteen percent (15%) rate increase when serious questions regarding prudence abound.

Prudency should not be a conclusion based on a presumption. It is the result of tests, rigorous, scientific, fact-based tests. Likewise, Mississippi Power Company's revenue requirement should not be based on some "pie in the sky" figure, but on actual, legal and functional components.

IV. THE COMMISSION'S DECEMBER 3, 2015 FINAL ORDER SIDE STEPS QUESTIONS REGARDING THE FILING OF CONFIDENTIAL DOCUMENTS.

In *Blanton*, the Mississippi Supreme Court stated as follows:

> "MPC not only sought rate increases but separately requested that the long-range rate-impact information furnished to the Commission be kept confidential, a direct violation of Section 77-3-37, which requires that information regarding changes in rates be 77-3-371) (Rev. 2009). The Commission improperly determined rate-impact information to be confidential, concealing from the ratepayers the amount of the projected increases. The Commission improperly sealed information to which the public was entitled. The Commission and MPC claim that, since a specific rate increase was not requested in the initial petition, it was proper to seal that information. That argument must fail, because the public has a right to know when and how much its rates will be increased at all stages of the proceeding. The Commission's decision to govern in a cloak of secrecy and grant confidentiality to rate-impact information was arbitrary and capricious." (¶23)

The Mississippi Public Service Commission seems undeterred by the above admonition. By allowing the filing of confidential exhibits, the Public Service Commission is following the same course that lead to the Supreme Court's reversal of the March 5, 2013 rate increase and restoration of the rate to its status immediately before March 5, 2013.

On behalf of the 186,000 customers of Mississippi Power Company, Intervener Blanton demands that the Mississippi Public Service Commission put an end to the company's confidential filings and Confidential Data Requests which are apparently back in play despite the Supreme Court's ruling. Unless the Mississippi Public Service Commission immediately puts an end to this "arbitrary and capricious"practice, the result may very well be another reversal of any rate increase granted in this matter, whether on a temporary or permanent basis. It is unfathomable that the Commission continues to turn a blind eye towards "confidentiality" in light of the Supreme Court's strong condemnation of keeping data secret and unavailable to Mississippi Power Company's ratepayers as well as the general citizenry of Mississippi. As the Mississippi Supreme Court has stated, confidentiality has no place in these proceedings and the facts must be open and available to the public. Although the Supreme Court has stated that the Public Service Commission has no authority within the law to seal the initial record for the permit, the Public Service Commission has taken no steps to unseal that record. Without the unsealing of that record, there can be no real "prudency" hearing or a finding as to the "prudency" of any expenditure for Kemper IGCC. At this point, only the Mississippi Public Service Commission has the authority to put an end to this practice.

V. THE IN-SERVICE ASSET PROPOSAL IS PART OF RATE MITIGATION PLAN WHICH HAS BEEN REJECTED BY THE SUPREME COURT.

In *Blanton,* the Mississippi Supreme Court found that the January 2013 Settlement Agreement was not valid and not enforceable. The Commission should have rejected the proposed Stipulation because it is based on the same rate mitigation plan that was originally set forth in the invalid Settlement Agreement. In 2013, Southern Company admitted to "material

deficiencies" in its accounting regarding the construction of Kemper IGCC, a fact never revealed to the Commission while Mississippi Power Company negotiated the invalid Settlement Agreement.

The Commission should not have considered a rate increase based on a Stipulation which was, in turn, ratification of a proposal which arose directly out of a Settlement Agreement held to be invalid and unenforceable by the Mississippi Supreme Court.

VI. THE DECEMBER 3, 2015 FINAL ORDER SHOULD BE SET ASIDE AND RECONSIDERED BY A NEWLY CONSTITUTED COMMISSION BECAUSE OF THE INVOLVEMENT OF COMMISSIONER POSEY.

Intervener Blanton submits that the Commission erred in denying his Motion to Recuse Commissioner Posey, filed on October 1, 2015 in Docket No. 2015-UN-80. Commissioner Posey should not been allowed to participate in the proceedings leading up to the adoption by the Commission of the Final Order. In fact, Commissioner Posey was the presiding Commissioner at the hearing held on November 10, 2015 and December 3, 2015.

