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## BEFORE THE MISSISSIPPI PUBLIC SERVICE COMMISSION

MISS. PUBLIC SERVICE  
COMMISSION

MISSISSIPPI PUBLIC SERVICE COMMISSION

DOCKET NO. 2017-AD-112

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

**'17-AD- 112****ORDER OPENING DOCKET**

This matter is before the Commission on its Order Opening a Docket and Requiring Settlement Proceedings for the Kemper Project, and the Commission provides as follows:

**I. INTRODUCTION**

As described in the body of this order, the Mississippi Public Service Commission ("Commission") has been reviewing and making decisions in regard to Mississippi Power Company's ("MPCo" or "the Company") integrated gasification combined cycle electric generating project in Kemper County, Mississippi ("Kemper Project") for more than eight years. Throughout that period the Commission's focus has been squarely on customer value, and the obligation of MPCo to bring the Kemper Project into commercial operation in a manner that provides and maintains that customer value. Given the repeated delays in achieving full operation of the Kemper Project, the billions of dollars of cost overruns in the gasification portion of the same, and the realized and continuing value of the combined cycle portion of the Kemper Project, the Commission now issues this order requiring the parties to expeditiously work to settle all outstanding matters associated with the Kemper Project. This settlement should include assignment of costs for the commercially operational and nonoperational portions of the project, a clear statement of risk assumptions going forward for any nonoperational portion of the Kemper Project that MPCo chooses to continue to pursue, and any necessary or appropriate modification of the certificate awarded for the Kemper Project. Fairness and a desire for finality should govern the settlement discussions, with a continued focus on customer value. If an appropriate settlement is not reached and approved, the Commission reserves its right to exercise its full authority to resolve all issues associated with the Kemper Project, including an order to

show cause and subsequent proceeding, which could potentially result in revocation of the Kemper Project certificate.

## **II. BACKGROUND AND PROCEDURAL HISTORY**

1. The Commission today is taking firm steps towards resolving all substantive matters associated with the Kemper Project. A history of the primary dockets and proceedings associated with the Kemper Project lays the foundation for the next steps.

### **A. KEMPER PROJECT CERTIFICATE PROCEEDING**

2. On January 16, 2009, MPCo filed a petition, testimony and supporting documents (“Certificate Petition”)<sup>1</sup> in Docket No. 2009-UA-14 (“Certificate Proceeding”) seeking a certificate of public convenience and necessity authorizing the Company to construct, acquire, operate, and maintain the Kemper Project as an integrated gasification combined cycle generating facility. MPCo’s Certificate Petition requested that the Commission (i) issue a certificate of public convenience and necessity authorizing the acquisition, construction, extension, operation and maintenance of the Kemper Project; (ii) apply the Commission’s authority under the Baseload Act, Miss. Code Ann. § 77-3-101, *et seq.*; and (iii) approve the Company’s pre-construction costs incurred in connection with the screening and evaluation of generating alternatives and the various pre-construction activities undertaken by the Company in connection with the Project.

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

- (i) a lignite-fueled two-on-one (2-on-1) integrated gasification combined-cycle (“IGCC”) base load electric generating facility having a net summer output capacity of 582 megawatts (“MW”); (ii) environmental equipment for the reduction of various emissions from the facility, including without limitation, equipment and facilities for the capture of sixty-five percent

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<sup>1</sup> *Petition of Mississippi Power Company for a Certificate of Public Convenience and Necessity Authorizing the Acquisition, Construction, and Operation of an Electric Generating Plant, Associated Transmission Facilities, Associated Gas Pipeline Facilities, Associated Rights-of-Way, and Related Facilities in Kemper, Lauderdale, Clarke, and Jasper Counties, Mississippi*, Docket No. 2009-UA-14 (Jan. 16, 2009). MPCo amended and supplemented its initial filing with supplemental filings in Docket No. 2009-UA-14 as follows: (i) Supplemental Filing for Phase One—Need, filed July 8, 2009; (ii) Rebuttal Filing for Phase One—Need, filed July 28, 2009; (iii) second Supplemental Filing for Phase One—Need, filed August 28, 2009; (iv) Third Supplemental Filing, filed December 7, 2009; (v) Phase Two Rebuttal Filing, filed January 5, 2010; and (vi) Phase Two Supplemental Filing, filed January 25, 2010. These filings are collectively referred to herein as MPCo’s “Certificate Petition.”

(65%) of the carbon dioxide (CO<sub>2</sub>) emissions from the facility; (iii) sixty (60) miles of transmission lines; (iv) three (3) transmission substations; (v) five (5) miles of natural gas transportation facilities to accommodate natural gas deliveries to the facility; (vi) thirty (30) miles of water transportation facilities to accommodate the delivery of the City of Meridian's treated wastewater to the facility's site for its cooling and process water needs; (vii) mineral leases, mining facilities and equipment and all related facilities needed to mine lignite; (viii) the option to own fifty-five (55) miles of CO<sub>2</sub> pipeline needed to transport CO<sub>2</sub> from the facility site to suitable oil fields for Enhanced Oil Recovery ("EOR"); and (ix) associated facilities, rights-of-way and other rights needed for the efficient and effective construction, acquisition, operation, repair and maintenance of the Kemper Project . . . .<sup>2</sup>

The Certificate Petition described the Kemper Project components as being split into two major system classifications: (i) a gasification island; and (ii) a combined cycle generating unit.<sup>3</sup> The Petition stated that the Kemper Project would be fueled primarily by lignite mined in Kemper County, Mississippi. The lignite would be converted to synthesis gas ("syngas") in a gasifier using air-blown Transport Integrated Gasification ("TRIG") technology jointly developed by Southern Company, Kellogg Brown & Root, LLC and the U.S. Department of Energy.<sup>4</sup> The resulting syngas would then be used in a 2-on-1 combined cycle generating unit.<sup>5</sup> MPCo stated that the Kemper Project would also be designed to capture 50% of its CO<sub>2</sub> output (subsequently revised to 65%), which would then be sold to one or more entities operating EOR projects in Mississippi and the surrounding region.<sup>6</sup> MPCo requested, under the Base Load Act, full recovery of the Kemper Project's construction work in progress ("CWIP") period financing costs, asserting that such treatment was necessary to maintain its strong A rating during project construction and to ensure access to capital.<sup>7</sup> MPCo assumed a November 2013 commercial operation date for the Kemper Project (later revised during the Certificate Proceeding to May

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<sup>2</sup> Certificate Petition at ¶ 7 (Jan. 16, 2009 Petition).

<sup>3</sup> *Id.* at ¶ 13.

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

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

<sup>6</sup> *Id.* at ¶ 17.

<sup>7</sup> *Id.* at ¶ 20.

2014), and estimated construction costs, net of incentives, at \$2.2 billion (subsequently revised during the Certificate Proceeding to \$2.4 billion).<sup>8</sup>

4. The Mississippi Public Utilities Staff (“Staff”), through the Staff Litigation Section, actively participated in the Certificate Proceeding from its inception through the Commission’s April 24, 2012, Final Order on Remand.<sup>9</sup> Those members of the Staff not assigned to the Litigation Section were designated to assist the Commission in an advisory role (“Advisory Section”), and appropriate safeguards were implemented to segregate the functions of the Litigation Section from the functions of the Advisory Section.

5. The Commission investigated and evaluated MPCo’s Certificate Petition pursuant to a two phase procedural schedule, which was initiated by Commission order issued on June 5, 2009.<sup>10</sup>

6. The Commission and Staff separately retained expert consultants to independently assist them with the evaluation of MPCo’s Certificate Petition in Phase One and the evaluation of resource alternatives and pre-construction costs in Phase Two. The Commission’s<sup>11</sup> and Staff’s<sup>12</sup> consulting and testifying experts and the Staff Litigation Section conducted extensive discovery throughout the proceedings in Phases One and Two. In addition, some of the expert consultants presented written and/or oral testimony.

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<sup>8</sup> *Id.* at ¶ 19.

<sup>9</sup> *Final Order on Remand Granting a Certificate of Public Convenience and Necessity, Authorizing Application of Base-load Act, and Approving Prudent Pre-Construction Costs*, Docket No. 2009-UA-014, issued April 24, 2012 (“Final Order on Remand”).

<sup>10</sup> *Scheduling Order, In Re. Petition of Mississippi Power Company for a Certificate of Public Convenience and Necessity*, Docket No. 2009-UA-14 (June 5, 2009).

<sup>11</sup> The Commission retained the National Regulatory Research Institute (“NRRI”), a nonprofit corporation, through its Executive Director, Scott Hempling, Esq., as an advisory consultant. The Commission also retained Boston Pacific, Inc. (“Boston Pacific”), through its principal, Dr. Craig Roach, as an independent party consultant. Dr. Roach’s role was enlarged in Phase Two to include serving as an independent evaluator to review and evaluate MPCo’s proposed Kemper IGCC Project and the various other submitted resource proposals. Dr. Roach presented written and oral testimony at the hearings held in Phase One and Phase Two.

<sup>12</sup> The Staff retained various expert consultants to provide an independent evaluation of MPCo’s Certificate Petition and to participate in portions of the hearings. The Staff also retained Larkin and Associates, PLLC, (“Larkin”) and its accountant, Ralph C. Smith, to audit and review the prudence of pre-construction costs incurred by MPCo through March 31, 2009.

