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September 30, 2019

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

**FILED**  
SEP 30 2019  
MISS. PUBLIC SERVICE  
COMMISSION

**Re: Petition of Mississippi Power Company for a Certificate of Public Convenience and Necessity for Environmental Compliance Activities Authorizing the Closure of the Ash Pond, Construction of Low Volume Wastewater Treatment Facilities, and Conversion of Bottom Ash Collection Facilities for the Plant Victor J. Daniel Electric Generating Facility in Jackson County, Mississippi  
Docket No. 2019-UA-116**

Dear Katherine:

On behalf of Mississippi Power Company in the above-referenced docket, I have enclosed the original and twelve (12) copies of the Company's Response in Opposition to Sierra Club's Motion to Require Supplementation of the Petition and a Revised Scheduling Order. Confidential Exhibits are being filed under separate, confidential cover. Also enclosed is a copy of this letter and the first page of the filing, which I will appreciate your file-stamping and returning to me. Please let me know if you have any questions regarding this matter.

Thank you for your assistance in this matter.

Very truly yours,

  
Ricky J. Cox

BHS:hr

Attachments

cc: Mr. Virden Jones  
Chad Reynolds, Esq.  
Jeff Stone, Esq.  
Shawn Shurden, Esq.  
Parties of Record

**FILED**

SEP 30 2019

MISS. PUBLIC SERVICE  
COMMISSION

BEFORE THE MISSISSIPPI PUBLIC SERVICE COMMISSION

MISSISSIPPI POWER COMPANY  
EC-120-0097-00

DOCKET NO. 2019-UA-116

**IN RE:      PETITION OF MISSISSIPPI POWER COMPANY FOR A  
CERTIFICATE OF PUBLIC CONVENIENCE AND  
NECESSITY FOR ENVIRONMENTAL COMPLIANCE  
ACTIVITIES AUTHORIZING THE CLOSURE OF THE ASH  
POND, CONSTRUCTION OF LOW VOLUME  
WASTEWATER TREATMENT FACILITIES, AND  
CONVERSION OF BOTTOM ASH COLLECTION  
FACILITIES FOR THE PLANT VICTOR J. DANIEL  
ELECTRIC GENERATING FACILITY IN JACKSON  
COUNTY, MISSISSIPPI**

**MISSISSIPPI POWER COMPANY'S RESPONSE IN OPPOSITION TO  
SIERRA CLUB'S MOTION TO REQUIRE SUPPLEMENTATION OF THE  
PETITION AND A REVISED SCHEDULING ORDER**

COMES NOW, Mississippi Power Company, ("MPC" or the "Company"), pursuant to RP 12 of the Mississippi Public Service Commission's ("Commission") Public Utilities Rules of Practice and Procedure ("Rules") and files this its Response in opposition to Sierra Club's ("Sierra Club" or "SC") Motion to Require Supplementation of the Petition and a Revised Scheduling Order ("Motion") in the above styled and referenced matter, and would show unto the Commission the following:

Granting MPC's Petition will allow the Company to proceed with construction that will lead ultimately to the closure of the ash pond at Plan Daniel<sup>1</sup> and compliance with the CCR Rule. Granting MPC's Petition *does not* foreclose the Commission's

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<sup>1</sup> Unless otherwise indicated, references to "Plant Daniel" shall mean Units 1 and 2 coal units.

continued review of MPC's generation in the Reserve Margin Plan ("RMP") docket. Stated differently, the Commission may grant the Petition now and still decide to order retirement of Units 1 and 2, in due course, if found to be in the public interest.

MPC must close the ash pond at Plant Daniel and must cease waste-streams to the ash pond no later than October 31, 2020. The only way to extend this cease-receipt date is to commit, prior to such date, to closing Units 1 and 2. The Commission, the Public Utilities Staff ("Staff") and its consultants have engaged with MPC for the past year to analyze and ascertain the best course for all stakeholders relative to MPC's generation fleet. The Commission established the RMP docket for that very purpose and has not yet set a hearing or rendered a decision on the matter.

But, this case and MPC's associated Petition does not sweep so broadly; rather, MPC must receive, in timely fashion, a certificate from the Commission so that MPC can comply with the EPA's CCR Rule. If the Commission chooses to deny MPC's Petition or chooses to delay its decision, then the Commission is effectively ordering MPC to retire Units 1 and 2, even though each unit has over 20 years of useful life remaining.

