

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

**In the Matter of the Determination            )**  
**of Carrying Costs for the Phase-In        )**       **ER-2012-0024**  
**Tariffs of KCP&L Greater Missouri        )**  
**Operations Company                            )**

**POST-HEARING BRIEF OF AG PROCESSING INC A COOPERATIVE**

**Introduction**

Ag Processing Inc a Cooperative ("AGP") is a major electric customer of KCP&L Greater Missouri Operations Company ("GMO") in the St. Joseph District. This district was formerly operated by St. Joseph Light & Power, which was purchased by Aquila, Inc. and operated as a separate division. Subsequent to that acquisition, Great Plains Energy purchased (through intermediaries) the stock of Aquila, Inc. (including responsibility for the St. Joseph service territory) and then renamed the company it had acquired as GMO.

In the recent GMO rate case, identified as ER-2010-0356, the Commission awarded GMO rate relief for the St. Joseph district that exceeded what GMO had requested. The Commission relied upon a comparatively new statute, Section 393.155.1 RSMo., as authorizing a "phase-in" of additional amounts. Both GMO and AGP have effected the necessary filings to perfect judicial review of that decision (although on obviously different grounds)

and that appeal currently pends before the Cole County Circuit Court.<sup>1/</sup>

This post-hearing brief will address the issues that AGP has raised in this proceeding. We will, for the most part, attempt to follow the statement of issues that was originally put forward in this proceeding. As stated in our Position Statement, this brief is submitted without prejudice to AGP's position that the Commission is entirely without jurisdiction to act herein.

## **Discussion of Issues**

### **I. DOES THE COMMISSION HAVE JURISDICTION IN THIS CASE?**

The Commission does not have jurisdiction in this case. There are at least three basic reasons for this conclusion.

#### **A. The Commission Lost Jurisdiction to Further Process This Cause Upon the Issuance of Writs of Review.**

It is well established in Missouri law that the issuance of a writ of review by a reviewing court deprives the Commission of jurisdiction over the cause being reviewed.<sup>2/</sup>

GMO applied for a writ of review of Case No. ER-2010-0356 on June 24, 2011 in Cole County Circuit Court Case No. 11AC-

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<sup>1/</sup> These appeals were taken pursuant to the then-existing statutory framework. Subsequently the General Assembly altered that framework such that future appeals would go to the appropriate Court of Appeals rather than a Circuit Court.

<sup>2/</sup> *State ex rel. Kansas City v. Public Service Com.*, 228 S.W.2d 738, 741 (Mo. 1950); *State ex rel. Campbell Iron Co. v. Public Serv. Comm.*, 296 S.W. 998, 1001 (Mo. 1927).

CC00415. That writ was issued on June 29, 2011. This issuance deprived the Commission of jurisdiction to further act in that matter.

Additionally, AGP sought and obtained an additional writ of review from the same court on July 5, 2011 in Case No. 11AC-CC00432. AGP's writ explicitly prohibited the Commission from acting further in the cause under review. ***It ordered: "that said Commission take no further action in such cause save compliance with this Writ of Review."***

The Commission is well aware of both these cases, having filed a Motion to Consolidate them on July 7, 2011. The Commission is also fully aware of the issue that AGP has with the Commission's ER-2010-0356 Report and Order, namely that the Commission unlawfully directed a phase-in which in the aggregate exceeds the amount of the increase in the rates requested by GMO. This issue is fully encompassed by the writ of review that AGP obtained and AGP's several Applications for Rehearing.

**B. Artificial Shifts of Case Numbers Do Not Change the Substance of the Cause.**

The Commission has now adopted two new cases or file numbers including this case, ER-2012-0024, in which to try to implement the unlawful phase-in for the St. Joseph district and circumvent the writs of review. Both this case number and the earlier case, ET-2012-0017, were initiated ***after*** the writs of review were issued.

The list of EFIS filings in this case is replete with over 50 pleadings that the Commission directed be copied from the ER-2010-0356 case, making it clear that the Commission is simply trying to avoid the implications of the writs of review by shifting activities to a new case number.

It is certainly clear that the Commission wishes to give GMO rate relief in excess of what its management thought it prudent to seek. Unfortunately the Commission is itself limited to the application that GMO filed for rate relief and the notice that the Commission itself directed be sent to the customers in the St. Joseph district and the announced purpose of the public hearings in the St. Joseph district.

Just as unfortunately, the Commission appears willing to disregard governing law, directions from the courts, and its own rules to do so. The Commission has now determined that this new case, ER-2012-0024, is to proceed as a **rate case**. Yet, there has been no showing that GMO could not make a new rate case filing. The Commission's actions are a transparent attempt to shortcut evade the writs of review, the law, the court's explicit orders, and ratepayer rights.

The Writ of Review issued on July 5, 2011 in Case No. 11AC-CC00432 ordered the Commission to certify fully, and return to it within thirty days of the issuance of this Writ, a full, true and complete copy of the record in Case No. ER-2010-0356. It also ordered that **"said Commission take no further action in such cause save compliance with this Writ of Review."**

On June 25, 2011, the Commission established a procedural conference in the ER-2010-0356 cause, the stated purpose of which was to

With regard to the phase-in compliance tariffs, however, the Commission determines that **it is appropriate to take additional evidence on what a "reasonable adjustment" or "carrying cost" should be.** Because the phase-in tariffs will not become effective until 2012, 2013, and 2014, the Commission need not take action on those tariffs in this order. Therefore, the Commission will set a procedural conference [in ER-2010-0356] in order to establish a schedule for hearing additional evidence on the phase-in portion of the tariffs. (Emphasis added)

GMO's writ of review was issued on June 29, 2011. On July 18, 2011, the Commission opened Case No. ET-2012-0017 entitled *In the Matter of the Determination of Carrying Costs for the Phase-In Tariffs of KCP&L Greater Missouri Operations Company.*

Next, on July 22, 2011 (and after **both** writs of review had been issued), the Commission issued another order in its newly-opened ET-2012-0017 case that, inter alia, stated:

In addition, the Commission opens this new file for the proceeding **related to a determination of the carrying costs** for the phase-in and approval of those tariffs. The parties to File No. ER-2010-0356 shall be made parties to this file without the need for further intervention. (Emphasis added)

Then, only a week after it had opened it, on July 25, 2011, the Commission closed the ET case and opened yet a new one, stating its reason as follows:

The Commission has determined **that this matter should be classified as a rate case rath-**

**er than as a tariff case.** Therefore, File No. ER-2012-0024 has been opened and will contain all filings that would have occurred in this file.

The common thread that ties together this flurry of activity is the fact that the original discussion of the carrying charge issue was in ER-2010-0356. However, after writs were issued depriving the Commission of jurisdiction openly to proceed in that cause, the Commission then moved to another case, designating it as an "ET" or electric tariff case but continued the same substantive cause that it had previously done in the ER-2010-0356 case, *i.e.*, the implementation of the unlawful and challenged phase-in tariffs. Then, perhaps recognizing its error, it closed the ET case and opened a new "ER" or electric rate proceeding as noted above. However, the purpose of this case continues to be the **same** cause that was initially addressed in ER-2010-0356 as to which the Commission not only lost jurisdiction but was prohibited from further action.

The selection of an "ET" or tariff designation is revealing. The Commission rather plainly wanted to continue to implement the St. Joseph phase-in despite the direct order in the writ not to do so.

The Commission opened ER-2012-0024 as a new rate case in which to try to implement the unlawful phase-in for the L&P district. Case No. ER-2012-0024 was titled the same as Case No. ET-2012-0017, *In the Matter of the Determination of Carrying Costs for the Phase-In Tariffs of KCP&L Greater Missouri Operations Company.*

All this shuffling is nothing more than playing with case numbers and will not suffice to frustrate judicial review nor restore lost jurisdiction. A Writ of Review is an equitable proceeding in which the Commission is directed to send up the record in the case for review. The reviewing court has exclusive jurisdiction thereafter and the Commission has no jurisdiction remaining in the cause. The Commission may not avoid this effect of a writ of review simply by shifting the same substantive cause to a new case number and continuing proceedings in that new number, even importing pleadings and other materials from the earlier case and for all intents and purposes attempting to make over the subsequent case into a continuation, extension and implementation of the cause under judicial review. Artificially shifting case numbers does not change the **substance** of the cause under consideration.

