

AUG 11 2015

MISS. PUBLIC SERVICE
COMMISSION**BEFORE THE MISSISSIPPI PUBLIC SERVICE COMMISSION****MISSISSIPPI POWER COMPANY
EC-120-0097-00****DOCKET NO. 2015-UN-80**

**IN RE: NOTICE OF INTENT OF MISSISSIPPI POWER
COMPANY FOR A CHANGE IN RATES SUPPORTED BY
A CONVENTIONAL RATE FILING OR, IN THE
ALTERNATIVE, BY A RATE MITIGATION PLAN IN
CONNECTION WITH THE KEMPER COUNTY IGCC
PROJECT**

TEMPORARY RATE ORDER

THIS CAUSE came to be heard on the First Supplemental Filing filed by Mississippi Power Company ("MPC" or the "Company") on July 10, 2015, in the above referenced docket. The Mississippi Public Service Commission ("Commission"), being fully apprised in the premises and having considered the documents and record before it does hereby find and order as follows:

BACKGROUND

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

2. On July 7, 2015, the Commission issued its Order on Remand in Docket No. 2013-UN-14, wherein it, *inter alia*, directed MPC to lower customer

¹ See *Miss. Power Co., Inc. v. Miss. Pub. Serv. Comm'n*, 2015 LEXIS 315 (Miss. 2015).

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

SCOPE OF THIS ORDER

3. This docket was initiated on May 15, 2015, by the Company's Notice of Intent to Change Rates Supported by a Conventional Rate Filing or, in the alternative, a Rate Mitigation Plan in Connection with the Kemper County IGCC Project ("Notice of Intent"). The Notice of Intent proposed three alternative rate proposals for the Commission's consideration.²

4. In response to the Supreme Court's mandate and this Commission's subsequent Order on Remand, MPC filed its First Supplemental Filing on July 10, 2015. The First Supplemental Filing offered a fourth alternative, termed the In-

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

Service Asset Proposal, which was to take the place of the previously proposed 2019 RMP Proposal. MPC's First Supplemental Filing also requested an expedited order granting MPC "interim" rate relief until such time as the Commission can render a final decision on the In-Service Asset Proposal.

5. This interlocutory order only addresses the Company's request for emergency, temporary rates. This order does not in any way relate to the merits of the four rate proposals currently pending in this case. This Commission intends to establish, by separate order, a schedule by which the Company's In-Service Asset Proposal will be reviewed and ruled upon in a final Commission order. This procedure will ensure all parties of record and the general public will be provided adequate opportunity to be heard concerning any issues that may be raised concerning the Company's various rate proposals.

PROCEDURAL HISTORY

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

³ MPC's last major change in rates was granted in Docket No. 2013-UN-14.

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

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

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

8. Mr. Blanton has raised concerns regarding the adequacy of notice of these proceedings. Mr. Blanton argues that the customer letters were insufficient to provide adequate notice and opportunity to be heard because MPC failed to provide a date, time and location of any Commission hearing or the docket number to be assigned to the case. Not only is this not required by the law and our Rules, MPC has no way of knowing this information at the time customer notice letters are sent. It is this Commission, not MPC that schedules hearings and assigns docket

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

numbers. Mr. Blanton's arguments in this regard are without merit. Notice of both filings was separately published in four different daily newspapers. A notification letter was also sent to each customer via email or U.S. Mail. Notice of the evidentiary hearing scheduled by the Commission was served upon each party of record and to the general public according to Mississippi law. All parties were afforded the right to file testimony, present evidence at the hearing and cross examine witnesses. Members of the general public were allowed to provide comments during the hearings. We believe more than adequate notice has been afforded to both the general public and MPC's customers.

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

- (a) Thomas Blanton;
- (b) Gulf Coast Business Group⁶
- (c) Mississippi Manufacturers Association
- (d) Mississippi Economic Council
- (e) Gulf Coast Business Council
- (f) City of Biloxi, Mississippi
- (g) City of D'Iberville, Mississippi
- (h) Harrison County, Mississippi
- (i) Gulfside Casino Partnership
- (j) Federal Executive Agencies

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

- (k) Wal Mart Stores East, LP & Sam's East, Inc.
- (l) Greenleaf CO₂ Solutions, LLC
- (m) Chevron Products Company

10. Pursuant to the schedule set out by this Commission, Greenleaf CO₂ Solutions, LLC submitted pre-filed testimony on July 24, 2015, but later withdrew such testimony on August 5, 2015. The Staff also provided comments on the same day, but did not submit pre-filed testimony. MPC submitted its rebuttal testimony on August 3, 2015.