7. In Phase One, the Commission evaluated MPCo's Integrated Resource Plan ("IRP") to determine whether there was a legitimate need for additional MPCo energy and capacity, necessitating such a large-scale generation project. The Commission held hearings on Phase One issues in the Commission hearing room October 5-9, 2009. The Commission provided proper notice of the hearings 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 Ann. of 1972, as amended, and by the Commission's Public Utilities Rules of Practice and Procedure ("RP" or "Commission Rule"). Following the Phase One hearings, the Commission issued its Order Finding Need for Generating Capacity and Energy on November 9, 2009 ("Phase One Order"). In the Phase One Order, the Commission found, based on all the evidence in the Phase One record, that MPCo had identified a valid need, and that the public interest required the Commission to proceed to Phase Two to assess available resources to meet that need.<sup>13</sup>

8. In Phase Two, the Commission evaluated resource options to address the verified need confirmed in Phase One, and the likely costs of those resources. The Phase Two procedural schedule allowed additional interested parties an opportunity to intervene for the purpose of submitting competing resource proposals for the Commission to compare and evaluate against MPCo's resource proposal, and included a list of minimum bid requirements that were applicable to all potential bidders in Phase Two. Entegra Power Group, LLC, KGen Power Management, Inc., and Calpine Corporation (collectively referred to as the independent power producers, or "IPPs") submitted multiple proposals for purchase power agreements ("PPAs") with terms ranging from 10 years to 25 years and offering different fuel arrangements. All of the PPA bids involved sourcing power from natural gas combined cycle facilities. Two of the IPPs included offers to MPCo that purported to provide fuel price protection for MPCo's customers for ten years commencing in 2014 (in other words, long-term, fixed-price natural gas bids). The Commission designated Dr. Roach, to act as an independent evaluator to analyze and assess the IPP bids.

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<sup>13</sup> Order, *In Re. Petition of Mississippi Power Company for a Certificate of Public Convenience and Necessity*, Docket No. 2009-UA-14 (Nov. 9, 2009).

9. Properly-noticed Phase Two hearings were held in the Commission's hearing room February 1-4, 2010. Limited portions of the hearings discussing confidential, proprietary and trade secret information were closed to the public and to those parties that had not executed appropriate confidentiality agreements affording them access to confidential information of MPCo and/or the other parties, but the majority of the hearing sessions were open to the public. Public witnesses were allowed to address the Commission regarding MPCo's application on February 5, 2010, and those public comments are in the Docket No. 2009-UN-14 record. In addition, the Commission allowed written comments to be received until March 12, 2010, after which the public comment period was closed.

10. At the conclusion of the Phase Two hearings, the Commission sought customer protection proposals from MPCo, Staff, and other interested parties to mitigate some of the risk borne by customers due to the novel and relatively untested proposed IGCC technology.

11. After review of the customer protection proposals, the Commission issued an order on April 20, 2010, denying certification of the Kemper Project.<sup>14</sup> In the April 2010 Order, the Commission found that, as filed, the Certificate Petition did not meet the "public convenience and necessity" requirement.<sup>15</sup> The Commission provided a roadmap for regulatory approval, providing conditions that, if accepted by MPCo, would result in approval of the Certificate Petition. These included requiring that MPCo assume all of the risks and uncertainties associated with the construction and operating costs for the Kemper Project. The Commission also proposed a continuing obligation on MPCo "to ensure that Kemper remains consistent with the public convenience and necessity, in light of feasible alternatives."<sup>16</sup> The April 2010 Order provided MPCo with a twenty-day window to file a motion of acceptance indicating that MPCo accepted the conditions set forth in the Order.

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<sup>14</sup> Order, *In Re. Petition of Mississippi Power Company for a Certificate of Public Convenience and Necessity*, Docket No. 2009-UA-14 (Apr. 29, 2010) ("April 2010 Order").

<sup>15</sup> *Id.* at p. 36.

<sup>16</sup> *Id.* at p. 46.

12. In response, MPCo filed a motion claiming that some of the conditions imposed in the April 2010 Order made it impossible for MPCo to proceed with the Kemper Project.<sup>17</sup> The Motion for Rehearing included exhibits showing the progress and development of the project since the completion of the Phase Two Hearings held in February 2010. MPCo's exhibits demonstrated that some of the risks of the Kemper Project had either been mitigated or eliminated. In the motion, MPCo proposed alternative conditions that it asserted would allow it to build the Kemper Project. The Commission allowed all parties to comment on MPCo's Motion for Rehearing and held several open meetings before issuing its May 26, 2010, Order in response.<sup>18</sup>

13. In the May 2010 Order, the Commission found that modifications to the conditions imposed in the April 2010 Order were warranted. Based on the representations made by MPCo in its Motion for Rehearing as to risks that had been mitigated or eliminated, the Commission devised a new set of conditions seeking to protect customers from risks associated with the new technology while ensuring that customers would see the projected benefits of the project. Specifically, the Commission (i) imposed a construction cost cap of \$2.88 billion, representing a 20% cap above MPCo's approved Kemper Project estimate; (ii) removed a financial incentive mechanism that would have rewarded the Company for cost underruns; and (iii) permitted 100% CWIP financing cost recovery in years 2012, 2013 and 2014, while still requiring that MPCo establish annually that the recovery of financing costs is needed and in the public interest.<sup>19</sup> The Commission again emphasized that an appropriate balance of risk and benefits of the Kemper Project between the Company and customers remained paramount, noting that construction and operating "[c]osts exceeding the level for which [MPCo's] experts have expressed confidence do not satisfy the 'public convenience and necessity' test, unless the

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<sup>17</sup> MPCo's Motion in Response, or in the Alternative, Motion for Alternation or Rehearing, *In Re. Petition of Mississippi Power Company for a Certificate of Public Convenience and Necessity*, Docket No. 2009-UA-14 (May 10, 2010) ("Motion for Rehearing").

<sup>18</sup> Order, *In Re. Petition of Mississippi Power Company for a Certificate of Public Convenience and Necessity*, Docket No. 2009-UA-14 (May 26, 2010) ("May 2010 Order").

<sup>19</sup> May 2010 Order at pp. 9-10, 12, 17.



Company can demonstrate to this Commission the prudence of and necessity for such variations.”<sup>20</sup>

14. MPCo filed a Motion for Commission to Accept Petition, agreeing to the modified conditions in the May 2010 Order. The Commission then issued a Final Certificate Order on June 3, 2010.<sup>21</sup>

15. Subsequently, intervenor Sierra Club appealed the Final Certificate Order to the Chancery Court for Harrison County, Mississippi, in Case No. C2401-10-02580(1). Although the Chancery Court affirmed the Final Certificate Order, on subsequent appeal by Sierra Club to the Mississippi Supreme Court, the Supreme Court reversed the Chancery Court’s judgment and remanded the Commission’s Final Certificate Order to the Commission for further proceedings.<sup>22</sup>

16. In response to the Supreme Court’s remand, on April 24, 2012, the Commission issued a Final Order on Remand, granting MPCo’s Certificate Petition. The Commission found that the record in the proceeding, compiled as of June 3, 2010, was complete, obviating the need for additional hearings, evidence, or supplements to the record. In so finding, the Commission relied on the ongoing monitoring and reporting activities by the Commission’s and the Staff’s Independent Monitors (“IMs”), and MPCo’s ongoing reporting of its periodic economic viability evaluations of the project.<sup>23</sup> The Commission noted that:

the Commission’s IM maintains a continuous presence on the job site, conducts various site and record inspections, tracks the Project’s accounting, routinely holds meetings with the Company, maintains close

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<sup>20</sup> *Id.* at p. 14.

<sup>21</sup> Final Order, *In Re. Petition of Mississippi Power Company for a Certificate of Public Convenience and Necessity*, Docket No. 2009-UA-14 (Jun. 3, 2010) (“Final Certificate Order”).

<sup>22</sup> *Sierra Club v. Mississippi Pub. Serv. Comm’n*, 2011-CA-00350-SCT (¶2) (Miss. 2012). By reversing the Final Certificate Order, the Mississippi Supreme Court also reversed, voided, and annulled the April 29, 2010 and May 26, 2010 certificate orders, which were incorporated by reference in the Final Certificate Order.

<sup>23</sup> *Final Order on Remand Granting a Certificate of Public Convenience and Necessity, Authorizing Application of Baseload Act, and Approving Prudent Pre-Construction Costs*, Docket No. 2009-UA-014, issued April 24, 2012, at ¶ 2 (“Final Order on Remand”).



contact with Commission staff and provides monthly reports to the Commission.<sup>24</sup>

17. The Commission noted that, through the IM's and MPCo's ongoing reporting in this proceeding and the Commission's participation in other proceedings, the Commission was kept fully aware of natural gas price forecasts and changes in cost comparisons between the Kemper Project and traditional natural gas-fired combined cycle generating units.