This newest effort, ER-2012-0024, is no more than a continuance of the case that is on judicial review, Case No. ER-2010-0356. This is clearly evidenced by the EFIS "Docket" Sheet in Case No. ER-2012-0024 starting with Entry 3 on July 26, 2011, in which the Order of Clarification and Modification (originally filed into ER-2010-0356 on May 27, 2011) was filed in the new case. In addition, the next 50 Entries, Nos. 4 through 54, all also filed on July 26, 2011, in Case No. ER-2012-0024, are all documents that were originally filed in Case No. ER-2010-0356 from May 31, 2011 through July 25, 2011. The EFIS caption shows their source. A copy of the Docket Sheet in Case No. ER-2012-

0024 from its opening through September 29, 2011 is attached as Appendix A. All of this is plainly an effort to frustrate judicial review and engage in a numbers game to accomplish the Commission's objective of giving GMO more rate relief than it had originally requested. In doing so the Commission has seriously misread Section 393.155.1.

**C. The Commission's Actions Are In Excess of Its Jurisdiction Because Section 393.155.1 Does Not Authorize The Commission To Grant Rate Relief to a Public Utility That Exceeds the Amount That the Utility Originally Requested and That Customers Were Notified It Was Seeking.**

**1. The Tortured Path To This Case.**

On June 4, 2010, pursuant to Section 393.140(11), RSMo., GMO filed revised rate schedules with the Commission designed to implement an overall electric rate increase of \$22.1 million or 13.87% for the Light and Power division of GMO.

On September 28, 2010, in its Order Setting Local Public Hearings and Directing Notice to Customers, the Commission directed that notice be given to the public including customers in its St. Joseph service area. This notice included this statement:

On June 4, 2010, KCP&L Greater Missouri Operations Company filed an electric rate case with the Missouri Public Service Commission seeking to increase annual electric operating revenues by approximately \$75.8 million in its MPS service territory **and approximately \$22.1 million in its L&P territory.** (Emphasis added)

and also the following:



Public hearings are scheduled on **the request**. The public hearing will consist of two parts. During the first part representatives of KCP&L Greater Missouri Operations will explain **their request** to the public. The PSC staff and the Office of Public Counsel will also answer questions and may present their positions regarding **the request**. The second part is a formal hearing to assure that members of public have the opportunity to make their views on **the request**, service or billing issues **known to the Commission**. (Emphasis added)

"The request" can refer to GMO's rate increase proposal, and only GMO's proposal because there was no other request pending at that time. An increase of \$22.1 million is clearly what the public in the L&P territory was officially informed about the level of rates that would be in issue and how high an increase could be expected. That is the amount that the rates filed by GMO for its L&P division would have produced had they gone into effect. The Commission's notice did not include any aggregation of GMO's request; each district was addressed separately.

In the same September 28 Order, the Commission directed GMO to "provide an individual notice to each of its customers in its Missouri service areas." This Commission-directed notice thus went to all L&P customers. Moreover, the Commission in the same order directed local public hearings **on the \$22.1 million** requested amount of rate relief to be held on December 6, 2010 at Missouri Western State University in St. Joseph.

From the time the \$22.1 million rate increase was filed until the case was decided in May of 2011, GMO did not file any

new tariffs with the Commission seeking recovery of revenues in excess of the \$22.1 million tariffs it initially filed for the L&P territory. Consequently, the ratepaying public in the L&P territory never received any notice that a rate increase in excess of the \$22.1 million request was being considered.

On May 4, 2011, after hearings on GMO's \$22.1 million increase for its L&P territory, the Commission issued its Report and Order in Case No. ER-2010-0356 in which the Commission purported to grant GMO an increase in rates for its L&P territory of \$29.3 million (21%) or, in other words, over \$7 million (7.13%) **in excess** of the \$22.1 million (13.87%) that the revised rate schedules or tariffs filed for the L&P territory on June 4, 2010 sought and on which the noticed hearings were held.

AGP filed its Application for Rehearing on the grounds that the Report and Order was "unlawful in that it grants GMO L&P a rate increase that is in excess of that initially requested by GMO and with regard to which GMO gave public notice."

On May 27, 2011, and almost two weeks after the May 14th effective date of its May 4th Report and Order, the Commission issued its "Order of Clarification and Modification" in which it recognized that a "21% increase" for the L&P customers, "when the original notices stated that the company was requesting a 13.78% [sic] increase", was an increase of such magnitude and effect on the ratepayers in L&P's territory, that it modified its May 4th Report and Order by adding Conclusion 65A in which it stated:

Because of the magnitude of the rate increase and the effects on the ratepayers in the L&P service area, the Commission determines in its discretion that a just and reasonable method of implementing this large increase is by phasing it in over a reasonable number of years. The **Commission further concludes that rates for L&P service area should initially be set at an amount equal to the \$22.1 million originally proposed by GMO with the remaining increase being phased-in in equal parts over a two year period.** (Emphasis added)

*First*, the Commission recognized its "original notice" advised customers that only a \$22.1 million increase request was being considered. *Second*, there is no authority or discretion for the Commission action to approve an "initial" rate increase that equals the amount requested and then to state how it intended to handle the "remaining increase."

On June 2, 2011, AGP sought rehearing of this Order of Clarification and Modification, once again on the grounds that it was unlawful in granting an increase greater than proposed and filed for and further that Section 393.155.1 did not authorize the Commission to grant an increase in excess of the amount proposed and noticed by phasing in the excess over a period of years and the purported phase-in was unlawful.

On June 15, 2011, the Commission issued its Order in ER-2010-0356 Approving Tariff Sheets and Setting Procedural Conference in which the Commission approved the base rate tariffs for the L&P customers designed to produce the \$22.1 million with an effective date of June 25, 2011. Because the additional \$7 million in phase-in tariffs would not become effective until

2012, 2013 and 2014 the Commission deferred action on them while it took additional evidence on what a "reasonable adjustment" or "carrying cost" should be.

On June 24, 2011, Relator filed its timely Application for Rehearing of the Commission's June 15th Order Approving Tariff Sheets and Setting Procedural Conference. The Commission denied all pending Applications for Rehearing on June 29, 2011.

To the extent that the phase-in rates exceed the \$22.1 million increase sought, they are invalid, null and void. The only action that the Commission properly may take with respect to such GMO filings is to reject them as it has no jurisdiction to do otherwise.

**2. The Commission is a Creature of the General Assembly and Has Only Such Powers as Have Been Expressly Granted.**

Missouri Courts have repeatedly stated that the PSC is a creature of statute and can only exercise such powers as are expressly conferred on it and the limits of which are clearly defined.<sup>3/</sup>

A Commission decision that is unlawful under a mistaken procedure is not entitled to any judicial deference. The Commission has no authority to declare or enforce principles of law or

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<sup>3/</sup> *State ex rel. Rutledge v. Public Service Commission*, 289 S.W. 785 (Mo. 1926); *Videon Corp. v. Burton*, 369 S.W.2d 264 (Mo. App. 1963); *Katz Drug Company v. Kansas City Power and Light Company*, 303 S.W.2d 672 (Mo. App. 1957); *Wilshire Constr. Co. v. Union Electric Co.*, 463 S.W.2d 903 (Mo. 1971).

equity.<sup>4/</sup> Nor may a Commission decision stand if the Commission has acted outside its statutory authority.<sup>5/</sup>

What appears to have been forgotten is that the public interest must be paramount in the PSC's acts; it is not an agency established to defend the utility's interests. Missouri's appellate Courts for many years have held without exception that: (1) the guiding star of the Public Service Commission Act; and (2) the dominant purpose of utility regulation itself is the promotion and conservation of the interest and convenience of the **public**. The dominant thought and purpose of legislation regulating public utilities is the protection of the public; any protection given the utility is merely incidental.<sup>6/</sup>

A search of applicable statutes through Chapters 386 and 393 R.S.Mo. will not produce any statute authorizing, permitting or otherwise directing the Commission to do what it has done in this instance -- approve rates in excess of the utility's request.

