

agreement to extend the effective date of the tariff sheets to June 4, 2011.” (*Order Approving June 4, 2011 Tariff Effective Date*, p. 2) GMO complied with this order and extended the effective date of its proposed tariffs to June 4, 2011, providing for an additional month for the parties and the Commission to process this case. By moving the effective date one month, the Company gave up essentially 1/12th of the annual revenue increase that would result from the case. As the outcome of this case has resulted in an annual increase in revenues in excess of \$65 million, the one month change resulted in a loss of over \$5 million.

3. In its *Report & Order* issued on May 4, 2011, the Commission determined that the Company should file tariff sheets that comport with the *Report & Order* no later than May 12, 2011. Staff was also directed on May 4, 2011 to file a pleading reporting the revenue requirement increase, the customer effect of that increase, and the new rates per kWh per customer class after the increase.² On May 11, 2011, the Staff filed a pleading identifying the overall revenue requirement increase authorized by the *Report & Order* was \$59,436,131 (9.3%)³, approximately \$38.4 Million less than originally requested by the Company. The Staff also reported that the Commission’s *Report & Order* authorized an increase of \$30,142,949 (6.0%) for the MPS and \$29,293,182 (21.0%) for L&P divisions.⁴ The Company filed its compliance tariffs on May 12, 2011⁵, and Staff filed its *Staff Recommendation To Approve Tariffs* on May 17, 2011.

4. In its *Report And Order*, the Commission determined that it was appropriate to adopt a different method of allocating the costs of Iatan 2 between the MPS and L&P divisions

² Order Directing Filing (issued on May 4, 2010).

³ See Staff Fourth Response To Order Directing Filing filed on May 11, 2011.

⁴ *Id.*

⁵ GMO also filed revised and substituted tariffs sheets in compliance with the Report & Order on May 16 and 17, respectively.

than that proposed by GMO, based largely upon the recommendations of the Commission Staff.⁶ In its findings of fact, the Commission specifically found: “The Iatan 2 Allocation is more akin to a rate design issue since it determines the relative amount of the rate increase that will be received by both the MPS and the L&P service areas rather than the overall revenue requirement impact of Iatan 2.”⁷ As a result of this rate design determination, a larger increase was adopted for the L&P division than originally proposed by GMO.

5. Timely applications for rehearing were filed by GMO, Ag Processing (“AGP”), the Public Counsel and Dogwood Energy, LLC. The Public Counsel and AGP challenged the authority of the Commission to grant an increase to the L&P division that was larger than the increase that the Company had initially proposed. In addition, Public Counsel and AGP filed objections to the tariffs that were filed on similar grounds. In AGP’s *Objection To L&P Tariff* filed on May 16, 2011 AGP through its counsel, Mr. Woodsmall, recommended that the Commission limit the L&P division’s increase to the initially requested 13.78% increase, and phase-in the remaining increase, pursuant to Section 393.155.1. (AGP’s *Objection To L&P Tariff*, p. 2)

6. After receiving the motions for rehearing and objections to tariffs, the Commission held an on-the-record question and answer session on May 26, 2011. At the on-the-record session, both counsel for AGP and Public Counsel endorsed the concept of a phase-in plan without the need to hold additional hearings⁸ (Tr. 4972-76):

⁶ *Report And Order*, pp. 195-204.

⁷ *Report & Order*, p. 196.

⁸ Counsel for GMO suggested that evidentiary hearings would be required in order to adopt a lawful phase-in plan, based upon competent and substantial evidence. (Tr. 4976)

[Mr. Mills]: Mr. Chairman, I think you can achieve all of the things you're talking about with the phase-in. You avoid the illegal increase above what it's noticed. You avoid the concept that I think is implicit in GMO's proposal which is that, you know, you're phasing in the increase to St. Joe, but in the meantime you're having MPS subsidize St. Joe, so I think that the only route you have that is reasonably fair to ratepayers in both districts and to the Company is the phase-in. (Tr. 4972-73)

* * *

[Mr. Woodsmall]: We would concur in the execution [of the phase-in plan] as described. I guess a couple of thing regarding the phase-in. The statute allows for phase-ins for unusually large rate base additions. No question that this qualifies. (Tr. 4973)

* * *

[Mr. Woodsmall]: So if you believe that that's a right decision, stick with it and phase in the remaining amount. (Tr. 4983)

7. On May 27, 2011, the Commission issued its *Order Of Clarification And Modification* which modified its original *Report And Order* and adopted the phase-in proposal suggested by Public Counsel and AGP, and modified the authorized revenue requirement. (i.e. \$29,772,796 of the L&P division and \$35,721,372 for the MPS division). The Company was also directed to re-file its tariff sheets incorporating the phase-in plan by May 31, 2011 with an effective date of June 4, 2011.