11. Evidentiary hearings, limited in scope to only address MPC's emergency request for interim rates, were held in the hearing room of the Commission on the 1st Floor of the Woolfolk Building in Jackson, Mississippi on August 6, 2015 at 10:00 a.m. On July 14, 2015, the Commission provided proper notice of the hearing in this cause to all persons entitled to such notice, in the manner, form and time required by the Mississippi Public Utility Act, Sections 77-3-1, *et seq.*, of the *Mississippi Code of 1972, as amended*, and by the Commission's Rules. Notice of the hearing was also published by this Commission pursuant to Sections 77-3-39 and 77-3-47. At the hearings, all parties had a fair and full opportunity to be heard, to present testimony, and to cross-examine all witnesses.⁷ Upon conclusion of the hearings, the Commission took the matter under advisement and noticed all parties and the public of a special Commission open meeting to be

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

held on August 13, 2015, to discuss the Company's request for emergency interim rates.

PROCEDURAL MOTIONS

12. The following procedural motions remain pending⁸ before the Commission at this time:

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

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

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

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

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

⁸ The Commission notes that Greenleaf CO₂ Solutions, LLC filed a Motion to Dismiss on July 24, 2015, that was later voluntarily withdrawn by Greenleaf on August 4, 2015.

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

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

LEGAL AUTHORITY

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

15. It seems appropriate at this time for the Commission to first discuss its traditional statutory authority applicable to the Company's current request for interim or emergency rates. It is then incumbent upon us to analyze the Supreme Court's recent decision in the Mirror CWIP appeal to determine whether and to what extent this opinion alters the Commission's statutory authority in this case. Through these discussions, the Commission intends to address the legal issues raised by the intervenors in the pleadings and at the hearing.

A. Traditional Rate Authority

16. This Commission is charged with "exclusive and original jurisdiction" over the intrastate business and property of public utilities.¹¹ Under Mississippi law, public utilities are entitled to "collect and receive fair, just and reasonable rates" in exchange for furnishing reasonable and reliable service.¹² "Rates

¹¹ MISS. CODE ANN. § 77-3-5.

¹² MISS. CODE ANN. § 77-3-33.

prescribed by the commission shall be such as to yield a fair rate of return to the utility furnishing service, upon the reasonable value of the property of the utility used or useful in furnishing service.”¹³ For utility rate-making purposes “a fair rate is one which, under prudent and economical management, is just and reasonable to both the public and utility.”¹⁴

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

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

The commission shall have power, when deemed by it necessary to prevent injury to the business or interest of the people or any public utility of this state in case of any emergency, to permit any public utility to alter, amend or suspend temporarily any existing rates, schedules and orders relating to or affecting any public utility or part of any public utility in this state except as provided in Section 77-3-42.¹⁵

18. Section 77-3-41 contains two independent sources of rate authority. The first paragraph permits the Commission, after hearing and notice, to adjust rates if they are determined to be unjust and unreasonable. The second paragraph

¹³ *Id.*

¹⁴ *State ex rel. Pittman v. Miss. Pub. Serv. Comm’n*, 506 So. 2d 978, 984 (Miss. 1987).

¹⁵ MISS. CODE ANN. § 77-3-41 (emphasis added). Section 77-3-42 relates to rate increases resulting from fuel adjustment clauses or riders and to audits of fuel purchases, and is not relevant to this case.

provides the Commission separate emergency authority to implement temporary interim rates when it is necessary to prevent injury to the business or interest of the people or any public utility. MPC's request herein invokes both authorities.

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

20. It is undisputed that the combined cycle facilities have already commercially generated billions of kilowatt hours of electricity without MPC receiving any permanent cost recovery.¹⁶ MPC testified that customers are receiving the benefits of substantial savings from the In-Service Assets; since its

¹⁶ Rebuttal Testimony of Mr. G. Edison Holland, Jr., p. 4 (Aug. 3, 2015) [hereinafter "Holland Rebuttal"].

August, 2014 in-service date, the Kemper Combined Cycle has provided savings to customers of approximately \$15.6 million, a fact which was also not contested.¹⁷ For these reasons alone, the Kemper Project's combined cycle facilities, and the other assets used to calculate the rate relief requested in this filing, are certainly "used and useful" in the traditional sense. Even though the Commission believes the facts currently in the record may be sufficient to make a finding that MPC's current rates are unjust and unreasonable, the Commission need not reach that issue at this time, given the imminent business injury to the Company and its customers. In doing so, the Commission can provide the Company needed relief while still allowing the public, all parties, the Staff and this Commission additional time to fully investigate the facts and prudence concerning the In-Service Assets.¹⁸ A separate order is being issued to establish a schedule for the review of the In-Service Asset Proposal.