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<sup>4/</sup> *Board of Public Works of Rolla v. Sho-Me Power Corp.*, 244 S.W.2d 55 (Mo. en banc 1952).

<sup>5/</sup> *State ex rel. Marco Sales v. Public Service Comm'n*, 685 S.W.2d 216 (Mo. App. 1984); *State ex rel. Beaufort Transfer Co. v. Clark*, 504 S.W.2d 216, 217 (Mo. App. 1973).

<sup>6/</sup> *State ex rel. Electric Co. of Missouri v. Atkinson*, 204 S.W. 897 (Mo. 1918); *State ex rel. City of Sedalia v. Public Service Commission*, 204 S.W. 497 (Mo. 1918); *State ex rel. Crown Coach v. Public Service Commission*, 179 S.W. 2d 123, 126 (Mo. App. 1944); *De Paul Hosp. School of Nursing, Inc. v. Southwestern Bell Tel. Co.*, 539 S.W.2d 542, 548 (Mo. App 1976).

**3. Section 393.155.1 Does Not Grant Authority to the Commission to Establish a Phase-In That Exceeds the Amount That the Utility Requested.**

Section 393.155.1, has been cited as authority for what the Commission has done. That statute authorizes the Commission to phase-in large increases over a period of years instead of all at once, but nothing in that statute authorizes the Commission to give a utility rate relief in excess of the amount that the utility sought in the first place. Doing what the Commission has done is not in any material regard different from granting a full increase in the amount sought by the utility, then moving into the future and granting the utility still further increases that have **not** been applied for and, in fact, were resisted by the utility explicitly on that basis.

Based on its opening argument, we can expect that GMO will rely on its interpretation of Mr. Woodsmall's verbal suggestions to the Commission. However, GMO will vainly seek for a suggestion by Mr. Woodsmall that 393.155.1 provided legal authority for the Commission to give the utility greater relief than the utility originally requested. Indeed, AGP explicitly reserved its position on the lawfulness of such an action.

The Wolf Creek case, on which GMO also attempts to rely, not only predated 393.155.1 but also was a settled case (with the usual disclaimers) that developed a phase-in that, in the aggregate, was **less** than the amount that the utility had

originally requested. Wolf Creek does not support GMO's case here. Nor does the similar Callaway Nuclear case.

As GMO counsel suggested in opening argument,<sup>2/</sup> GMO resisted Staff's proposal to shift additional amounts of the Iatan plant responsibility to St. Joseph. GMO had good reason for such resistance. Apparently, while the Commission did not remember, the Company recalled what happened to it over 35 years ago when the Commission granted it an increase substantially in excess of its request in PSC Case No. 17,903 on May 7, 1974. It was immediately reversed on May 29, 1974, when the Circuit Court of Jackson County issued its Order for Reversal and Remand of Administrative Decision in *State of Missouri, ex rel Jackson County, Missouri v. Public Service Commission*, Case No. 779,963, in which it reversed the Commission because the procedure employed by the PSC and its decision and orders were "beyond its jurisdiction and violative of the due process requirements of the Constitution of the United States of America and of the State of Missouri and the letter and spirit of the provisions of the Missouri Public Service Commission law, and particularly Sections 393.140(11) and 393.150, RSMo. thereof." A copy of the Court's decision is attached hereto and incorporated by reference herein as Appendix B. This decision is the final judicial action in that cause. KCPL did not choose to appeal this decision and it is therefore law in Missouri.

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<sup>2/</sup> Tr. Vol. 2, p. 17, ll. 4-5.

It is equally clear from a review of the statutes with respect to the Commission's powers in this matter that the Commission is limited to those powers specified in Sections 393.140(11) and 393.150, RSMo., known as the "file and suspend" statutes.<sup>8/</sup> Under Section 393.140(11), the utility files tariffs designed to increase rates by a fixed amount and under Section 393.150, the Commission suspends such tariffs from becoming effective and undertakes hearings on the increase requested.

The Commission itself crafted and issued a notice to the public, noting that GMO sought \$22.1 million from the customers in the L&P area. The Commission then scheduled a series of public hearings to enable the utility to present its **filed** proposal. Nevertheless, ignoring its own notice, scheduled public hearings, press releases, and the law, the Commission then issued orders after the hearings were concluded purporting to allow GMO to increase rates in the L&P service territory by roughly \$29 million.

After public notice and full public and technical hearings on the full tariff charges the Commission is authorized by Section 393.150 "to make such order in reference to **such** rate [or] charge . . . as would be proper in a proceeding initiated after the rate [or] charge . . . had become effective". In other words, because the only rates that could go into effect before

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<sup>8/</sup> See, e.g., *State ex rel. Utility Consumers Council, Inc. v. Public Service Com.*, 585 S.W.2d 41 (Mo. 1979).



the Commission ruled were the rates filed by the utility, the only order of the Commission that would be proper after the rates filed by the utility went into effect would be the rates proposed by the utility or rates that produced less revenue than the Company had sought. The Commission is not authorized to approve rates in excess of the rates that were filed. All the Commission had before it for decision were the rates and charges proposed by GMO and filed on June 4, 2010 and any lesser rates or charges. Section 393.150 controls. These sections were not repealed by 393.155.1. The PSC could only act ("make such order") on what was before it ("in reference to such rate"). A grant of higher rates or charges than those contained in the June 4, 2010 GMO schedules is unauthorized and unlawful *ipso jure*. To permit such a grant would thwart due process and make a mockery of the General Assembly's plan for the issuance of PSC orders after notice and public hearings.

The General Assembly neither wished nor intended for a public utility to sandbag the public by permitting it to file tariffs for materially lesser rates than it actually plans to ask the PSC to grant.

Such an ill-conceived notion, which is attempted in the Report and Order in ER-2010-0356 could mean, for example, that a utility might file tariffs for an additional \$100,000 in annual gross revenues, thereby virtually eliminating any interventions or public interest, then present an uncontested case claiming a \$10 million increase or revenue deficiency which the PSC would

then accept through an order for the higher amount of increase, all without the filing of the amended tariff which would not be subject to further notice or hearings at a later date. In the first instance the requirements of due process are met; in the latter they are not.

It was only **after** the hearing held in this case was concluded that the PSC made a determination that GMO had under-filed its request for revenue and then purported to authorize an additional increase beyond that for which GMO had originally applied.

**4. The Commission Action Also Violates Utility Management Prerogatives.**

The basic purpose of the Public Service Commission Act is to substitute regulated monopoly for destructive competition. *State ex rel. Electric Company of Missouri v. Atkinson, supra.* This does not mean, however, that the PSC is to manage the public utility. The Commission may not substitute its judgment for management discretion.<sup>9/</sup> If, for example, utility management chooses to file tariff schedules for less than its present evidence of need, the Commission may not substitute its judgment for the judgment of the utility's management. It is wrong and unlawful for the PSC to direct a utility to file amended tariffs to produce any certain amount of revenues which it believes may be proved or required by such utility. That is a matter solely

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<sup>9/</sup> *State ex rel. Southwestern Bell Telephone Company v. Public Service Commission*, 416 S.W.2d 109 (Mo. 1967).

within the discretion of management of the utility and the statutes so provide.

Rather than file amended or new tariffs when Staff filed testimony proposing greater than a \$29 million increase to the L&P Division, which new tariff filing would have given notice to the world that GMO was modifying its request and would have required a hearing had a complaint been lodged and revived the period the PSC could have suspended the tariffs, GMO resisted Staff's contention and chose to continue with the \$22.1 million tariffs before the Commission. GMO, however, knew full well that the PSC had never in its history successfully granted a utility more than was requested by the tariffs before it; and likewise knew of no Commission in any other jurisdiction which had made such a grant.