18. The Final Order on Remand re-affirmed the Commission's determination during Phase One of the Certificate Proceeding that MPCo had a need for additional generating capacity, which had not been contested on appeal.<sup>25</sup> The Commission concluded that, based on its re-examination of the record, consistent with the Commission's determination in Phase Two, the Kemper Project remained the best alternative to meet MPCo's need to provide reliable energy and capacity at low, stable fuels prices for the next few decades. In reaching that determination, the Commission noted the Mississippi Legislature's stated "policy preference for the development of diverse baseload capacity and energy,"<sup>26</sup> and expressed the Commission's strategic "preference for a long-term baseload resource that will provide reliable service to MPCo's customers for the next 40 years."<sup>27</sup> The Commission noted, however, that it perceived the costs and risks associated with the Kemper Project to be equal or greater in magnitude than other baseload facilities, given the cost of the proposed facility, the size of MPCo relative to the Kemper Project, the new technology being employed, and MPCo's request for alternative cost recovery mechanisms under the Baseload Act.<sup>28</sup>

19. The Commission found that the IPPs who intervened in the Certificate Proceeding and argued that fixed-price natural gas bids were a viable alternative to meet MPCo's resource needs did not present a solution supported by credible evidence. Once the fixed-price gas bids were removed from consideration, the record evidence supported a finding that MPCo's Kemper

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<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at ¶ 3.

<sup>26</sup> *Id.* at ¶ 6, citing Miss. Code Ann. § 77-3-101.

<sup>27</sup> *Id.* at ¶ 4.

<sup>28</sup> *Id.* at ¶ 9.

Project proposal was the most economic resource available.<sup>29</sup> In addition to the identified economic advantages to the Kemper Project, the Commission also relied on the strategic benefit provided by the project's addition of fuel diversity to MPCo's generation fleet. The Commission noted that, since deregulation of natural gas prices in the 1970's, gas prices had been "extremely volatile, and their trend in pricing has been upward for the last 50 years."<sup>30</sup> , The Commission stated that analysis submitted through the Certificate Proceeding confirmed "the Commission's original and continued understanding of the economics of the Kemper Project: it wins in a moderate and high fuel cost world and loses if fuel prices remain low for the long term."<sup>31</sup> Based on the fuel make-up of MPCo's generating fleet, the traditional price volatility and potential future demand for natural gas, the Commission found that providing for long-term fuel diversity was critical to keeping MPCo's prices to its customers low and stable over the coming decades.

20. The Commission set MPCo's construction estimate of \$2.4 billion as the "first measure of cost recovery protection for ratepayers."<sup>32</sup> The Commission noted that:

the Company cannot recover any amounts in excess of \$2.4 billion until such time as this Commission has scrutinized those costs for prudence, which will occur, at the Commission's discretion, upon petition of MPCo at such time after the Plant has been completed and entered into commercial operation. Estimates, although not required with great precision or detailed design, do have consequences for the Company. To recover anything beyond the estimated \$2.4 billion, the Company must demonstrate to the Commission the prudence and necessity for such variation. If a cost estimate is conservative and if MPCo is confident in those estimates then exceeding the estimate should not be a necessity.<sup>33</sup>

21. In recognition of the increased costs and risks associated with the Kemper Project's new technology as compared to other baseload facilities, the Commission also imposed a cost cap to "insulate customers from large construction cost overruns by shifting this risk to the utility at a certain total cost level beyond which customers are no longer responsible, even if

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<sup>29</sup> *Id.* at ¶ 7.

<sup>30</sup> *Id.* at ¶ 8.

<sup>31</sup> *Id.* at ¶ 57.

<sup>32</sup> *Id.* at ¶ 172.

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

the costs are found to be prudent.”<sup>34</sup> This hard cost cap set an outer limit for Kemper Project costs, beyond which MPCo would not be able to recover even prudently-incurred costs.<sup>35</sup> Based on the Commission’s consideration of expert analysis,<sup>36</sup> the Commission set the cost cap at 20% over the Commission-approved capital cost estimate of \$2.4 billion (which excluded the lignite mine-related handling equipment and CO<sub>2</sub> pipeline),<sup>37</sup> making the total construction cost recoverable from ratepayers no more than \$2.88 billion (net of government construction cost incentives, estimated at \$296 million) unless the Commission later increased the cap pursuant to its authority.<sup>38</sup> The Commission provided exceptions to the cost cap, noting that it would approve MPCo’s request for an increase in the recoverable amount for any or all of the following reasons:

- i. The Company demonstrates that the purpose and effect of the construction cost increase is to produce efficiencies that will result in a neutral or favorable effect on the ratepayers, relative to the original proposal.
- ii. MPCo accompanies its proposed cost increase with an equal or greater revenue requirement decrease associated with one (1) or more of the other estimates (e.g., operational performance, sales of byproducts,) in its original proposal.
- iii. To the extent the Commission does not allow 100% CWIP (which the Company assumed when making its \$2.4 billion estimate), it will allow an increase in that figure to reflect the [Allowance for Funds Used During Construction] AFUDC cost that CWIP would have obviated.
- iv. The Company demonstrates the occurrence of force majeure events such as Acts of God, natural disasters, war, terrorism, sabotage or similar catastrophes which were unavoidable through prudent utility practice or a

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<sup>34</sup> *Id.* at ¶ 10.

<sup>35</sup> *Id.* at ¶ 173.

<sup>36</sup> The Commission’s deliberation process and discussion of the expert findings relied on by the Commission is detailed in paragraphs 170-184 of the Final Order on Remand.

<sup>37</sup> Final Order on Remand at ¶ 183, p.105. *Note:* the Final Order on Remand included a paragraph numbering mistake, wherein the paragraph numbers went from ¶ 184 at the conclusion of section VI.A to ¶ 179 at the beginning of section VI.B.

<sup>38</sup> *Id.* at ¶ 184(a), p.106.

change in law or regulation effective after the date of [the Final Order on Remand].<sup>39</sup>

22. In addition to the cost cap, the Commission imposed additional customer safeguards to ensure that the Kemper Project remained the most economic resource option for MPCo's customers.

23. The Commission imposed operational costs and performance requirements to protect ratepayers from an "underperforming" asset. The Commission stated that the cost to ratepayers from operating the Kemper Project must not exceed the costs associated with the operational assumptions in MPCo's original filing (specifically, the assumptions concerning availability factor (meaning the availability to burn lignite, not natural gas), heat rate, lignite heat content, and by-product revenues), unless the operational parameters are modified in a manner that makes the net result at least neutral in terms of the costs to ratepayers over the life of the plant, or unless the Commission finds that the public interest would be served by any variance from the Company's operating assumptions due to *force majeure* events such as Acts of God, natural disasters, war, terrorism, sabotage or similar catastrophes which were unavoidable through prudent utility practice or a change in law or regulation effective after the date of the Final Remand Order.<sup>40</sup> The Commission summed up its operational cost protection by saying: "Put simply, if Kemper doesn't perform as advertised then the ratepayers will not pay for it."<sup>41</sup>

24. The Commission noted that nothing in the Final Remand Order or in the Baseload Act undercut the Commission's authority to ensure that ratepayers only pay for MPCo's investments that are "used and useful." The Commission distinguished the "used and useful" doctrine from cost recovery provisions of the Baseload Act and noted that the Commission "declines any application of the Baseload Act that would undermine the independent safeguards of the used and useful doctrine."<sup>42</sup>

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<sup>39</sup> *Id.* at ¶ 184(b), p.107.

<sup>40</sup> *Id.* at ¶ 179, p.108.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at ¶ 12.

25. The Commission further addressed concerns about the binding effect under the Baseload Act of any prudence determinations made during construction potentially creating a risk that customers would be required to pay for costs found to be prudent by the Commission prior to a decision by the Commission or MPCo to cancel the Kemper Project for any reason. In response to those concerns, the Commission made clear that any determination of prudence made by the Commission in connection with the Kemper Project would not diminish the Commission's authority under Miss. Code Ann. § 77-3-105(l)(e), which provides that in the context of an abandonment or cancellation without Commission approval, the Commission shall:

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

26. In addition to the above conditions, the Commission also required MPCo to: demonstrate that it used "best efforts" to procure federal incentives before recovering any additional costs from customers resulting from the loss of any incentive;<sup>43</sup> use "all diligence" to obtain and maintain all necessary permits to construct and operate the Kemper Project;<sup>44</sup> and periodically re-evaluate the economic viability of the Kemper Project to confirm that it remains in the best interest of customers.<sup>45</sup>

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

MPCo has a continuing obligation to ensure that Kemper is in the public interest. Pursuant to Miss. Code Ann. § 77-3-33 and applicable case law, MPCo has an obligation to take all actions necessary to serve its retail ratepayers at a just and reasonable cost. That obligation includes using its expertise to ensure that the path that it has urged continues to be the best path. The Commission's granting of a certificate does not diminish this

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<sup>43</sup> *Id.* at ¶ 183, pp.110-11.

<sup>44</sup> *Id.* at ¶ 184, p.111.

<sup>45</sup> *Id.* at ¶ 185, pp.111-12.

obligation. The first-of-a-kind nature of this project, its unprecedented size and cost, and the uncertainty concerning the cost of alternatives to Kemper, call for special measures to ensure that the certificate issued is consistent with the public convenience and necessity. The Commission therefore makes explicit what is implicit: MPCo has a continuing obligation to ensure that Kemper remains consistent with the public convenience and necessity, in light of feasible alternatives.<sup>46</sup>

28. The Commission initially approved MPCo to recover CWIP for the Kemper Project based on testimony that such recovery would save retail customers between \$500 and \$600 million over the forty-year life of the Project.<sup>47</sup> The Commission's CWIP Treatment barred MPCo from including any CWIP for the Kemper Project in retail rate base and from recovering any retail financing costs during 2010 and 2011 for any construction costs incurred through 2011. For calendar years 2012, 2013, and 2014, the Commission authorized MPCo to include 100% of all construction costs (subject to prudence reviews) in CWIP for the purpose of allowing recovery of the financing costs, provided that the amount of CWIP allowed was (i) reduced by the amount of any government construction cost incentives received by MPCo in excess of \$296 million to the extent that such amount increases cash flow for the pertinent regulatory period and (ii) justified by a showing that CWIP allowance would benefit customers over the life of the plant. The Commission required MPCo, as part of its annual rate filings during construction beginning for the 2012 regulatory period, to present its CWIP return requirements for the project year (based upon 100% CWIP adjusted for government construction cost incentives) and include its then-current credit ratings from Moody's, Fitch's and Standard & Poor's. The Commission noted its authority to make later adjustments to the CWIP amounts (up or down) based on MPCo's credit rating and substantial evidence specific to then-current conditions. The CWIP mechanism included a "true-up" procedure to ensure that ratepayers paid no more than MPCo's actual financing costs associated with prudent actual capital expenditures through the period.