Sierra Club knows that delay by the Commission furthers Sierra Club's stated purpose of "killing coal"<sup>2</sup> at Plant Daniel before it moves on with its plans to "kill gas,"<sup>3</sup> too. Sierra Club does not oppose MPC closing the ash pond. Equally, Sierra

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<sup>2</sup> <https://content.sierraclub.org/coal/>

<sup>3</sup> <https://content.sierraclub.org/ourwildamerica/beyond-dirty-fuels-initiative;> *see also* <https://www.sierraclub.org/maryland/beyond-natural-gas> (wherein Sierra Club publicly opposes the fracking techniques that have fundamentally altered the delivered price of natural gas in North America).

Club does not assert that the Petition should be denied, as it has not contested MPC's filing. Rather, Sierra Club's only purpose is to delay these proceedings and divert the Commission's attention away from the RMP docket, where Sierra Club chose not to intervene and is foreclosed from participation.

Sierra Club's dilatory tactics should not be rewarded, and the Commission should deny Sierra Club's instant Motion. Such action will preserve the Commission's ability to fully consider the future of MPC's generation for the benefit of all stakeholders, while allowing MPC a timely path to comply with the CCR Rule.

1. Denial of Sierra Club's Motion is Proper

The Commission should deny Sierra Club's Motion because it is both dilatory and without merit. Sierra Club has employed delay tactics in a predictable attempt to kill coal. After sitting on its hands for over two (2) months, Sierra Club has tried to disrupt an orderly Commission process and create disarray in the 11<sup>th</sup> hour to derail the Company's CCR Projects, which Sierra Club knows are legally required to continue to operate Units 1 and 2 at Plant Daniel.

Why did Sierra Club intervene in this matter only to sit idly for two months until the eve of the Commission's Scheduling Order? Simply put: Because Sierra Club failed to intervene in the Commission's RMP docket,<sup>4</sup> where the Commission has initiated a full and thorough investigation and analysis of the future of MPC's

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<sup>4</sup> MPSC Docket No. 2018-AD-0145. A copy of MPC's filed Reserve Margin Plan is attached hereto as Exhibit "A" and incorporated herein by reference.

existing generating facilities, its current reserve margins, and its future generation needs.

As provided by the Commission:

The Reserve Margin Plan shall include, among other things: forecasting customer load and energy requirements; evaluating the resources available to meet the energy and capacity needs while satisfying strategic considerations; developing, evaluating and implementing demand side management and energy efficiency programs; and assessing and planning for existing and anticipated environmental laws and regulations and any other issues the Mississippi Public Service Commission deems relevant.

MPC's Plan shall also contain: (i) discrete alternatives that the Company proposes to address its current reserve margin; (ii) the timeframe over which each alternative can be implemented; (iii) a preliminary estimate of the costs of implementing each alternative, including any incremental transmission capital investment and any costs associated with retiring any un-depreciated assets; and (iv) any other impacts (financial or otherwise) not specifically prescribed herein that would have a material impact upon the service provided by MPC or the costs to customers.<sup>5</sup>

Many of the issues raised by Sierra Club in its Motion should be, and are being, addressed in the RMP docket, including the efficacy of the flue gas desulfurization system, the long-term capacity factor of Units 1 and 2, the operating costs of running those Units, anticipated future environmental regulations, fuel forecasts, the remaining value of the Units, and the expected retirement date for those Units.

Sierra Club, however, declined to intervene in the RMP docket, and is now left to conjure up unfounded reasons to delay this proceeding as a last-ditch attempt to kill coal at Plant Daniel. Sierra Club asks for a delay until December, because if they

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<sup>5</sup> Second Amended and Restated Stipulation, MPSC Docket No. 2017-AD-112, pp. 8-9 (Nov. 30, 2017).

can delay a Commission decision on MPC's application, they will effectively prevent MPC's compliance and may even get what they really want—a forced Plant Daniel retirement, whether the RMP docket determines it would be in the best interest of *all stakeholders* or not.

Sierra Club is the only stakeholder that matters to Sierra Club. And killing coal is what they do for a living.<sup>6</sup> This Commission should not change its course in this proceeding; Sierra Club's Motion should be denied. The record before the Commission is already fully developed through the Company's application, its pre-filed testimony and its data request responses. The Commission is well within its legal rights to deny Sierra Club's Motion and move forward pursuant to the Scheduling Order. It owes Sierra Club nothing at this late stage in the proceeding.