21. The grant of interim or emergency rate relief is neither unusual nor unreasonable, and there are multiple instances nationwide of regulatory commissions granting regulated utilities immediate rate relief in the face of substantial economic hardship.¹⁹ Several states have similar emergency rate

¹⁷ *Id.*

¹⁸ The Commission notes that the Staff has reported much of their review is complete and expects to be prepared to move forward with a prudence hearing on the In-Service Assets as soon as the next few months.

¹⁹ See e.g., Order, FERC Docket No. ER80-315, 11 FERC ¶ 61,220 (1980)(Although FERC did not grant emergency rate relief in this Order, but rather set the matter for hearing as a request for CWIP relief, this Order notes that the utility "has filed for and received emergency rate relief in its Missouri retail jurisdiction and had requested permanent, emergency, and interim rate relief in its Kansas retail jurisdiction."); Order, Pennsylvania Public Utility Commission, Case No. R-2008-2073938 (Dec. 18, 2008); see also Sally W. Bloomfield, *Emergency Rate Making for Ohio Public*

statutes as Mississippi.²⁰ In Mississippi, similar emergency rate relief has been granted by the Commission under Section 77-3-41 in prior proceedings involving major, baseload generation facilities.²¹

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

B. Mirror CWIP Appeal Decision

23. The Supreme Court rendered an opinion in June of 2015, reversing this Commission’s Mirror CWIP Order. Mr. Blanton has raised several grounds for

Utilities, 37 OHIO ST. L. J. 108 (1976)(in which Ohio Public Utility Commissioner discusses history and application of Ohio emergency ratemaking authority).

²⁰ See e.g., OHIO REV. CODE ANN. § 4909.16; CC PA. CONS. STAT. § 1308(e); IND. CODE ANN. § 8-1-2-42 & 8-1-2-113.

²¹ Final Order on Rehearing, MPSC Docket No. U-4620, p. 9 (Sept. 16, 1985).

denial or dismissal based upon the language of the Supreme Court's decision, that are summarized below:²²

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

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

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

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

On remand, the Commission is hereby instructed to (1) fix by order the rates in existence prior to its order of March 5, 2013; (2) fix no rate increases until the Commission is in compliance with this Court's opinion; and (3) enter an order refunding the monies attributable to the rate increases allowed by the March 5, 2013, Order.²³

25. The Commission has fully complied with this mandate. Our Order on Remand issued on July 7, 2015, terminated the Mirror CWIP rates as of the first billing cycle of August. This directive went into effect on July 20th and the Company's witnesses confirmed their compliance to this provision at the August 6th

²² The Commission acknowledges that Mr. Blanton has raised other grounds in his pleadings in this case but these issues do not relate to the Commission's exercise of emergency rate authority. Namely, whether the Kemper Project certificate authorizes the operation of the Kemper combined cycle on natural gas, whether the Kemper combined cycle is used and useful, and whether a rate mitigation plan can be approved prior to commercial operation of the entire Kemper Project are all issues that will be addressed, as necessary, when considering the In-Service Asset Proposal later this year.

²³ *Miss. Power Co., Inc. v. Miss. Pub. Serv. Comm'n*, 2015 LEXIS 315, *14 (Miss. 2015)

hearings. Similarly, the Commission approved a Refund Plan by order issued August 6, 2015. As directed by the Commission, customers will receive their full refund, if desired, no later than December 4, 2015. Furthermore, the Supreme Court's opinion does not foreclose rate action until the refund is complete; the opinion merely requires the Commission "enter an order." This has been done. The Commission's required duties on remand have been fully satisfied.

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

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

28. The fact that some of the money to be collected from customers under the temporary rate will be used to pay for Kemper construction is of no legal import. We do not read the Supreme Court opinion as requiring that rate collections derived from any source must be restricted so as to prevent the cash collected from being used to pay Kemper construction costs, or any other costs incurred for that matter. Once money is collected by MPC, it is commingled with all other money for use in whatever cash needs are present at the time. This means that cash collected as a customer deposit, for example, can still be used to pay vendors, buy fuel or pay employee salaries. As required by the accounting rules, however, the Company maintains a liability on its accounting books for the customer deposit collected so that a record is maintained as to exactly what the customer is owed. The Court opinion was concerned with what costs are allowed to be included in rate base for purposes of calculating a rate under the Baseload Act. As explained below, such calculations are not the basis of the temporary rate approved in this order.

