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 Approved Fuel and Purchased Power Cost Recovery Mechanism.	)))))	Case No. EO-2008-0216

INITIAL POST-HEARING BRIEF OF
KCP&L GREATER MISSOURI OPERATIONS COMPANY

KCP&L Greater Missouri Operations Company, formerly known as Aquila, Inc. (also referred to as "GMO" or "Company")[1] states the following as its Initial Post-Hearing Brief.

Aquila was the first company to file for a Fuel Adjustment Clause ("FAC") under the newly enacted Section 386.266.[2] Enacted in 2005, over twenty-five years after the Missouri Supreme Court's decision in State ex rel. Utility Consumers Council of Missouri, Inc. v. PSC, 585 S.W.2d 41 (Mo. en banc 1979) ("UCCM"), this law changed the regulatory landscape in Missouri regarding rate adjustment mechanisms and established an entirely new statutory mechanism to deal with fuel and other costs. The cause now before the Commission is the first FAC case that has been appealed and remanded back to the Commission.

Pursuant to the Court of Appeals' decision in State ex rel. Ag Processing, Inc. v. PSC, 311 S.W.3d 361 (Mo. App. W.D. 2010), the Commission now has an opportunity to review the actions that it took in its May 17, 2007 Report and Order ("May 2007 Order") in the Aquila Rate Case (Case No. ER-2007-0004). 311 S.W.3d at 367. The Commission may now explain to the remanding Court that its February 14, 2008 Order in this case ("February 2008 Order") approving the collection of additional charges from customers pursuant to the FAC approved in

[1] Aquila, Inc. changed its name to KCP&L Greater Missouri Operations Co. after it was acquired in 2008 by Great Plains Energy Inc. The Commission's approval of the acquisition was affirmed by the Court of Appeals. State ex rel. Praxair, Inc. v. PSC, No. WD71340 (Mo. App. W.D., Aug. 17, 2010), *transfer granted* (Mo. Dec. 21, 2010).
[2] Unless otherwise indicated, all statutory references are to the Missouri Revised Statutes (2000) and its Cumulative Supplement (2009), as amended.

the May 2007 Order is not retroactive ratemaking and that the calculation of fuel costs within the initial Accumulation Period should begin on June 1, 2007.

Should the Commission determine that it did engage in retroactive ratemaking, the Commission nevertheless does not have authority to order a refund or adjustment regarding any over-collection that occurred in the initial Accumulation Period, as the time for any refund or adjustment in this case has passed, there is no money to be refunded as no party has requested a stay and posted a suspending bond, and any order directing a refund or adjustment would be confiscatory. Should the Commission find that it does have authority to order a refund or adjustment, the Commission should issue an Accounting Authority Order to GMO regarding any amounts calculated from June 1 to July 5, 2007 that are contained in a refund or adjustment.

I. The Calculation of Fuel Costs Within the Initial Accumulation Period (June-November 2007) Should Begin on June 1, 2007.

Because Aquila's customers knew what their rates would be prior to the February 2008 Order becoming effective March 1, 2008, because the tariffs that became effective July 5, 2007 contained no information that customers did not already have on June 1, 2007, and because the new rates were prospectively applied, the accumulation of costs starting on June 1, 2007 is not retroactive ratemaking. Thus, the Commission should calculate fuel costs starting on June 1, 2007, as it did in its February 2008 Order. In any event, there can be no refund or adjustment relating to costs accumulated and collected on or after July 5, 2007, which is the uncontroverted effective date of the tariffs that are the subject of the Court of Appeals remand.

A. The Commission's February 14, 2008 Order is Not Retroactive Ratemaking.

In its decision in State ex rel. Ag Processing, Inc. v. PSC, the Court of Appeals found that the Commission's Order Approving Tariff to Establish Rate Schedules for Fuel Adjustment Clause, Case No. EO-2008-0216 (Feb. 14, 2008), violated the prohibition on retroactive

ratemaking because it permitted FAC charges to go into effect on March 1, 2008 that were based upon the cost of fuel and purchased power used from June 1 through November 30, 2007, when the June 29, 2007 Aquila Rate Case order that approved the FAC did not become effective until July 5, 2007. 311 S.W.3d 361 at 365-367. The Court of Appeals remanded this cause to the Commission for proceedings consistent with its ruling that retroactive ratemaking did occur prior to the tariffs becoming effective on July 5, 2007. Id. at 367. The Commission must here decide whether a refund or adjustment is appropriate for costs accumulated and calculation between June 1, 2007 and July 5, 2007. In conducting its analysis, the Commission must carefully analyze Missouri's judicial precedents in order to avoid labeling the prospective cost recovery of historical costs as retroactive ratemaking. See GMO Initial Brief at 7-11.