Based on the attached Motion to Recuse Commissioner Posey, the Commission should have recused Commissioner Posey. Intervener Blanton would reassert his Motion to Recuse Commissioner Posey as part of this Motion for Rehearing. Intervener Blanton would further assert that a newly constituted Commission, should reconsider Mississippi Power Company's request for a rate increase and should, after considering the same, deny that request until there is established a separate certificate for Kemper CC, the Kemper IGCC Plant is completed, and full prudence regarding the entire Kemper IGCC Plant is established. Alternatively, the Commission should, after establishing a separate certificate for Kemper CC, determine whether or not under the terms and conditions of that separate certificate, there is a basis for a rate

increase as to Kemper CC only.

VII. MISSISSIPPI POWER COMPANY CUSTOMERS ARE ENTITLED TO A REFUND BASED ON THE 2015 FUEL COST SURPLUS.

Finally, said Final Order should be set aside to determine if ratepayers should receive either a credit or refund for the fuel cost surplus during 2015. The fuel cost report filed by Mississippi Power Company and projected for February 2016 through January 2017 indicates that Mississippi Power Company received Seventy-Four Million Eight Hundred Seventy-One Thousand Six Hundred Forty Dollars and seventeen cents ($74,871,640.17) as a fuel cost surplus in 2015 and none of this money has been presently returned to ratepayers. This very set of circumstances belies the underlying rationale of the Kemper IGCC. The Public Service Commission has used this set of facts as a rationale to improperly provide additional CWIP-type funds for Mississippi Power Company. By delaying credits based on this surplus until the February 2016 billing cycle, Mississippi Power Company is able to delay repayment and have the blanket use of these funds for a full year. Based on Mr. Feagin's testimony in 2015-UN-80, it is apparent that this money was used for the continued construction of Kemper IGCC. In short, once again, Mississippi Power Company is obtaining CWIP without an underlying finding of prudence. It may be *de facto*, but it is indeed CWIP.

VIII. AN ADDITIONAL RATE INCREASE SHOULD NOT HAVE BEEN GRANTED WITHOUT AN IMPACT STUDY.

The facts in this case mandate that the Commission should have required an impact study before granting still another rate increase to Mississippi Power Company. See §77-3-37(9) of the Mississippi Code of 1972, as amended. The "Notice" provided to Mississippi Power

Company customers failed to include "a financial impact statement showing the average amount of increase to customers by class and usage (§77-3-37(9))."

When the Commission denied a rate increase to Mississippi Power Company in June, 2012, the Commission did so after it heard extensive evidence from public witnesses regarding the impact on people with fixed incomes, senior citizens and others identified as being below the poverty line. Even in March, 2013, the Commission heard extensive evidence regarding impact. That certainly is not true regarding Mississippi Power's In-Service Asset Proposal. At the hearing on November 10, 2015, the Commission heard no evidence whatsoever regarding impact. There have been no impact studies nor any other documents developed which would show the impact of Mississippi Power Company's multiple requests in Docket No. 2015-UN-80 for a rate increase. Further, Mississippi Power Company's proposed rate increases are not "routine." They are "major" as defined in §77-3-37(8). Both the original filing by Mississippi Power Company in May, 2015 and its First Supplemental filing Request "major" rate increases, and these rate increases represent a true threat to poor and disadvantaged customers of Mississippi Power Company. In *State Ex Rel. Allain v.* 535 So. 2d 608 (Miss. 1983), the Mississippi Supreme Court could state with confidence that the impact of any increase had been given "serious consideration" by the Commission. That cannot be said of Docket No. 2015-UN-80.

CONCLUSION

For the reasons set forth herein, Intervener Blanton submits that the Commission should

reconsider and set aside its Final Order of December 3, 2015.[1]

RESPECTFULLY SUBMITTED, this the 30th day of December, A.D., 2015.

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[1]Blanton would note that many of the foregoing issues were raised in the Joint Parties' Objection to the Stipulation and in their Post-Hearing Brief. While certainly Blanton does not speak for said Joint Parties, he would ask that the Commission in rehearing this matter consider the expert and factual evidence previously submitted by the Joint Parties. That evidence only further amplifies the need for the Commission to rehear and set aside the December 3, 2015 Final Order.

CERTIFICATE OF SERVICE

I, Michael Adelman, counsel for Thomas A. Blanton herein, do hereby certify that I have this day mailed, by United States Mail, postage fully prepaid, an original and twelve (12) copies of the above and foregoing **INTERVENER BLANTON'S MOTION FOR REHEARING** on:

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