**5. The Commission's Actions Denied Customers a Fair Hearing and Rudimentary Due Process and Fair Play.**

The general public and GMO's L&P customers were not afforded any notice that GMO was going to receive a \$29 million annual increase rather than the \$22.1 million for which proposed tariffs had been filed. Had there been proper notice, there may have been complaints filed or additional interventions from those members of the public adversely affected by such "altered" increase request.

Chapter 393, R.S.Mo., only grants the Commission the power to increase rates upon the filing of new proposed schedules by a utility with the Commission, after not less than 30 days

notice to the Commission, and publication to the public of the proposed new charges. For good cause shown, the Commission may allow different charges with less than the statutory 30 days notice under such conditions as the Commission may prescribe. Section 393.140(11) R.S.Mo. The General Assembly, in delegating to the PSC the police power to fix and determine utility rates and charges, did so with the public interest foremost in its mind through its requirements for notice and hearing procedures. Certainly the General Assembly did not contemplate the PSC implementing rates that exceed the level that was requested by the utility, were published and publicly noticed by the utility, and on which public and technical hearings were held. It is a legal absurdity that a decision contained in orders that were of necessity issued after the hearing was held and notice to the public given could be permitted to impose rates upon that public that exceed the level that the utility requested. This process is not a fair consideration of the interest of the public in this process. *State ex rel. Fischer v. Public Service Com.*, 645 S.W.2d 39, 43 (Mo. App. 1982). There the court ruled:

Due process requires that administrative hearings be fair and consistent with rudimentary elements of fair play. *Tonkin v. Jackson County Merit System Commission*, 599 S.W. 2d 25, 32-33[7] (Mo. App. 1980); *Jones v. State Department of Public Health and Welfare*, 354 S.W. 2d 37, 39-40[2] (Mo. App. 1962). One component of this due process requirement is that parties be afforded a full and fair hearing at a meaningful time and in a meaningful manner. *Merry Heart Nursing and Convalescent Home, Inc. v. Dougherty*, 131 N.J. Super. 412, 330 A. 2d 370, 373-374[7] (Ct. App. Div. 1974).

It should be self-evident that a party cannot meaningfully defend against a proposal of which it knows not nor has a full and fair hearing on a proposal of which they know nothing.

**II. DOES THE COMMISSION DECISION CONSIDER ALL RELEVANT FACTORS?**

**A. A Decision to Set Rates Must Consider All Relevant Factors.**

AGP submits its brief on the following issues without prejudice to its jurisdictional position.

Missouri law is also plain that in setting rates, the Commission must consider all relevant factors.<sup>10/</sup> This is true if the decision is to establish a particular rate level less than or equal to what the utility has sought. It is also true if the decision is to permit filed rates to go into effect.<sup>11/</sup> Moreover, under Missouri's Constitution, a decision to set rates must find support from competent and substantial evidence of those relevant factors.<sup>12/</sup>

This has been determined by the Commission's own Order to be a rate case. As developed earlier in this Brief, the Commission actually determined after the writs of review had been filed to discontinue its activities in an "ET" case and move to this case, making the determination that it should be processed

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<sup>10/</sup> *State ex rel. Utility Consumers Council, Inc. v. Public Service Com.*, 585 S.W.2d 41 (Mo. 1979).

<sup>11/</sup> *Id.*

<sup>12/</sup> Mo. Const., Art. V, Section 18.

as a rate case. Accordingly, if anything, it is to be tested under the standards applicable to a rate case, because that is what the Commission chose to call it. It may not now become some undefined continuation of the ER-2010-0356 case that is under review and as to which the Commission has lost jurisdiction. This whole effort is nothing more than an effort to "patch up" what perhaps should have been done before.

**B. As a Rate Case, All Relevant Factors Herein Have Not and Cannot Be Considered On This Record.**

Neither GMO witness Rush nor GMO witness Bryant provided any evidence of relevant factors in this matter. Mr. Rush testified only as to the "support for the Stipulation and Agreement ("Stipulation") between the Staff and Company filed in this case."<sup>13/</sup> Mr. Bryant testified as to the carrying cost rate.<sup>14/</sup> Examination of their testimony, which was taken in to this record subject to AGP's continuing objection regarding the Commission's jurisdiction to act in this matter, shows that neither testified about relevant factors that the Commission must consider in making a decision to set rates.

Mr. Bryant did, however, recognize that GMO had "originally requested" only \$22,101,088 but had been granted

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<sup>13/</sup> Rush, Direct Testimony, p. 2, ll. 16-17.

<sup>14/</sup> Bryant, Direct Testimony, p. 2, ll. 19-22.

\$29,772,796 by the Commission's action<sup>15/</sup> -- action that AGP contends is unlawful.

AGP's contentions are not vitiated by claiming that this case is an "extension" of the ER-2010-0356 cause. Were that contention made, it would further demonstrate that the Commission is doing exactly what AGP contends, *i.e.*, acting without any jurisdiction. As a result, GMO should not be heard to argue that the carrying cost issue is just an extension of the decision in ER-2010-0356. Of course, this is what GMO attempted, as demonstrated in the transcript [GMO Attorney Fischer querying Staff Witness Barnes]:

6 Q. Is it your understanding that in Case Number  
7 ER-2010-0356, the Commission found a revenue requirement for  
8 GMO?  
9 A. I was not a witness in that case, but yes,  
10 that's my understanding.<sup>16/</sup>

Commission actions are made even more ironic in this matter because it is the "shifting" of the allocation of the new Iatan generating station that resulted in the proposed increase to the St. Joseph district in that the result exceeded (using the Commission's own words) the amount that had been sought by GMO and had been originally resisted by GMO.<sup>17/</sup> It is the value of

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<sup>15/</sup> Bryant, Direct Testimony, p. 3, ll. 5-7.

<sup>16/</sup> Tr. Vol. 2, p. 17, ll.4-5.

<sup>17/</sup> Mr. Fischer stated in his opening that

4 GMO opposed both Staff recommendations because  
5 of the adverse impact it could have upon the L&P customers.  
6 But over the objection of the company, the Commission decided  
7 to allocate a larger portion of Iatan 2 to the L&P district  
8 and adopted the Staff's recommendation to rebase fuel costs.

Tr. Vol. 2, p. 17.

that rate base item that could have formed the basis of any rate relief that was given to GMO. Nevertheless, GMO counsel's cross attempted to get the Staff witnesses to tie the two cases together.<sup>18/</sup> -- GMO recognizes its problem. However, the implications and operation of depreciation would result in a lower rate base valuation in June, 2012 and certainly on corresponding dates in 2013 and 2014. Not only did GMO witnesses not offer any evidence regarding rate base valuation on those future dates, they did not even attempt to do so.

As a result, let's take a look at a short list of some relevant factors that the Commission considers in other rate cases:

### **1. Financial Analysis.**

Any financial analysis of GMO was performed almost a year ago. Staff Witness Murray testified:

18 Q. Mr. Murray, when did you do your financial  
19 analysis for the company in ER-2010-0356?  
20 A. It would have been almost a year ago, I  
21 believe. I don't remember the exact time.<sup>19/</sup>

There was no financial analysis conducted of the GMO company thereafter, and certainly not for June, 2012, 2013 or 2014.<sup>20/</sup>

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<sup>18/</sup>

6 Q. Is it your understanding that in Case Number  
7 ER-2010-0356, the Commission found a revenue requirement for  
8 GMO?  
9 A. I was not a witness in that case, but yes,  
10 that's my understanding.

Tr. Vol. 2, p. 50.

<sup>19/</sup> Tr. Vol. 2, p. 41, ll. 18-21.

<sup>20/</sup> *Id.*



## 2. Rate of Return on Equity.

Rate of return on equity or "ROE" is not only a relevant factor, but also an often controversial issue in rate cases.