2. MPC's Petition Satisfies Mississippi Law and The Burden of Proof

MPC's petition satisfies all requirements of the Mississippi Public Utility Act and the Commission's Rules regarding facility certificates.<sup>7</sup> Sierra Club ignores the information contained in MPC's petition and the supporting testimony and exhibits of Mark Loughman, which thoroughly explains the requirements of the CCR Rules, the specific manner, timing, and scope of the activities necessary for compliance, and the estimates of the costs of such projects.

Moreover, Sierra Club attempts to impose on MPC, and the Commission, filing requirements that do not exist. Section 77-3-11 of the *Mississippi Code of 1972*, as

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<sup>6</sup> See supra note 1.

<sup>7</sup> MISS. CODE ANN. 77-3-11, -13 (West 2019); RP 7.102 and Schedule "3" of Appendix "A".

*amended*, contains no requirements for certificate filings, only that a certificate is required in certain circumstances.<sup>8</sup> Section 77-3-13 *Mississippi Code of 1972, as amended*, provides only that the Commission must assess the “financial ability and good faith of the applicant, the necessity for additional services, and such other matters as the commission deems relevant.”<sup>9</sup>

While Sierra Club may want more information regarding these CCR Projects, capacity factors, economics, etc., its desire does not alter the Commission’s Rules, and Sierra Club cannot impose a greater burden upon MPC than is required under Mississippi law or the Commission’s Rules. Sierra Club can, however, utilize the primary tool provided by the Commission to gather additional information about MPC’s filing—data requests. Both Staff and Sierra Club have requested a significant amount of additional information about the CCR Projects and Plant Daniel since the Company’s filing, to which MPC has fully and timely responded. Sierra Club, however, waited over two (2) months before serving its first data request, so the Commission properly moved forward with its process to resolve the matter.

MPC’s Petition and supporting testimony satisfy the letter and spirit of the Commission’s Rules, consistent with decades-long practice for similar applications. To the extent certain enumerated information in Schedule “3” of Appendix “A” of the Rules was not specifically provided as an attachment to the petition (e.g. a complete set of engineering plans and specifications), MPC clearly indicated the planning and

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<sup>8</sup> MISS. CODE ANN. § 77-3-11 (West 2019).

<sup>9</sup> *Id.* at § 77-3-13 (3) (emphasis added).

engineering activities undertaken to date. As is customary in these types of proceedings, such engineering plans and specifications can be (and routinely are) supplemented and provided to the Staff and their technical experts, Commission and other parties as the project progresses. Much of that information was included in MPC's responses to Staff's and Sierra Club's data requests. Sierra Club is attempting to create a "deficiency" that does not exist in order to create the disarray and uncertainty they need to achieve their strategic goals.

Contrary to Sierra Club's plea in its Motion, a utility's request for a certificate of public convenience and necessity *does not* require the utility or the Commission to undertake a complete economic evaluation of every project proposed. The Commission must determine only whether the public convenience and necessity requires the particular project or facility requested based upon the facts and evidence presented in the petition and anything else the Commission, *in its discretion*, wants to consider. The Commission, not Sierra Club, gets to decide how far it must take its inquiry. There is no formula for what the Commission must consider.<sup>10</sup>

In addition to its petition and testimony, the Company has provided Staff with thorough, good faith responses to all of Staff's thirty (30) data requests which go into issues far beyond the basic requirements prescribed by the Commission's rules. Moreover, the Company has responded to Sierra Club's thirty-two (32) data requests. A copy of the data request responses are attached hereto as Exhibit "B" and incorporated herein by reference (public version). Confidential responses to both

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<sup>10</sup> MISS. CODE ANN. § 77-3-13.



Staff's and Sierra Club's data requests are being provided to the Commission under separate confidential cover as Confidential Exhibit "C" and incorporated herein by reference.

MPC substantially complied with the requirements of the Commission in filing its petition in this docket, both in terms of timing and content, certainly satisfying its burden to present a *prima facie* case for the CCR Projects proposed. The final determination of the rule, particularly regarding non-CCR waste streams, was not finalized until March 15, 2018, and it was different than anticipated.<sup>11</sup> Once that rule was finalized, MPC determined its proper course, developed a compliance plan and submitted its application. Occasionally, MPC must react quickly to these changing circumstances, which then requires the Staff and Commission to react quickly as well. This is not a new scenario. Sierra Club, of all groups, should know this and to complain about this process and the timing of the Company's request is disingenuous at best.

