

**EXHIBIT 1**

Proposed Findings of Fact of  
KCP&L Greater Missouri Operations Company

BEFORE THE PUBLIC SERVICE COMMISSION  
FOR THE STATE OF MISSOURI

In the Matter of KCP&L Greater Missouri Operations	)	
Company for Authority to Implement Rate Adjustments	)	
Required by 4 CSR 240-20.090(4) and the Company's	)	Case No. EO-2008-0216
Approved Fuel and Purchased Power Cost Recovery	)	
Mechanism.	)	

**PROPOSED FINDINGS OF FACT OF  
KCP&L GREATER MISSOURI OPERATIONS COMPANY**

KCP&L Greater Missouri Operations Company, formerly Aquila, Inc., (“Aquila,” “GMO” or “Company”) submits its Proposed Findings of Fact.

**FINDINGS OF FACT**

1. The order that was reversed by the Court of Appeals in State ex rel. Ag Processing, Inc. v. PSC, 311 S.W.3d 361 (Mo. App. W.D. 2010), was the Commission’s February 14, 2008 Order in this case, which was the first Fuel Adjustment Clause (“FAC”) proceeding of KCP&L Greater Missouri Operations Company, formerly known as Aquila, Inc. An FAC was authorized in Aquila’s last general rate case under the Commission’s May 17, 2007 Report & Order (effective May 27, 2007), Case No. ER-2007-0004 (“Aquila Rate Case”).

2. Although clarifications were made to GMO’s proposed FAC tariff sheets, the Commission’s approval of the FAC, as authorized by Section 386.266.1<sup>1</sup> and the FAC regulations, did not change between May 27 and July 5, 2007, which is the effective date of the tariffs.<sup>2</sup> The general rate tariffs, which included the Base Fuel Costs upon which the FAC is based, went into effect pursuant to that Report and Order on June 1, 2007.<sup>3</sup> Pursuant to the tariff, a Cost Adjustment Factor (“CAF”) is charged to customers in the future for over-collected or under-collected costs, the Base Fuel Costs of which were authorized and implemented on June 1,

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<sup>1</sup> Unless otherwise indicated, all statutory references are to the Missouri Revised Statutes (2000) and its Cumulative Supplement (2009), as amended.

<sup>2</sup> Hearing Ex. 1 at 5.

<sup>3</sup> Hearing Ex. 1 at 5; Hearing Ex. 1 at Sch. TMR-1, Orig. Sheet 124 and 126; Hearing Ex. 1 at Sch. TMR-2.

2007.<sup>4</sup> It is uncontroverted that the specific FAC tariff sheets that set forth the calculation of future CAFs became effective July 5, 2007.<sup>5</sup>

3. In its March 23, 2010 opinion, the Court of Appeals held that the Commission's February 14, 2008 Order violated the prohibition against retroactive ratemaking. It found a violation because the order permitting the recovery of fuel costs beginning on June 1, 2007 was not issued in the Aquila Rate Case until June 29, 2007 and did not become effective until July 5, 2007.<sup>6</sup> Because the Court found the calculation of fuel and fuel-related costs prior to July 5, 2007 was retroactive ratemaking, it remanded the case to the Commission "for further proceedings consistent with this opinion."<sup>7</sup>

I. On What Date Within the Initial Accumulation Period (June-November 2007) Should the Calculation of Fuel Costs Begin?

4. It is clear that the Court of Appeals held that the only period of time for which any adjustment or refund issue exists is the 34 days between June 1 and July 4, 2007.<sup>8</sup> Nowhere did the Court hold that accumulation of costs after the July 5, 2007 tariff effective date was retroactive ratemaking. The refund of any sums accumulated on July 5 or later would violate the tariff's plain language.

5. Nevertheless, the parties now disagree on the date within the initial Accumulation Period on which the calculation of fuel costs should begin. Public Counsel and the Industrial Intervenors contend that Commission rules regarding a true-up year require that an FAC commence on the first day of a calendar month, that the Commission itself confirmed in its recent decision in Case No. ER-2010-0356 that an FAC must commence on the first day of a calendar month, and that Staff and GMO's prior statements confirm that an FAC must

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<sup>4</sup> Hearing Ex. 1 at 5.

<sup>5</sup> Id.

<sup>6</sup> 311 S.W.3d 365–67.

<sup>7</sup> Id. at 367.