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<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at ¶ 190, p.115, citing Phase Two Direct Testimony of Frances Turnage, pp. 17-18 (Dec. 7, 2009).

## **B. RELEVANT POST-CERTIFICATE PROCEEDING PROCEDURAL HISTORY**

### **1. Certified New Plant (“CNP”) Rate Case (Docket No. 2011-UN-135)**

29. On April 27, 2011, in Docket No. 2011-UN-135, MPCo filed a Kemper Project rate plan to recover project financing costs over several years during the construction period, consistent with the Final Order on Remand.<sup>48</sup> The CNP Rate Schedule Filing sought approval of the proposed CNP-A Rate Schedule mechanism only, and did not seek any adjustment to MPCo’s revenues at that time.

30. The Commission issued an order on May 10, 2011, suspending the filing, pending a full investigation by Commission Staff.<sup>49</sup> On November 15, 2011, MPCo filed its CNP-A Filing for the 2012 Evaluation Period (“2012 CNP-A Annual Filing”),<sup>50</sup> requesting a revenue adjustment of \$97,950,242, qualifying as a major change in rates under Miss. Code Ann. § 77-3-37. The 2012 CNP-A Annual Filing was made pursuant to the terms and conditions of the proposed CNP-A Rate Schedule, which at that time was still pending before the Commission. MPCo filed a Verification of Notice on February 9, 2012, confirming that all of the Company’s customers, including special contract customers, had been provided notice of MPCo’s 2012 CNP-A Annual Filing by providing a copy of a Notice of Filing in each customer’s bill in compliance with the provisions of RP 9.101. During the discovery period in this proceeding, the Staff’s consultants propounded comprehensive data requests to the Company covering MPCo’s initial example of the CNP-A revenue requirement calculation developed using historical 2010 data. MPC responded to each of the data requests in accordance with the Commission Rules.

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

32. The Commission held an evidentiary hearing on MPCo’s CNP Rate Schedule Filing and the 2012 CNP-A Annual Filing in the Commission’s hearing room on June 22, 2012.

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<sup>48</sup> *Notice of Intent to Establish the Certified New Plant, Rate Schedule CNP-A*, Docket No. 2011-UN-135 (Apr. 27, 2011) (“CNP Rate Schedule Filing”).

<sup>49</sup> Suspension Order, *In Re. Notice of Intent to Establish the Certified New Plant, Rate Schedule CNP-A*, Docket No. 2011-UN-135 (May 10, 2011).

<sup>50</sup> Notice of Intent to Change Rates for the 2012 Evaluation Period, *In Re. Notice of Intent to Establish the Certified New Plant, Rate Schedule CNP-A*, Docket No. 2011-UN-135 (Nov. 11, 2011).



The Commission provided proper notice of the hearing to all persons entitled to such notice, in the manner, form and time required by the Mississippi Public Utility Act and the Commission's Rules. All parties had a fair and full opportunity to be heard, to present testimony, and to cross-examine witnesses. At the conclusion of the evidentiary hearing, the Commission denied MPCo's CNP-A Rate Schedule and implementation of rates due to the fact that the Final Order on Remand was still pending appeal.<sup>51</sup> The Commission held "that it would not be prudent to allow [MPCo] to recover costs associated with the Kemper Project during the pendency of the appeal before the Mississippi Supreme Court or other appellate tribunal."<sup>52</sup>

33. MPCo appealed the order denying the CNP-A filings to the Mississippi Supreme Court, and Mr. Thomas Blanton intervened in that appeal.<sup>53</sup> MPCo and the Commission ultimately settled that appeal ("CNP-A Settlement Agreement"), but Mr. Blanton's appeal remained before the Court.

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

34. On January 25, 2013, pursuant to the terms of the CNP-A Settlement Agreement, MPCo filed for an approximate 21% rate adjustment related to the Kemper Project consistent with the "Mirror" CWIP provisions of FASB Accounting Standard Codification 980.<sup>54</sup> Under that approach, MPCo requested authority to recover through rates, during the construction period, funds to be later used to offset some of the increase in rates that would otherwise occur once the Kemper Project was placed into service. Mirror CWIP was approved by the Commission in its Mirror CWIP Order dated March 5, 2013, which was subsequently appealed by Mr. Thomas Blanton. That appeal was consolidated with the CNP-A cross appeal already before the Mississippi Supreme Court at the time.

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<sup>51</sup> Order Denying CNP-A Filing, *In Re. Notice of Intent to Establish the Certified New Plant, Rate Schedule CNP-A*, Docket No. 2011-UN-135 (Jun. 22, 2012) at ¶11.

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

<sup>53</sup> See, *Mississippi Power Company, Inc. v. Mississippi Public Service Comm'n*, Mississippi Supreme Court Case No. 2012-UR-01108-SCT, consolidated with *Blanton v. Mississippi Power Co., et al.*, Mississippi Supreme Court Case No. 2013-UR-0047-SCT.

<sup>54</sup> *Notice of Intent of Mississippi Power Company for a Change in Rates Related to the Kemper County IGCC Project*, Docket No. 2013-UN-14 (Jan. 25, 2013).

35. On February 12, 2015, the Mississippi Supreme Court reversed the Mirror CWIP Order, required that the Commission fix by order the rates in existence prior to the issuance of the Mirror CWIP Order, ordered a refund of all revenue collections under the Mirror CWIP Order, voided the CNP-A Settlement Agreement reached between MPCo and the Commission, and remanded the cases back to the Commission for further proceedings.<sup>55</sup>

36. On July 7, 2015, the Commission issued its Mirror CWIP Remand Order, in which it directed MPCo to lower customer rates to remove the Mirror CWIP rate approved in 2013, beginning with the first billing cycle of August 2015 so that MPCo would make no recovery from ratepayers related to the Kemper Project after July 20, 2015.<sup>56</sup> That order resulted in no rate recovery for CWIP related to the Kemper Project after July 20, 2015. The Mirror CWIP Remand Order also directed MPCo 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 MPCo's proposed Refund Plan, with modifications, such that the refund of the Mirror CWIP collections, in total approximately \$350 million, was to be completed no later than December 4, 2015.

### **3. Seven-Year Plan Filing (Docket No. 2013-UN-039)**

37. On February 26, 2013, MPCo filed its Notice of Intent in Docket No. 2013-UN-039 to establish a rate mitigation plan governing rates related to the Kemper Project for the first seven years of operations. MPCo later revised its proposed Seven-Year Plan to comply with the provisions of the Commission's Mirror CWIP Order in Docket No. 2013-UN-14. Although the Commission scheduled a hearing on the Seven-Year Plan for October 1, 2013, those hearings were cancelled on August 26, 2013. On December 14, 2015, MPCo filed a Motion for Case to be Retired to File, due to changing circumstances that rendered the assumptions underlying the filed plan "outdated and obsolete." The Commission's Executive Secretary issued an Order Retiring to File on January 5, 2016.

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<sup>55</sup> *Mississippi Power Company, Inc. v. Mississippi Public Service Commission and Thomas A. Blanton*, 168 So. 3d 905 (Miss. 2015).

<sup>56</sup> Order on Remand, *In Re. Notice of Intent of Mississippi Power Company for a Change in Rates Related to the Kemper County IGCC Project* Docket No. 2013-UN-14 (Jul. 7, 2015).

#### 4. Prudence Case Docket (Docket No. 2013-UA-189)

38. On June 28, 2013, MPCo filed a Petition for Finding of Prudence in Docket No. 2013-UA-189.<sup>57</sup> MPCo's Prudence Petition asked the Commission to conduct a prudence review of all Kemper Project costs incurred as of March 31, 2013.<sup>58</sup> The Commission issued a Scheduling Order in the case, establishing discovery procedures and setting a hearing for March 4, 2014.<sup>59</sup> The Commission noted that, because the Kemper Project was not fully operational, it intended "to limit any prudence determination made in this docket by reserving final judgment or determination of the used and usefulness of the Kemper Project for furnishing electric service in the manner and for the purpose for which it was certificated."<sup>60</sup> The Commission also made clear that it reserved:

. . . its right to review any aspect of the Kemper Project for prudence and may revisit any prudency determination, including if at any point after the Kemper Project enters commercial operation it is determined or declared that all or any portion of the Project is not used and useful or will not be used or useful in furnishing electric service as intended.<sup>61</sup>

39. The Prudence Case Docket generated voluminous documentation in the form of, *inter alia*, MPCo's responses to data and document requests and reports of the detailed investigation of the Kemper Project costs conducted by the Commission's and Commission Staff's IMs. Although the Commission had initially scheduled an evidentiary hearing for the week of September 8, 2014, the Commission cancelled the scheduled prudence hearing on August 5, 2014, making it clear that it would not consider whether Kemper Project costs were prudent until the assets were commercially operational: "no prudency hearings will be conducted until such time as the Kemper Project is placed in commercial operation and demonstrates, for a reasonable period, its availability, as indicated by the Commission and Public Utilities Staff in

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<sup>57</sup> *Petition of Mississippi Power Company for Finding of Prudence in Connection with the Kemper County Integrated Gasification Combined Cycle Generating Facility*, Docket No. 2013-UA-189 (Jun. 28, 2013) ("Prudence Petition").

