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VIA E-MAIL
VIA U.S. MAIL

Katherine Collier, Esq.
Executive Secretary
Mississippi Public Service Commission
501 North West Street, Suite 201A
Jackson, MS 39201

**Re: Notice of Intent of Mississippi Power Company for a Change in Rates Supported by a Conventional Rate Filing or, in the Alternative, by a Rate Mitigation Plan in Connection with the Kemper County IGCC Project
Docket No. 2015-UN-80**

Dear Katherine:

On behalf Mississippi Power Company, I have enclosed the original and twelve (12) copies of MPC's Proposed Order on Notice of Intent and First Supplemental Filing for filing in the above-referenced docket. I have also included a copy of the first page of the filing, which I appreciate you file-stamping and returning to me in the enclosed, self-addressed, stamped envelope.

Thank you for your assistance in this matter.

Very truly yours,



Ben H. Stone

BHS:hr

Attachments

cc: All Parties of Record
Shawn Shurden, Esq.
Mr. Virden Jones
Chad Reynolds, Esq.
Mr. Billy Thornton
Mr. Stephen Stiglets
Mr. Ben Vance

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

ORDER

THIS matter is before the Mississippi Public Service Commission (“Commission”) on the Notice of Intent and First Supplemental Filing filed by Mississippi Power Company (“MPC” or the “Company”) wherein MPC petitioned the Commission to establish permanent rates for a portion of the Kemper County IGCC Project (as previously defined by Commission order in Docket No. 2009-UA-014). An evidentiary hearing on MPC’s request was held on Tuesday, November 10, 2015, in the Commission’s hearing room located on the First Floor of the Woolfolk State Office Building in Jackson, Mississippi. At such hearing, certain parties were subjected to cross-examination. At the conclusion of the evidentiary hearing, the Commission took the matter under advisement. The Commission, being fully apprised in the premises and having considered the documents and record before it does hereby find and order as follows:

1. The Commission’s findings in this Order provide the Company with permanent rate relief, supported by a prudence finding, related to the In-Service Asset Proposal presented on July 10, 2015 in MPC’s First Supplemental Filing. The

Commission has relied upon its expert judgment and discretion to reach a resolution balancing the interests of all stakeholders. The Company's In-Service Asset Proposal requested rate recovery associated with those portions of the Kemper County IGCC Project ("Kemper Project" or the "Project") which had already been completed and placed into service, and which are already serving MPC's customers.¹

2. This Order is divided into four sections. Section I focuses upon the Kemper Project's background and the developments which have led to and occurred within this proceeding. Section II discusses the Stipulation reached in this proceeding. Section III outlines the legal authority and principles relevant to this Order and provides the Commission's findings, both with respect to broad, overarching legal issues and with respect to the reasonableness of specific revenue requirement calculation inputs. Section IV provides a conclusion.

3. The Commission and all parties have had the opportunity to engage in motion practice, conduct discovery, present testimony and other evidence, cross-examine adverse witnesses and participate in public hearings. As a result, the Commission has been presented with substantial evidence upon which to base its Order. Having reviewed that evidence, this Commission now finds that a rate level of approximately \$126 million, rather than the \$159 million rate requested by the Company, is appropriate. The approved rate level results in just and reasonable

¹ The In-Service Assets include the Kemper Combined Cycle and related assets; all transmission projects, including the two new 230 kV lines and substations supporting the combined cycle, which have been energized since 2013; and the Project's wastewater and natural gas pipelines.

rates for the Company and its customers and will actually result in a decrease in overall rates from the temporary rates approved in August.² This rate increase will also allow the Company to begin recovering the cost of assets which have been in-service and which have been benefitting MPC's customers (without any associated rate recovery) for more than a year.³ This Order does not rely upon the "Mirror" CWIP relief overturned by the Mississippi Supreme Court, or any authority contained within the Baseload Act.⁴

4. The Commission's findings are supported by the Stipulation entered between MPC and the Mississippi Public Utilities Staff ("Staff"), which this Commission expressly adopts in full and without modification. While the Commission has independently analyzed all the evidence in this proceeding, it has likewise reviewed the Stipulation in the context of that evidence and hereby approves of and adopts the agreement reached between MPC and the Staff in this case for the reasons discussed in greater detail herein. In so doing, the Commission also affirms the value and desirability of stipulations and compromise, particularly in contested matters before this Commission. Stipulations negotiated between

² The Commission understands that the Company has, in several cases, referenced cost savings associated with placing the Kemper Combined Cycle into service. The Commission also understands that these "cost savings" will not produce a net decrease, in the near-term, on customers' bills. Such cost increases are unavoidable when new baseload generation is added to a utility's fleet, but the Commission has worked diligently to minimize those cost increases in this proceeding. The Commission unanimously found a "need" for new generation in the Certificate docket, as Commissioner Presley noted at the November 10, 2015 hearing, and acted to meet that need. The Kemper CC facility is now operating daily in economic dispatch, to the undeniable benefit of customers.

³ The Kemper Combined Cycle was placed in service in August, 2014, while other In-Service Assets have been operating since 2013.

⁴ See Transcript (not proofed), MPSC Docket No. 2015-UN-80, p. 107 (Nov. 10, 2015).

parties, particularly when related to proceedings as complex as those ongoing in this docket, promote regulatory efficiency and the judicious use of regulatory resources.⁵ A high regard for regulatory efficiency and for the judicious use of regulatory resources benefits all utility stakeholders, not least of all utility ratepayers, who ultimately bear the majority of the regulatory cost burden.

5. The significant terms stipulated to are as follows: MPC will be allowed to place into effect a rate designed to recover a retail revenue requirement of \$126 million, which revenue requirement is derived primarily from a combined cycle capital cost of \$575.36 million. MPC's rate request and the subsequent stipulation both exclude the 15% portion of the Project's capital and O&M costs that had been expected to be covered by South Mississippi Electric Power Association's ("SMEPA") purchase of the facility, but which purchase was subsequently announced to be cancelled after the Company filed its initial Notice of Intent. MPC also agreed in the Stipulation to reduce significantly its land costs included in the In-Service Asset Proposal to a total of \$18.4 million; to exclude all claimed beneficial capital, force majeure, and change in law cap exceptions from the Company's revenue requirement; to include \$5.6 million in projected ad valorem tax expenses in the In-Service Asset Proposal that would have otherwise been recovered in MPC's existing ATA rate clause; to reverse all adjustments related to the proposed securitization financing arrangement; to provide a specific formula for ensuring that the Company's capital structure remains consistent with the capital structure used in

⁵ Stipulations are specifically authorized by Section 77-3-39 of the *Mississippi Code of 1972, as amended* and in RP 13 of the Commission's Public Utilities Rules of Practice and Procedure.

MPC's rate projections; and to amortize the In-Service Asset Proposal's regulatory assets over a period ranging from two to ten years, depending on the specific costs included in each regulatory asset account. A copy of the Stipulation is attached as Exhibit "A" hereto.

6. Ultimately, the revenue requirement inputs approved by the Commission in this case are subject to the broad discretion afforded to this expert body by both statute⁶ and case law.⁷ For instance, the Commission could approve amortization periods of various terms to recover the Project's regulatory asset accounts, thereby altering the Company's approved annual revenue requirement by tens of millions of dollars. The amortization period chosen, although impacted by underlying accounting principles, could reasonably reflect a wide range of discretionary preferences which could have a major impact on the Company's approved rate. All parties agreed that the establishment of amortization periods was largely a policy decision subject to broad but reasonable discretion of this Commission. The specific amortization periods approved by the Commission herein balance customers' interests in having the lowest reasonable rates with the Company's need for timely cost recovery.

7. The Commission is not currently approving recovery of any capital costs deemed to be in excess of the In-Service Assets' initial certified estimate.⁸

⁶ MISS. CODE ANN. § 77-3-43.

⁷ *State ex rel. Pittman v. Miss. Pub. Serv. Comm'n*, 520 So. 2d 1355, 1357 (Miss. 1987) (discussing the "broad authority and discretion promulgated in favor of the Commission").