<sup>8</sup> Id.

commence on the first day of a calendar month.<sup>9</sup> Public Counsel and the Industrial Intervenors assert that provisions in the Commission's rules regarding a true-up year therefore mandate that the calculation of fuel and fuel-related costs under the FAC at issue here begin no sooner than August 1, 2007.

6. Staff and GMO agree that a tariff provision defining an accumulation period trumps the Commission's rules defining a true-up year.<sup>10</sup> The Commission agrees and orders that the initial Accumulation Period begin on July 5, 2007. A July 5, 2007 start date for the calculation of fuel and fuel-related costs in the initial Accumulation Period is proper for the following reasons.

A. The Tariff Is Unambiguous.

7. First and foremost, Commission rules 4 CSR 240-3.161(1)(G) and 4 CSR 240-20.090(1)(I) that define a true-up year, but which do not define when an accumulation period must begin and do not require that an accumulation period start at any particular time, do not govern GMO's unambiguous FAC tariff that carries the full effect of the law. Tariff Sheet No. 124, effective July 5, 2007, provides for a six-month accumulation period of June through November.<sup>11</sup> The inclusion of the true-up period definition in the FAC regulations does not necessitate that an accumulation period begin on the first of a month.<sup>12</sup> Rather, the true-up period provisions in the FAC regulations ensure that amounts collected during the Recovery Period defined in the FAC tariffs are reflected in a timely manner.<sup>13</sup>

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<sup>9</sup> Public Counsel Initial Brief at 2, Industrial Intervenors' Initial Brief at 8-9; Public Counsel Initial Brief at 3-6; Industrial Intervenors' Reply Brief at 6-7; see also 4 CSR 240-3.161(1)(G) and 4 CSR 240-20.090(1)(I).

<sup>10</sup> Hearing Ex. 1 at 5; GMO Initial Brief at 4-6; GMO Reply Brief at 3-9; Staff Initial Brief at 2; Staff Reply Brief at 2; Staff Recommendation to Approve Tariff Sheet and Motion for Leave to File Out of Time, Case No. EO-2008-0216 (Jan. 29, 2008) at 5.

<sup>11</sup> Hearing Ex. 1 at Sch. TMR-1.

<sup>12</sup> Hearing Ex. 1 at 5.

<sup>13</sup> Id.

B. The July 5, 2007 Commencement of the Initial Accumulation Period Does Not Violate the Statutory Requirement of an Accurate True-Up.

8. Staff's methodology for calculating fuel and fuel-related costs for the first four days of July 2007 is reasonable.<sup>14</sup> Though the final figure reached is an "approximation" of costs for the first four days of July 2007, "[t]he general rule is that, where more accurate information is unavailable, estimates should be considered."<sup>15</sup> As noted by Staff witness David C. Roos, Staff used the "most reasonable" methodology to calculate costs for the first four days of July 2007.<sup>16</sup> Thus, Staff's and GMO's calculation of those costs is accurate for the purposes of satisfying Section 386.266.4(2).

C. The Commission Has the Power to Order an FAC Tariff to be Effective on a Date Other Than the First Day of a Calendar Month.

9. Finally, the Commission clearly has the power to order FACs to be effective on dates other than the first of the month in a number of recent cases. The Commission has done so in a number of recent decisions.<sup>17</sup> In its decision in Case No. ER-2010-0356 to which Public Counsel and the Industrial Intervenors cite, the Commission stated that it "is not prohibited from determining a different effective date of a tariff [i.e., other than on the first day of a calendar month] if good cause exists to do so."<sup>18</sup> Because there is no prior FAC that would remain in effect until replaced by the FAC tariffs at issue here, and any delay in the start of the initial Accumulation Period thus would harm GMO, good cause exists to begin the accumulation and

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<sup>14</sup> Tr. at 155; Hearing Ex. 2 at 2–3; Hearing Ex. 6 at 3.

<sup>15</sup> Report and Order, BPS Tel. Co. v. Voicestream Wireless Corp., Case No. TC-2002-1077, 2005 Mo. PSC LEXIS 139 \*50 (Jan. 29, 2005). See also State ex rel. Martigney Creek Sewer Co. v. PSC, 537 S.W.2d 388, 396 (Mo. 1976).

<sup>16</sup> Tr. at 155.

<sup>17</sup> See, e.g., Order Granting Motion for Expedited Treatment and Approving Tariff in Compliance with Commission Order, Case No. ER-2010-0130 (Sept. 1, 2010); Order Approving Tariff Filings in Compliance with Commission Order, Case No. ER-2011-0004 (June 7, 2011).