<sup>58</sup> *Id.* at ¶ 8.

<sup>59</sup> Scheduling Order, *In Re. Petition of Mississippi Power Company for Finding of Prudence in Connection with the Kemper County Integrated Gasification Combined Cycle Generating Facility*, Docket No. 2013-UA-189 (Jul. 26, 2013).

<sup>60</sup> *Id.* at p. 3.

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

consultation with the Independent Monitors.”<sup>62</sup> After that order, the Commission took no further action in the Prudence Case Docket, and directed the Executive Secretary of the Commission to close that docket in an order in a subsequent proceeding.<sup>63</sup>

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

40. The combined cycle component of the Kemper Project (“Kemper CC”) was originally synchronized to the grid on September 7, 2013. MPCo then conducted eleven months of start-up, testing and commissioning activities using natural gas as a fuel, because the integrated gasification component of the unit was still non-operational. Effective 12:01 a.m. (Central) on August 9, 2014, MPCo declared the Kemper CC and related assets to be in service for both accounting and tax purposes. Pursuant to Commission order in the Prudence Docket, the Company filed its Report and Analysis to the Commission Supporting MPCo’s Decision to Place the Combined Cycle Generating Facilities and Related Portions of the Kemper County IGCC Project in Service (“Kemper CC Filing”) on August 18, 2014, creating Docket 2014-UA-195. MPCo asserted that placing the plant in service at that time would allow MPCo to qualify for bonus depreciation tax treatment on qualifying assets placed in service by December 31, 2014, resulting in substantial tax benefits to MPCo, to be shared with ratepayers over the life of the facilities. MPCo’s Kemper CC Filing estimated the total capital cost of the Kemper CC to be approximately \$882 million.

41. The Commission retired this docket to the file in its Final Rate Order in Docket No. 2015-UN-80, as further described below.

## 6. 2015 In-Service Asset Rate Case (Docket No. 2015-UN-80)

42. On May 15, 2015, MPCo filed an initial Notice of Intent in Docket No. 2015-UN-80, proposing a change in rates in three separate proposals.<sup>64</sup> After the Mississippi Supreme

<sup>62</sup> Order Cancelling Hearing, *In Re. Petition of Mississippi Power Company for Finding of Prudence in Connection with the Kemper County Integrated Gasification Combined Cycle Generating Facility*, Docket No. 2013-UA-0189 (Aug. 5, 2014) at p.2.

<sup>63</sup> See *infra* Section II.B.5.

<sup>64</sup> A detailed description of the procedural history of related cases leading up to MPCo’s rate change filing is provided in the Final Order, *In Re. Notice of Intent of Mississippi Power Company for a Change in Rates Supported by a Conventional Rate Filing or, in the Alternative, by a Rate Mitigation Plan in Connection with the Kemper County IGCC Project*, Docket No. 2015-UN-80, issued December 3, 2015, at ¶¶ 1-12 (“Final Rate Order”).

Court's mandate in the Mirror CWIP Appeal, MPCo amended its rate request on July 10, 2015, to include a fourth proposal, the In-Service Asset Proposal, which limited the scope of the rate change to only those Kemper-related assets that were then currently serving customers. At that time, the following Kemper Project assets ("In-Service Assets"), representing over \$1 billion in capital costs, were operational and in service<sup>65</sup>:

- The Kemper CC, fueled exclusively by natural gas;
- All transmission projects, including two 230kV lines and substations supporting the Kemper CC, which were energized in 2013; and
- The wastewater and natural gas pipelines.

Contemporaneously with the supplemental filing of the In-Service Asset Proposal, MPCo requested temporary, emergency rate relief to stave off financial emergency and potential bankruptcy.

43. The Commission granted MPCo temporary, emergency rate relief under bond pursuant to its authority under Miss. Code Ann. § 77-3-41 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>66</sup> Such relief was limited to MPCo's request for emergency temporary rates, and reserved a ruling on the merits for any permanent rate proposal until after the November 10, 2015 hearing set by the procedural schedule.<sup>67</sup> In the Temporary Rate Order, the Commission found that MPCo was "on the brink of bankruptcy,"<sup>68</sup> and "in or nearing financial crisis."<sup>69</sup> In granting temporary, emergency relief, the Commission did not make any determination as to the prudence of any of the Kemper Project-related costs.

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<sup>65</sup> Although "in-service," the Liberty Mine would not be included as an "In-Service Asset" for purposes of recovery since it was not involved in providing electric service to customers.

<sup>66</sup> Temporary Rate Order, *In Re. Notice of Intent of Mississippi Power Company for a Change in Rates Supported by a Conventional Rate Filing or, in the Alternative, by a Rate Mitigation Plan in Connection with the Kemper County IGCC Project*, Docket No. 2015-UN-80 (August 13, 2015) ("Temporary Rate Order").

<sup>67</sup> *Id.* at ¶ 11.

<sup>68</sup> *Id.* at p. 1.

<sup>69</sup> *Id.* at ¶ 51.

44. Between the pre-hearing conference on October 20, 2015 and the evidentiary hearing, Staff and MPCo reached a full settlement-in-principle.

45. The Commission held an evidentiary hearing on MPCo's petition in the Commission hearing room on November 10, 2015. The Commission provided proper notice of the hearing to all persons entitled to such notice, in the manner, form and time required by the Mississippi Public Utility Act and the Commission's Rules. At the hearing, Staff summarized on the record the terms of the settlement in principle negotiated between Staff and MPCo. The Commission then commenced the evidentiary hearing, in which witnesses for MPCo, Joint Intervenors (Greenleaf CO<sub>2</sub> Solutions, Chevron Products Company, and various federal agencies), and Staff offered testimony and were subjected to cross-examination. The Commission's post-hearing order and procedures are detailed in the Final Rate Order.<sup>70</sup>

46. Pursuant to the Commission's post-hearing order and schedule, Staff and MPCo entered into a Stipulation on November 17, 2015, which allowed MPCo to begin recovering only costs of In-Service Assets that had actually been in service and providing benefits to MPCo's customers for more than one year. The Stipulation included the following principal terms:

- a) A stipulated retail revenue requirement of approximately \$126 million annually, resulting in a total retail revenue requirement reduction of approximately \$32 million from MPCo's In-Service Asset Proposal;
- b) Exclusion from the stipulated retail revenue requirement of the 15% share of the capital and operation and maintenance ("O&M") costs that would have been covered by South Mississippi Electric Power Association's cancelled purchase of an undivided interest in the Kemper Project (subject to MPCo reserving its right to seek recovery in a future proceeding);
- c) Exclusion and deferral to a regulatory asset for Commission consideration at a later date of all capital costs of the Kemper CC over the certified estimate of \$576 million;
- d) Exclusion and deferral to a regulatory asset for Commission consideration at a later date of all land costs not directly associated with the In-Service Assets;

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<sup>70</sup> Final Rate Order at ¶¶ 18-19.

- e) Stipulation of a prudence finding associated with all costs included in the stipulated revenue requirement;
- f) Reversal of all adjustments related to the proposed securitization financing arrangement;
- g) Stipulated return on equity equal to 9.225%;
- h) Agreement by MPCo to obtain \$125 million of equity from Southern Company in the form of common stock on or before December 31, 2015, upon the issuance of a final order by the Commission approving the Stipulation;
- i) A true-up calculation for MPCo's capitalization structure and weighted average cost of capital to address the issues raised concerning MPCo's projected debt and equity issuances during the test period;
- j) Specific amortization periods for each regulatory asset ranging from two years to ten years depending upon the types of costs being amortized;
- k) Commitment by MPCo to file another rate request within 18 months of the final order in that proceeding; and
- l) Agreement to terminate the temporary rates authorized by the Commission in the Temporary Rate Order upon approval and implementation of the stipulated rates, and a rate refund in the form of a one-time bill credit to customers of record within 90 days of the date of the Final Rate Order.<sup>71</sup>

47. In the Final Rate Order, the Commission adopted the Stipulation between MPCo and Staff and incorporated it by reference.<sup>72</sup>

48. The Final Rate Order directed MPCo to file a subsequent rate request with the Commission within 18 months of the order, to prevent the Company from "over-collecting" from customers after its regulatory asset accounts became fully amortized. The Commission noted that nothing in the Final Rate Order limited "the Commission's right under the law to request that [MPCo] show cause, at any time, why its current rates related to the Kemper Project should

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<sup>71</sup> The Stipulation required the bill credit to be in an amount equal to the difference between the amount collected under the temporary rates and the amount that would have been collected under the stipulated rates during the period in which the temporary rates were in effect. Final Rate Order at ¶ 33(l).