⁸ MPC's \$2.4 billion Kemper Project certified estimate did not identify with specificity in all cases the various assets and associated costs that make up the In-Service

Although the Kemper Combined Cycle's ("Kemper CC") actual cost to complete was roughly \$785 million (approximately \$80 million of which has already been written off by MPC), MPC shall only include the \$575.34 associated with its initial estimate in its approved rate calculations. No party suggested that a similar combined cycle facility could be built at lower cost, or that any imprudence had occurred during the Kemper Combined Cycle's construction. Remaining eligible costs not yet included in rates will be deferred for ratemaking purposes and will be reviewed by this Commission in the future. All of the costs underlying the stipulated revenue requirement are deemed both prudent and "used and useful." MPC's witnesses testified to the continuing, reliable operations of the Kemper CC and the energy savings associated therewith.⁹

8. For the reasons expressed in greater detail below, the rate approved in this proceeding appropriately balances the interests of all parties, MPC's customers, and the public at large, and supports the Commission's clear authority to continue protecting those interests in any future Kemper-related rate decision.

I.

9. The Kemper Project has been before this Commission in numerous proceedings since it was first proposed. More than six years ago, the Company submitted its Petition for Facility Certificate seeking authority to construct,

Assets. However, MPC presented a detailed estimate and allocation to derive a "certified estimate" for the In-Service Assets, which for the combined cycle-related assets equaled \$575.34. See Exhibit___(MPC-2) to MPC's Kemper CC Filing dated August 18, 2014. No party took issue with the Company's estimate. AFUDC associated with costs under the certified estimate are also included for recovery, consistent with the Stipulation.

⁹ Transcript (not proofed), MPSC Docket No. 2015-UN-80, p. 53, 85 (Nov. 10, 2015).

operate, and maintain a new integrated gasification combined cycle baseload generating facility in Kemper County, Mississippi. Following a seventeen month certification process that far outstripped (both in terms of detail and length) any certificate analysis conducted in Mississippi history,¹⁰ the Commission recognized a baseload generation need in MPC's service territory and found that the Kemper Project was the best option to meet that need. The Kemper Project's certificate was appealed and was affirmed two years later, in 2012, in the Commission's Final Order on Remand.¹¹ The Commission acknowledged that the certificate docket represented "the most thoroughly analyzed certificate petition ever presented to the Commission."¹²

10. The Commission's Final Order on Remand synthesized thousands of pages of evidence, ultimately providing more than 130 pages of analysis related to the Project's benefits (as well as the conditions necessary from MPC's perspective to undertake the Project and, therefore, necessary to capture those benefits) and the Project's risks (as well as the protections deemed necessary by the Commission to protect customers from those risks).

11. The Commission's findings in the Final Order on Remand are consistent with the actions of the legislative branch. The legislative branch has supported the Kemper Project and associated customer protections since the Project's inception, enacting the Species Exemption Bill, H.B. 1639 (codified at

¹⁰ See Exhibit___(JCH-21 REB), Rebuttal Testimony of John C. Huggins and Steven K. Owen, MPSC Docket No. 2013-UA-0189 (May 23, 2014).

¹¹ Final Order on Remand, MPSC Docket No. 2009-UA-14 (Apr. 24, 2012).

¹² *Id.* at 4.

Miss. Code Ann. 27-31-20), the Mississippi Public Utility Rate Mitigation and Reduction Act, H.B. 1134 (codified at Miss. Code Ann. 77-3-111 *et. seq*), and the Mitigation Act, H.B. 894 (codified at Miss. Code Ann. 77-3-106). Individually and collectively, the legislation identified above constitutes clear support for and approval of the Kemper Project, as described in the Certificate. The Legislature, however, has not had an opportunity to consider the Project's actual status, which this Commission is uniquely positioned to discuss; the determinations made in this Order have been specifically delegated to the Commission.

12. The Kemper Project's costs have now exceeded the Project's cost estimate, and its schedule has been delayed. Despite these facts, the Project is currently generating electricity through its combined cycle unit and is producing energy savings for MPC's customers through its lower operating costs. Both the risks and benefits contemplated by the Commission have begun to materialize, and it is evident that the Project has faced unforeseen challenges. Although many of the Project's challenges have not related to the assets approved for recovery in this proceeding (and therefore do not require detailed discussion herein), the overall cost overruns and schedule delays of the Kemper Project are still relevant to this case. Those challenges appear to have precipitated, at least in part, MPC's decision to seek relief in this docket,¹³ and drove MPC's decision to place the Kemper CC into service prior to the entire Kemper Project's completion.¹⁴

¹³ See Direct Testimony of G. Edison Holland, Jr., Docket No. 2015-UN-80, pp. 2-3 (May 15, 2015).

¹⁴ Miscellaneous Filing or Report and Analysis, Docket No. 2014-UA-195, pp. 2-3 (Aug. 18, 2015).

13. MPC's customers remain protected by the Project's certificate conditions. For instance, this Commission required MPC to accept a construction cost cap for the plant. Under the construction cost cap, the Company would not be able to recover certain capital costs—even if prudent—once the cap had been exceeded. This Commission found that, in addition to the Commission's efforts to monitor the Project utilizing construction and engineering experts, "the cost cap established for the majority of the Kemper Project [would] sufficiently mitigate the risks associated with not having final estimates based on a detail design."¹⁵ As a result of this Commission's wise decision to implement these protections, MPC has charged more than \$2 billion to earnings to date.

14. Although the cost cap has functioned as planned, other portions of the Certificate order have been more challenging to implement. The Project's certificate recognized that MPC had a need for CWIP relief designed to ensure MPC's financial stability during the Kemper Project's construction; consequently, the Commission authorized MPC's recovery of CWIP in calendar years 2012, 2013, and 2014.¹⁶ Unfortunately, due to a number of changing circumstances, CWIP relief was not granted and, prior to this Order, a prudence determination had not been made.

¹⁵ *Id.* at 61. The Commission also acknowledged that such limited pre-construction design was a reality of utility practice. The Final Order on Remand stated that "[g]iven the limited activities that a utility is authorized to do prior to receiving a certificate, it is generally unreasonable to expect the Company to produce, at this stage, a more detailed or accurate estimate. In fact, the Commission notes that the Company's FEED Study efforts exceed the level of detail that is typically undertaken in certificate proceedings. Nevertheless, the Commission must always be mindful of the uncertainties that exist in an estimate and the possible consequences to customers that can arise."

¹⁶ *Id.* at 117.

Refusing to grant the CWIP they had recognized as needed in granting the certificate, the Commission approved a surrogate form of rate relief, “Mirror” CWIP.

15. The Mississippi Supreme Court’s opinion in *Mississippi Power Co. v. Miss. Pub. Serv. Comm’n*¹⁷ overturned the “Mirror” CWIP Order, invalidated the “Mirror” CWIP rate increase (thereby lowering MPC’s rates to 2013 levels) and required the refund of all Kemper-related rates collected to date. Those circumstances prompted MPC to file its May 15, 2015, rate case in this proceeding, which was supplemented with an alternative rate plan—the In-Service Asset Proposal—and a request for interim or emergency rate relief filed on July 10, 2015.¹⁸

16. This Commission’s August 13, 2015, Temporary Rate Order responded to MPC’s July 10, 2015, filing and found that “emergency temporary rates [were] required to prevent injury to the business or interest of the people or any public utility of this state.” The Commission, therefore, allowed MPC to implement an emergency rate (associated with a \$159 million annual revenue need/request) under bond. As Mr. Feagin testified at the November 10, 2015, hearing, this rate level was designed by MPC specifically to prevent customers from experiencing any rate shock;¹⁹ it was also chosen out of necessity, given that the calculations for such a rate level had already been completed and, once approved, could be implemented

¹⁷ 168 So. 3d 905, 916 (Miss. 2015).

¹⁸ Although the Supreme Court’s initial opinion issued in February 2015, both the Commission and MPC filed motions for rehearing. Both motions were ultimately rejected, and the Supreme Court’s mandate issued on July 2, 2015, shortly before MPC’s First Supplemental Filing.