29. The temporary rates being granted by the Commission are not based upon MPC's Kemper financing costs; rather the rate level established is based upon the total current cash needs of the Company and the amount required to re-open the capital markets. If the Company was in a position to borrow the funds needed, no emergency would exist and the temporary rates would likely not be granted. The temporary rates are also not being granted to allow MPC a path around the Supreme Court's recent decision. This order is being issued to allow MPC to

continue to provide reliable service to customers and to begin to repair its financial strength to a point at which it can once again borrow money.

30. Finally, Mr. Blanton argues a finding of prudence is required before the Commission can exercise *any* rate authority, including emergency rate authority. We do not read the opinion so broadly. The Supreme Court's opinion held that a prudence determination was required before granting an increase in rates under the Baseload Act. The Commission's actions in this order are not dependent upon or even related to the Baseload Act or to the recovery of or on CWIP. The Commission's emergency rate authority, which is embodied in Section 77-3-41, is not part of the Baseload Act. The authority relied upon in this order is a fundamental component of the Mississippi Public Utility Act of 1956 and has been in effect since its passage.

31. The Mississippi Supreme Court has long acknowledged that such pre-determinations of prudence are not necessary under the Commission's traditional source of authority, the Public Utility Act.²⁴ This makes complete sense, particularly in emergency situations. To require notice, hearing and prudence prior to exercising emergency rate authority, especially since such authority is only temporary in nature, would frustrate the entire the purpose of granting emergency authority in the first place. Emergency authority is necessary for exactly the situation within which MPC finds itself. As a regulated public utility, MPC does not have the autonomy to raise or lower rates or to drastically cut service to

²⁴ *Miss. Power Co. v. Goudy*, 459 So. 2d 257, 275 (Miss. 1984)(Hawkins, J., specially concurring).

customers when it finds itself in financial crisis. Mississippi's regulatory framework does not afford MPC that type of unilateral authority. Because of these real constraints on MPC's business, the Commission must have the flexibility to act quickly to protect the Company and/or its customers in exigent circumstances.

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

I have a right (given me now by statute) to ultimate determination that the rate a utility charges is reasonable. But, when I walk in the electric company office at the first of the month to pay my bill, I have no right to have it legally predetermined that the amount I am required to pay for the month is fair and reasonable.²⁵

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

COMMISSION FINDINGS

34. The Commission finds that it has jurisdiction over the parties and subject matter in this proceeding. The Commission also finds that MPC has

²⁵ *Goudy*, 459 So. 2d at 275 (Hawkins, J., specially concurring).

adequately complied with the requirements of the applicable law and this Commission's Rules, and has provided all of the information relevant and necessary for the Commission to evaluate the Company's request herein and support this order. Therefore, for good cause shown, the Commission hereby waives each and every other filing requirement that may be prescribed by the Public Utility Act and the Commission's Rules.

35. During its investigation, the Staff and its IMs propounded data requests to MPC covering various aspects of the Company's filings. MPC responded to each of the data requests in accordance with this Commission's procedural Rules. The Commission and its IMs also independently analyzed the Company's filings. No party has contested or otherwise sought relief concerning the discovery process in this case. Therefore, this Commission finds that a full opportunity for discovery was afforded all parties and that the record in this proceeding contains substantial evidence supporting the Commission's findings.

A. Finding of Emergency

36. The evidence in the Commission's record offer overwhelming support a finding of that MPC is in or nearing financial crisis. MPC has testified, and no contrary testimony has been provided, that significant business injury has already been suffered. MPC has been operating the Kemper combined cycle units for a year for the benefit of customers and has received no permanent rate recovery.²⁶ MPC

²⁶ Holland Rebuttal, p. 4.

has already experienced several credit rating downgrades.²⁷ Currently, S&P has issued a stand-alone credit rating profile for MPC of bb+, which is below investment grade.²⁸ The Company has lost access to traditional credit markets.²⁹ These injuries have already been endured.