Staff's Witness Murray, who does such analyses, testified:

22 Q. When you study the rate of return; is that  
23 correct a time-sensitive issue?  
24 A. Yes.  
25 Q. Would you agree with me that the rate of  
00042  
1 return on equity is a relevant factor for the Commission to  
2 consider?  
3 A. Yes.  
4 Q. What is the rate of return on common equity  
5 for this company on June 25, 2012?  
6 A. I know the allowed ROE. Allowed ROE is ten  
7 percent.  
8 Q. What is the rate of return on equity for this  
9 company on July -- June 25, 2012?  
10 A. I have not examined the earned ROE.  
11 Q. Do you know?  
12 A. No, I do not.  
13 Q. I want to make a comment to you, sir, if I  
14 may, that I do not know is a perfectly acceptable answer.  
15 A. Yes, thank you.  
16 Q. Do you -- well, let me ask you this: What is  
17 the rate of return for this company on its common equity on  
18 June 25, 2013?  
19 A. I do not know.  
20 Q. Would your answer be the same if I were to ask  
21 you that question with respect to June 25, 2014?  
22 A. I don't know what it will be, of course.<sup>21/</sup>

## 3. Capital Structure of the Utility.

Mr. Murray again testified that analysis of a utility's capital structure is a relevant factor in setting rates:

23 Q. Is capital structure a relevant consideration  
24 for the Commission?  
25 A. In the context of a rate case, yes.  
00043  
1 Q. What is the capital structure of the utility  
2 that is before us on June 25, 2012?  
3 A. I do not know that and will not know that  
4 until -- until June 25th.  
5 Q. Would your answer be the same if I were to ask  
6 you with respect to June 25, 2013?  
7 A. Yes.  
8 Q. Would your answer be the same if I were to ask  
9 you that question with respect to June 25, 2014?

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<sup>21/</sup> Tr. Vol. 2, p. 41-42.

10 A. Yes.<sup>22/</sup>

#### 4. Cash Working Capital.

Cash Working Capital is often a consideration in rate cases as it is the "bellows" on which the utility sometimes operates. It is typically calculated using "lead" and "lag" factors representing how quickly customers pay bills and what cash requirements the utility has until it is later paid for service provided. Again, Mr. Murray testified:

11 Q. Now this may take you, Mr. Murray, into an  
12 area that you don't often get into, but do you deal with cash  
13 working capital?  
14 A. Not directly responsible. I'm familiar with  
15 it, yes.  
16 Q. Does it bear in any way on the analysis that  
17 you do?  
18 A. Not directly, no.  
19 Q. Would you agree or disagree that analysis of  
20 the company's cash working capital requirements is a relevant  
21 factor?  
22 A. In what context?  
23 Q. In the setting of rates.  
24 A. In the setting of rates, yes.  
25 Q. Do you know what the company's cash working

00044

1 capital requirements are on June 25, 2012?  
2 A. No.  
3 Q. Would you know, if I were to ask you the same  
4 question, with respect to June 25, 2013 or June 25, 2014?  
5 A. No. Once again, that's in the future, so I do  
6 not know.<sup>23/</sup>

#### 5. Valuation of Utility Rate Base.

Often a source of dispute, (and that was certainly the case regarding Iatan costs), not only as to the value of that rate base initially, but as to the effect of depreciation on that value. Mr. Murray agreed that this was a relevant factor and that depreciation would be an offset to that value. Yet he was

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<sup>22/</sup> Tr. Vol. 2, pp. 42-43.

<sup>23/</sup> Tr. Vol. 2, pp. 43-44.

unable to testify about that factor for the three periods involved.

7 Q. Now when you do your analysis, do you take  
8 into account the value of the company's installed rate base?  
9 A. Not -- not directly. The rate of return is  
10 applied to the rate base.  
11 Q. So that becomes a multiplication process?  
12 A. That's correct.  
13 Q. But would you agree with me that the value of  
14 the company's rate base is a relevant factor?  
15 A. In rate settings, yes.  
16 Q. How does, in your experience, depreciation,  
17 and I'm just going to ask you at a high level, does that have  
18 any effect on the value of the company's rate base?  
19 A. Yes, there's an offset, accumulated  
20 depreciation, offsets for the plant service.  
21 Q. Would you agree with me --  
22 COURT REPORTER: Sir, I need to stop. Okay.  
23 Go ahead. Thank you. Sorry.  
24 BY MR. CONRAD:  
25 Q. And I think I was starting -- just starting to

00045

1 ask, when you say it's an offset, it's -- that reduces the  
2 value of the company's rate base?  
3 A. That's correct.  
4 Q. Now is the amount of depreciation that is an  
5 offset, is that a relevant factor for the Commission to  
6 consider in setting rates?  
7 A. Yes.  
8 Q. Do you know, sir -- again, let me remind you  
9 that I do not know is a good answer -- but do you know what  
10 the value of the company's rate base would be, net of  
11 depreciation, on June 25, 2012?  
12 A. No, I would not know that at this point.  
13 Q. And would your answer be the same if I were to  
14 ask you with respect to the -- the same question with respect  
15 to the dates June 25, 2013 and 2014?  
16 A. Yes.<sup>24/</sup>

## 6. Capital Markets.

An analysis of capital markets is a relevant factor because, using the *Hope Natural Gas*<sup>25/</sup> and *Bluefield Water Works*<sup>26/</sup> standards, consideration should be given to the capital

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<sup>24/</sup> Tr. Vol. 2, pp. 44-45.

<sup>25/</sup> *Federal Power Commission v. Hope Natural Gas*, 320 U.S. 591; 64 S. Ct. 281; 88 L. Ed. 333; 1944 U.S. LEXIS 1204 (1944).

<sup>26/</sup> *Bluefield Water Works & Improvement Company v. Public Service Commission of the State of West Virginia et al.*, 262 U.S. 679; 43 S. Ct. 675; 67 L. Ed. 1176; 1923 U.S. LEXIS 2676 (1923).

markets in which the utility competes for capital. Mr. Murray testified that he had not looked at this relevant factor.

17 Q. Do you usually, Mr. Murray, get into any other  
18 issues than rate of return on equity? I see sometimes your  
19 testimony on bond returns. Do you do that?  
20 A. Capital market issues, correct.  
21 Q. Yeah, market issues. Do you have any  
22 information that you could share with us what the capital  
23 markets are going to look like on June 25, 2012?  
24 A. By the yields in asset prices right now, I  
25 could tell you what I believe investors require for returns

00046

1 over the next several years. Now obviously, that's a -- the  
2 capital markets are very dynamic and while bond investors may  
3 expect very low returns at this point in time, that could  
4 change a couple years down the road if there's inflation  
5 that's not expected right now.  
6 Q. Things could happen even offshore, correct?  
7 A. Yes.  
8 Q. Things I hear that they call Euro dollars?  
9 A. Yes, the Euro.  
10 Q. Now, do you have any projection as to what the  
11 capital markets might be looking like in June 25 -- on June  
12 25, 2013?  
13 A. I believe interest rates will -- it's  
14 projected to remain low and the Federal Reserve has given  
15 some assurance that the capital markets -- that it will keep  
16 short-term interest rates low to attempt to keep long-term  
17 interest rates low. But I do have my understanding of what I  
18 believe the monetary policy objectives are considering in  
19 this current slow growth state of the committee and high  
20 unemployment.  
21 Q. You'd agree with me that, I take it, that  
22 monetary policy objectives are sometimes not achieved?  
23 A. Of course.  
24 Q. Do you have any information that you could  
25 share with us about what the capital markets are going to

00047

1 look like June 25, 2014?  
2 A. If I -- I cannot predict exactly what's going  
3 to happen on June 25, 2014.  
4 Q. I really wish you could, Mr. Murray.  
5 A. I wish I could, too. Thank you.<sup>27/</sup>

Staff Witness Barnes agreed as to the evaluation of

LIBOR:

11 Q. I will direct your attention primarily to  
12 Exhibit 6, and let's cover a couple of things there. Page 3,  
13 line 19, you're referring to LIBOR.  
14 A. Yes.  
15 Q. That's the London InterBank Offered Rate  
16 change; is that correct?  
17 A. That's correct.  
18 Q. You indicate there it changes monthly?  
19 A. Yes. It could actually change daily.  
20 Q. Can you tell me what, insofar as daily, it's

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<sup>27/</sup> Tr. Vol. 2, pp. 45-47.