As expressly permitted by Section 386.266, the Commission in this case allowed fuel costs to be tracked for six months after the new rates authorized by the Aquila Rate Case became effective. During this 6-month period (June-November 2007) the tariffs under which fuel expenses were tracked did not contain any cost or rate information. There was no data available to customers in June or July of 2007 regarding whether their electric rates would go up or down and by how much, as the tariff sheets that became effective July 5, 2007 contained multiple zeros in all of the critical categories relating to fuel cost. See GMO Initial Brief Exhibits 5-6; Rush Direct Sch. TMR-1 (Hearing Ex. 1). These tariff sheets simply stated when the accumulation and calculation of cost would begin, but did not impose rates. After February 14, 2008, customers had the specific information regarding rates to be charged beginning March 1 and were able to make economic or business plans or adjustments.

Thus, the Commission did not engage in retroactive ratemaking when it approved the collection of additional charges from customers pursuant to the FAC in its February 2008 Order, as the Order became effective March 1, 2008 and the rates are prospectively charged. Because

there was no retroactive ratemaking, a refund or adjustment for costs accumulated and calculated between June 1 and July 4, 2007 is inappropriate.

B. There Can be No Adjustment Relating to Costs Incurred on or After July 5, 2007.

While the Company firmly stands by its foregoing position that under the specific facts of this case there was no retroactive ratemaking, 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. See 311 S.W.3d at 367. Nowhere did the Court hold that accumulation of costs after the July 5, 2007 tariff effective date was retroactive ratemaking. The Commission need not address any period of time longer than those 34 days.

Aquila's Rate Adjustment Mechanism ("RAM") was approved in the May 2007 Order (effective May 27, 2007). Although clarifications were made to the proposed FAC tariff sheets, the Commission's approval of the FAC, as authorized by Section 386.266.1 and the FAC regulations, did not change between May 27 and July 5. See Rush Direct at 5 (Hearing Ex. 1). 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. See Rush Direct at 5, Sch. TMR-1 at Orig. Sheet 124 and 126, Sch. TMR-2 (Hearing Ex. 1). 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, 2007. See Rush Direct at 5 (Hearing Ex. 1). It is uncontroverted that the specific FAC tariff sheets that set forth the calculation of future CAFs became effective July 5, 2007. Id.

Furthermore, the Company agrees with Staff that a tariff provision defining an accumulation period trumps the Commission's rules defining a true-up year. See Rush Direct at 5 (Hearing Ex. 1); see also Staff Initial 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.

In their initial briefs, Public Counsel and the Industrial Intervenors erroneously assert that the Commission's definition of a true-up year governs when an accumulation period can begin. See Public Counsel Initial Brief at 2, Industrial Intervenors' Initial Brief at 8–9; see also 4 CSR 240-3.161(1)(G) and 4 CSR 240-20.090(1)(I).

Tariff Sheet No. 124, effective July 5, 2007, provides for a six-month accumulation period of June through November. See Rush Direct Sch. TMR-1 (Hearing Ex. 1). 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. See Rush Direct at 5 (Hearing Ex. 1). 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. Id. 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, cannot override an unambiguous tariff that carries the full effect of the law.

What's more, FAC regulations focus on the effective date of the Commission order approving a Rate Adjustment Mechanism ("RAM"). See 4 CSR 240-20.090(1)(I); Rush Direct at 5 (Hearing Ex. 1). Aquila's RAM was approved in the Aquila Rate Case May 17, 2007 Report and Order (effective May 27, 2007). Were 4 CSR 240-3.161(1)(G) and 4 CSR 240-20.090(1)(I) applicable to the instant case, "the first day of the first calendar month following the effective date of the commission order approving a RAM" (rate adjustment mechanism) is June 1, 2007. Thus, even if Commission rules defining a true-up year govern when an accumulation period could start, the June 1, 2007 commencement of the initial Accumulation Period does not violate the Commission rules defining a true-up year, as the order approving the rate adjustment mechanism became effective in May 2007.