37. MPC faces further injury if rate relief is not granted to alleviate the Company's impending cash shortfall. Mr. Feagin testified the Company currently expects to be in a negative cash position by the end of this year if the status quo persists.³⁰ On July 8th, one day following the Commission's Order on Remand requiring the Mirror CWIP collections be refunded, S&P issued a CreditWatch Negative Report indicating further downgrades are likely in the near future.³¹ Moody's has placed MPC on review for downgrade.³² MPC remains on negative outlook with Fitch, even after a recent downgrade to BBB+ this June.³³ None of this evidence was rebutted or discredited by the Staff or any other party. MPC has experienced and faces continued business injury without some financial support.

38. Customers also face potential harm from MPC's financial condition. To illustrate this concern, hurricane season still threatens our State and region, and customers could face great hardship if MPC's current financial condition does not

²⁷ Rebuttal Testimony of Mr. Moses H. Feagin, p. 2 (Aug. 3, 2015) [hereinafter "Feagin Rebuttal"].

²⁸ Direct Testimony of Mr. Moses H. Feagin, p. 12 (July 10, 2015) [hereinafter "Moses Direct"].

²⁹ Feagin Rebuttal, pp. 3-4.

³⁰ Feagin Direct, pp. 25-26.

³¹ Feagin Direct, pp. 12-13.

³² Feagin Direct, p. 13.

³³ Feagin Direct, p. 13.

improve prior to a storm event. Access to sufficient capital is crucial to fund the vital storm restoration efforts following a hurricane. The risk to customer health and business interruption caused by prolonged storm-related outages must be mitigated to greatest extent reasonably possible. The Company also correctly pointed out that the lower its credit ratings are, the higher cost any borrowings that can be obtained will be. These higher costs of capital are ultimately borne by customers through future rates.

39. At least one intervenor argued that even though an emergency situation may exist, the Commission should decline any emergency relief because the emergency situation was caused by the Company's own actions. MPC testified the emergency situation materialized as a result of a culmination of several factors, including but not limited to, the cost and schedule issues related to the Kemper Project, this Commission's failure to grant CWIP relief in 2012 and the Supreme Court's recent reversal of the Mirror CWIP Order.³⁴ The issue of causation, however, appears to be unnecessary under Section 77-3-41. Our review of the statute confirms this Commission is not required to address fault to utilize the emergency rate authority granted by the statute. Although we agree that several factors combined to create the current financial crisis for MPC, not all of which were the fault of MPC, we decline to address the issue further in this order.

40. Several intervenors argued that no emergency exists because Southern Company either already intends or could be forced to financially support MPC. The

³⁴ Holland Rebuttal, pp. 3-9; Feagin Rebuttal, pp.4-5.

Company admitted that Southern Company had already provided a loan to MPC to pay the SMEPA deposit earlier this year and has committed to loan the funds necessary to complete the Mirror CWIP refund.³⁵ But both Mr. Holland and Mr. Feagin made clear that Southern Company has made no future commitments to provide additional equity and that continued financial support by Southern Company through intercompany loans was both unfair and not absolute.³⁶ Despite argument to the contrary, neither MPC nor this Commission possess a legal means to force Southern Company to provide financial support to MPC. MPC, not Southern Company, holds the certificate of public convenience and bears the obligation to serve. Southern Company's financial support to date is noted, but we cannot guarantee that it will continue. Regardless of the potential for financial support from Southern Company, this Commission is extremely concerned about the financial constraints and risks posed by a public utility that has no meaningful access to outside capital, especially during hurricane season.

41. The Staff agrees that the Commission's consideration of emergency rate relief is appropriate: "The Staff believes it is important for the Commission to consider the projected financial condition of the Company without any interim rate relief. Evidence indicates that the Company's financial condition is likely to deteriorate before the Commission can issue a final decision in this matter, because

³⁵ Holland Rebuttal, p. 10.

³⁶ Holland Rebuttal, p. 11-12; Feagin Rebuttal, p. 6.

the Company's current rates are not adequate to support its revenue requirement. Therefore, under the Public Utilities Act, interim rate relief could be appropriate."³⁷

42. Based upon the foregoing, this Commission finds that emergency temporary rates are required to prevent injury to the business or interest of the people or any public utility of this state in case of an emergency. We now turn to the specific rate relief to be granted.