21 going to be on June 25, 2012?  
22 A. I don't know what that rate's going to be.  
23 Q. How about on June 25, 2013?  
24 A. Same answer, I don't know.  
25 Q. And on -- and June 25, 2014?

00052  
1 A. Same answer, I don't know.<sup>28/</sup>

## 7. Normal Weather.

Weather normalization has often been a "hot" issue in rate cases because it is a major driver for a utility's revenue and even impacts how customer class revenues are affected. Mr. Wells, who often does this work for Staff, testified:

7 Q. -- on several issues. One of them includes  
8 the calculation of normal weather. Why is normal weather an  
9 important consideration?  
10 A. Well, essentially, the weather in any given  
11 year varies substantially from any other given year. And  
12 this is an attempt to find an average year.  
13 Q. To what end?  
14 A. To better account for any spikes or any high  
15 exceptionally warm summers, cold summer, warm winters, cold  
16 winters, to normalize the revenue stream for the company.  
17 Q. Okay. So it has some effect, then, I take it,  
18 on the company's revenues --  
19 A. Yes.  
20 Q. -- for that period? Would it also have some  
21 potential on expenses --  
22 A. I imagine so.  
23 Q. -- for the company also? Would the company's  
24 revenues and expenses be relevant factors in setting of  
25 rates?

00063  
1 A. Yes.  
2 Q. So in that sense, normal -- normalization of  
3 weather, weather adjustments are relevant factors?  
4 A. Yes.  
5 Q. Can you tell me what the weather is going to  
6 be on June 25, 2012?  
7 A. No, sir.  
8 Q. How about June 25, 2013?  
9 A. No.  
10 Q. Or 2014?  
11 A. No, I can't.  
12 Q. So may I conclude from that that you would not  
13 know what the company's revenues were likely to be on  
14 June 25, 2012?  
15 A. That's correct.  
16 Q. Same on 2013?  
17 A. Yes, sir.  
18 Q. Same June, 25, 2014?

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<sup>28/</sup> Tr. Vol. 2, pp. 51-52.

19 A. Yes.<sup>29/</sup>

## 8. Customer Growth.

Another relevant factor is customer growth. Not in the physical size of the customers, of course, but in the amounts for an electric utility, of the demand and energy used by the customers to whom service is provided. Based on Mr. Wells' testimony, customer growth or even shrinkage, is a relevant factor, again with an effect on revenues.

20 Q. Now, is customer growth an issue sometimes?  
21 A. It's a factor that's considered.  
22 Q. Relevant factor?  
23 A. Yes.  
24 Q. And when we talk about customer growth, sir, I  
25 want to be clear with you that we're not talking about

00064  
1 customer measures that get more obese. We're talking about  
2 customers in their usage that grows?  
3 A. Yes, sir.  
4 Q. Right?  
5 A. Right.  
6 Q. And usage can also shrink?  
7 A. Yes, it can.<sup>30/</sup>

This could also have an impact on the class revenue relationships.

22 Q. What is rate design?  
23 A. It's designing the rates to essentially  
24 reflect cost of service.  
25 Q. Would revenues by class of customer have

00065  
1 anything to do with that?  
2 A. Yes.  
3 Q. Would revenues by class of customer be a  
4 relevant factor for the Commission to consider in setting  
5 rates for particular customer classes?  
6 A. Yes, sir.  
7 Q. Do you know what the relative revenue shares  
8 for customer classes are going to be in June of -- June 25 of  
9 2012?  
10 A. No, sir.  
11 Q. Same question, 2013?  
12 A. Same answer, I don't know.  
13 Q. How about 2014?

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<sup>29/</sup> Tr. Vol. 2, pp. 62-63.

<sup>30/</sup> Tr. Vol. 2, pp. 63-64.

14 A. Same answer.<sup>31/</sup>

Mr. Wells had also done weather normalization and testified that it could vary by class of customer.

17 Q. But you have done weather normalization?  
18 A. Yes.  
19 Q. And does weather normalization have greater or  
20 lesser impact on certain classes of customers?  
21 A. It will vary by class of customer.  
22 Q. Now do you know how it was going to vary from  
23 when you had done whatever you had done in ER-2010-0356, if  
24 you did something there --  
25 A. I did.

00068

1 Q. -- to June 25, 2012?  
2 A. Again, the question?  
3 Q. I'll -- let's break it down. Did you do any  
4 weather normalization or work on weather normalization in  
5 ER-2010-0356?  
6 A. Yes, I did.  
7 Q. When was that done?  
8 A. It was based on the test year as adjusted for  
9 true-up -- an update period and true-up.  
10 Q. Now let's just get that into the record. Do  
11 you remember what the test year was?  
12 A. No, sir, I don't.  
13 Q. Do you remember what the true-up period was?  
14 A. I don't.  
15 Q. But whatever the record would show --  
16 A. Yes.  
17 Q. -- would be correct?  
18 A. Yes.  
19 Q. So June 25 of 2012 would be sometime after  
20 that, right?  
21 A. Definitely.  
22 Q. And that weather analysis or weather  
23 normalization could vary from what you had when you did the  
24 weather normalization or analysis in ER-2010-0356?  
25 A. The actual weather would most likely be

00069

1 different.  
2 Q. Same would be true with respect to the date,  
3 June 25, 2013?  
4 A. Yes.  
5 Q. And 2014 also?  
6 A. And 2014.<sup>32/</sup>

Mr. Wells also agreed that the primary driver for revenue for an electric utility was weather.

22 Q. And for electric utility, what's the primary  
23 driver for revenue?

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<sup>31/</sup> Tr. Vol. 2, pp. 64-65.

<sup>32/</sup> Tr. Vol. 2, pp. 67-69.

No witness for either Staff or GMO testified about a long list of relevant factors that the Commission must under the law consider when setting rates for a particular period. The value of utility plant, offset by depreciation, is obviously critical; utility revenues can vary driven by weather or by customer growth. There is no basis for the Commission to set rates in a rate case for June 25, 2012, or 2013 much less 2014. There is no competent and substantial evidence for the Commission to consider on these relevant factors.

**III. SHOULD GMO'S CARRYING COSTS IN THE PHASE-IN TARIFF SCHEDULES FILED IN THIS PROCEEDING BE 3.25% PER YEAR?**

Given that the Commission does not have jurisdiction in this case to address this matter as noted in this Brief in Segment I, and cannot consider all relevant factors in its purposed attempt to authorize a phase-in that exceeds the original request made by the utility, as noted in Segment II of this Brief, this issue is not properly before the Commission for decision and any decision thereon would be unlawful, extra-jurisdictional and in further contempt of the Court's original Writ of Review in Case No. 11AC-CC00432.

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<sup>33/</sup> Tr. Vol. 2, p. 69.