MPC has sought approval of the solution it has determined to be the best overall solution to comply with the CCR Rules, in the near term, and to preserve coal as an option in its fleet until a more thorough analysis of the long-term value of Plant Daniel can be completed and a comprehensive plan can be implemented regarding how MPC will continue to reliably serve its customers through a mix of resources. That analysis and the comprehensive plan that Sierra Club seeks will be addressed (appropriately) in the RMP docket.

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<sup>11</sup> Testimony of Mark P. Loughman, pp. 12-14.

### 3. MPC's CCR Compliance Plan Is Necessary and Appropriate

Sierra Club does not dispute that MPC must close the ash pond at Plant Daniel to comply with environmental laws and regulations. Sierra Club does not dispute that when MPC closes the ash pond, it must provide an alternate transport and storage mechanism to deal with bottom ash coming from the boilers at Plant Daniel. Finally, Sierra Club does not dispute that when MPC closes the ash pond, MPC will have to provide alternative ways to store bottom ash and a new low volume wastewater retention facility.

At most, Sierra Club suggests that retiring Plant Daniel will avoid the bottom ash expenditures. That approach would not eliminate the bulk of the costs of the CCR Projects and would not even eliminate the full costs of the LVW portion. Essentially, retiring Plant Daniel over 20 years early would potentially avoid some portion of the CCR project costs, while causing the acceleration of other asset retirement obligations. Again, if that decision is going to be made, it should be made in the RMP docket and it should be made only after transmission constraints are mitigated or eliminated.

Sierra Club casually calls into question whether the transmission constraints described by Mr. Loughman and in various responses to data requests are legitimate by claiming that they are "unspecified". MPC has provided a significant amount of information to both Staff and Sierra Club on this issue. Sierra Club misunderstands the nature of pooling arrangements and system arrangements such as the Southern electric system or MISO. Coordinated planning is fundamental to the reliable

operation of such systems and to suggest that transmission constraints should not matter to the Commission in this docket, because the transmission improvements are needed in an affiliate's service area demonstrates their lack of understanding of coordinated planning. To retire Plant Daniel prior to the completion of the necessary transmission improvements, as proposed by Sierra Club, would not be prudent and will expose MPC's customers to transmission related reliability risk without Units 1 and 2.

4. No Hearing is Required in this Proceeding.

With respect to Sierra Club's assertion that an "evidentiary hearing is required by statute," Sierra Club is wrong and relies erroneously on a provision of the Mississippi Public Utility Act that does not even apply to MPC's request. MPC's petition was properly filed with the Commission in this docket on July 9, 2019. Two parties properly intervened—Cooperative Energy and Sierra Club. Sierra Club has had since July 9<sup>th</sup> to object or contest the Company's filing and has not done so. At the time the Commission issued its Scheduling Order, neither Sierra Club nor any other party filed (and has still not filed) any objection, contest or protest to the Company's petition. In that posture and at the time of the Scheduling Order, this matter was (and still is) uncontested.<sup>12</sup>

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<sup>12</sup> Miss. Code Ann. § 77-2-13(5) provides: "A proceeding shall be considered contested in the following:

(a) Upon the initiation of any proceedings requiring a party to show cause why any action by the commission should not be taken;

(b) In a rate change proceeding when a rate filing is suspended; and

(c) In any adversarial proceeding, when any objection or contest is filed by any party."

Uncontested matters do not require a hearing of any sort, much less an evidentiary hearing: “Notwithstanding any provision of this section [77-3-13] to the contrary, the certificate as applied for may be granted without a hearing in uncontested cases . . .”<sup>13</sup> Sierra Club erroneously relies upon Section 77-3-14 as its support for a hearing requirement. MPC’s petition seeks approval of neither generating facilities nor transmission facilities, both of which are governed by Section 77-3-14. MPC’s petition in this proceeding is governed by 77-3-13. No hearing is required, and the Scheduling Order issued by the Commission was a lawful expression of the Commission’s preferred procedures, consistent with and in compliance with Mississippi law and the Rules of this Commission.