¹⁹ Transcript (not proofed), MPSC Docket No. 2015-UN-80, p. 115 (Nov. 10, 2015).

with sufficient speed to avoid further damage to MPC's financial strength (and, therefore, its ability to provide reliable electric service).²⁰

17. Because the Commission's August 13, 2015 Temporary Rate Order resolved MPC's financial emergency, the Company's financial strength or potential emergency status were no longer deemed relevant to this proceeding, and the Commission has since focused its attention on MPC's In-Service Asset Proposal, which was also proffered in the Company's July 10, 2015 filing.

18. The Company's In-Service Asset Proposal sought recovery for only those assets currently serving MPC's customers; the largest of these assets is the Kemper CC. The record demonstrates that the Kemper CC has, to date, delivered millions of kilowatt-hours of electricity to customers, has operated with an outage rate far better than the industry average, and has saved customers millions of dollars in fuel costs by displacing higher cost generation. Additional related assets, for instance, the Project's transmission facilities and natural gas and water pipeline facilities, are also in service and benefitting MPC's customers.

19. Prior to filing its May 15, 2015, Notice of Intent in this docket, MPC had previously attempted to secure permanent rate recovery related to the Kemper CC. By August 5, 2014, it had come to the Commission's attention that MPC intended to place the Kemper CC into service sometime in the summer of 2014—consequently, the Commission ordered that MPC “file with the Commission, in a new docket, analyses supporting MPC's decision to place the CCGT, and related

²⁰ Temporary Rate Order, MPSC Docket No. 2015-UN-80, pp. 12-13, 17-18 (Aug. 13, 2015).

portion, of the Kemper Project into service.”²¹ MPC complied with the Commission’s request and submitted its filing on August 18, 2014.²² No decision has yet been rendered by this Commission in this docket, although the Kemper CC was in fact placed in service in the summer of 2014.

20. Since MPC filed its initial Notice of Intent in this docket, all parties have been afforded notice and opportunity to be heard in excess of that required by due process. The adequacy of the process afforded all parties intersects with several legal issues, which will be outlined in brief detail below before being taken up in greater detail, as necessary, under Section III, *infra*.

21. This Commission would reiterate that this Order addresses MPC’s In-Service Asset Proposal, and, as stated above, the Company’s emergency financial status was earlier resolved by this Commission’s Temporary Rate Order. Although Greenleaf CO₂ Solutions, LLC (“Greenleaf”), an intervenor in this proceeding, has raised numerous issues related to MPC’s financial status, this Commission has made clear the proper scope of these proceedings.²³ Greenleaf withdrew from these proceedings on August 4, 2015, just days before the August 6, 2015 hearing on MPC’s emergency status, where it might have properly addressed that issue.

22. This Commission would also reiterate that full and adequate notice has been provided to all parties at every step. Notice of MPC’s May 15, 2015, filing was provided, as required by law, to all persons interested therein by mailing such

²¹ Order Requiring Filing, MPSC Docket No. 2009-UA-0014 (August 5, 2015).

²² Miscellaneous Filing or Report and Analysis, Docket No. 2014-UA-195, pp. 2-3 (Aug. 18, 2015).

²³ Transcript (not proofed), MPSC Docket No. 2015-UN-80, p. 11 (Nov. 10, 2015).

notice 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.²⁴ MPC also mailed a notice to each customer pursuant to RP 9.101 of the Rules and subsequently verified such notice to the Commission as required by Rule.²⁵ Notice of the Company's filing was provided by publication on June 3, 2015, in the Sun Herald, a newspaper of general circulation in Gulfport, Mississippi and in the 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.

23. MPC also mailed a notice of its First Supplemental Filing to each customer pursuant to RP 9.101 of the Rules and again verified such notice to the Commission.²⁶ 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. The Commission entered a Suspension Order concerning the First Supplemental Filing on July 17, 2015. More than a dozen parties petitioned the Commission for and

²⁴ MPC's last major change in rates was granted in Docket No. 2013-UN-14.

²⁵ MPC filed a Verification of Notice on July 2, 2015, confirmed that MPC had 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.

²⁶ 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.

were granted leave to intervene in this proceeding, all in accordance with RP 6 of the Rules.

24. A pre-hearing conference was held on October 20, 2015, all parties were invited to attend, and many did in fact attend. An evidentiary hearing, limited in scope to only address MPC's In-Service Asset Proposal, was held in the Commission's hearing room on the 1st Floor of the Woolfolk Building in Jackson, Mississippi, on November 10, 2015. Immediately after beginning the hearing, the Commission afforded all parties another opportunity to convene privately to discuss potential settlement terms, and, following that meeting, the major terms of the Company's stipulation with the Staff were read into the public record. All parties and public commentators therefore had an opportunity to comment on the proposed stipulation. Certain parties cited into the record their intent to do so.

25. More than adequate opportunity for discovery has been afforded every party. The Commission and Staff continue to rely upon their respective expert Independent Monitors ("IMs") who meet monthly with the Kemper Project Team, and who issue formal or informal discovery requests, as needed, to ensure the Project's continued prudence. This provides the Commission and Staff both with a deep understanding of the Kemper Project. In addition, intervenors have been furnished IM reports and have been provided ample opportunity to investigate the Project on their own. Intervenors have in fact issued discovery. Mr. Thomas Blanton issued a set of data requests to MPC, while Greenleaf issued five sets of data requests to MPC. MPC also issued data requests to the Staff and to

intervenors Greenleaf, Chevron Products Company, and the Federal Executive Agencies.

26. The discovery period in this proceeding was far longer than the 80 days required by Mississippi law for utility regulatory proceedings.²⁷ MPC's First Supplemental Filing was submitted on July 10, 2015, and discovery did not close until October 16, 2015, 98 days later. MPC's First Supplemental Filing was derived from (and did not introduce evidence which had not already been provided in) the May 15, 2015, Notice of Intent submitted almost two months prior to MPC's First Supplemental Filing.

27. Aside from the robust record developed in this case, many of the issues relevant to the Kemper Project's prudence (and therefore relevant to MPC's In-Service Asset Proposal) were already evaluated in Docket No. 2013-UA-189, where a significant amount of discovery was conducted and where substantial testimony and exhibits were filed by MPC and by the Commission's and Staff's Independent Monitors ("IMs"). There is significant overlap between the intervenors in Docket No. 2013-UA-189 and the intervenors in this proceeding, although not all intervenors in this docket chose to participate in that case. The Commission notes, however, that MPC's incorporation of the evidence from prior Kemper dockets was initially made in its May 15th filing and later in specific testimony filed throughout the case. This incorporated evidence is already available to the public through the Commission's files and, by extension, through its website. Therefore, those parties that were not intervenors in the previous Kemper dockets had more than ample

²⁷ MISS. CODE ANN. § 77-3-37(7)(b).

notice and opportunity to review and investigate this prior filed evidence and to cross-examine MPC's witnesses on such testimony in this proceeding as it related to the In-Service Assets.

28. Five parties presented testimony at the Commission's November 10, 2015, hearing pursuant to the administrative procedures established by this Commission for the hearings. Mississippi Power Company presented eight witnesses, divided among two panels, to support its request. Mr. John C. Huggins and Mr. Steven K. Owen testified with regard to the Project's engineering and construction, while Mr. Samuel G. Sumner, Jr. testified regarding the Project's operational performance and expectations and Mr. Garey C. Rozier, a rebuttal witness, addressed resource and scenario planning and various methods of viability analysis. MPC identified this group as its "prudence panel," seeing as how the group was prepared to discuss the prudence of the In-Service Assets' planning, construction, and operation. MPC also presented a "finance panel," consisting of Mr. Moses H. Feagin, the Company's CFO, Ms. Cindy F. Shaw, the Company's Comptroller, Mr. Lawrence J. Vogt, the Company's Director of Rates, and Dr. James Vander Weide, the Company's cost of capital expert. This panel was presented to discuss issues with MPC's accounting, revenue requirement, and rate calculations. All of MPC's witnesses adopted their pre-filed testimony at the November 10, 2015, hearing.

29. Mr. Michael P. Gorman and Mr. Charles S. Griffey, independent consultants, testified on behalf of Greenleaf, Chevron Products Company, and the

Federal Executive Agencies. Mr. Gorman's testimony addressed the potential risks of securitizing Kemper Project costs and disputed MPC's revenue requirement calculation, focusing on topics such as the Company's capital structure and regulatory asset amortization period. Mr. Gorman suggested amortizing the Project's regulatory assets over a ten-year period, and as shown in Mr. Gorman's Exhibit____(MPG-1), Mr. Gorman's recommendations produced a revenue requirement of \$83.6 million.