Should the Commission agree with Public Counsel and the Industrial Intervenors that the Commission's definition of a true-up year governs when an accumulation period can begin, good cause exists in this case to nevertheless begin the accumulation and calculation of costs, approved by the Commission and deemed prudent by Staff, no later than July 5, 2007 when the Commission's Order of June 29, 2007 that approved the FAC tariff sheets became effective. See File No. EO-2009-0115; Tr. at 149; Rush Direct Sch. TMR-1 (Hearing Ex. 1). A July 5, 2007 start date for the initial Accumulation Period results in credit amounts, including interest through December 31, 2010, of $1,975,363 for MPS and $484,626 for L&P. See Rush Rebuttal at 3 (Hearing Ex. 2); Roos Rebuttal at 2 (Hearing Exs. 6 and 7). An August 1, 2007 start date for the initial Accumulation Period results in credit amounts, including interest through December 31, 2010, of $7,084,354 for MPS and $1,710,484 for L&P. Id. Thus, GMO would be harmed by any delay in the start of the initial Accumulation Period.

Therefore, regardless of the arguments of the parties, there can be no refund with regard to costs that were incurred by the Company on or after July 5, 2007. The refund of any sums accumulated on July 5 or later would violate the tariff's plain language, as well as the filed rate doctrine and its various components, including the ban on retroactive ratemaking.

II. The Commission Does Not Have the Authority to Order a Refund or an Adjustment Regarding Any Over-Collection That Occurred in the Initial Accumulation Period.

Even if the Commission determines that its February 2008 Order constituted retroactive ratemaking, the issue of whether a refund or adjustment is appropriate in a future fuel adjustment clause case for a future period as a result of fuel costs that were accumulated and calculated between June 1 and July 4, 2007 remains. Because any refund or adjustment ordered by the Commission in this case would occur well after the True-Up Adjustment and the Prudence Review processes were completed, after the increase in rates under the fuel adjustment clause

have become permanent, and without any party to these proceedings requesting a stay of the February 2008 Order, the Commission has no authority to order a refund or adjustment here and any such refund or adjustment would be confiscatory.

A. The Time for Any Refund or Adjustment in This Case Has Passed.

GMO agrees with Staff that "any accumulation period credit should occur in either the true-up or prudence adjustment for the accumulation period." See Rogers Direct at 4 (Hearing Ex. 3); Rush Direct at 8 (Hearing Ex. 1). Because any refund or adjustment would occur outside of the Section 386.266 review periods, such refund or adjustment is inappropriate. 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. Id. The True-Up Adjustment (File No. EO-2009-0431) relating to this Recovery Period was in effect from September 1, 2009 through August 31, 2010. Id. 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. Id.; Tr. at 149. 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. See Tr. at 149. No party objected to the Prudence Review, and it was approved by the Commission. See Rush Direct Sch. TMR-5 (Hearing Ex. 1).

Therefore, any refund or adjustment that is now considered by the Commission in this case will 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. For this reason, GMO agrees with Staff 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 does not exist." Id. at 4-5.

B. No Party Has Applied to the Circuit Court for a Stay or Established a Stay Fund; Thus, There Is No Money To Be Refunded.

Because no party has contested the Commission's May 2007 Order approving the FAC or the February 2008 Order in this case, nor has any party filed a suspending bond, there is no money to be refunded. 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. See State ex rel. Midwest Gas User's Ass'n v. PSC, 996 S.W.2d 608, 614 (Mo. App. W.D. 1999).

When customers fail to contest the PSC order setting their rate and fail to establish a stay fund, their payments to the utility are not conditioned upon any challenge to the rate they paid and become the unconditional property of the utility. Lightfoot v. City of Springfield, 236 S.W.2d 348, 353-354 (Mo. 1951). Without a stay fund segregating 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. City of Joplin v. PSC, 186 S.W.3d 290, 295 (Mo. App. W.D. 2005).