<sup>18</sup> Order of Clarification and Modification at 8–9, Case No. ER-2010-0356 (May 27, 2011).

calculation of costs no later than July 5, 2007 when the Commission's Order of June 29, 2007 that approved the FAC tariff sheets became effective.<sup>19</sup>

DECISION: The Commission finds that GMO should begin to calculate its fuel and fuel-related costs beginning on July 5, 2007.

II. Does the Commission Have the Authority to Order a Refund or Adjustment for the Recovery of Fuel Costs in a Future Fuel Adjustment Clause Case Regarding Any Over-Collection that Occurred in the Initial Accumulation Period?

10. The Commission has already determined that "Aquila's FAC process and the Commission's regulations require that the FAC rate adjustments be interim, subject to true-up and prudence reviews."<sup>20</sup> The rates the Commission approved in the February 14, 2008 Order are interim, subject to true-up and prudence review, but not subject to refund on court review, absent a stay and the posting of a suspending bond pursuant to Section 386.520.

11. Thus, the Commission agrees with Staff and GMO that it does not have the authority to order a refund or adjustment for the recovery of fuel costs over-collected in the initial Accumulation Period because any refund or adjustment must occur in either the Section 386.266 true-up or prudence adjustment for the Accumulation Period, which are now complete. The Commission further notes because no party to these proceedings has requested a stay of the February 14, 2008 Order any such refund or adjustment would be confiscatory.

A. The True-Up Adjustment and the Prudence Review Processes Are Complete.

12. The Recovery Period during which the Cost Adjustment Factor ("CAF") reflecting the appropriate FAC costs for the June-November 2007 initial Accumulation Period was March 1, 2008 through February 28, 2009.<sup>21</sup> The true-up adjustment (File No. EO-2009-0431) relating to this Recovery Period was in effect from September 1, 2009 through August 31,

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<sup>19</sup> Hearing Ex. 2 at 3; Hearing Ex. 6 at 2; Hearing Ex. 7.

<sup>20</sup> Order Clarifying Order Approving Tariff at 2, Case No. EO-2008-0216 (Feb. 26, 2008).

<sup>21</sup> Hearing Ex. 3 at 4; Hearing Ex. 1 at 8.

2010.<sup>22</sup> Staff conducted a prudence review (File No. EO-2009-0115) for the period June 1, 2007 through May 31, 2008, and submitted its report on December 1, 2008.<sup>23</sup> There was no finding of imprudence regarding any of the fuel and fuel-related costs accumulated and calculated during the initial Accumulation Period, which included the 34 days at issue here.<sup>24</sup> No party objected to the prudence review, and it was approved by the Commission.<sup>25</sup>

13. Any refund or adjustment that is now considered by the Commission in this case would occur well after the true-up adjustment and the prudence review processes contemplated by Section 386.266 were completed, and after the increase in rates under the fuel adjustment clause have become permanent. The Commission agrees with Staff and GMO that the opportunity for the Commission to provide relief in the true-up or prudence review for including costs in the period June 1 through July 4, 2007, for determining the CAF for the first recovery period has passed.

B. No Party Has Applied to the Circuit Court for a Stay or Established a Stay Fund and Any Refund Would Be Confiscatory.

14. Any party aggrieved by a Commission order has the right to protect its interest by applying to the circuit court for a stay of enforcement of the Commission's order, pursuant to Section 386.520. This section permits the circuit court to stay the Commission's order upon the filing of a suspending bond, and allows for the payment into the court registry of sums the utility collects beginning on the date of entry of the stay order that are subject to refund upon determination on appeal that they were improperly collected.<sup>26</sup> Without a stay fund segregating

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<sup>22</sup> Id.

<sup>23</sup> Id.; Tr. at 149.

<sup>24</sup> Tr. at 149.

<sup>25</sup> Hearing Ex. 1 at Sch. TMR-5.

<sup>26</sup> State ex rel. Midwest Gas User's Ass'n v. PSC, 996 S.W.2d 608, 614 (Mo. App. W.D. 1999).

contested funds, there is no money from which a refund could be ordered and thus no monetary relief can be given to the party challenging the rates.<sup>27</sup>

15. The Commission and Staff found the costs accumulated under the tariffs at issue to be prudent.<sup>28</sup> The Commission did not stay its May 17, 2007 or February 14, 2008 Orders under Section 386.500.3, nor did any party to these proceedings request a stay of those Orders. Consequently, no stay was issued and no bond was filed at the Circuit Court, pursuant to Section 386.520. There is no money to refund to the appealing parties or other customers that would represent sums collected in excess of the amounts determined proper on appeal. Without a stay fund from which to order a refund, any order directing a refund or an adjustment would be confiscatory and violate GMO's due process rights.<sup>29</sup>

DECISION: The Commission finds that it does not have the authority to order a refund or adjustment for the recovery of fuel costs in a future fuel adjustment clause case regarding any over-collection that occurred in the initial Accumulation Period.

