

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

**In the Matter of the Determination            )**  
**of Carrying Costs for the Phase-In        )**       **ER-2012-0024**  
**Tariffs of KCP&L Greater Missouri        )**  
**Operations Company                            )**

**AGP'S POSITION STATEMENTS**

COMES NOW Ag Processing Inc a Cooperative ("AGP") and states its positions on the issues as listed in the *Issues List* filed herein December 21, 2011 as follows:

1. DOES THE COMMISSION HAVE JURISDICTION IN THIS CASE?

AGP Position: No. A Writ of Review concerning Case No. ER-2010-0356 was issued by the Code County Circuit Court on June 24, 2011. Under governing Missouri Law, upon the issuance of that writ of review, the Commission lost jurisdiction. Further, in its July 5, 2011 Writ concerning the same Case, the Circuit Court ordered the Commission to "take no further action in such case save compliance with this Writ of Review". Although the Commission subsequently sought, on July 18, 2011 to continue Case No. ER-2010-0356 in Case No. ET-2012-0017 and still later on July 25, 2011 in this case by assigning new case numbers and incorporating major portions of the record (also in violation of Commission Rules and Missouri Statutes regarding administrative notice) in the ER-2010-0356 Case, such actions are nothing more

than attempts to do an end run around the Court's explicit order and are actions in contempt of that order. Accordingly, the Commission has no jurisdiction to process this case further and further participation by AGP herein will be without prejudice to that position.

2. DOES THE COMMISSION DECISION CONSIDER ALL RELEVANT FACTORS?

AGP Position: No. Under Missouri Law, any Commission decision to implement rates, even a failure to suspend rates that are proposed, must consider all relevant factors. Moreover, given that the Commission has determined this to be a rate case as to the phase-in, and it is, therefore, a contested case, under the Missouri Constitution, the Commission's decision to do so must be lawful and be supported by competent and substantial evidence on the whole record. It was not, nor can any decision in this case consider them. Neither the utility's direct testimony nor Staff's testimony address all relevant factors. Nor was it possible to have considered all relevant factors in Case No. ER-2010-0356 in which case the Commission purported to allow phase-in rates that exceeded the initial level of rates that the Commission found GMO entitled in that case. The second, third and fourth "phase-ins" in that case did not and could not have considered all relevant factors. Accordingly all issues in this case are moot.

3. SHOULD GMO'S CARRYING COSTS IN THE PHASE-IN TARIFF SCHEDULES FILED IN THIS PROCEEDING BE 3.25% PER YEAR?

AGP Position: Given that the Commission does not have jurisdiction in this case to address this matter as noted in Position Statement 1, and cannot consider all relevant factors in its purposed attempt to authorize a phase-in that exceeds the original request made by the utility, as noted in Position Statement 2, this issue is not properly before the Commission for decision and any decision thereon would be unlawful as extra-jurisdictional and in further contempt of the Court's original Writ of Review in Case No. ER-2010-0356.

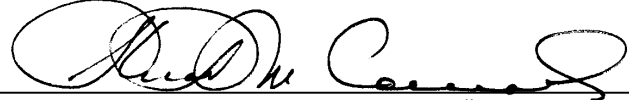
4. SHOULD THE COMMISSION ORDER THAT THE TARIFF SCHEDULES FILED WITH THE NON-UNANIMOUS STIPULATION AND AGREEMENT ON SEPTEMBER 2, 2011, FOR THE SECOND, THIRD AND FOURTH YEAR OF THE PHASE-IN PLAN BE ALLOWED TO BECOME EFFECTIVE AUTOMATICALLY IN EACH SUBSEQUENT YEAR ON JUNE 25 WITHOUT FURTHER ORDER OF THE COMMISSION, UNLESS SUSPENDED BY THE COMMISSION FOR GOOD CAUSE SHOWN?

AGP Position: Given that the Commission has already acted outside of its lawful jurisdiction, any decision made with respect to the tariffs not only would be unlawful as exceeding its jurisdiction but could not consider all relevant factors which would further make any decision impossible to support by competent and substantial evidence on the whole record. In that

limited sense, AGP agrees with Staff's initial position in that the tariff sheets regarding the second, third and fourth "phase-ins" should be rejected as improvidently filed.

Respectfully submitted,

FINNEGAN, CONRAD & PETERSON, L.C.



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ATTORNEYS FOR AG PROCESSING INC A  
COOPERATIVE

**CERTIFICATE OF SERVICE**

I certify that I have served a copy of the foregoing pleading on the designated attorneys or representatives of each party in accord with Commission Orders and the service list maintained in this proceeding by the Secretary of the Commission on EFIS.

Dated: December 27, 2011



Stuart W. Conrad, an attorney for  
Ag Processing Inc a Cooperative