8. On May 31, 2011, GMO filed its revised tariff sheets implementing the rate changes authorized by the Commission in its May 4, 2011 *Report and Order*, and its May 27, 2011 *Order of Clarification And Modification*. The general rate increase tariffs which were ordered to be filed with a June 4, 2011 effective date are designed to implement the general rate increase ordered by the Commission's orders that were to become effective on June 4, 2011. These general rate increase tariffs are not dependent upon the immediate approval of the phase-in plan tariffs. In order to effectuate the phase-in plan ordered by the Commission for the L&P division, the remaining phase-in plan tariffs were filed with effective dates of June 4, 2012, June 4, 2013 and June 4, 2014. **These phase-in plan tariffs may be approved at a later date than the general rate increase tariffs. The Commission should clarify its *Suspension Order* by lifting the suspension of the general rate increase tariffs and approving the general rate increase tariffs as soon as practicable.**

9. The Commission may review the details of the phase-in plan tariffs on a more leisurely schedule since the subsequent years of the phase-in plan tariffs are not intended to become effective until June 4 of 2012, 2013, and 2014, respectively.

10. In the May 31, 2011, cover letter and supporting documentation (p. 3) that accompanied the filing of the tariffs, the Company explained that the carrying costs in its proposed phase-in tariffs were determined consistent with the method approved previously by the Commission: "Carrying costs have been set at the authorized rate of return, consistent with Case Nos. ER-85-128 and EO-85-185 (28 Mo.P.S.C. (N.S.) 228 (1986))." (i.e. KCP&L's *Wolf Creek* rate case which included a seven (7) year phase-in plan).

11. The Commission's *Report And Order* in the *Wolf Creek* rate case approved the KCP&L's previous phase-in plan, stating: "The carrying costs on the deferred revenues under

the phase-in plan shall be calculated at the overall rate of return.” (Re Kansas City Power & Light Company, 28 Mo.P.S.C. (N.S.) at 418). The Company utilized the same method for determining the carrying costs as was last approved by the Commission in the Wolf Creek rate case since it believes this is the correct approach for reflecting carrying costs on the deferred revenues as required by Section 393.155.1 RSMo. The Company intends to further explain its position on this issue in the response that was ordered to be filed by June 8, 2011.

12. On June 2, 2011, the Public Counsel filed his *Objections To Tariffs*⁹ in which the Public Counsel argued that Public Counsel needed more time to review the tariffs, and the Commission was under no legal obligation to approve GMO’s tariffs. The Public Counsel, however, recognized that “. . . it should be the Commission’s goal to approve compliance tariffs quickly once the Commission has determined in a Report and Order that a rate increase is justified. . .” (Objection, p. 2). The Public Counsel also candidly admitted that the Public Counsel and other parties “rely on the Staff’s review of tariff filings because the Staff has both the requisite number of employees and the requisite institutional expertise to do the required detailed tariff analysis in the abbreviated time that the Commission generally allows for compliance tariff review.” (*Id.*)

13. Shortly after Public Counsel filed his *Objection To Tariffs* on June 2, 2011, the Commission Staff completed its tariff review of the general rate increase tariffs, and filed its recommendation to approve the tariffs bearing a June 4, 2011 effective date¹⁰ since the tariffs were in compliance with the Commission’s *Report and Order* issued on May 4, 2011, as

⁹ On June 2, 2011, AG Processing Inc. also filed a pleading concurring in Public Counsel’s objection to the tariffs.

¹⁰ The Commission Staff also recommended approval of the fuel adjustment clause tariffs to be effective on July 1, 2011, as ordered by the Commission in its *Order of Clarification And Modification* issued on May 27, 2011. This *Clarification Order* ordered that “KCP&L Greater Missouri is authorized to refile those [FAC] tariff sheets in compliance with this order including an effective date of July 1, 2011.” (Clarification Order, pp. 10-11)

modified and clarified by the Commission's *Order of Clarification and Modification* issued on May 27, 2011. These tariffs were designed to implement the general rate increase that was approved by the Commission for both the MPS and L&P districts to be effective on June 4, 2011 ("general rate increase tariffs"), and the fuel adjustment clause tariffs that were to be effective on July 1, 2011. These tariff sheets reflected an increase of \$22,101,088 for the L&P division, and \$35,721,372 for the MPS division, as authorized by the Commission's orders. The remaining increase for the L&P division was reflected in phase-in plan tariffs with effective dates of June 4, 2012, June 4, 2013, and June 4, 2014.

