

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

In the Matter of the Determination of Carrying)
Costs for the Phase-In Tariffs of KCP&L Greater)
Missouri Operations Company) Case No. ER-2012-0024

**OPPOSITION OF KCP&L GREATER MISSOURI OPERATIONS COMPANY TO
APPLICATION FOR REHEARING**

KCP&L Greater Missouri Operations Company (“GMO” or “Company”), pursuant to 4 CSR 240-2.080, states the following for its Opposition to the Application for Rehearing of AG Processing Inc. a Cooperative (“AGP”):

1. On May 9, 2012 the Missouri Public Service Commission (“Commission”) approved tariff sheets, effective June 8, 2012, which carry out the mandate of the Commission in its Report and Order of March 7, 2012 (effective April 6).

2. AGP filed no application for rehearing or motion for reconsideration of the Commission’s March 7, 2012 Report and Order. Instead, AGP filed an improper and untimely Motion to Suspend, or, in the Alternative, Reject Tariff (“Motion”) on April 10, 2012.

3. In its Motion, AGP attempted to raise substantive issues that the Commission already decided, and that AGP already lost and failed to preserve through an application for rehearing or other motion for reconsideration. As described in GMO’s April 19, 2012 Opposition to AGP’s Motion (“Opposition”), incorporated herein by reference, AGP’s belated attempt to revive issues already determined by the Commission was both an unwarranted *fifth* bite at the apple and an impermissible collateral attack on several Commission orders.

4. The Commission so held when it soundly rejected AGP's Motion in its May 9, 2012 Order Approving Tariffs ("Order") that AGP now challenges, stating that AGP's Motion "is nothing more than an untimely collateral attack on the Report and Order. What's more, the Commission has already addressed those objections in the Report and Order." Order at 1-2.

5. Now, with its Application for Rehearing, AGP attempts a *sixth* bite at the apple. AGP's persistent re-litigation of issues already determined by the Commission at the Commission, instead of at Missouri Court of Appeals where it has filed a notice of appeal,¹ clearly is improper and untimely.

6. Without citing any facts, AGP asserts in its Application for Rehearing that the Commission's Order warrants rehearing because the Commission "failed to consider all relevant factors" in approving those tariffs, "failed to give proper notice of its action" approving those tariffs, and "is not supported by competent and substantial evidence." Application for Rehearing at 1-2. Such general claims of fault do not constitute "sufficient reason" to grant rehearing. See Section 386.500.1. The PSC is obligated to grant rehearing only if, in its judgment, such "sufficient reason" exists. Id. See also State ex rel. County of Jackson v. PSC, 14 S.W.3d 99, 102 (Mo. App. W.D. 2000).

7. Indeed, it is unclear from AGP's Application for Rehearing exactly upon what it seeks rehearing. No hearing was held prior to the Commission's issuance of its Order. Instead, the purpose of the Order presently under attack is merely to implement the tariffs that carry out the mandate of the Commission in its Report and Order of March 7, 2012, which went into effect April 6. AGP filed no application for rehearing or motion for reconsideration of that March 7, 2012 Report and Order. Consequently, AGP did not preserve any right to attack the

¹ Notice of Appeal, Ag Processing v. Missouri Pub. Serv. Comm'n, No. WD75057 (filed March 26, 2012).

Report and Order in this proceeding or any other on appeal. Certainly, as the Commission has already determined, any rehearing of the issues in that Report and Order is improper. Order at 1-2. Any rehearing of the unspecified issues in AGP's present Application for Rehearing, which GMO can only assume relate to those issues already determined in the Report and Order and other prior Commission determinations, also is improper as it constitutes an unwarranted sixth bite at the apple and a collateral attack, as more fully described in GMO's April 19, 2012 Opposition.

8. Furthermore, AGP's Application for Rehearing is untimely. See Section 386.500.1; 4 CSR 240-2.160. By not following the correct procedures for challenging the Commission's Report and Order issued on March 7, 2012 or Order Approving Tariffs issued on May 9, 2012, AGP waived any objection to GMO's phase-in tariffs. See State ex rel. Mid-Missouri Tel. Co. v. PSC, 867 S.W.2d 561, 565 (Mo. App. 1993). The Commission should deny AGP's Application for Rehearing.

WHEREFORE, for the reasons stated above, KCP&L Greater Missouri Operations Company respectfully requests that the Commission deny the AGP's Application for Rehearing.

Respectfully submitted,

/s/ Karl Zobrist
Karl Zobrist MBN 28325
Lisa A. Gilbreath MBN 62271
SNR Denton US LLP
4520 Main Street, Suite 1100
Kansas City, Missouri 64111
Phone: 816.460.2400
Fax: 816.531.7545
karl.zobrist@snrdenton.com
lisa.gilbreath@snrdenton.com

Roger W. Steiner MBN 39586
Corporate Counsel
Kansas City Power & Light Company
1200 Main Street
Kansas City, MO 64105
Phone: (816) 556-2314
Roger.Steiner@kcpl.com

James M. Fischer MBN 27543
Fischer & Dority, PC
101 Madison, Suite 400
Jefferson City MO 65101
Phone: (573) 636-6758
Fax: (573) 636-0383
jfisherpc@aol.com

Attorneys for KCP&L Greater Missouri Operations
Company

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the above and foregoing was served upon counsel of record on this 8th day of June, 2012.

/s/ Lisa A. Gilbreath _____
Lisa A. Gilbreath