In Lightfoot, in which customers of a municipal utility did not contest the PSC order setting their rate nor did they establish a stay fund, the Missouri Supreme Court stated, "No ultimate consumer had ever made a request or a demand that any of the money collected by the utility from its customers . . . in accordance with rate schedules in force and effect as approved by the Public Service Commission . . . should be ordered set apart, segregated or impounded to

await the event of the decision upon the review of the Federal Power Commission's order." Thus, the court concluded that "money so unconditionally paid as prescribed by the lawfully promulgated and effective rates became and was the property of the distributors." Id. See also Monsanto Co. v. PSC, 716 S.W.2d 791, 794 (Mo. en banc 1986) (finding that because industrial customers did contest the PSC order and did establish a stay fund, their money paid to the utility did not become the property of the utility, and relief could be granted by virtue of the stay entered and the suspending bond established by the circuit court pursuant to Section 386.520).

The Commission did not stay its May 2007 or February 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.

C. Any Order Directing a Refund or an Adjustment Would Be Confiscatory.

Without a stay fund from which to order a refund, any order directing a refund or an adjustment would likely be viewed by the courts as confiscatory. Due Process prevents any court or legislative body from taking from a utility money collected from ratepayers pursuant to lawful rates, as those funds are the property of the utility. Lightfoot, 236 S.W.2d at 354; City of Joplin, 186 S.W.3d at 299. As the Supreme Court stated in Lightfoot, because the utility's customers did not contest the PSC order setting their rate nor did they establish a stay fund, "[t]he money collected by the utility . . . came into its hands unconditionally." Lightfoot, 236 S.W.2d at 354. The Supreme Court concluded that any order refunding these funds would violate the utility's due process rights:

> In our opinion the money so unconditionally paid as prescribed by the lawfully promulgated and effective rates became and was the property of the [utility]. . . . We have said that when the established rate of a utility has been followed, the amount so collected becomes the property of the utility, of which it cannot be deprived without violating the due process provisions of the state and federal constitutions. [Id.]

So too did the Missouri Court of Appeals find that due process concerns prevented it from ordering a refund where the City of Joplin, which was contesting water rates, had failed to request a stay fund:

> Because the courts still have not finally decided the lawfulness of the rates herein and because there is no stay fund where contested monies could have remained under the court's jurisdiction, the Company collected money from Joplin district ratepayers under lawful rates, and we too are prevented by due process concerns from ordering a refund in this proceeding. [City of Joplin, 186 S.W.3d at 299].

The Court of Appeals found that it was "bound by Missouri case law which provides that, in the absence of a stay fund, monies collected by utilities under lawful rates cannot be refunded without due process implications." Id.

Furthermore, any order directing a refund or an adjustment of fuel costs recovered in an FAC that could otherwise have been recovered in a rate case also runs afoul of GMO's due process rights. In the UCCM case, the Supreme Court did ***not*** order a refund of the FAC and Roll-in charges. Recognizing that the Commission lacked statutory authority to authorize the FAC, the Supreme Court found that the utilities could have filed a rate case "in order to allow them to recover their increased fuel costs and to maintain a just and reasonable rate." State ex rel. Utility Consumers Council of Missouri, Inc. v. PSC, 585 S.W.2d 41, 58 (Mo. en banc 1979). Because the utilities "had a right to file for an increased rate," the Court determined that it could not order a refund "without depriving the utility (or the consumer if the rates were originally too low) of his property without due process." Id. Thus, the Court decided that ordering a refund of such amounts "would clearly be confiscatory and to order an offset of this refund by what a

'reasonable rate' would have been would be (retroactive) rate making at the order of this court, something we cannot do." Id.

In contrast, the Court in UCCM found that the Surcharge was an extension of the both the old and new FACs implemented by the Commission, and that the expenses it sought to collect were not collectible under the language and terms of the FACs. Therefore, the Court held: "Since the surcharge thus enabled the utilities to collect monies not collectible under the rate filed at the time the expenses intended to be recoverable under the surcharge were incurred, the utilities have no vested right in the monies collected." Id. at 59. Relying on that distinction, the Court ordered the utilities to make restitution to restore the amount of the surcharge to customers.