Any formal objection levied by Sierra Club at this late stage should be rejected as untimely, given that the Commission has already issued a Scheduling Order. Moreover, the procedure set out in the Commission’s Scheduling Order provides both MPC and the parties an opportunity to be heard through the submission of a proposed order and an opportunity for formal comments thereto. Sierra Club’s opportunity to comment on MPC’s proposed order is more process than it is actually entitled to and is otherwise sufficient opportunity to be heard.

5. Gulf Power’s Request to Retire Plant Daniel Should Not Impact the Commission’s Decision in this Proceeding.

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<sup>13</sup> MISS. CODE ANN. § 77-3-13 (8); *see also* RP 7.105(9) provides the following regarding hearings: “The Commission may grant a Certificate without a hearing in an uncontested case; however, the Commission may hear an uncontested case if it determines that the public interest will be served thereby. The Commission shall conduct a hearing on every Petition seeking authority to construct any facility for the generation of electricity, as set forth in Miss. Code Ann. §77-3-14.”

Sierra Club also suggests in its Motion, that MPC is “ignoring” Gulf Power’s request to retire Plant Daniel. This is simply false. Gulf Power has notified MPC of its intention to retire Gulf Power’s fifty percent (50%) undivided interest in Plant Daniel on January 15, 2024. The date of Gulf’s intended retirement is after the closure requirement date for the ash pond. Most importantly, it is nearly three and one-half (3 ½) years after the CCR Rule prohibits receipt of any CCR and non-CCR waste streams into the Plant Daniel ash pond under the standard closure requirements. Finally, said date is after the latest retirement date allowed for ash ponds and generating facilities to operate under alternate closure procedures. In simple terms, unless both Gulf Power and MPC were intending to retire Plant Daniel by October 17, 2023, the work proposed by MPC with respect to bottom ash and LVW would still have to be performed or otherwise addressed in order to continue to operate Plant Daniel after the October 31, 2020 deadline.<sup>14</sup>

6. Conclusion - Sierra Club’s Motion Should be Denied.

In closing, MPC asks the Commission to deny Sierra Club’s Motion to Require Supplementation of the Petition and a Revised Scheduling Order. The Company’s proposal in this case is lawful, reasonable, and consistent with the Commission’s practice and rules. The Commission’s Scheduling Order issued in this proceeding is also lawful and consistent with Mississippi law and the Commission’s Rules. Sierra Club’s failure to take any substantive role in this proceeding until September 12,

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<sup>14</sup> See generally Testimony of Mark Loughman, pp. 11-13.

2019, over two (2) months after the Company's filing should not be rewarded by the Commission. Sierra Club's Motion should be denied.

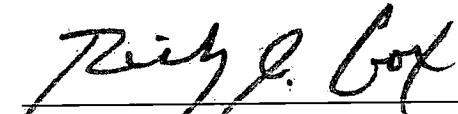
WHEREFORE, PREMISES CONSIDERED, Mississippi Power Company requests that the Commission deny Sierra Club's Motion to Require Supplementation of the Petition and a Revised Scheduling Order.

Respectfully submitted on this, the 30<sup>th</sup> day of September, 2019.

MISSISSIPPI POWER COMPANY

BY: BALCH & BINGHAM LLP

BY:

  
RICKY J. COX

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**CERTIFICATE OF SERVICE**

I, RICKY J. COX, counsel for Mississippi Power Company in the Petition filed with the Mississippi Public Service Commission (the "Commission") of even date herewith do hereby certify that in compliance with Rule 6 of the Commission's Public Utilities Rules of Practice and Procedure (the "Rules"):

(1) An original and twelve (12) copies of the filing have been filed with the Commission by U.S. Mail to:

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

(2) An electronic copy of the filing has been filed with the Commission via e-mail to the following address:

efile.psc@psc.state.ms.us

(3) A copy of the filing was served via U.S. Mail, postage prepaid, upon each of the following parties of record:

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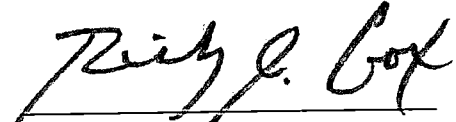
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(4) MPC has complied with or requested a waiver of all other requirements of this Commission's Rules.

THIS, the 30<sup>th</sup> day of September, 2019.

  
Ricky J. Cox