**IV. SHOULD THE COMMISSION ORDER THAT THE TARIFF SCHEDULES FILED WITH THE NON-UNANIMOUS STIPULATION AND AGREEMENT ON SEPTEMBER 2, 2011, FOR THE SECOND, THIRD AND FOURTH YEAR OF THE PHASE-IN PLAN BE ALLOWED TO BECOME EFFECTIVE AUTOMATICALLY IN EACH SUBSEQUENT YEAR ON JUNE 25 WITHOUT FURTHER ORDER OF THE COMMISSION, UNLESS SUSPENDED BY THE COMMISSION FOR GOOD CAUSE SHOWN?**

Given that the Commission has already acted outside of its lawful jurisdiction, any decision made with respect to the tariffs not only would be unlawful as exceeding its jurisdiction but could not consider all relevant factors which would further make any decision impossible to support by competent and substantial evidence on the whole record. In that limited sense, AGP agrees with Staff's initial position in that the tariff sheets regarding the second, third and fourth "phase-ins" should be rejected as improvidently filed. Missouri law requires that the Commission consider all relevant factors, even when permitting a filed rate schedule to go into effect by operation of law.<sup>34/</sup>

**V. CONCLUSION.**

The Commission is without jurisdiction to proceed in this matter for the reasons indicated. Moreover, even if jurisdiction is upheld, there has been and cannot be consideration of all relevant factors on this record and a Commission decision in that regard cannot be supported by competent and substantial evidence on the whole record as is required by Missouri's Constitution. Accordingly, not only should this matter be dismissed

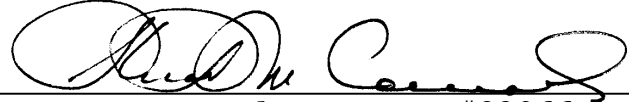
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<sup>34/</sup> *State ex rel. Utility Consumers Council, Inc. v. Public Service Com.*, 585 S.W.2d 41 (Mo. 1979).

but the tariffs submitted herein should be rejected as improvidently filed.

Respectfully submitted,

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ATTORNEYS FOR AG PROCESSING INC A  
COOPERATIVE

**CERTIFICATE OF SERVICE**

I certify that I have served a copy of the foregoing pleading on the designated attorneys or representatives of each party in accord with Commission Orders and the service list maintained in this proceeding by the Secretary of the Commission on EFIS.

Dated: February 2, 2012



Stuart W. Conrad, an attorney for  
Ag Processing Inc a Cooperative

## Missouri Public Service Commission

### Docket Sheet

**Date:** 9/29/2011

**Case No.** ER-2012-0024  
**Company Name (s)** Commission-(All)  
 KCP&L Greater Missouri Operations Company-Investor(Electric)  
**Style of Case** In the Matter of the Determination of Carrying Costs for the Phase-In Tariffs of KCP&L Greater Missouri Operations Company  
**Tracking No.** ER-2010-0355, ER-2010-0356, YE-2011-0608, YE-2011-0609, YE-2011-0610  
**Status** Open  
**Assigned Judge** Pridgin Ron  
**Assigned Attorney** Williams Nathan  
**Consolidated To**  
**Consolidated From**  
**Appealed To**

Item No.	Date Filed	Title of Filing	Filed on Behalf Of	In Response to Item No.
<u>77</u>	9/27/2011	City of St. Joseph Motion to Withdraw	City of St. Joseph, Missouri-(All)	
<u>76</u>	9/19/2011	MGE's Motion to Withdraw	Missouri Gas Energy-Investor(Gas) Southern Union Company-Investor (Gas) Ameren Missouri-Investor(Electric) Ameren Missouri-Investor(Gas)	
<u>75</u>	9/19/2011	Summary of Tour of Energy Trade Floor and Sioux Energy Center	Union Electric Company-Investor (Electric) Union Electric Company-Investor(Gas)	
<u>74</u>	9/15/2011	Motion to Withdraw of Union Electric Company d/b/a Ameren Missouri	Ameren Missouri-Investor(Electric) Union Electric Company-Investor (Electric) Ameren Missouri-Investor(Electric) Ameren Missouri-Investor(Gas)	
<u>73</u>	9/13/2011	Notice of Meeting - Sioux Tour	Union Electric Company-Investor (Electric) Union Electric Company-Investor(Gas) Lee's Summit Medical Center-(All) Liberty Hospital-(All) North Kansas City Hospital-(All) Research Belton Hospital-(All)	
<u>72</u>	9/13/2011	Withdrawal of Parties	Saint Luke's East - Lee's Summit-(All) Saint Luke's Northland Hospital - Smithville Campus-(All) St. Mary's Medical Center-(All)	
<u>71</u>	9/12/2011	Motion to Withdraw - Robert Wagner	Robert Wagner-(All)	
<u>70</u>	9/12/2011	Order Setting Prehearing Conference	Commission-(All)	
<u>69</u>	9/8/2011	Objection to Nonunanimous Stipulation and Agreement and Request for Hearing	AG Processing, Inc-(All)	
<u>68</u>	9/6/2011	Staff's Response to Order	MO PSC Staff-(All)	60

**ATTACHMENT A**

<u>67</u>	9/6/2011	Reply of KCP&L Greater Missouri Operations Company to AG Processing Inc.'s Response and Objection to Motion	KCP&L Greater Missouri Operations Company-Investor(Electric)	
<u>66</u>	9/2/2011	Non-Unanimous Stipulation and Agreement	KCP&L Greater Missouri Operations Company-Investor(Electric) MO PSC Staff-(All)	
<u>65</u>	9/1/2011	Notice of Meeting/Seminar	Dogwood Energy, LLC-(All)	
<u>64</u>	8/30/2011	Order Granting Motion to Withdraw	Commission-(All)	
<u>63</u>	8/26/2011	Summary of Communication	Kansas City Power & Light Company-Investor(Electric) KCP&L Greater Missouri Operations Company-Investor(Electric)	
<u>62</u>	8/25/2011	Response and Objection to Motion	AG Processing, Inc-(All)	59 60
<u>61</u>	8/17/2011	Notice of Intent to Respond	AG Processing, Inc-(All)	
<u>60</u>	8/17/2011	Order Granting Motion to Suspend Procedural Schedule	Commission-(All)	
<u>59</u>	8/16/2011	Motion to Suspend Procedural Schedule	KCP&L Greater Missouri Operations Company-Investor(Electric)	
<u>58</u>	8/10/2011	Summary of Communication (August 8-9 EPA Meeting)	Ameren Missouri-Investor(Electric) Ameren Missouri-Investor(Gas) Union Electric Company-Investor (Electric) Union Electric Company-Investor(Gas)	
<u>57</u>	8/10/2011	Motion to Withdraw of The Empire District Electric Company	Empire District Electric Company, The-Investor(Electric)	
<u>56</u>	8/9/2011	Withdrawal of Counsel	KCP&L Greater Missouri Operations Company-Investor(Electric)	
<u>55</u>	8/4/2011	Notice of Meeting	Ameren Missouri-Investor(Electric) Ameren Missouri-Investor(Gas) Union Electric Company-Investor (Electric) Union Electric Company-Investor(Gas)	
<u>54</u>	7/26/2011	Notice Closing File (Originally filed in ER-2010-0356 on July 25, 2011)	Commission-(All)	
<u>53</u>	7/26/2011	Motion to Withdraw (Originally filed in ER-2010-0356 on July 22, 2011)	KCP&L Greater Missouri Operations Company-Investor(Electric)	
<u>52</u>	7/26/2011	Summary of Diversity Day Presentation (Originally filed in ER-2010-0356 on July 20, 2011)	Ameren Missouri-Investor(Electric) Ameren Missouri-Investor(Gas) Union Electric Company-Investor (Electric) Union Electric Company-Investor(Gas)	
<u>51</u>	7/26/2011	Notice of Extra-Record Communication (Chairman Kevin D. Gunn, Vice Chairman Rober M. Clayton III, Commissioner Jeff N. Davis, Commissioner Terry M. Jarrett, and Commissioner Robert S. Kenney) (Originally filed in ER-2010-0356 on July 14, 2011)	Commission-(All)	
			AARP-(All) AG Processing, Inc-(All) Ameren Missouri-Investor(Electric) City of Kansas City, Missouri-(All) City of Lee's Summit, Missouri-(All) City of St. Joseph, Missouri-(All) Consumers Council of Missouri-(All)	