Our situation involves an FAC that was established according to law under Section 386.266 and that was implemented pursuant to the Commission's May 2007 Order in the Aquila Rate Case, as well as the February 2008 Order in this case. As a technical matter, it did not become effective until 34 days after it was intended to take effect on June 1, 2007 because of last-minute changes to the tariff. Yet no stay has been ordered nor has any party posted a suspending bond. What's more, costs accumulated under these tariffs were found by Staff and the Commission to be prudent. See Tr. at 149; Rush Direct Sch. TMR-5 (Hearing Ex. 1). Like the FAC and the Roll-in charges in the UCCM case, Aquila and now GMO have a due process right to the moneys that were paid under the FAC. A refund or adjustment would not be appropriate or lawful.

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

It is crucial to note that, in reversing the February 2008 Order, the Court of Appeals did not reverse the Commission's May 2007 Order authorizing an FAC. See State ex rel. Ag Processing, Inc. v. PSC, 311 S.W.3d 361, 365–67 (Mo. App. W.D. 2010). Nor did the Court

order a refund of *any* amounts accumulated under the FAC Id. Rather, the Court remanded the case "to the Circuit Court with directions to remand to the Commission for further proceedings consistent with this opinion." Id. at 367.

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. Id. at 367. It is uncontroverted that the effective date of the Commission's June 29, 2007 Order is July 5, 2007. While GMO believes that the Commission does not have the authority to order a refund, and that the tariffs approving the FAC became effective June 1, 2007 under the May 2007 Order, if a refund were required, the amount due to the customer would be 34 days worth of costs based upon the amounts filed in the first accumulation filing with the Commission. See Rush Direct at 8-9 (Hearing Ex. 1).

Using a July 5, 2007 start date for the initial Accumulation Period, credit amounts, including interest through December 31, 2010, would be $1,975,363 for MPS and $484,626 for L&P. See Rush Rebuttal at 3 (Hearing Ex. 2); Roos Rebuttal at 2 (Hearing Exs. 6 and 7). 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. See Rush Direct at 9 (Hearing Ex. 1); see also Roos Rebuttal at 3 (Hearing Ex. 6).

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

Although the Company firmly stands by its abovementioned position that under the specific facts of this case there was no retroactive ratemaking and that the Commission does not have the authority to order a refund in any case, should the Commission 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.

Including any 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. See Rush Direct at 10 (Hearing Ex. 1). 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." See Rush Direct Sch. TMR-1 (Hearing Ex. 1). 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. See Rush Direct at 10 (Hearing Ex. 1).

V. The Commission Should Issue an Accounting Authority Order to GMO Regarding Any Amounts That Are Contained in a Refund or an Adjustment.

While the Company does not agree that any refund is appropriate, if the Commission determines that such refund is necessary, it should authorize an Accounting Authority Order ("AAO") that would include all of the accumulations determined by this Commission to be necessary as a result of the Court of Appeals' Order on Remand. An AAO allows a utility to defer certain costs for later consideration in a general rate case. See Tr. at 165-166. Prudent costs are generally eligible for rate recovery. See Tr. at 171. However, the deferral of costs in an AAO is "not a guarantee of an ultimate recovery of a certain amount by the utility." Missouri Gas Energy v. PSC, 978 S.W.2d 434, 436 (Mo. App. W.D. 1998). Rather, the Commission must consider all other relevant factors when determining in the rate case the appropriate rate the utility may charge. Public Counsel v. PSC, 858 S.W.2d 806, 812 (Mo. App. W.D. 1993).

The fuel and fuel-related costs under the FAC at issue here have survived numerous reviews by the Commission and its Staff. The Commission approved the FAC in its May 2007 Order, and approved the first FAC rate in its February 2008 Order. On April 22, 2009, the

Commission approved Staff's prudence review of *all* aspects of GMO's fuel costs as they are passed through to customers through the FAC. See Rush Direct. Sch. TMR-5 (Hearing Ex. 1). The Commission's intent, therefore, plainly is to allow the recovery of prudent FAC costs beginning on June 1, 2007.

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. See 4 CSR 240-20.030; Tr. at 165-166. As an electric company subject to the Commission's jurisdiction, GMO is required to keep all its accounts in conformity with the USOA. Id. 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, what this Commission refers to as an AAO, may be appropriate when accounting for extraordinary items of profit or loss. See Tr. at 166. 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.