30. Mr. Griffey's testimony encouraged the Commission to minimize the Company's cost recovery in this proceeding in light of the pending uncertainty regarding the Project's ultimate cost and performance. Although several of Mr. Griffey's arguments were misplaced,²⁸ the Commission appreciates Mr. Griffey's thoughtful analysis of the cost of a standalone CCGT. Mr. Griffey suggested denying MPC's In-Service Asset Proposal in full but, in the alternative, proposed exclusions yielding a \$49.31 million revenue requirement.²⁹

31. The Staff empaneled three witnesses: Mr. Ralph C. Smith and Mr. Mark S. Dady testified on behalf of Larkin & Associates, the Staff's accounting IM, while Mr. Donald Grace testified for Cost Plus Consulting, a subcontractor to Critical Technologies Consulting, the Staff's engineering and construction IM. The Staff's witnesses testified in support of the stipulation reached between the Staff and the Company.

²⁸ For instance, Mr. Griffey's pre-filed testimony suggested that the Company should be required to procure a new certificate—a theory already disposed of by this Commission, as discussed in greater detail herein.

²⁹ Direct Testimony of Mr. Charles S. Griffey, pp. 35-36.

32. All of the witnesses identified above were made available for cross-examination. Although Mr. Blanton, an intervenor in the proceeding, did not file testimony, his attorney cross-examined the Company's witnesses. With the exception of the Commission's counsel, no other non-testifying participants opted to conduct cross-examination.

33. Throughout these proceedings, this Commission has already resolved a number of legal and regulatory issues. Although the Commission's prior determinations may be discussed below, where appropriate, a brief, initial overview appears to be warranted: the Commission has found that the Kemper CC does not require a new, standalone certificate, and that facility certificates do not typically contemplate use of only one fuel source.³⁰ The Commission also found that the Mississippi Supreme Court's invalidation of the Settlement Agreement in *Mississippi Power Co., v. Miss. Pub. Serv. Comm'n*,³¹ had no bearing on the Commission's consideration of the In-Service Asset Proposal, in light of the fact that the Company's In-Service Asset Proposal relies upon law not yet addressed by the Mississippi Supreme Court and because the In-Service Asset Proposal is properly filed under Section 77-3-106 of the *Mississippi Code of 1972, as amended*.³² Additionally, the Commission retains its ability to make a decision regarding the balance of the Project's prudence when the entire Project is placed in service. Only the In-Service Asset Proposals are relevant to this Order, and, should the relief

³⁰ Order Denying Motion to Dismiss, MPSC Docket No. 2015-UN-80 (Sept. 1, 2015).

³¹ 168 So. 3d 905 (Miss. 2015).

³² Order, Docket No. 2015-UN-80, pp. 6-7 (Nov. 3, 2015).

granted ultimately be insufficient, the Company will again be able to petition this Commission for temporary, emergency relief subject to bond.

II.

34. On the eve of the In-Service Asset Proposal evidentiary hearings, Chevron's counsel requested that the hearings be postponed to allow the parties an opportunity to continue settlement discussions that were initiated at the prior pre-hearing conference. To accommodate this request, the Commission delayed the hearings for approximately an hour to permit the parties to meet and potentially resolve or simplify some or all of the issues presented. The settlement meeting was not attended by the Commissioners, but all parties of record were invited to attend. The Commission's general counsel attended for purposes of organizing the meeting only. During this meeting, MPC and the Staff shared with the parties that a full settlement had been reached in principle and that a written stipulation memorializing the settlement terms was nearing final form. After the parties were permitted time to consider this announcement, it was determined that further settlement among additional parties was not imminent and the evidentiary hearings should not be further delayed.

35. Upon completion of the settlement conference, the Commission commenced the evidentiary hearings and requested that the Staff summarize, on the record, the terms of the settlement in principle negotiated between the Staff and MPC for the benefit of the parties and the public. Copies of the draft stipulation were also circulated to the parties and the public present for the hearings. All

parties were permitted to examine witnesses concerning the terms of the draft settlement agreement; no party's right to fully present their case was affected by the announcement of the pending stipulation between MPC and the Staff. Following conclusion of the hearings, the Commission issued a post-hearing order establishing a deadline for parties to file stipulations and supporting testimony or documents and permitting any party to file objections to such stipulation for consideration by this Commission.³³

36. On November 17, 2015, the Staff filed the final Stipulation executed between MPC and the Staff. A summary of the principle terms of the Stipulation is presented below:

- a. The stipulated retail revenue requirement is approximately \$126 million annually, resulting in a total retail revenue requirement reduction of approximately \$32 million from MPC's original In-Service Asset Proposal.
- b. MPC and the Staff confirmed that the stipulated revenue requirement excluded the 15% share of the capital and O&M costs that were expected to be covered by South Mississippi Electric Power Association's (SMEPA) purchase that was announced to be cancelled after the filing of MPC's rate request in this docket. The Company reserved its right to seek recovery in a future proceeding.

³³ At the request of the Staff and without objection from any party, the Commission extended this deadline by order to November 17, 2015. This extension also extended the deadline for non-settling parties to file objections to any filed stipulations.

- c. All capital costs of the Kemper CC over the certified estimate of \$575.36 million were excluded and deferred to a regulatory asset for consideration by this Commission at a later date.
- d. All land costs not directly associated with the In-Service Assets were excluded and deferred to a regulatory asset for consideration by this Commission at a later date.
- e. The Parties stipulated to a prudence finding associated with all costs included in the stipulated revenue requirement.
- f. All adjustments related to the proposed securitization financing arrangement were reversed.
- g. The Parties stipulated to a return on equity equal to 9.225%.
- h. MPC agreed to acquire the remaining \$125 million of common equity contributions from Southern Company on or before December 31, 2015, upon the issuance of a final order by the Commission approving the Stipulation.
- i. The Parties developed and agreed upon a true-up calculation for the Company's capitalization structure and weighted average cost of capital to address the issues raised concerning the projected debt and equity issuances of the Company in the test period.
- j. The Parties stipulated to specific amortization periods for each regulatory asset accounting ranging from 2 years to 10 years depending upon the types of costs being amortized.

- k. MPC committed to file another rate request within 18 months of a final order in this case.
- l. The Parties agreed that the temporary rates authorized by this Commission on August 13, 2015 should terminate upon approval and implementation of the stipulated rates. The Stipulation also calls for a rate refund in the form of a one-time bill credit to customers of record within 90 days of the date of this Order. The bill credit shall 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.

37. MPC filed testimony from Moses Feagin and the Staff filed testimony from Ralph Smith, its IM, in support of the various compromises reached. Both witnesses testified that the Stipulation would result in just and reasonable rates and represented a fair and reasonable compromise of the many issues presented in this case. None of the parties filed testimony objecting to the Stipulation. Having reviewed the Stipulation and the post-hearing testimony, the Commission agrees that the Stipulation balances the interests of both the utility and customers. For the reasons detailed in Section III below, the Commission hereby adopts in full and without modification, the Stipulation reached by the Staff and Company in this case, which the Commission finds to be supported by substantial evidence in the

record and well within the policy discretion and legal authority held by this Commission.

III.

38. The overwhelming majority of issues raised by intervenors in this case were procedural and legal in nature. A discussion concerning the more substantive issues raised in this proceeding is warranted, and shall be included among the Commission's findings below.

A. Overarching Legal Findings

39. The Commission finds that it has jurisdiction over the parties and subject matter in this proceeding. The Commission also finds that MPC has adequately complied with the requirements of the Act and the Rules regarding requests for rate relief and has provided all of the information relevant to and necessary for the Commission to evaluate the In-Service Asset Proposal and to support our Order in this Docket. Therefore, for good cause shown, the Commission hereby waives each and every other filing requirement that may be prescribed by the Commission's Rules.

