

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

In the Matter of KCP&L Greater )  
Missouri Operations Company for )  
Authority to File Tariffs Changing ) HT-2013-0456  
the Steam QCA for Service Provided )  
to Customers in its Service Terri- )  
tory )

**MOTION FOR RECONSIDERATION AND REHEARING  
AND FOR EXPEDITED CONSIDERATION**

COMES NOW AG PROCESSING INC A COOPERATIVE ("AGP") and with respect to the Commission's agenda session on May 29, 2013 at which time it took up AGP's Application for Rehearing, Protest, Request for Suspension of Tariff and Request to Set Hearing, AGP requests reconsideration or rehearing of that decision as follows:

1. *United Consumers Council of Missouri v. Public Service Commission ("UCCM")*, 585 S.W.2d 41,49 (Mo. 1979) requires that when there is a decision not to suspend a tariff proposed by a public utility subject to the Commission's jurisdiction, there must still be consideration of all relevant factors. In discussing adjustment clauses and suspension of disputed rates for proper review, the *UCCM* court plainly stated:

As such, it [the adjustment clause] is a radical departure from the usual practice of approval or disapproval of filed rates, in the context of a general rate case. Even under the file and suspend method, by which a utility's rates may be increased without *requirement* of a public hearing, the commis-

sion must of course consider all relevant factors including all operating expenses and the utility's rate of return, in determining that no hearing is required and that the filed rate should not be suspended. *See State ex rel. Missouri Water Co. v. Public Service Comm'n*, 308 S.W.2d 704, 718-19, 720 (Mo. 1957). However, a preference exists for the rate case method, at which those opposed to as well as those in sympathy with a proposed rate can present their views. *See State ex rel. Laclede Gas Co. v. Public Service Comm'n*, 535 S.W.2d at 574.

(Italics in original). The Commission should note that the QCA resulted from a settlement of a full steam rate case and was later adjusted in a settlement of a full steam rate case. There is no statutory authority for such a clause.

There is no record here that demonstrates that the Commission considered all relevant factors in reaching a decision not to suspend the proposed tariffs as was required by the Missouri Supreme Court.

2. The Commission was directed by the Court of Appeals to reconsider its decision in HC-2010-0235 using what the Court determined was an "appropriate burden of proof." The Court stated the following:

Accordingly, we reverse the order and remand the cause for further consideration under the appropriate burden of proof.

#### **CONCLUSION**

The Commission's Report and Order is reversed, and the cause is remanded for further consideration consistent with this opinion.

The Court did not order or direct the Commission to vacate its order, consolidate cases, or attempt to initiate a process to

return ratepayer funds. However, the Commission exceeded this direction and determined, entirely on its own, to vacate its earlier order and attempt to initiate a process that the Court **might have, but did not**, initiate. As a result of vacation of its earlier order, there is no longer any basis nor any order for the Commission to attempt to rectify and thus the funds that were returned to ratepayers are now completely theirs and there is no longer any legal basis to direct the return of funds that are now ratepayer property as though those funds had never been collected by the utility. When an order is vacated, it no longer exists. Nor is there any statutory authority that converts the Commission into a reviewing court.

3. The Court of Appeals also did not direct that the parties be "restored" to their prior status and the Commission has been repeatedly reminded that it is not a court and does not have the powers of a court. Accordingly, the Commission has no authority to order or direct a **retroactive** rate increase from ratepayers under any circumstances and cannot direct a prospective rate increase without consideration of all relevant factors.

4. An Application for Intervention was submitted with respect to the proposed tariffs by a customer that would be directly affected and who was either the first or second largest steam customer supplied. This Application for Intervention was completely ignored by the Commission that refused to consider this valid and timely filed Application. While the Commission may have discretion to grant or deny such an Application, there

is no authority for the Commission to ignore such Application and refuse to rule thereon.

5. With the vacation of the earlier order which was not authorized or directed by the Court, the Commission rendered that order a complete nullity. The Commission, not being a court, has no authority to order recovery of funds that were paid out under an order that no longer exists.

6. The utility failed to even seek an administrative stay of the Commission's earlier (now vacated) order and the Commission is without power to assume the powers of a court and in some manner attempt to set the parties back to the same position that they were before a now non-existent order. The Commission has no power or authority to substitute its judgment for that of a court and provide the utility with relief that it now contends it was not entitled to receive. The Commission has no restorative powers and cannot lawfully act retroactively. The Commission's obvious zeal to try to recover funds for this utility are entirely *ultra vires*.

7. The GMO filing includes an attempted collection of interest. To the extent that the Commission wants to rely on a filed tariff, that filed tariff has no provision for interest flowing either way. The Commission so decided in its now-vacated decision. If however the Commission attempts to justify its decision to allow the utility to collect interest, then it must confront the law that it is not a court and has no power of a court. Refuge may not be sought in Section 386, even new amend-

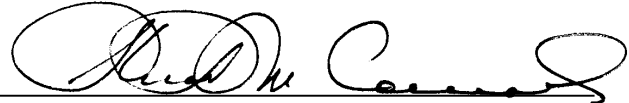
ments thereto, because the Commission is not, as much it would like to be, a court.

8. The proposed effective date for these tariffs to go into effect without a hearing tomorrow, June 1, 2013. AGP, of necessity, requires speedy consideration of this Motion or the ratepayers will be paying the increased rates even if they later prove to be unlawful, unreasonable, or constitute prohibited retroactive ratemaking. In addition, AGP requests that the rate increase be stayed to prevent AGP and other steam ratepayers from irreparable harm.

WHEREFORE, AGP moves for reconsideration or rehearing with respect to this matter, moves for expedited consideration of this motion for the reasons stated, and moves that the proposed rates be stayed and that the Commission rule on AGP's Application to Intervene in this matter.

Respectfully submitted,

FINNEGAN, CONRAD & PETERSON, L.C.

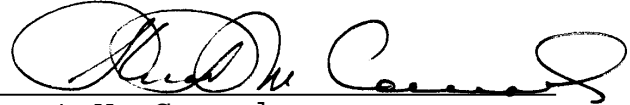


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ATTORNEYS FOR AG PROCESSING INC A  
COOPERATIVE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing pleading by U.S. mail, postage prepaid, or by attachment to e-mail, addressed to all parties by their attorneys of record as disclosed by the pleadings and orders herein according to the record maintained by the Secretary of the Commission in EFIS.

A handwritten signature in black ink, appearing to read "Stuart W. Conrad", written over a horizontal line.

Stuart W. Conrad

Dated: May 31, 2013