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September 18, 2018

VIA ELECTRONIC MAIL

Commissioner Brandon Presley, Chairman  
Commissioner Cecil Brown, Vice-Chairman  
Commissioner Sam Britton  
Mississippi Public Service Commission  
Post Office Box 1174  
Jackson, MS 39215

Re: 2018-AD-64: Integrated Resource Planning (IRP) Docket

Dear Commissioners:

I am in receipt of the letter to you by Jeremy Vanderloo with Entergy (EMI) dated September 11 addressing portions of my recently filed Supplemental Testimony in the IRP Docket on behalf of the Bigger Pie Forum (BPF). Please let me note in response:

The proposal of my Supplemental Testimony (attached) is that if an intervenor requests fuel forecasts, analysis of generation alternatives, or other information in an IRP Docket the electric utilities have filed “confidential/proprietary,” that the IRP Rule should require the utility to file first any motion for protective order with the Commission for a prompt decision on disclosure, not first with the courts. BPF has had real world experience: during the Kemper proceedings BPF won a disclosure battle with the electric utility in the courts, but only after 2 ½ years—a period so long the Commission’s 2012 recertification proceedings were long over.

The “defect” I pointed out (p.4) in my supplemental testimony is not with the statutory mandate of the Public Utilities Staff *per se*, as suggested by Mr. Vanderloo’s letter. It is with the overall regulatory structure that lacks “an office of a consumer advocate.” The electric utilities will never lack for a strong advocate devoted solely to their interests. An independent advocate devoted solely to consumers’ interests would bring a needed balance to the adversarial process before the Commission.

I also noted that in North Carolina the Public Staff “routinely challenge whether information placed under seal should have been placed under seal” but the MPUS has not been tasked with that role and so has not exercised “the same level of vigilance” over disclosure issues. It is important to note that although the names of North Carolina’s Public Staff and MPUS are similar, the statutory roles are different. In North Carolina, they are the office to advocate for consumers by intervening “on behalf of the using and consuming public.” (N.C. General Statute § 62-15). In Mississippi, they lack that legislative mandate. In the case between BPF and the utility in the Kemper case, the MPUS never had the opportunity to weigh in on

BPF's request for information marked "confidential/proprietary" because MPC went straight to the courts with their motion for a protective order instead of first presenting it to the Commission—the very point that my Supplemental Testimony makes.

However, at the very least in the IRP proceedings the IRP Rule should have the electric utilities first make their case for a protective order to the Commission where it can be dealt with expeditiously. Further, the Rule should allow the party requesting the information to appear specially for the purpose of stating its view to the Commission on the motion for protective order. The Commission should then consider the issue of disclosure as the elected guardians of the public interest.

I am glad EMI has affirmed our view that pending a decision by the Commission on the issue of disclosure to the public, an intervenor should at least be able to enter into a confidentiality agreement with the utility if it wishes so that if it can use the information in that proceeding under seal. However, BPF was in a different position in the Kemper proceeding because BPF was acting as a journalistic organization outside the case, not a party intervenor. Rather, BPF sought the disclosure of the electric utility's natural gas forecasts in the Kemper case hoping to report to the public in a timely way what those forecasts were, the cost consequences and that they had been rendered wholly obsolete by the fracking revolution.

Indeed, ultimately the public elected guardians of the public interest to the Commission brought the Kemper proceedings to a satisfactory conclusion.

Respectfully,

A handwritten signature in black ink, appearing to read "Erik Randolph", written over a horizontal line.

Erik Randolph

On behalf of the Bigger Pie Forum

Cc: Jeremy C. Vanderloo, Esq.  
Robert P. Wise, Esq.  
Mr. Virden Jones  
Chad Reynolds, Esq.  
Frank Farmer, Esq.