40. Further, as discussed *supra*, MPC has provided more than adequate notice. MPC provided direct notice to each of its customers upon filing both its May 15, 2015, Notice of Intent and upon filing its July 10, 2015, First Supplemental Filing. This is in compliance with the notice requirements contained in the Commission's rules. RP 9.101 requires that, when a utility makes a filing for a major change "the utility shall concurrently provide written notice of the filing to

each affected customer, briefly summarizing the proposed changes in rates.” MPC in fact did so.

41. The Commission interprets paragraph 172 of the Commission’s April 24, 2012 Final Order on Remand to prohibit recovery of costs in excess of the Project’s initial estimate until after the entire Project is placed into service.

Paragraph 172 of the Final Order on Remand states as follows:

Section 77-3-14 requires a public utility to submit an estimate of construction costs, and the Commission must review and approve the estimate before granting a certificate allowing construction. As to facilities treated under the Baseload Act, such as Kemper, “recovery of any construction costs incurred in excess of the amount estimated by the public utility in a certificate proceeding will be addressed by the commission in a proceeding after the generating facility is completed and commences commercial operation, upon petition by the public utility.” Thus, the law contemplates that cost overruns should be addressed by the Commission after they occur and the plant is placed into commercial operation. Consequently, the Company’s approximate \$2.4 billion estimate, in which MPCo expressed such confidence, serves as the first measure of cost recovery protection for ratepayers. Utilizing these traditional tools, 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.

Based on the foregoing, the Commission finds that it is reasonable and appropriate to exclude costs between the \$2.4 billion estimate and the \$2.88 billion cost cap from rates at this time.

42. Although the In-Service Assets is completed and placed into commercial operation and the cost of the In-Service Assets is not in excess of \$2.4 billion, the Commission finds that it is proper to use the portion of the Combined Cycle costs identified by MPC as corresponding with the initial \$2.4 billion estimate for purposes of this filing. The Commission also finds that further subdivision into more discrete units would be improper; in other words, the Commission does not intend to limit the future recovery of individual valves or pipes which may exceed the initial estimate, but will simply limit this actual cost-versus-estimate analysis, for purposes of Paragraph 172, to a Combined Cycle or IGCC facility-level review. The Stipulation terms are consistent with these findings.

B. Statutory Framework for Rate Filings

43. The rate relief approved in this Order falls under the distinct authority of two separate and independently sufficient sections of the *Mississippi Code of 1972, as amended*. On May 15, 2015, Mississippi Power Company filed its Notice of Intent in this docket, the initial filing in a typical Commission rate proceeding. MPC's Notice of Intent presented the Commission with three unique rate proposals: a "2017 rate mitigation filing," a "2019 rate mitigation filing" and a "traditional" rate proposal. The first two options would have fixed rates through 2017 and 2019, respectively, and were authorized by Section 77-3-106 of the *Mississippi Code of 1972, as amended*. MPC's traditional rate filing is required under Section 77-3-106 and complied with the requirements of Section 77-3-37 of the *Mississippi Code of 1972, as amended*. None of the options presented by the Company relied upon the

Baseload Act or were otherwise contrary to the Supreme Court's recent opinion. The Company's First Supplemental Filing presented a fourth alternative, the In-Service Asset Proposal, taken up by the Commission in this Order. As stated above, the First Supplemental Filing also sought authority for temporary, emergency rates under Section 77-3-41 of the *Mississippi Code of 1972, as amended*, but, at this juncture, neither MPC's temporary, emergency rates nor the Company's (i) 2017 rate mitigation filing, nor (ii) 2019 rate mitigation filing, nor (iii) traditional filing are currently before the Commission. This Order addresses only the In-Service Asset Proposal, which was derived from the first year of the Company's multiyear 2019 rate mitigation filing. The Company's In-Service Asset Proposal complied with the requirements of, and is authorized by, both Sections 77-3-106 and 77-3-37 of the Mississippi Code.

44. Section 77-3-37 of the *Mississippi Code of 1972, as amended*, provides the requirements for public utility rate requests submitted under the Mississippi Public Utility Act. Section 77-3-37(2) sub-sections (a) through (n) provide the standard documentation necessary when filing a utility rate request. MPC has in fact provided all the information required therein, or has, as appropriate, received a waiver in this case. MPC's Notice of Intent included or incorporated all of the below documentation:

- a. twelve separate testimony filings from various MPC witnesses provided during the Commission's prudence evaluation in Docket No. 2013-UA-189;

- b. more than 125,000 pages of data request responses related to the Project's prudence, provided in Docket No. 2013-UA-189;
- c. seven separate testimony filings from various MPC witnesses supporting the Company's Notice of Intent rate requests, and which included exhibits providing various documentation required by statute and Commission rule;
- d. MPC's Articles of Incorporation;
- e. an MPC balance sheet as of March 31, 2015;
- f. an actual operating statement, setting forth revenue and expenses by account numbers for the twelve months ending March 31, 2015;
- g. pro forma operating statements in the same form as the actual statements beginning with the effective date of the proposed changes (a) without giving effect to the changed rates and (b) giving effect to the changed rates under the 2017 and 2019 rate mitigation filings;
- h. Federal Income tax returns and State Income tax returns, with all required attachments and schedules, for 2011, 2012 and 2013;
- i. a copy of the notice to customers to be sent pursuant to RP 9;
- j. a statement of (a) the amount and kinds of stock authorized, issued and outstanding; (b) the number and amount of bonds authorized and the number and amount issued; and (c) the rate and amount of dividends paid during the five previous fiscal years and the amount of capital stock on which dividends were paid each year;

- k. an analysis of the surplus covering the period from the last calendar year for which an annual report had been filed with the Commission to the date of the balance sheet referenced above;
- l. a description of the utility's property, including a statement of the original cost of the property and the cost to the utility; and
- m. a list of the names and addresses of all "Interested Persons" as defined by RP 2.115 of the Commission's Rules.

The Commission's analysis in this proceeding began with, but has now extended well beyond these required submissions. The Commission has analyzed the numerous motions and testimony filings submitted between May 15 and the Commission's November 10 hearing. A significant portion of the record relied upon by this Commission in issuing this Order was identified by MPC at the hearing by presenting the Commission and all parties with a list of the pleadings, testimony, and data requests the Company moved to introduce into the record. The Commission has also analyzed that evidence, a list of which is provided as Exhibit "B" hereto, in support of its decision. Although the procedural motions and orders issued in this docket are too numerous to list here, and although many of the issues disputed therein are discussed in this Order, the Commission would also incorporate its prior legal findings to the extent they support the relief granted in this Order.

45. Section 77-3-106 of the *Mississippi Code of 1972, as amended*, prescribes statutory authority also relevant to MPC's request for rate relief in this

case; this Commission has previously discussed the applicability of Section 77-3-106 to MPC's In-Service Asset Proposal while rejecting Mr. Blanton's Motion to Deny, and would repeat its position here for the benefit of the record. The Commission stated:

MPC's rate proposal in its *First Supplemental Filing* falls outside the definition of a "rate mitigation plan" since the proposal is based on the costs of assets already in service and from which MPC has received no rate recovery. In the *First Supplemental Filing*, MPC states, as follows

MPC hereby amends its *Notice of Intent* in this docket to add a fourth proposal—the In-Service Asset Proposal. This proposal does not constitute a rate mitigation plan and is limited in scope to only those Kemper-related assets that are currently serving customers. In other words, the proposal contains no costs associated with assets not yet in service.

According to Section 77-3-106(1)(a), a "rate mitigation plan" is defined, as follows:

[A] rate plan designed to mitigate the initial rate impacts of collecting the revenue requirements associated with the inclusion of a newly constructed generating facility in rate base and rates by establishing a plan for collecting or phasing in the revenue requirements over a period that is not to exceed ten (10) years.

MPC's Notice of Intent and First Supplemental Filing offer conventional rate recovery proposals and rate mitigation plans as authorized by Miss. Code Ann. § 77-3-106, *et seq.* Section 77-3-106 (3)(b) requires that, in addition to a rate mitigation plan, MPC must submit a conventional rate recovery proposal without a rate mitigation plan. The In-Service Asset proposal is this plan.³⁴

46. The Commission also notes that MPC's submission of the In-Service Asset Proposal was consistent with Commissioner Renfroe's explicit guidance.

³⁴ Order, MPSC Docket No. 2015-UN-80, pp. 6-7 (Nov. 3, 2015).