The USOA indicates that an extraordinary item for which special accounting treatment would be appropriate is "of unusual nature and infrequent occurrence." Furthermore, "they 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." 18 CFR part 101 (1992), General Instruction 7 (Attached hereto as **Exhibit 1**).

The Commission has established a test to determine when an AAO should be granted, stating that it would approve an AAO for events that it found to be "extraordinary, unusual and

unique, and not recurring."[3] Tracking the language in the USOA, the Commission in 2008 determined that, "for an item to be considered 'extraordinary' it must: (1) be of unusual nature; (2) be of infrequent occurrence; (3) be of significant effect; (4) be abnormal and significantly different from the ordinary and typical activities of the company; and (5) not reasonably be expected to recur in the foreseeable future." Report and Order, In re Application of Missouri Gas Energy for an Accounting Authority Order Concerning Environmental Compliance Activities, 2008 Mo. PSC LEXIS 1316 *17-18, Case No. GU-2007-0480 (Dec. 17, 2008). The ordering of a refund of costs related to the FAC clearly meets each of these qualifiers.

1. Unusual Nature.

The Commission found in its 2008 analysis that the word unusual is defined in the alternative as 'rare.' Id. at 18. Aquila was the first Company to implement an FAC under Senate Bill 179, which became Section 386.266, and the new rules promulgated by the Commission. That any refund ordered here is connected with the first FAC implemented by the Commission underscores the rarity and unusual nature of this event. The Commission should approve an AAO for the deferral of costs relating to any FAC refund because any refund relating to costs accumulated after the start of GMO's initial Accumulation Period but before the effective date of its FAC tariffs is rare and unusual.

2. Infrequent Occurrence.

In its 2008 analysis, the Commission considered infrequent occurrences not to be "common, familiar, current, usual, habitual and persistent." Id. at 21. Again, Aquila was the first Company to implement an FAC under the new statute and Commission rules. Subsequent GMO

[3] In re Application of Missouri Public Service for the Issuance of an Accounting Order Relating to its Electrical Operations; In re Application of Missouri Public Service for the Issuance of an Accounting Order Relating to its Purchase Power Commitments, 1 MPSC 3d 200, 205 (1991), *aff'd* State ex rel. Public Counsel v. PSC, 858 S.W.2d 806, 811-812 (Mo. App. W.D. 1993).

FAC orders have been upheld by the courts on appeal. Indeed, this case involves specific facts that are not common or usual. The Court of Appeals reversed the Commission's February 2008 Order because it permitted FAC charges to go into effect on March 1, 2008 that were based upon the cost of fuel and purchased power used from June 1 through November 30, 2007, yet the FAC tariffs did not become effective until July 5, 2007. Thus, there were 34 days during the initial Accumulation Period where costs were tracked prior to the effective date of the Commission's Order. Any refund of funds collected under the initial Accumulation Period is not likely to recur for other Accumulation Periods. The Commission should approve an AAO for the deferral of costs relating to the FAC refund because it is an infrequent occurrence.

3. Significant Effect.

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. See Tr. at 146. This change in the system of recovery of these costs was a significant change from the prior system whereby costs were recovered in a general rate case. See Tr. at 162. What's more, if any refund or adjustment amounts to more than approximately 5 percent of income, that is further evidence of its significant effect. See Exhibit 1, CFR part 101 (1992), General Instruction 7.[4] Using a July 5, 2007 start date for the initial Accumulation Period, any refund or adjustment would amount to 7.45 percent of 2007 net operating income for L&P and 2.90 percent of 2007 net operating income for MPS. The Commission should approve an AAO for the deferral of these costs because the passage of Section 382.266 had a significant effect on utilities' recovery of these

[4] See also Report and Order, In re Application of Missouri Public Service for the Issuance of an Accounting Order Relating to its Electrical Operations, and In re Application of Missouri Public Service for the Issuance of an Accounting Order Relating to its Purchasing Power Commitments, Case Nos. EO-91-358 and EO-91-360 (Dec. 20, 1991) 129 P.U.R.4th 381, 1 MPSC 3d 200.

costs, Aquila was the first Company to implement an FAC under this new statute, and these costs would amount to more than 5 percent of 2007 net operating income for L&P.

