

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

In the Matter of the Application of KCP&L)
Greater Missouri Operations Company for)
Approval to Make Certain Changes in its)
Charges for Electric Service.) Case No. ER-2010-0356

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

KCP&L Greater Missouri Operations Company (“GMO” or “Company”), pursuant to MO. REV. STAT. § 386.500.1 (2000) and 4 CSR 240-2.160, files its application for rehearing of the *Order Of Clarification And Modification* (“*Clarification Order*”) issued on May 27, 2011. In support of its application for rehearing, the Company states as follows:

I. Legal Principles That Govern Applications for Rehearing.

1. All decisions of the Commission must be lawful, with statutory authority to support its actions, as well as reasonable. State ex rel. Ag Processing, Inc. v. PSC, 120 S.W.3d 732, 734-35 (Mo. en banc 2003). An order’s reasonableness depends on whether it is supported by substantial and competent evidence on the record as a whole. State ex rel. Alma Tel. Co. v. PSC, 40 S.W.3d 381, 387 (Mo. App. W.D. 2001). An order must be neither arbitrary, capricious, nor unreasonable, and the Commission must not abuse its discretion. Id.

2. In a contested case, the Commission is required to make findings of fact and conclusions of law. MO. REV. STAT. § 536.090 (2000); Deaconess Manor v. PSC, 994 S.W.2d 602, 612 (Mo. App. W.D. 1999). For judicial review to have any meaning, it is a minimum requirement that the evidence, along with the explanation thereof by the Commission, make sense to the reviewing court. State ex rel. Capital Cities Water Co. v. PSC, 850 S.W.2d 903, 914 (Mo. App. W.D. 1993). In order for a Commission decision to be lawful, the Commission must include appropriate findings of fact and conclusions of law that are

sufficient to permit a reviewing court to determine if it is based upon competent and substantial evidence. State ex rel. Noranda Aluminum, Inc. v. PSC, 24 S.W.3d 243, 246 (Mo. App. W.D. 2000); State ex rel. Monsanto Co. v. PSC, 716 S.W.2d 791, 795 (Mo. en banc 1986); State ex rel. A.P. Green Refractories v. PSC, 752 S.W.2d 835, 838 (Mo. App. W.D. 1988); State ex rel. Fischer v. PSC, 645 S.W.2d 39, 42-43 (Mo. App. W.D. 1982), cert. denied, 464 U.S. 819 (1983).

3. A review of the evidentiary record in this case demonstrates that the *Report and Order*, as clarified by the *Clarification Order*, failed to comply with these principles in certain respects and that rehearing should be granted as to the issues discussed below.

II. Application For Rehearing

4. On May 27, 2011, the Commission issued its *Clarification Order* which, *inter alia*, modified its *Report and Order* on the Iatan 2 allocation between MPS and L&P, and concluded that “rates for L&P service area should be set at an amount equal to the \$22.1 million originally proposed by GMO with the remaining increase plus carrying costs being phased-in in equal parts over a two year period.” (*Clarification Order*, p. 7) The Company requests rehearing of this portion of the *Clarification Order* on the grounds that the order is unlawful and unreasonable, and lacks sufficient findings of fact to support the order.¹

5. The *Clarification Order* is unlawful since the Commission failed to hold the evidentiary hearing required by Section 393.155 RSMo. In particular, the Commission did not hold an evidentiary hearing to determine that the authorized increase in revenues was “primarily due to an unusually large increase in the corporation’s rate base.” The Commission did not hold an evidentiary hearing to review competent and substantial evidence regarding the details of an

¹ On May 13, 2011, GMO also filed its *Motion For Clarification And/Or Reconsideration And Rehearing Of KCP&L Greater Missouri Operations Company*. GMO hereby re-alleges those points contained in its May 13, 2011 application for rehearing and incorporates them herein by reference.

appropriate phase-in plan, or the financial impact of a phase-in plan upon the Company or its customers. The only “hearing” held on this issue was an oral argument on May 26, 2011, at which time the Commission specifically determined that no additional evidence would be taken at the on-the-record session. (*See Order Setting Oral Arguments on Applications For Rehearing and Motions For Clarification*, p. 1 (issued May 24, 2011)).

6. The Commission’s *Clarification Order* is not supported by competent and substantial evidence on the whole record. In fact, there is no testimony in the entire record in which any party proposed a phase-in plan of the increase for the L&P service area, or otherwise discussed the length of the phase-in plan, the statutorily required carrying costs, or the financial impact of a phase-in plan upon the Company or its customers. As a result, the *Report & Order*, as modified and clarified by the *Clarification Order* is unreasonable, and not based upon competent and substantial evidence.

7. The Commission’s *Clarification Order* is not supported by adequate findings of fact and conclusions of law that explain the basis for the Commission’s decision to order a phase-in plan for the rate increase in the L&P service area.

8. The Commission’s *Clarification Order* also declined to clarify or reverse its decision with regard to the Crossroads Accumulated Deferred Income Tax Reserve Amount. (*Clarification Order*, pp. 2-3) The Commission’s order on this issue is not supported by competent and substantial evidence in the whole record, and the Commission abused its discretion and acted in an arbitrary and capricious manner when it declined to clarify its *Report and Order* and recalculate the amount of the accumulated deferred income tax based upon the lower value utilized the Commission for the Crossroads plant in the *Report and Order*. The Commission’s decision on this issue also is not supported by adequate findings of fact and

conclusions of law.

WHEREFORE, KCP&L Greater Missouri Operations Company respectfully requests that the Commission grant rehearing of its *Order Of Clarification And Modification*, as more fully described herein.

Respectfully submitted,

/s/ Roger W. Steiner

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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 2nd day of June, 2011.

/s/ Roger W. Steiner

Roger W. Steiner