### III. What is the Amount of a Refund or Adjustment, if Any?

16. According to the ruling of the Court of Appeals, the only period of time for which any refund of fuel charges assessed to customers is appropriate is the 34 days between June 1 and July 4, 2007.<sup>30</sup> It is uncontroverted that the effective date of the Commission's June 29, 2007 Order is July 5, 2007. Staff and GMO agree that if the Commission finds that it has authority to order a refund, using a July 5, 2007 start date for the initial Accumulation Period the credit amounts, including interest through December 31, 2010, would be \$1,975,363 for MPS

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<sup>27</sup> City of Joplin v. PSC, 186 S.W.3d 290, 295 (Mo. App. W.D. 2005).

<sup>28</sup> Tr. at 149; Hearing Ex. 1 at Sch. TMR-5; Hearing Ex. 1 at Sch. TMR-6.

<sup>29</sup> See Lightfoot v. City of Springfield, 236 S.W.2d 348, 354 (Mo. 1951); City of Joplin v. PSC, 186 S.W.3d 290, 299 (Mo. App. W.D. 2005); State ex rel. Utility Consumers Council of Missouri, Inc. v. PSC, 585 S.W.2d 41, 58 (Mo. en banc 1979).

<sup>30</sup> State ex rel. Ag Processing, Inc. v. PSC, 311 S.W.3d 361, 367 (Mo. App. W.D. 2010).



and \$484,626 for L&P.<sup>31</sup> Staff and GMO further agree that those 34 days of costs should be included as a reduction in the next semi-annual filing and refunded over the next twelve-month Recovery Period, if the Commission finds that it has authority to order a refund.<sup>32</sup> Nevertheless, as indicated in Section II above, the Commission does not have the authority to order a refund. The Commission will need to choose one of the decisions below.

DECISION: If the Commission finds that it does not have the authority to order a refund or adjustment for the recovery of fuel costs calculated in the initial Accumulation Period, the Commission need not calculate the amount of any refund or adjustment.

DECISION: If the Commission finds that it does have the authority to order a refund or adjustment for the recovery of fuel costs calculated in the initial Accumulation Period, the Commission credits amounts, including interest through December 31, 2010, of \$1,975,363 for MPS and \$484,626 for L&P.

IV. What is the Appropriate Mechanism for a Refund or Adjustment, if Any?

17. Staff and GMO agree that, if the Commission finds that it has the authority to order any refund or adjustment, such should be included as a reduction in the next semi-annual filing and refunded over the next twelve-month Recovery Period.<sup>33</sup> The Industrial Intervenors agree that an adjustment to the next semi-annual filing is appropriate so long as interest is properly reflected.<sup>34</sup> The Commission agrees that, if it has the authority to order a refund, including such refund as an adjustment in the next scheduled FAC Recovery Period is the most efficient and reasonable option, as this mechanism to accommodate corrections and adjustments is already in place in FAC tariff sheets.

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<sup>31</sup> Hearing Ex. 2 at 3; Hearing Ex. 6 at 2; Hearing Ex. 7.

<sup>32</sup> Hearing Ex. 1 at 9; Hearing Ex. 6 at 3.

<sup>33</sup> Staff Initial Brief at 4; GMO Initial Brief at 12-13.

<sup>34</sup> Industrial Intervenors' Reply Brief at 10.

18. On Original Sheet No. 125, the FAC tariff provides: “C = Under/Over recovery determined in the true-up of prior recovery period cost, including accumulated interest, and modifications due to prudence reviews.”<sup>35</sup> This method adjusts the semi-annual CAF calculation for any adjustments or corrections that need to be made, spreads those adjustments or corrections over the next twelve-month Recovery Period, and allows for the matching of the refund to current usage patterns.<sup>36</sup> The Commission will have to choose one of the decisions below.

DECISION: If the Commission finds that it does not have the authority to order a refund or adjustment for the recovery of fuel costs calculated in the initial Accumulation Period, the Commission need not determine the appropriate mechanism for any refund or adjustment.