4. Abnormal and Significantly Different From the Ordinary and Typical Activities of the Company.

Upon its enactment, Section 386.266 changed the regulatory landscape in Missouri regarding rate adjustment mechanisms. Indeed, an FAC "is a radical departure from the usual practice of approval or disapproval of filed rates, in the context of a general rate case." UCCM 585 S.W.2d at 49. See also Tr. at 162. The advent of this new statute changed the ordinary and typical way by which utilities recover fuel and fuel-related costs. See Tr. at 139-140, 146, 162. Aquila was the first Company to implement an FAC under Section 386.266, and any refund ordered here would therefore be connected with the first FAC implemented by the Commission. What's more, the refund of prudent FAC costs in this case would be an abnormal cost for GMO. For these reasons, the Commission should approve an AAO for the deferral of refund costs.

5. Not Reasonably Expected to Recur in the Foreseeable Future.

Any refund or adjustment of FAC costs here is a non-recurring event. Because subsequent GMO FAC orders have been upheld by appellate courts, 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. Thus, deferral of these costs is consistent with previous Commission approvals of the deferral and subsequent amortization of extraordinary costs.

The Commission has never limited the granting of an AAO to costs resulting from natural catastrophes such as fire, flood, or ice storm that cause a large amount of damage to the utility's property. See Report and Order, In re Application of Missouri Gas Energy for an Accounting Authority Order Concerning Environmental Compliance Activities, 2008 Mo. PSC LEXIS 1316

*13-14, Case No. GU-2007-0480 (Dec. 17, 2008). "On the contrary, the Commission has found that an AAO would be appropriate in a wide variety of circumstances." Id. at 14. The Commission has approved an AAO for the deferral of costs relating to refurbishment a coal-fired generating plant,[5] for a company's costs incurred to enhance security after the terrorist attacks of September 11, 2001,[6] and for the deferral of costs related to a company's compliance with changed accounting standards.[7]

What's more, "the Commission has granted AAOs authorizing deferral of costs relating to actions that a utility has been required to take as a result of governmental orders, regulations, or statutes." Id. at 16. For example, the Commission has granted AAOs for costs related to a company's compliance with emergency amendments to the Commission's cold weather rule,[8] and for expenses related to a company's compliance with a gas safety line replacement program.[9]

The significant statutory change in the manner in which fuel and fuel-related costs are recovered was an extraordinary event. Aquila was the first Company to implement an FAC under the new Section 386.266, and any refund or adjustment ordered in this case, due to the specific facts of this case, would also be an extraordinary event. Refunding costs accumulated and calculated for the 34 days after the start of an Accumulation Period but before the effective date of FAC tariff sheets certainly is unusual, infrequent, significant, abnormal and significantly

[5] In re Application of Missouri Public Service for the Issuance of an Accounting Order Relating to its Electrical Operations. In the Matter of the Application of Missouri Public Service for the Issuance of an Accounting Order Relating to its Purchase Power Commitments, 1 MPSC 3d 200 (1991).

[6] In re Joint Application of Missouri-American Water Company, St. Louis Water Company, d/b/a Missouri-American Water Company, and Jefferson City Water Works Company, d/b/a Missouri-American Water Company, for an Accounting Authority Order Relating to Security Costs, Report and Order on Remand, Case No. WO-2002-273 (November 10, 2004).

[7] In re Application of Union Electric Company for an Accounting Authority Order, 1 MPSC 3d 329 (1992)

[8] In re Application of UtiliCorp United, Inc., d/b/a Missouri Public Service and St. Joseph Light and Power Company for an Accounting Authority Order Relating to Commission Rule 4 CSR 240-13.055(13), 11 MPSC 3d 78 (2002); In re Application of Missouri Gas Energy, a Division of Southern Union Company, for an Accounting Authority Order Relating to Commission Rule 4 CSR 240-13.055(13), 11 MPSC 3d 317 (2002).