14. The Commission Staff recognized that the general rate increase tariffs needed to be processed more quickly than the phase-in plan tariffs, and indicated that they were "still reviewing these [phase-in] tariff sheets to determine if the individual billing rates will generate those future revenue requirements, and Staff will make its recommendation to the Commission for these tariff sheets as soon as practicable." (*See Staff Recommendation To Approve Tariff Sheets*, para. 6)

15. On June 2, 2011, the Commission issued its *June 2 Suspension Order* which, *inter alia*, suspended all the GMO tariffs, including the general rate increase tariffs, the phase-in tariffs, and the fuel adjustment clause tariffs, until June 18, 2011. Apparently, the Commission took this extraordinary step to allow Public Counsel and other parties additional time to review the revised tariffs. While GMO believes this step was unnecessary in light of the fact that the Commission Staff had completed its review of the general rate increase tariffs and recommended approval of the general rate increase tariffs prior to the issuance of the *Suspension Order*, GMO believes a 16-day delay for the approval of the general rate increase tariffs is unreasonable, arbitrary and capricious, and an abuse of discretion. The Courts have recognized that the

Commission “may fix a reasonable time in lieu of the said thirty day period”, and in State ex rel. Alton Railroad Co. v. Public Service Commission, 155 S.W.2d 149, 154 (Mo. 1941), the Missouri Supreme Court found a 10-day period between the issuance date and effective date of the order was not unreasonable. Therefore, even if the Commission believes Public Counsel is entitled to additional time to review the tariffs, it should not unduly extend the period to the detriment of the Company since the Commission has already determined that a rate increase is necessary.

16. The Company believes that the Staff’s approach for reviewing the tariffs is reasonable. The Commission should approve the general rate increase tariffs without further delay. If the Commission has questions regarding the appropriate carrying costs to be utilized in the phase-in plan tariffs, it may convene an evidentiary hearing to consider such issues.¹¹ However, it should not delay the general rate increase tariffs while the Commission considers competent and substantial evidence related to the Commission-mandated phase-in plan.

17. The Commission should recognize that any delay in the effective date of GMO’s non-fuel adjustment clause tariffs will cost the Company approximately \$200,000 per day, after the Commission has already found, based upon competent and substantial evidence, that a general rate increase is required. The Commission has already decided not to allow the Company to recover the full rate increase it found to be reasonable and necessary in its original *Report And Order*, until after a phase in plan is completed. The delay in implementing the general rate increase itself until June 18, 2011 adds to the adverse financial impact on the Company.

¹¹ As explained in the Company’s Application For Rehearing filed on June 2, 2011, the Company believes that the Commission must convene an evidentiary hearing and consider competent and substantial evidence related to phase-in proposals before it adopts a phase-in plan, pursuant to Section 393.155.1 RSMo.

18. Finally, the Commission should not allow the parties that proposed the phase-in plan at the eleventh hour to use the fact the Commission approved their proposal to now unduly delay the entire amount of the rate increase. On June 2, 2011, AGP through its counsel, Mr. Stuart W. Conrad, has now argued that the method chosen by the Commission to implement Section 393.155.1 is unlawful even though AGP's counsel, Mr. David Woodsmall, originally suggested the phase-in approach in this case. (Tr. 4972-73; 4983)(*See Application For Rehearing By AG Processing Inc A Cooperative* filed on June 2, 2011).

WHEREFORE, KCP&L Greater Missouri Operations Company respectfully requests that the Commission grant rehearing/reconsideration of its *Order Suspending Tariff Sheets And Directing Filing*, and clarify and approve the general rate increase tariffs without further delay, even if it desires to inquire into the carrying costs incorporated into the Company's phase-in plan tariffs.

Respectfully submitted,

/s/ James M. Fischer
James M. Fischer, MBN 27543
Fischer & Dority, P.C.
101 Madison Street—Suite 400
Jefferson City, MO 65101
Telephone: (573) 636-6758
Fax: (573) 636-0383
jfischerpc@aol.com

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

ATTORNEYS FOR KCP&L GREATER
MISSOURI OPERATIONS COMPANY

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand delivered, emailed or mailed, postage prepaid, this 3rd day of June, 2011, to all counsel of record.

/s/James M. Fischer
James M. Fischer