DECISION: If the Commission finds that it does have the authority to order a refund or adjustment for the recovery of fuel costs calculated in the initial Accumulation Period, the Commission determines that the refund or adjustment will be included as a reduction in the next semi-annual filing and refunded over the next twelve-month Recovery Period.

V. Is it Appropriate Under the Facts of this Case for the Commission to Issue an Accounting Authority Order to GMO Regarding Any Amounts That Are Contained in a Refund or Adjustment?

19. The Commission adopted the Uniform System of Accounts (“USOA”) prescribed by the Federal Energy Regulatory Commission in exercise of its authority to set uniform methods of keeping accounts, records, and books for electrical corporations.<sup>37</sup> As an electric company subject to the Commission’s jurisdiction, GMO is required to keep all its accounts in conformity with the USOA.<sup>38</sup> The USOA requires that a company’s net income reflect all items of profit or loss occurring during the period, but recognizes that special accounting treatment,

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<sup>35</sup> Hearing Ex. 1 at Sch. TMR-1.

<sup>36</sup> Hearing Ex. 1 at 10.

<sup>37</sup> 4 CSR 240-20.030; Tr. at 165-166.

<sup>38</sup> Id.

what this Commission refers to as an AAO, may be appropriate when accounting for extraordinary items of profit or loss.<sup>39</sup> An AAO allows a utility to defer certain costs for later consideration in a general rate case.<sup>40</sup> Prudent costs are generally eligible for rate recovery.<sup>41</sup>

20. The USOA indicates that an extraordinary item for which special accounting treatment would be appropriate is “of unusual nature and infrequent occurrence.” Furthermore, extraordinary items “will be events and transactions of significant effect which are abnormal and significantly different from the ordinary and typical activities of the company, and which would not reasonably be expected to recur in the foreseeable future.”<sup>42</sup> Under the facts of this case, permitting GMO to defer to Account 182.3, Other Regulatory Assets, all unrecovered costs directly related to the FAC remand is consistent with the Commission’s prior granting of AAOs for “extraordinary items” as defined in the USOA.

21. Aquila was the first company to file for an FAC under Senate Bill 179, which became Section 386.266, and the new rules promulgated by the Commission. The cause now before the Commission is the first FAC case that has been appealed and remanded back to the Commission. Nevertheless, the Commission has approved Staff’s prudence review of all aspects of GMO’s fuel costs as they are passed through to customers through the FAC.<sup>43</sup> These prudent costs are eligible for rate recovery.

22. So too are any unrecovered costs resulting from the FAC remand “extraordinary.” Because Aquila was the first Company to implement an FAC under the new statute and Commission rules, and because subsequent GMO FAC orders have been upheld by the courts on

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<sup>39</sup> Tr. at 166.

<sup>40</sup> Tr. at 165-166.

<sup>41</sup> Tr. at 171.

<sup>42</sup> 18 CFR part 101 (1992), General Instruction 7.

<sup>43</sup> Tr. at 149; Hearing Ex. 1 at Sch. TMR-5 (Order Approving Staff’s Prudence Review, Case No. EO-2009-0115 (Apr. 22, 2009)); Hearing Ex. 1 at Sch. TMR-6 (Order Approving Staff’s Prudence Review, Case No. EO-2010-0167 (Jul. 15, 2010)).

appeal, this cause involves specific facts that are rare and unusual. Any unrecovered costs resulting from the FAC remand are non-recurring, as subsequent GMO FAC orders have been upheld by appellate courts and the basis for the Court of Appeals' remand -- the 34 days where costs were tracked prior to the July 5, 2007 tariff effective date -- is not reasonably expected to recur in the foreseeable future. Furthermore, the passage of Section 386.266 was a significant event that changed the ordinary and typical way that utilities recovered their fuel and fuel-related costs,<sup>44</sup> resulting in a change to the ordinary and typical way by which utilities recover fuel and fuel-related costs.<sup>45</sup>

DECISION: The Commission finds that GMO may defer to Account 182.3, Other Regulatory Assets, all unrecovered costs directly related to the FAC remand.

Respectfully submitted,

/s/ Lisa A. Gilbreath

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<sup>44</sup> Tr. at 146, 162.

<sup>45</sup> Tr. at 139-140, 146, 162.

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**Certificate of Service**

I hereby certify that on this 11th day of July, 2011 copies of the foregoing have been mailed, transmitted by facsimile, or emailed to all counsel of record.

/s/ Lisa A. Gilbreath  
Attorney for KCP&L Greater Missouri Operations  
Company