During the Commission’s July 7, 2015, Open Meeting, Commissioner Renfroe said that he:

... would encourage [MPC] to consider giving this Commission another option and—the one I had—the particular one I have in mind would consider the equipment that’s already in operation. The combined cycle has been in operation for quite a while, and recovering those costs should be more straight forward, in my view. Although, I’m not suggesting an outcome on any of these options. I think that you might reduce the risk of having nothing approved if you gave us another option that would include the—at least the equipment that’s already in service, as well as other costs that could be identified that would be ripe for recovery.³⁵

47. MPC’s In-Service Asset Proposal fits within, meets the requirements of, and is authorized by Sections 77-3-37 and 77-3-106 of the *Mississippi Code of 1972, as amended*.

C. The Combined Cycle is Operating, as Certified by this Commission

48. This Commission has already found that the Kemper Combined Cycle is currently “used and useful”³⁶ and does not require a new certificate.³⁷ The Commission found that Kemper CC is “used and useful” based upon the fact that the facility had been “providing service and benefits to ratepayers for some time, with MPC having received no recovery.” The Commission’s decision affirming the adequacy of the facility’s certificate was rooted in longstanding Commission practice (which does not generally contemplate the issuances of certificates limited to just one fuel source) and in the facts that (i) the Kemper Certificate has always

³⁵ Partial Hearing Transcript, Miss. Pub. Serv. Comm’n Open Meeting, p. 5 (July 7, 2015).

³⁶ Order Denying Motion to Dismiss, MPSC Docket No. 2015-UN-80 (Sept. 1, 2015).

³⁷ *Id.*

contemplated strategic operation on gas, and (ii) fuel diversity and flexibility are good things. The Certificate for the entire Project, as discussed above, also benefits from the Mississippi Legislature's clear support.

49. If, in the future, the Kemper Project is not available to operate reliably on syngas for a sustained period of time after the entire Project declares its commercial operation date, MPC will have an opportunity to ensure that the Kemper assets remain useful to its customers. The Commission's decision in this Order relates only to the In-Service Assets, and this Commission has not considered the Project's "fuel-switching" capabilities, which have not yet been demonstrated. Although certain cross-examination conducted during the November 10, 2015, hearing attempted to elicit testimony regarding how MPC would dispatch its facilities in hypothetical, future scenarios, the Commission finds that this topic is not currently before it. The Commission retains flexibility to address the Kemper Project's operation on syngas at a later date, and has not tied its hands in this regard, nor has the Company sought any relief associated with syngas-fired operation.

D. Prudence

50. Outside of this docket, the Commission has already defined the prudence standard applicable to public utility proceedings in Mississippi. On October 15, 2013, this Commission acknowledged that in Mississippi a "presumption of prudence" exists in favor of the utility. The Commission rejected "the notion that simply 'opening its books to inspection' or relying upon the wisdom

of management would be sufficient for [a utility] to present a prima facie case, thereby shifting the burden of production.”³⁸

51. Prudence 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.³⁹ In order for MPC to make a *prima facie* case, the Commission expected MPC to provide:

- a. An overview of the procedures and controls put in place by management to manage the development, design, engineering, procurement, construction, startup and operation of the project.
- b. An overview of the accounting procedures and controls put in place by management to properly account for the cost of the project; and
- c. A review of cost variances between the Commission sanctioned estimated amounts and incurred or forecasted amounts and an explanation for any variance where the incurred or forecasted amount exceeded the original estimated amount and the response by management to address any overruns.

52. The hundreds of pages of testimony and exhibits filed in Docket No. 2013-UA-189 and adopted by MPC’s witnesses at the November 10, 2015, hearing more than satisfied the Commission’s *prima facie* prudence requirements. As such,

³⁸ Order, MPSC. Docket No. 2013-UA-189, p. 3 (Oct. 15, 2013).

³⁹ *Id.* at 4.

the burden of production for demonstrating imprudence shifted to the Staff and intervenors.

53. No evidence has been provided raising a “serious doubt” as to the Kemper Project’s prudence in this proceeding, and the Commission finds that all of the costs included in the approved revenue requirement are prudent. The Commission was not presented with any credible evidence disputing this finding.

54. With respect to the Project’s prudence, CTC stated that “while CTC is of the opinion that the project team responded generally in an adequate manner, there were shortcomings and inadequacies in the implementation of the project that led to inefficiencies which have increased costs and have resulted in additional schedule delays.”⁴⁰ These “inefficiencies”, however, were approximated to equate with only 25% of the inefficiency’s estimated in Burns and Roe’s “cost of inefficiency” analysis in Docket No. 2013-UA-189 and, therefore, ranged from only \$21.25 to \$30.75 million.⁴¹ In addition, CTC estimated that an additional \$15 million of “inefficiencies” existed unique to the Kemper CC piping and hanger deliveries, installation, testing and retesting.⁴² Thus, the total amount of “inefficiencies” attributable to the Kemper CC was estimated to be between \$36.25 and \$45.75 million. CTC noted that these inefficiencies were lower than the \$88.71 million of costs that have been voluntarily written down by the Company specifically related to the Kemper CC. Moreover, these inefficiencies did not exceed

⁴⁰ Direct Testimony of Mr. Don Grace, MPSC Docket No. 2015-UN-80, p. 15 (Oct. 9, 2015).

⁴¹ *Id.* at 16.

⁴² *Id.* at 16-17.

those costs identified as being between the initial \$2.4 billion estimate and \$2.88 billion cost cap for the Kemper CC, and therefore any “inefficient” costs, even in the absence of write-offs by the Company, would properly be deferred until a subsequent rate case. Consequently, no additional cost disallowance was proposed due to the alleged “inefficiencies.”

55. For comparative purposes, CTC also developed an independent cost estimate of \$669.24 million for the Kemper CC and concluded “that when MPCo’s reported total cost of the CC is reduced by the write-offs already taken by the Company and the non-CC land cost, the remaining amount falls within a reasonable range of what [CTC] would expect a self-built CC to cost in this area of the country.”⁴³ Importantly, due to the limitations imposed on the Company under paragraph 172 of the Final Order on Remand, the Company’s currently approved Kemper CC rate recovery (\$575.36 million) is even lower than CTC’s independent cost estimate.

56. Mr. Griffey’s testimony also supported the prudence of costs in excess of those actually permitted for recovery in this Order. Mr. Griffey recommended that the Commission limit MPC’s rate recovery based upon estimates provided by the Energy Information Administration for the cost of a new CCGT in Mississippi.⁴⁴ Although Mr. Griffey made subsequent adjustments (for instance, removing regulatory asset costs) to lower MPC’s revenue requirement, he indicated that “\$614,151,850 of the CCGT costs could be considered prudently incurred based on

⁴³ *Id.* at 19.

⁴⁴ Direct Testimony of Mr. Charles S. Griffey, MPSC Docket No. 2015-UN-80, p. 22 (Oct. 9, 2015).

the EIA estimate.” Again, MPC is being authorized to recover only \$575.36 million in Kemper CC capital costs at this time.

57. Based on the foregoing, it is clear that the In-Service Asset costs approved for recovery in this Order were the result of reasonable and prudent decision-making.

58. The Commission’s decision on prudence is limited to the In-Service Asset costs. Questions about the prudence of expenditures for other aspects of the Kemper Project or of the Kemper Project generally are not appropriate for decision in this Order. The Commission’s certificate of convenience and necessity authorizes construction of the Project. Prudence determinations for specific expenditures of the Project other than the In-Service Assets will be made, as appropriate, upon application of the Company. Such future determinations could include expenditures for other aspects of the Kemper Project, which the Commission is deferring at this time.

E. Due Process and Taking Issues

59. The Commission’s legal obligations are guided not only by Mississippi law, but also by the United States and Mississippi Constitutions.⁴⁵ It is in the best interests of Mississippi, its citizens, and ratepayers that the Commission ensures that rates do not raise a substantial question regarding compliance with the U.S. Constitution. This Order complies with all constitutional requirements.

⁴⁵ See *Mississippi Power Co. v. Mississippi Public Serv. Comm’n*, 168 So. 3d 905, 916 (Miss. 2015).