[9] In re Tariff Revisions of Missouri Gas Energy, a Division of Southern Union Company, Designed to Increase Rates for Natural Gas Service to Customers in the Missouri Service Area of the Company, 10 MPSC 3d 369 (2001).

different from the ordinary and typical activities of the Company, and not reasonably expected to recur again. Furthermore, because the Commission approved the FAC in its May 2007 Order, approved the first FAC rate in its February 2008 Order, and approved Staff's prudence review of the FAC, the Commission's intent clearly is to allow the recovery of prudent FAC costs beginning on June 1, 2007. As any refund or adjustment of these prudent costs would be extraordinary, the Commission should authorize an AAO.

WHEREFORE, the Company requests that the Commission find that it did not engage in retroactive ratemaking and that the calculation of fuel costs within the initial Accumulation Period should begin on June 1, 2007. Should the Commission determine that it did engage in retroactive ratemaking, the Company requests that the Commission find that it does not have authority to order a refund or adjustment regarding any over-collection that occurred in the initial Accumulation Period. Should the Commission fund that it does have authority to order a refund or adjustment, the Company requests that the Commission use a July 5, 2007 start date for the initial Accumulation Period, and credit amounts, including interest through December 31, 2010, of $1,975,363 for MPS and $484,626 for L&P. Finally, the Company requests that the Commission issue an Accounting Authority Order to GMO regarding any amounts that are contained in a refund or adjustment.

Respectfully submitted,

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Certificate of Service

I hereby certify that on this 7th day of June, 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

EXHIBIT 1

item frequently appears in more than one list. The proper entry in each instance must be determined by the texts of the accounts.

7. *Extraordinary Items.*

It is the intent that net income shall reflect all items of profit and loss during the period with the exception of prior period adjustments as described in paragraph 7.1 and long-term debt as described in paragraph 17 below. Those items related to the effects of events and transactions which have occurred during the current period and which are of unusual nature and infrequent occurrence shall be considered extraordinary items. Accordingly, they 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 forseeable future. (In determining significance, items should be considered individually and not in the aggregate. However, the effects of a series of related transactions arising from a single specific and identifiable event or plan of action should be considered in the aggregate. To be considered as extraordinary under the above guidelines, an item should be more than approximately 5 percent of income, computed before extraordinary items. Commission approval must be obtained to treat an item of less than 5 percent, as extraordinary. (See accounts 434 and 435.)

7.1 *Prior period items.*

A. Items of profit and loss related to the following shall be accounted for as prior period adjustments and excluded from the determination of net income for the current year:

(1) Correction of an error in the financial statements of a prior year.

(2) Adjustments that result from realization of income tax benefits of preacquisition operating loss carryforwards of purchased subsidiaries.

B. All other items of profit and loss recoguized during the year shall be included in the determination of net income for that year.

8. *Unaudited Items (Major Utility).*

Whenever a financial statement is required by the Commission, if it is known that a transaction has occurred which affects the accounts but the amount involved in the transaction and its effect upon the accounts cannot be determined with absolute accuracy, the amount shall be estimated and such estimated amount included in the proper accounts. The utility is not required to anticipate minor items which would not appreciably affect the accounts.

9. *Distribution of Pay and Expenses of Employees.*

The charges to electric plant, operating expense and other accounts for services and expenses of employees engaged in activities chargeable to various accounts, such as construction, maintenance, and operations, shall be based upon the actual time engaged in the respective classes of work, or in case that method is impracticable, upon the basis of a study of the time actually engaged during a representative period.

10. *Payroll Distribution.*

Underlying accounting data shall be maintained so that the distribution of the cost of labor charged direct to the various accounts will be readily available. Such underlying data shall permit a reasonably accurate distribution to be made of the cost of labor charged initially to clearing accounts so that the total labor cost may be classified among construction, cost of removal, electric operating functions (steam generation, nuclear generation, hydraulic generation, transmission, distribution, etc.) and nonutility operations.

11. *Accounting to be on Accrual Basis.*

A. The utility is required to keep its accounts on the accrual basis. This requires the inclusion in its accounts of all known transactions of appreciable amount which affect the accounts. If bills covering such transactions have not been received or rendered, the amounts shall be estimated and appropriate adjustments made when the bills are received.

B. When payments are made in advance for items such as insurance, rents, taxes or interest the amount applicable to future periods shall be charged to account 165, Prepayments, and spread over the periods to which applicable by credits to account 165,