B. Approval of Temporary Rate

43. Mr. Feagin testified that approximately \$200 million annually would be required to support the cash needs until after the Kemper Project commercial operation date.³⁸ However, MPC requested that the temporary rate be equal to the previous rate approved by the Mirror CWIP Order, which was sufficient to collect approximately \$159 million annually. Mr. Feagin testified that although this amount was not sufficient to fully address the Company's cash needs, this rate level was proposed only because the rate design had already been done, saving weeks of required calculation and testing, and minimizing the impact to customers, because it would have resulted in no rate change had the emergency relief been granted prior to July 20th.³⁹

44. In addition to offering the Company's \$159 million proposal, the Staff offered four different alternatives in its response to MPC's petition: \$89 million

³⁷ Staff's Response to Mississippi Power Company's Petition for Interim Rates Pursuant to Miss. Code Ann. § 77-3-41, MPSC Docket No. 2015-UN-80, p. 2 (July 24, 2015) [hereinafter "Staff Response"].

³⁸ See Feagin Rebuttal, p. 9.

³⁹ Feagin Rebuttal, pp. 8-9.

annual revenue collection; \$100 million annual revenue collection; \$115 million annual revenue collection; \$125 million of annual revenue collection.⁴⁰ All of the Staff's different alternatives varied by changing the amortization period for the Kemper Project regulatory assets balance.⁴¹ The Staff's response also raised several other fact and policy issues concerning the calculation of the revenue requirement for the In-Service Asset. But as previously stated, these issues are irrelevant to the current scope of this order and will be addressed in subsequent hearings to be held later this year.

45. The relevant fact at this juncture is what is the minimum required to avert the impending emergency. The Staff's response does not address this issue. In fact, Mr. Feagin's exhibits and testimony provide the only evidence on this issue. Exhibit____(MHF-14) indicates that without any emergency rates, MPC will run out of cash as early as November of this year. Even with the requested rate increase, the Company projects to be cash negative after March of 2016.⁴² However, Mr. Feagin testified that if the Commission rules on the In-Service Asset Proposal prior to this time, MPC expects lenders to begin to regain confidence in MPC and provide any necessary debt financing to operate the Company's business.⁴³

46. Our primary concern in this proceeding is not with the rationalization of MPC or the Staff for how each derived its respective revenue calculations

⁴⁰ Staff Response, p. 8.

⁴¹ *Id.*

⁴² Feagin Direct, p. 26.

⁴³ Feagin Rebuttal, p. 8.

supporting temporary relief. We are primarily concerned with preventing further injury to the Company and its customers. We find, based upon the evidence, that a temporary rate based upon an annual collection of \$159 million, which will produce approximately \$13 million on average per month, should be sufficient to stabilize MPC's cash flow at least until this Commission can make a ruling on the In-Service Asset Proposal. It is important to this Commission that MPC maintain adequate financial health and credit quality in order to allow continued reliable and cost-effective service to customers. The evidence before this Commission demonstrates that the requested \$159 million annual revenue level represents the minimum necessary in the near term to address the Company's current financial crisis. Therefore, MPC is hereby authorized to implement, as temporary emergency rates and subject to the provisions of this order, the rates attached as Exhibits "C" and "D" to the Company's July 10th First Supplemental Filing beginning with the first billing cycle of September.

C. Conditions Precedent

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

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

(b) As soon as practicable but no later than the start of the first billing cycle of September, MPC shall file a refunding bond with this Commission with Mississippi Power Company as the principal and a surety company duly authorized to do and doing business in Mississippi as the surety payable to the State of Mississippi, for the use and benefit of all interested customers of Mississippi Power Company in a total amount of Fifty Million Dollars (\$50,000,000.00).⁴⁴

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

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

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

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

⁴⁴ The \$50 million bond amount was calculated assuming \$13 million per month of collections (i.e. \$159 million annually) for 4 months, which is consistent with the schedule to be established by this Commission for consideration of the In-Service Asset Proposal.

ORDERED that as soon as practicable but no later than the start of the first billing cycle of September, MPC shall file a refunding bond with this Commission with Mississippi Power Company as the principal and a surety company duly authorized to do and is doing business in Mississippi as the surety payable to the State of Mississippi, for the use and benefit of all interested customers of Mississippi Power Company in a total amount of Fifty Million Dollars (\$50,000,000.00).

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

Chairman Lynn Posey voted ____; Vice-Chairman Steve Renfroe voted ____; and Commissioner Brandon Presley voted ____.

SO ORDERED by the Commission on this the ____ day of August, 2015.

MISSISSIPPI PUBLIC SERVICE COMMISSION

LYNN POSEY, CHAIRMAN

R. STEPHEN RENFROE, VICE-CHAIRMAN

BRANDON PRESLEY, COMMISSIONER

ATTEST: A True Copy

KATHERINE COLLIER, ESQ.
Executive Secretary

Effective this the ____ day of August, 2015.