60. The United States Constitution provides protections for both rate-regulated entities and the public in ratemaking proceedings, and the Commission has honored these protections. With respect to the general public, administrative hearings “must afford minimum procedural due process which is (1) notice, and (2) opportunity to be heard.”⁴⁶ The Company’s provision of direct notice of its filings to customers on multiple occasions, as well as the various opportunities made available by the Commission for intervention, filing of testimony, cross-examination, conference among the parties, and provision of public comment more than meet the due process requirements applicable to these proceedings.

61. Although Greenleaf has repeatedly argued that it has been deprived of due process, this Commission affirms its prior findings that Greenleaf has not been so deprived. For instance, in the Commission’s November 3, 2015, Order Denying Greenleaf CO2 Solutions, LLC’s Motion to Stay and Request for Expedited Ruling, the Commission noted that Greenleaf’s Motion to Stay argued “no fewer than seven (7) times that its due process rights [had] been violated by MPC’s discovery practices in this case. The Commission disagrees.”⁴⁷ The Commission explained that, “[a]t its core, due process ensures that ‘no court can, under our Constitutions, take away property or valuable rights from any person without giving him fair notice and an opportunity to be heard,’” but also noted that, more than thirty years ago, the Mississippi Supreme Court held that the Public Utility Act “... is not a

⁴⁶ *State Oil & Gas Bd. v McGowan*, 542 So.2d 244 (Miss. 1989).

⁴⁷ Order Denying Greenleaf CO2 Solutions, LLC’s Motion to Stay and Request for Expedited Ruling, MPSC Docket No. 2015-UN-80, p. 3 (Nov. 3, 2015).

specific grant of a property right ... to customers of a utility. Rather, it constitutes a regulation of the rate to be fixed by the public utility ...”⁴⁸

62. With respect to utilities, the government is precluded from setting confiscatory rates when it regulates certain regulated private entities that have an obligation to serve the public.⁴⁹ Where a “rate does not afford sufficient compensation, the State has taken the use of utility property without paying just compensation and so violated the Fifth and Fourteenth Amendments.”⁵⁰ “In addition to prohibiting rates so low as to be confiscatory ... exploitative rates are illegal as well.”⁵¹ The rates approved in this case are neither confiscatory nor exploitative; the Commission expects that this Order will protect MPC’s ability to maintain its financial integrity, attract capital, and compensate its investors for risks assumed. The Commission is constitutionally obligated to consider these factors.⁵²

63. Rates that do not enable a public utility to operate successfully, maintain its financial integrity, attract capital, and compensate its investors for risk assumed constitute a taking and violate the Due Process Clause. If the In-Service Asset Proposal would have been rejected, the Company may not have been

⁴⁸ *Id.* at 3-4.

⁴⁹ *See, e.g., Duquesne Light Co. v. Barasch*, 488 U.S. 299, 307-08 (1989) (citing *Covington & Lexington Turnpike Road Co. v. Sandford*, 164 U.S. 578, 597 (1896); *Fed. Power Comm’n v. Natural Gas Pipeline Co.*, 315 U.S. 575, 585 (1942); *Fed. Power Comm’n v. Texaco Inc.*, 417 U.S. 380, 391-92 (1974)).

⁵⁰ *Duquesne Light*, 488 U.S. at 308

⁵¹ *Jersey Central Power & Light Co. v. FERC*, 810 F.2d 1168, 1180 (D.C. Cir. 1987) (Bork, J.).

⁵² *Verizon Commc’ns, Inc. v. FCC*, 535 U.S. 467, 484 (2002) (quoting *Fed. Power Comm’n v. Hope Natural Gas Co.*, 320 U.S. 591, 605 (1944)).

able to operate successfully, maintain its financial integrity, attract capital, or compensate its investors for risk assumed.

64. The Commission determines that the rates approved herein constitute a diligent balancing of the due process protections available to both MPC and the public at large.

F. Specific Revenue Requirement Findings

65. “It is beyond question that the function of rate making in this state is purely legislative in character ...”⁵³ With regard to such purely legislative functions, the Commission’s discretionary authority is at its zenith—and with respect to this proceeding, the Commission has been called upon to use that discretion in balancing a number of particularly unwieldy concerns. In doing so, the Commission relied upon its unique expertise to reach a resolution ultimately in the best interest of all stakeholders.

66. The Commission explicitly acknowledges the need for integrating large, baseload generation into a utility’s fleet and the challenges of assuring corresponding rate recovery which is just and reasonable. With respect to the challenges presented by the Kemper Project, however, the Commission also explicitly recognizes the nimble and responsive approach taken by the Company in this case. The decision to place the Kemper CC into service for the benefit of customers in August 2014, thereby capturing energy savings for customers, preserving the Company’s ability to claim bonus depreciation for the Kemper CC,

⁵³ *Miss. Pub. Serv. Comm’n v. S. Cent. Bell Tel. Co.*, 464 So. 2d 1133, 1135 (Miss. 1984).

and amortizing significant regulatory assets prior to the total Project's inclusion in rates, permits meaningful rate mitigation. This is a desirable outcome.

67. The capital cost and the amortization period of the regulatory assets included in the In-Service Asset Proposal were two of the central drivers in the Company's revenue requirement calculation. In comparison to the Commission's analysis of reasonable capital costs, the Commission's analysis of an appropriate amortization period is subject to significantly more discretion. The Commission finds that the following amortization periods, starting August 2015, are reasonable for the categories of costs previously deferred to regulatory assets on the Company's books:

Screening & Evaluation Costs – 10 years

Corporate Franchise Tax – 10 years

Transmission – 10 years

Ad Valorem on AFUDC – 10 years

Prudence Proceedings – 7 years

Independent Monitors – 7 years

Deferred Depreciation & O&M (CC, Regulatory & Other Assets) – 10 years

Debt Carrying Costs – 2 years

Equity Carrying Costs – 2 years

68. Although the Company expressed a belief that recovery of these costs was essentially "overdue," because they were recurring expenses, the Commission has broad latitude with regard to this topic. At the hearing, Mr. Ralph C. Smith, the Staff's accounting IM, testified that the Commission could reasonably rely upon

amortization periods ranging between two and forty years.⁵⁴ Mr. Gorman, meanwhile, supported a ten-year amortization period for MPC's deferred expenses on the basis that such an amortization period would "mitigate costs to customers, and provide reasonable timely recovery of these costs to MPC."⁵⁵ MPC's proposal utilized a two-year amortization period for all of the Company's regulatory assets, which it had chosen primarily to keep its current rate levels unchanged.

69. The Commission finds that approval of the amortization periods listed *supra* is within the Commission's discretion, balances the interests of customers in low rates with MPC's interest in timely recovery, and will allow MPC to mitigate the Project's total rate impact when the rest of the Kemper Project comes on-line. Further, the amortization periods agreed to above will allow MPC to lower rates in the immediate future, as the rate relief granted herein will lower MPC's annual retail revenue requirement by more than \$30 million, with respect to the rates currently in effect.

70. The Commission finds the proposed depreciation rates for assets included in the In-Service Asset Proposal to be appropriate. This includes the Company's use of an original, 40-year life for Kemper's production assets. The Commission acknowledges that the Company is required to submit updated depreciation studies periodically, and that such studies may update depreciation rates, asset lives, and cost of removal rates where appropriate.

⁵⁴ Transcript (not proofed), MPSC Docket No. 2015-UN-80, p. 153 (Nov. 10, 2015).

⁵⁵ Direct Testimony of Mr. Michael P. Gorman, MPSC Docket No. 2015-UN-80, p. 21 (Oct. 9, 2015).

71. The Commission finds that stipulated land costs of \$18.4 million are reasonable. Witnesses for both the Staff and intervenors challenged the cost of land included in the Company's filing. Mr. Griffey opined that MPC's land costs were too high for this filing, due to the fact that "[s]tand-alone CCGTs take very little land ... and can be located close to existing transmission lines and gas lines."⁵⁶ The Commission bases its analysis on actual costs spent, and determines whether those costs were prudent. It is not the Commission's intention to re-litigate the Kemper certificate case, where the Project's site was chosen and approved, and no parties have presented evidence challenging the actual land acquisition activities conducted by the Company. Mr. Grace suggested allocating 24% of the project's total land costs to the Kemper CC, based on the fact that the Kemper CC did not require as much land as the entire Kemper Project will.⁵⁷ This recommendation did not appear to recognize that a significant portion of the In-Service Asset Proposal's land costs were related to the Projects' transmission and linear facilities, rather than only the plant site. Therefore, it would be inappropriate to limit MPC's cost recovery simply because the construction site for a green-field combined cycle facility would require less land than was included in MPC's rate request.