<sup>72</sup> *Id.* at ¶ 34.



remain unchanged.”<sup>73</sup> In response to the requirements of the Final Rate Order, MPCo made a “Compliance Rate Filing” in Docket No. 2015-UN-0080 on June 5, 2017.<sup>74</sup>

## 7. Discovery Docket (Docket No. 2016-AD-161)

49. On August 17, 2016, on its own motion, the Commission established a Discovery Docket to provide a framework and procedures for managing information relative to the prudence of MPCo’s Kemper Project costs.<sup>75</sup> The Commission noted that the Discovery Docket Order did not set or mandate a prudence hearing, and did not establish a rate case; rather, it established procedures to develop a record regarding the prudence of MPCo’s actions that could be used in a later, separately-filed rate case.<sup>76</sup> The Commission ensured adequate notice to all interested parties by directing the Executive Secretary of the Commission to publish notice of the creation of the Discovery Docket in every major newspaper in MPCo’s service territory and to serve a copy of the Discovery Docket Order on all parties in each of the eleven prior Kemper Project-related proceedings before the Commission,<sup>77</sup> and by ordering MPCo to provide each of its customers with notice, consisting of Commission-prescribed language, of the docket’s creation.<sup>78</sup>

50. The Commission established a 180-day discovery process, broken down into three 60-day periods, with the third and final phase concluding by April 3, 2017. Discovery in the docket was limited to (i) the prudence of the Kemper Project costs; (ii) the “used and usefulness” of the Kemper Project; and (iii) the conditions imposed by the Commission’s Order on Remand in Docket No. 2009-UA-14.<sup>79</sup> The Commission noted that in a prior order it defined prudence as follows:

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<sup>73</sup> *Id.* at ¶ 91.

<sup>74</sup> *See infra*, Section II.B.8.

<sup>75</sup> Order Establishing Discovery Docket, *In Re: Creation of Discovery Docket to Manage All Filings Related to the Prudence of the Kemper County Integrated Gasification Combined Cycle Generating Facility*, Docket No. 2016-AD-161 (Aug. 17, 2016) (“Discovery Docket Order”).

<sup>76</sup> *Id.* at ¶¶ 8-9.

<sup>77</sup> *Id.* at ¶ 11.

<sup>78</sup> *Id.* at ¶¶ 10-13.

<sup>79</sup> *Id.* at ¶ 15.

Prudency requires that a public utility demonstrate that it “went through a reasonable decision making process to arrive at a course of action and, given the facts as they were or should have been known at the time, responded in a reasonable manner.” Prudency governs “a public utility’s *continuation* of an investment as well as its decision to enter in that investment . . . and requires the utility to respond prudently to changing circumstances or new challenges that arise as a project progresses.”<sup>80</sup>

51. The Commission explained that a primary purpose of the Discovery Docket was “to ensure that all pertinent information is readily available to interested parties in future prudence and rate cases involving the Kemper Project.”<sup>81</sup> To that end, the Commission suspended the deadline for interventions, allowing any interested party to intervene at any time.

52. The Commission directed MPCo to file full copies of the Staff data requests and the Company’s responses in the Prudence Docket (Docket No. 2013-UA-189) as part of the initial disclosures ordered in the Discovery Docket. The Commission also directed the Executive Secretary of the Commission to close the Prudence Docket.

53. MPCo complied with the Discovery Docket Order by establishing a password-protected SharePoint web portal to facilitate the exchange of information pursuant to the data request procedures established in the order, and assigned each intervening party a unique identification account to access the portal. MPCo filed the initial disclosures required by the order, and then responded to multiple rounds of data requests from Staff, the Commission’s and Staff’s IMs, and intervenor parties.

## 8. MPCO Compliance Rate Filing (Docket No. 2015-UN-80)

54. MPCo made a compliance rate filing on June 5, 2017,<sup>82</sup> in response to the requirements of the Commission’s Final Rate Order in Docket No. 2015-UN-0080 dated December 3, 2015. In the Final Rate Order, the Commission approved the Stipulation of the Parties, which included a requirement for MPCo to file a new rate case within 18 months of the

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<sup>80</sup> *Id.*, citing Docket No. 2013-UA-189 (Oct. 15, 2013) (emphasis in original) (internal citations omitted).

<sup>81</sup> Discovery Docket Order at ¶ 17.

<sup>82</sup> Mississippi Power Company Compliance Rate Filing Requesting a Change in the Amortization Schedule for Certain Regulatory Asset Accounts Accrued in Connection With the Kemper Project In-Service Assets, Docket No. 2015-UN-0080 (Jun. 5, 2017) (“Compliance Rate Filing”).

Final Rate Order. MPCo submits that the Compliance Rate Filing was filed in satisfaction of its obligation with respect to the new rate case.

55. The purpose of requiring MPCo to file a new rate within 18 months of the Final Rate Order is to prevent MPCo from over-collecting from customers, as stated in the Final Rate Order:

The Commission finds that it is necessary to prevent the Company from “over-collecting” from customers once regulatory asset accounts become fully amortized. Simply put, once certain regulatory asset accounts become fully amortized, MPC will recover revenue for which there was no corresponding expense, absent a subsequent rate filing, which could potentially result in rates that are no longer just and reasonable. Although this is not an unusual situation in ratemaking, the Commission finds that it must respond in order to ensure that customers are protected. Therefore, MPC is directed to file a subsequent rate request with this Commission within eighteen (18) months of the issuance of this Order.<sup>83</sup>

56. The Compliance Rate Filing seeks a modification of MPCo’s amortization schedule for certain of the assets associated with the In-Service Assets. The In-Service Assets include only a portion of the total facilities included in the Kemper Project – generally those relating directly to the combined cycle generating portions of the Project which have been in service and producing electricity since August 2014. The In-Service Assets do not include assets related primarily to the gasifier portion of the plant or the Liberty Mine. The filing is supported by pre-filed direct testimony of MPCo Vice President Moses Feagin and three exhibits.<sup>84</sup>

57. MPCo asks the Commission to: (1) receive and file the Compliance Rate Filing, (2) treat the Compliance Rate Filing as a routine filing pursuant to Miss. Code Ann. § 77-3-37 and RP 9.100; (3) apply the revenue being used to amortize the accelerated debt and equity carrying costs (amortization on those ends on July 31, 2017) to pay off the other seven regulatory asset accounts which have depreciation schedules of 7-10 years pursuant to the Commission’s Final Rate Order; (4) authorize acceleration of the seven accounts to provide for full amortization over 11 months; (5) request a Commission order allowing for the new amortization to begin on

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<sup>83</sup> Final Rate Order at ¶ 91.

<sup>84</sup> Compliance Rate Filing at 1-6.

August 1, 2017; (6) find that the Company's current rates will not change as a result of the requests; and (7) direct MPCo to make a new rate filing relating to the Kemper Project no later than March 2, 2018.<sup>85</sup>

58. MPCo states that its rate proposal will give the Company additional time to place the Kemper Project in service and subsequently seek rate recovery for the entire project. MPCo claims its request will minimize rate volatility, reduce costs paid by customers over the life of the Kemper Project, and ensure stable cash flows for the Company, all of which were identified as priorities for the Commission in the Final Rate Order. The Company proposes to continue developing both a traditional rate case and a rate mitigation plan to address the recovery of the remainder of the Kemper Project costs.<sup>86</sup>

59. The Commission's designee will issue an appropriate scheduling order in Docket No. 2015-UN-0080, and takes no position on the Compliance Rate Filing in this proceeding.

### **III. KEMPER PROJECT STATUS**

60. For purposes of this order, the Commission assumes the following material facts about the operational status of the Kemper Project. Project-specific information comes from filings made by MPCo.

61. The In-Service Assets have been in commercial operation since August 9, 2014.<sup>87</sup> This includes the transmission projects, the water and natural gas pipelines, and the combined cycle portion of the plant.<sup>88</sup>

62. The Kemper CC is capable of producing 730 MW of electricity.<sup>89</sup>

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<sup>85</sup> *Id.* at 3-4; Direct Testimony of Moses H. Feagin in Compliance Rate Filing at 7.

<sup>86</sup> Compliance Rate Filing at 3-4.

<sup>87</sup> Direct Testimony of Bruce C. Harrington, Discovery Docket, Oct. 3, 2016 ("Harrington Discovery Docket Direct") at 5. The combined cycle portion consists of two gas turbines with associated generators, two heat recovery steam generators, and a single steam turbine with generator. *Id.* at 4.

<sup>88</sup> *Id.* at 5; *see also* Direct Testimony of Steven K. Owen, Discovery Docket, October 3, 2016 ("Owen Discovery Docket Direct") at 4.

<sup>89</sup> First Supplemental Filing of MPCo, 2015 In-Service Asset Rate Case, July 10, 2015, at 3. The Kemper CC can produce 696.4 MW in summer and 730 MW in winter. *See* Testimony of Donald Grace, 2015 In-Service Asset Rate Case, October 9, 2015 ("Grace 2015 In -Service Asset Rate Case Testimony") at 8.

63. From August 8, 2014, through September 30, 2016 (the last full month prior to syngas testing), the Kemper CC commercially generated more than 8.0 million MWh of electricity, net of station service.

64. The net generation from the Kemper CC during the period August 8, 2014, through September 30, 2016, expressed as a percent of MPCo's retail sales during the same period, is 39%, representing one of MPCo's largest contributing units.