72. The \$18.4 million in land costs approved herein excludes the cost of all land not directly related to the In-Service Assets. In other words, the Commission is approving recovery of only those land costs associated with the natural gas pipeline, water pipeline, transmission facilities, and combined cycle facility and

⁵⁶ Direct Testimony of Mr. Charles S. Griffey, p. 23.

⁵⁷ Direct Testimony of Mr. Don Grace, p. 18.

related common facilities, all of which assets are currently prudent and “used and useful.” MPC’s current recovery of these costs is appropriate.

73. The Commission also finds that the O&M costs included in MPC’s In-Service Asset Proposal, as modified by the Stipulation, are reasonable. The Staff’s witness, Mr. Don Grace, calculated the Kemper CC’s actual O&M costs to be “approximately 20% higher than the average O&M cost factor of \$31.07/mWh for the other three Southern Company combined cycle plants” Mr. Grace chose for comparison.⁵⁸ Mr. Grace also found, however, that the Kemper CC’s total O&M costs were only an approximate “4% higher than the calculated O&M costs based upon industry published data. Therefore, the actual O&M costs are considered reasonable.”⁵⁹ We agree. MPC should not be penalized for the fact that the typical Southern Company combined cycle facilities out-perform the industry, particularly in light of the fact that the Kemper CC has not been designed to operate primarily on natural gas and is not intended to operate on natural gas over the long-term. The Commission also notes that, even with O&M costs slightly above the industry average, the Kemper CC has delivered actual energy savings to MPC’s customers.

74. Importantly, the Company has not even requested recovery of the entire O&M budget deemed reasonable by Mr. Grace. Although Mr. Grace agreed that MPC’s actual variable and fixed O&M costs of \$15,107,800 were reasonable, MPC’s rate filing contemplated recovery of only \$10,170,207 in Non-fuel Operations

⁵⁸ Direct Testimony of Mr. Don Grace, p. 42.

⁵⁹ *Id.* at 39.

and Maintenance Expenses.⁶⁰ Certainly, then, the O&M costs approved for recovery in this Order per the Stipulation are reasonable.

75. The Commission finds that it is reasonable to defer a final decision on the various cap exceptions included in MPC's In-Service Asset Proposal. The Company stipulated to exclude all alleged beneficial capital, force majeure and change in law cap exceptions from the In-Service Asset Proposal revenue requirement. It will be more appropriate to address these items when costs incurred above the certified estimate are considered when the remainder of the Project is placed in commercial operation.

76. The Commission finds that the stipulated Return on Equity of 9.225% is reasonable, given the posture of this case. This figure is the current Commission-approved benchmark return used in all MPC rate filings. It also happens to represent the low end of the range of returns presented in the evidence (9.225% to 10.9%). MPC is required to file another Kemper rate case within 18 months, limiting the exposure to MPC from changes in market conditions. The fact that MPC was agreeable to this Return on Equity, even though it was advocating for a higher Return on Equity, also weighs on this Commission's decision to approve the stipulated return.

77. The Company's In-Service Asset Proposal was based upon capital structure and cost of capital projections developed in early 2015. Significant and material changes in circumstances, including but not limited to the SMEPA refund,

⁶⁰ See Page 1 to Exhibit____(MHF-10), MPSC Docket No. 2015-UN-80 (July 10, 2015).

“Mirror” CWIP refund, and subsequent credit rating downgrades could materially impact the Company’s projections, thereby changing the Company’s overall cost of capital. Several intervenors expressed concern about this issue. Specifically, both the Staff and intervenor witnesses testified that expected intercompany loans from Southern Company to cover the various required refunds may lower the proposed cost of capital. Concerns were also raised regarding the probability that MPC would receive the \$125 million in equity contributions assumed to be received from Southern Company before the end of the test year. All of these issues and concerns were adequately and appropriately addressed by the terms of the Stipulation, which requires that the Company submit a true-up calculation of its cost of capital at the end of the test period, and annually thereafter, for as long as the rates approved herein remain in effect.

78. The Commission hereby authorizes MPC to defer for ratemaking purposes (and for accounting purposes to the extent allowed under GAAP) the following specific costs related to the In-Service Assets that were excluded or reduced as a result of this Order:

- a. Cost of capital on excluded land.
- b. Cost of capital and depreciation on capital over \$2.4 billion to the extent such costs do not exceed the \$2.88 billion cost cap.
- c. Cost of capital and depreciation on the excluded cap exceptions.

- d. Cost of capital and depreciation on the AFUDC related to (a), (b), and (c) above, unless the underlying amounts exceed the \$2.88 billion cost cap.
- e. O&M portion of excluded variable pay.

79. The Commission also finds that MPC is authorized to defer for ratemaking purposes the prudence costs, ad valorem on AFUDC and Independent Monitor costs incurred on or before April 1, 2016. The Company shall also calculate and defer its weighted average cost of capital on the unrecovered balance of these deferrals. The recoverability of these deferrals will be addressed within the final prudency hearing or in a subsequent rate case to be filed following the Kemper Project's declaration of commercial operation. These findings are necessary to permit the Company to defer certain Kemper costs not included in the stipulated revenue requirement so that they may be later reviewed and considered for recovery by this Commission.

80. 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 its 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. Nothing contained herein will limit the Commission's right under the law to request that MPC show cause, at any time, why its current rates related to the Kemper Project should remain unchanged.

81. Finally, the Commission finds that the central purpose of Docket No. 2014-UA-195 has been resolved by this proceeding. In Docket No. 2014-UA-195, MPC presented the Commission with evidence supporting a request to place the Kemper CC into service. Clearly, this request is mooted by the fact that the Commission is approving rate recovery for the Kemper CC and related assets in this docket. Therefore, the Commission retires Docket No. 2014-UA-195 to the file.

IV.

82. The relief granted in this Order provides for a fair balancing of the Company's and the general public's interests. These rates result from a compromise between the Staff and the Company, as well as from the Commission's and IM's thorough review of the Project's history and of all of the evidence presented.

83. Allowing MPC to recover costs related to assets which have been found prudent and which have been serving customers for more than a year is not only required by law, but is also required by fundamental notions of fairness. Further, allowing MPC to amortize significant regulatory asset costs and to begin depreciating its rate base prior to the entire Kemper Project's rate case allows for meaningful rate mitigation.

IT IS THEREFORE ORDERED that, based upon all of the above, including all of the pre-filed testimony filed and properly incorporated in this proceeding, the

pleadings, briefs, exhibits, data request responses and all other documents contained in the record, and all of the oral testimony provided at the hearings in this matter and as found by this Commission as is more fully described in this Order, that MPC is authorized to collect the rates approved herein, associated with an approximately \$126 million annual revenue requirement, consistent with the rate base, expenses, and other items established by the Stipulation. It is further,

ORDERED, that Commission Docket Number 2014-UA-195 shall be retired to the file. It is further,

ORDERED, that the In-Service Assets are “used and useful.”

ORDERED, that the costs underlying the stipulated revenue requirement, in their entirety, are prudent.

ORDERED, that MPC and the Staff shall comply in full with the terms of the Stipulation adopted by this Commission, including the obligation that MPC test its capital structure and submit a true-up calculation at the end of the test period, and the obligation that MPC file a new rate case with this Commission within eighteen (18) months of the issuance of this Order.

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 Lynn Posey voted _____; Vice Chairman R. Stephen Renfroe voted _____; and Commissioner Brandon Presley voted _____.

DATED this the ____ day of _____, 2015.

MISSISSIPPI PUBLIC SERVICE COMMISSION

Lynn Posey, Chairman

R. Stephen Renfroe, Vice Chairman

Brandon Presley, Commissioner

ATTEST: A True Copy

Katherine Collier, Executive Secretary

Effective this the _____ day of _____, 2015.