65. The Kemper CC year-to-date equivalent forced outage rate on natural gas only is 0.51% through April 26, 2017.<sup>90</sup> The Kemper CC availability factor, which measures the amount of time the plant is available to run, was 91.4% from August 2014 to July 2015.<sup>91</sup>

66. The Kemper CC capacity factor, which measures the actual time the plant runs, was 74.15% for the period of August 9, 2014, through September 30, 2016. This exceeds the Energy Information Agency's ("EIA") most recent final annual national figures for combined cycle plants, which shows an average capacity factor of 56%.<sup>92</sup>

67. The Company was authorized to recover a stipulated \$575.36 million in capital costs for the Kemper CC.<sup>93</sup>

68. While MPCo has an unresolved claim of approximately \$882 million in CC related costs, using the authorized \$575.36 million and a 730 MW capacity, the permitted Kemper CC capital costs are \$788 per kw, which is less than the cost of comparably-sized facilities, on a per kw basis, based on the most recent figures available from the EIA.<sup>94</sup>

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<sup>90</sup> IM Monthly Report, April, 2017, at 13.

<sup>91</sup> Grace 2015 In -Service Asset Rate Case Testimony at 29.

<sup>92</sup> EIA Electric Power Monthly, Data for April 2017, Release Date June 23, 2017, Re-Release Date June 29, 2017, Table 6.7.A., "Capacity Factors for Utility Scale Generators Primarily Using Fossil Fuels, January 2013-April 2017" (available at [https://www.eia.gov/electricity/monthly/epm\\_table\\_grapher.php?t=epmt\\_6\\_07\\_a](https://www.eia.gov/electricity/monthly/epm_table_grapher.php?t=epmt_6_07_a)). EIA figures show an average 56% capacity factor for combined cycle units in 2016 and a range of 45.7% to 50.6% in the first four months of 2017.

<sup>93</sup> Final Rate Order at ¶ 33. The total In-Service Assets were estimated in MPCo's Report to the Commission in the Kemper Combined Cycle Proceeding to cost \$882 million. Report and Analysis to the Commission Supporting MPC's Decision to Place the Combined Cycle Generating Facilities and Related Portions of the Kemper County IGCC Project in Service, Kemper Combined Cycle Proceeding, August 18, 2014, at 3. MPCo reiterated this cost in its filings in the 2015 In-Service Asset Rate Case. *See, e.g.*, First Supplemental Filing of MPCo, 2015 In-Service Asset Rate Case, July 10, 2015, at 3 and Exhibit MPC-2. Capital costs above \$575.36 million were excluded and deferred to a regulatory asset for later consideration by the Commission.

<sup>94</sup> November 2016 EIA data shows a cost of \$978 per kw for a nominal 702 MW combined cycle plant, on a nationwide basis. *See* Capital Cost Estimates for Utility Scale Electricity Generating Plants, EIA, November 2016, at 7, Table 1 (available at

69. Other than the In-Service Assets, none of the Kemper Project assets have achieved commercial operation as contemplated by the Final Order on Remand.<sup>95</sup>

70. Syngas production began in July (Gasifier B) and September (Gasifier A) of 2016.<sup>96</sup> Syngas production between the two gasifiers has totaled 1,579 hours as of March 31, 2017.<sup>97</sup> The Kemper Project has not generated syngas for a sufficient amount of time to provide actual operational data.<sup>98</sup>

71. The Kemper Project, excluding the In-Service Assets, is more than three years behind schedule, and MPCo has extended the commercial operation date for the full Kemper Project numerous times.

72. At the time of its certification, the Kemper Project was projected by the Company to cost approximately \$2.97 billion.<sup>99</sup> The current cost exceeds \$7.50 billion.<sup>100</sup>

73. Once the IGCC plant reaches commercial operation, the Company anticipates that its first year availability will be 35%, down from an expected 59% described in the Certificate Petition.<sup>101</sup>

74. The Company estimates that the IGCC plant will operate below the levels described in the Certificate Petition until year four, where it will match the Certificate Petition projected availability at 77%.<sup>102</sup>

75. The Company estimates that the Kemper Plant's heat rate will be 12,160 BTU/kWh, higher than the estimate in the Certificate Petition (11,708 BTU/kWh).<sup>103</sup>

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[https://www.eia.gov/analysis/studies/powerplants/capitalcost/pdf/capcost\\_assumption.pdf](https://www.eia.gov/analysis/studies/powerplants/capitalcost/pdf/capcost_assumption.pdf)). For the specific geographic regions in the Kemper Project area (SERC Reliability Corporation – Southeastern and SERC Reliability Corporation – Central), the capital cost for the same sized facility is somewhat less, at \$910 per kw. *See id.* at 11, Table 4 (applying a regional cost adjustment factor of 0.93 to the \$978 per kw national figure).

<sup>95</sup> MPCo Monthly Status Report, Through April 2017, dated June 5, 2017, at page 1 (“Mississippi Power Company now expects the remainder of the Kemper IGCC, including both gasifiers, will be placed in service by the end of June 2017.”).

<sup>96</sup> Owen Discovery Docket Direct at 5.

<sup>97</sup> *Id.* at 5-6.

<sup>98</sup> Harrington Discovery Docket Direct at 8 and 12.

<sup>99</sup> Owen Discovery Docket Direct at 12.

<sup>100</sup> MPCo Monthly Status Report through April 2017, dated June 5, 2017, in Certificate Proceeding, at 1.

<sup>101</sup> Harrington Discovery Docket Direct, Exhibit\_(BCH-1)

<sup>102</sup> *Id.*

<sup>103</sup> Harrington Discovery Docket Direct at 9-10.

76. The Company estimates that the heat content of the lignite fuel supply is 5,416 BTU/lb., an increase from the 5,290 BTU/lb. estimate in the Certificate Petition.<sup>104</sup>

77. The Company estimates chemical product sales revenues as equal to or slightly higher than the estimate in the Certificate Petition.<sup>105</sup>

78. In each year of years 1 through 5 of commercial operations, the Company's estimate of IGCC maintenance capital and total non-fuel O&M range from \$130 million to \$201 million more than the estimate in the Certificate Petition.<sup>106</sup>

79. The Company's most recent Economic Viability Analysis of the Kemper IGCC shows that the Kemper IGCC is more expensive in all low and medium natural gas price scenarios than running the Kemper CC on natural gas or constructing a new natural gas combined cycle unit.<sup>107</sup>

80. Southern Company's June 5, 2017 SEC Form 8-K acknowledges many of these shortcomings in the Kemper Project, and, regarding rate recovery, states that "timely resolution of such filing will likely require a settlement between Mississippi Power and the Mississippi Public Utilities Staff (and other parties) and may include other operational or cost recovery alternatives" and that MPCo "intends to pursue any available settlement alternatives and will also continue to consider other possible operational and cost recovery options."<sup>108</sup>

81. On June 28, 2017, Southern Company and MPCo publicly announced that MPCo was "beginning a process to suspend operations and start-up activities on the gasifier portion of the Kemper IGCC."<sup>109</sup> As the basis for that action, MPCo indicated it was responding to "the uncertainty as to the future of the gasifier portion of the Kemper IGCC[;] . . . the factors affecting the economics of the Kemper IGCC; . . . the positions articulated by other parties in recent motions filed with the Mississippi PSC; and . . . the Mississippi PSC's statement [at the

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<sup>104</sup> *Id.* at 10.

<sup>105</sup> Harrington Discovery Docket Direct, Exhibit\_(BCH-2).

<sup>106</sup> *Id.* at Exhibit\_(BCH-3).

<sup>107</sup> Economic Viability Analysis of the Kemper Project, Feb. 21, 2017, in Certificate Proceeding , at 2-3.

<sup>108</sup> 8-K Current Report dated June 5, 2017 filed jointly with the Securities and Exchange Commission by MPCo and its parent, The Southern Company at 7 ("June 5, 2017 8-K").

<sup>109</sup> 8-K Current Report dated June 28, 2017 filed jointly with the Securities and Exchange Commission by MPCo and its parent, The Southern Company at 4 ("June 28, 2017 8-K"); *see also* MPCo letter filing of June 28, 2017, with the Commission.



Commission open meeting of June 21, 2017] of intent and expectations relating to the establishment of [this docket].”<sup>110</sup>

#### IV. ANALYSIS

##### A. THE GASIFIER PORTION OF THE KEMPER PROJECT HAS NOT MET REASONABLE COMMISSION EXPECTATIONS FOR ON-TIME, ON-BUDGET PERFORMANCE

82. As described earlier in this order, the Kemper Project as a whole is years overdue and billions of dollars over budget. While the Company has built and is commercially operating the Kemper CC, the rest of the project is not performing as promised and is, arguably, not performing at all. This Commission has an obligation to rigorously evaluate the Kemper Project in the face of the continuing delays and the prospect that ratepayers will be asked to pay for a project that is not meeting the Commission’s reasonable expectations for cost and provision of timely, reliable service.

83. Given the first-of-a-kind technology involved in the IGCC facility, the Commission set forth certain operational criteria that must be met before considering recovery of costs in rate base – which costs, even if allowed, are subject to review for prudence. These include plant availability, heat rate, lignite heat content, and chemical product sales. The Company’s current forecast of plant availability is well below what was anticipated at the time of certification, and the heat rate is below certification estimates as well. This is inconsistent with the Commission’s expectations for the performance of the gasification portion of the Kemper Project.

84. The Commission was clear in the Order on Remand that “[t]he economics of the [Kemper] Project are dependent upon the accuracy of the Company’s cost and performance estimates” and that the “cost to ratepayers from operating the Kemper IGCC Project must not exceed the costs associated with the operational assumptions in MPCo’s original filing . . . .”<sup>111</sup> The operational costs of the Kemper Project are far in excess of the original assumptions, with,

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<sup>110</sup> *Id.*

<sup>111</sup> Final Order on Remand at ¶ 179.

as noted earlier, annual IGCC maintenance capital and total non-fuel O&M ranging from \$130 million to \$201 million more than the estimate in the Certificate Petition.

85. The cost overruns, delays, and operational challenges of the Kemper IGCC gasification assets – concerns that the Commission has consistently discussed in its orders – are also at odds with any reasonable expectations of MPCo. Indeed, MPCo has been under an obligation to continually evaluate the Kemper Project for just such issues since it received its certificate. In the Final Order on Remand the Commission specifically cautioned MPCo about its continuing obligation to consider the viability of the Kemper Project in light of other alternatives:

MPCo has a continuing obligation to ensure that Kemper is in the public interest. Pursuant to Miss. Code Ann. § 77-3-33 and applicable case law, MPCo has an obligation to take all actions necessary to serve its retail ratepayers at a just and reasonable cost. That obligation includes using its expertise to ensure that the path that it has urged continues to be the best path. The Commission's granting of a certificate does not diminish this obligation. The first-of-a-kind nature of this project, its unprecedented size and cost, and the uncertainty concerning the cost of alternatives to Kemper, call for special measures to ensure that the certificate issued is consistent with the public convenience and necessity. The Commission therefore makes explicit what is implicit: MPCo has a continuing obligation to ensure that Kemper remains consistent with the public convenience and necessity, in light of feasible alternatives.<sup>112</sup>

86. Given the continued delays, cost overruns, and likely operational deficiencies (as compared to commitments in the certification proceeding) of the gasification assets, and the consistent performance of the Kemper CC, there is strong evidence supporting a conclusion that the Kemper CC is a feasible alternative to the full Kemper Project. There is similarly strong evidence supporting a conclusion that the Kemper Project, other than the In-Service Assets, are not now, and will not become, used and useful in serving Mississippi customers. The Commission is not in this order rendering any of those conclusions, but rather is referencing the Company's own assertions of costs, performance, and delay problems to encourage the parties to this case to work towards a settlement that is consistent with what is incontrovertible: 1) the Kemper CC has been performing well since 2014; and 2) the Kemper gasification assets are over

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<sup>112</sup> *Id.* at ¶ 185 (emphasis added).

budget, late, are not now commercially operable and are not likely to be so in any reasonable timeframe.

**B. THE COMMISSION REASONABLY IS SEEKING SETTLEMENT OF ALL OUTSTANDING KEMPER ISSUES ON AN EXPEDITED TIMEFRAME.**

87. Proceedings related to the Kemper Project have been long, complex and, at times, contentious. With the Kemper Project remaining incomplete more than three years after its projected completion date and the project being billions of dollars over budget, the complexity of issues and potential for contentious proceedings between MPCo and the ratepayers who may bear the costs of the Kemper Project has only increased. Disputes between utilities and ratepayers are contrary to the public policy of the state which the Legislature has expressed to be “to encourage and promote harmony between public utilities, their users and the environment.” Miss. Code Ann. §77-3-2(1)(e).

88. MPCo has publicly acknowledged that resolution of the issues surrounding the Kemper Project would require settlement among the parties.<sup>113</sup> Although the Commission has been neither a party to any communications between MPCo, the Staff or others regarding settlement of issues related to the Kemper Project, the Commission understands that, in furtherance of Staff’s obligation to “represent the broad interests of the State of Mississippi by balancing the respective concerns of the residential, commercial or industrial ratepayers, and the state and its agencies and departments, and the public utilities,”<sup>114</sup> Staff has entered into discussions with MPCo (and potentially other parties) to facilitate the settlement of issues relating to the Kemper Project.<sup>115</sup>

89. In keeping with the Commission’s policy to “encourage agreement, settlements

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<sup>113</sup> See, e.g., 2016 Mississippi Annual Report at p.6 (“Although the 2017 Rate Case has not yet been filed...the Company also expects that that timely resolution of the 2017 Rate Case will likely require a negotiated settlement agreement”) and at p.33 (“in the event an agreement acceptable to both the Company and MPUS (and other parties) can be negotiated and ultimately approved by the Mississippi PSC, it is reasonably possible that full regulatory recovery of all Kemper IGCC costs will not occur.”).

<sup>114</sup> Miss. Code Ann. §77-2-1.

<sup>115</sup> See June 5, 2017 8-K at 6 (“Mississippi Power and the Mississippi Public Utilities Staff have been discussing the status of the Kemper IGCC project and the nature and timing of a rate filing to address recovery of the approximately \$3.4 billion in Kemper IGCC costs not currently in rates...”).

and stipulations between the parties,” (*see, e.g.*, RP 13.102-103), and to further discussions between MPCo, the Staff and other parties, the Commission is establishing the Settlement Docket with the goal of providing for the resolution of as many Kemper Project issues as possible without lengthy and contentious proceedings.<sup>116</sup>

90. The Staff, as a body “completely separate and independent from the Public Service Commission and the Public Service Commission staff,”<sup>117</sup> is free to communicate with MPCo and other parties regarding settlement of any issues relating to the Kemper Project. *See* Miss. Code Ann. §77-2-13(1). Nothing in this Order implicates any of the concerns noted by the Mississippi Supreme Court in *Mississippi Power Co. v. Mississippi Public Service Comm’n*, 168 So. 3d 905 (Miss. 2015). Any agreement or stipulation entered into between Staff, MPCo and any other parties shall be considered by the Commission after a stipulation is filed. After filing, notice shall be issued and an opportunity for further participation provided as appropriate.

91. In establishing the Settlement Docket through the issuance of this order, the Commission makes no commitment as to any specific future result or action, and does not mandate any specific resolution to any issue, and the Commission expressly reserves all of its rights and powers with respect to any and all matters negotiated between MPCo, the Staff and other parties.

## **V. ORDER REQUIRING SETTLEMENT PROCEEDINGS.**

92. Based on the foregoing, the Commission establishes this docket to encourage a settlement of all issues associated with the Kemper Project.

93. Intervention in this docket shall be provided consistent with Commission Rules. All parties to Docket No. 2015-UN-080 shall be deemed parties in this docket unless they affirmatively request otherwise.

94. MPCo shall notice its customers individually of this new settlement docket.

95. Without committing to any specific future result, and based upon the Commission’s review of information available to it in matters before the Commission or

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<sup>116</sup> Mississippi law endorses agreements and stipulations among the parties for this very purpose. *See, e.g.*, Miss. Code Ann. § 77-3-39(5).

<sup>117</sup> Miss. Code Ann. §77-2-1.

otherwise made publicly available by the Company, the Commission believes the following areas should be resolved, or largely resolved, by MPCo, Staff, and intervening parties in any settlement that is presented to the Commission:

a. Any costs resulting from the settlement and assigned to MPCo customers shall result in, at a minimum, no rate increase to MPCo customers. The Commission encourages serious discussions that would lead to a rate reduction, with a particular focus on residential customers.

b. The settlement should seek to remove the risk of ratepayers bearing any of the costs associated with the gasifier and related assets.

c. The settlement should include modification or amendment of the certificate issued in Docket No. 2009-UA-014 to allow only for ownership and operation of a natural gas facility at the location of the Kemper County In-Service Assets.

96. Any settlement shall be filed with the Commission no later than 45 days from the effective date of this order. If a settlement is filed, a hearing will be set 45 days from the date of the settlement's filing, and the Commission's designee shall enter an appropriate scheduling order.

97. If an appropriate settlement is not reached and approved, the Commission reserves its right to exercise its full authority to resolve all issues associated with the Kemper Project, including an order to show cause and subsequent proceeding, which could potentially result in revocation of the Kemper Project certificate.

98. 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.

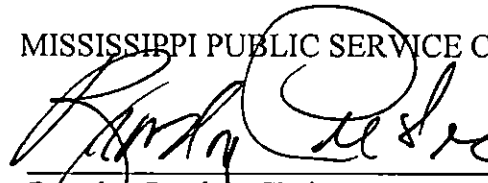
Chairman Brandon Presley voted aye; Vice Chairman Cecil Brown voted aye and Commissioner Samuel F. Britton voted aye.

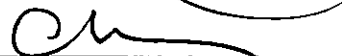
SO ORDERED by the Commission on this 6th day of July, 2017.

10/10/17



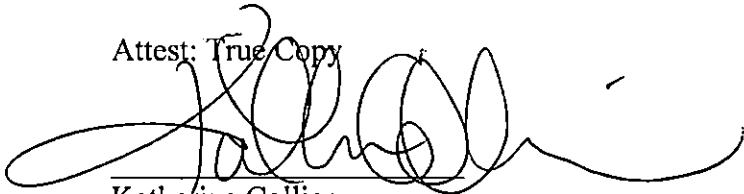
MISSISSIPPI PUBLIC SERVICE COMMISSION

  
Brandon Presley, Chairman

  
Cecil Brown, Vice Chairman

  
Samuel F. Britton, Commissioner

Attest: True Copy

  
Katherine Collier  
Executive Secretary

Effective this the 6th day of July 2017.