		Dogwood Energy, LLC-(All) Empire District Electric Company, The-Investor(Electric) Federal Executive Agencies-(All) IBEW Local Union 1464-(All) IBEW Local Union 1613-(All) IBEW Local Union 412-(All) KCP&L Greater Missouri Operations Company-Investor(Electric) Lee's Summit Medical Center-(All) Liberty Hospital-(All) Missouri Department of Natural Resources-(All) Missouri Gas Energy-Investor(Gas) Missouri Retailers Association-(All) MO PSC Staff-(All) North Kansas City Hospital-(All) Research Belton Hospital-(All) Saint Luke's East - Lee's Summit-(All) Saint Luke's Northland Hospital - Smithville Campus-(All) Sedalia Industrial Energy Users Association-(All) Southern Union Company-Investor (Gas) St. Mary's Medical Center-(All) Union Electric Company-Investor (Electric)
<u>50</u>	7/26/2011	Proposed Procedural Schedule (Originally filed in ER-2010-0356 on July 14, 2011)
<u>49</u>	7/26/2011	Staff Status Report on Advanced Coal Tax Credits (NP and HC) (Originally filed in ER-2010-0356 on July 13, 2011)
<u>48</u>	7/26/2011	Notice of Meeting (Ameren Diversity Day) (Originally filed in ER-2010-0356 on July 13, 2011)
<u>47</u>	7/26/2011	Notice of Communication (Commissioner Robert S. Kenney and Policy Advisor/Legal Counsel Joshua Harden) (Originally filed in ER-2010-0356 on July 7, 2011)
<u>46</u>	7/26/2011	Transcript - Volume 48 (6-28-11 Procedural Conference) (Originally filed in ER-2010-0356 on July 7, 2011)
<u>45</u>	7/26/2011	Notice of Communication (Commissioner Terry M. Jarrett) (Originally filed in ER-2010-0356 on July 6, 2011)
<u>44</u>	7/26/2011	Order Denying Applications for Rehearing (Originally filed in ER-2010-0356 on June 29, 2011)
<u>43</u>	7/26/2011	Public Counsel's Application for Rehearing of Order Approving Tariff Sheets and Setting Procedural Conference (Originally filed in ER-2010-0356 on June 24, 2011)
<u>42</u>	7/26/2011	Corrected Service Certificate (Originally filed in ER-2010-0356 on June 24, 2011)

<u>41</u>	7/26/2011	Application for Rehearing by Ag Processing Inc., a Cooperative (Originally filed in ER-2010-0356 on June 24, 2011)	AG Processing, Inc-(All)
<u>40</u>	7/26/2011	Notice of Communication (Commissioner Robert S. Kenney and Policy Advisor/Legal Counsel Joshua Harden) (Originally filed in ER-2010-0356 on June 16, 2011)	Commission-(All)
<u>39</u>	7/26/2011	Notice Regarding Tariff No. YE-2011-0607 (Originally filed in ER-2010-0356 on June 15, 2011)	Commission-(All)
<u>38</u>	7/26/2011	Order Approving Tariff Sheets and Setting Procedural Conference (Originally filed in ER-2010-0356 on June 15, 2011)	Commission-(All)
<u>37</u>	7/26/2011	Reply of KCP&L Greater Missouri Operations Company to Staff Response to Order Directing Filing (Originally filed in ER-2010-0356 on June 14, 2011)	KCP&L Greater Missouri Operations Company-Investor(Electric)
<u>36</u>	7/26/2011	Response to KCP&L Greater Missouri Operations Company to Order Directing Filing Issued on June 14, 2011 (Originally filed in ER-2010-0356 on June 14, 2011)	KCP&L Greater Missouri Operations Company-Investor(Electric)
<u>35</u>	7/26/2011	Staff's Response to Order Directing Filing (Originally filed in ER-2010-0356 on June 14, 2011)	MO PSC Staff-(All)
<u>34</u>	7/26/2011	Notice of Communication (Commissioner Jeff Davis) (Originally filed in ER-2010-0356 on June 14, 2011)	Commission-(All)
<u>33</u>	7/26/2011	Order Directing Filing (Originally filed in ER-2010-0356 on June 14, 2011)	Commission-(All)
<u>32</u>	7/26/2011	Response of KCP&L Greater Missouri Operations Company to Order Further Suspending Tariff Sheets (Originally filed in ER-2010-0356 on June 13, 2011)	KCP&L Greater Missouri Operations Company-Investor(Electric)
<u>31</u>	7/26/2011	Order Further Suspending Tariff Sheets (Originally filed in ER-2010-0356 on June 10, 2011)	Commission-(All)
<u>30</u>	7/26/2011	Clarification of Staff Response to Order Suspending Tariff Sheets and Directing Filing (NP) (Originally filed in ER-2010-0356 on June 10, 2011)	MO PSC Staff-(All)
<u>29</u>	7/26/2011	Reply of KCP&L Greater Missouri Operations Company To Clarification of Staff Response To Order Suspending Tariff Sheets And Directing Filing (Originally filed in ER-2010-0356 on June 10, 2011)	KCP&L Greater Missouri Operations Company-Investor(Electric)
<u>28</u>	7/26/2011	Clarification of Staff Response to Order Suspending Tariff Sheets and Directing Filing (HC) (Originally filed in ER-2010-0356 on June 9, 2011)	MO PSC Staff-(All)
		Reply of KCP&L Greater Missouri	

<u>27</u>	7/26/2011	Operations Company to Public Counsel's and AGP's Responses (Originally filed in ER-2010-0356 on June 9, 2011)	KCP&L Greater Missouri Operations Company-Investor(Electric)
<u>26</u>	7/26/2011	Public Counsel's Response to Application for Rehearing and Response to Order Directing Filing (Originally filed in ER-2010-0356 on June 8, 2011)	Office of the Public Counsel-(All)
<u>25</u>	7/26/2011	Supplemental Response to Order Suspending Tariff Sheets (Originally filed in ER-2010-0356 on June 8, 2011)	AG Processing, Inc-(All)
<u>24</u>	7/26/2011	Non-Prejudicial Response to Order (Originally filed in ER-2010-0356 on June 8, 2011)	AG Processing, Inc-(All)
<u>23</u>	7/26/2011	KCP&L Greater Missouri Operations Company's Response to Order Directing Filing (Originally filed in ER-2010-0356 on June 8, 2011)	KCP&L Greater Missouri Operations Company-Investor(Electric)
<u>22</u>	7/26/2011	Staff Response to Order Suspending Tariff Sheets and Directing Filing (Originally filed in ER-2010-0356 on June 7, 2011)	MO PSC Staff-(All)
<u>21</u>	7/26/2011	Notice of Communication (Summary of Energy Learning Center Event) (Originally filed in ER-2010-0356 on June 6, 2011)	Ameren Missouri-Investor(Electric) Ameren Missouri-Investor(Gas) Union Electric Company-Investor (Electric) Union Electric Company-Investor(Gas)
<u>20</u>	7/26/2011	Application for Rehearing and Motion for Clarification of KCP&L Greater Missouri Operations Company (Originally filed in ER-2010-0356 on June 3, 2011)	KCP&L Greater Missouri Operations Company-Investor(Electric)
<u>19</u>	7/26/2011	Application for Rehearing by AG Processing Inc A Cooperative (Originally filed in ER-2010-0356 on June 2, 2011)	AG Processing, Inc-(All)
<u>18</u>	7/26/2011	Application for Rehearing of KCP&L Greater Missouri Operations Company (Originally filed in ER-2010-0356 on June 2, 2011)	KCP&L Greater Missouri Operations Company-Investor(Electric)
<u>17</u>	7/26/2011	Notice of Communication (Commissioner Robert S. Kenney and Policy Advisor/Legal Counsel Joshua Harden) (Originally filed in ER-2010-0356 on June 2, 2011)	Commission-(All)
<u>16</u>	7/26/2011	Order Suspending Tariff Sheets and Directing Filing (Originally filed in ER-2010-0356 on June 2, 2011)	Commission-(All)
<u>15</u>	7/26/2011	Concurrence in Public Counsel's Tariff Objection by AG Processing Inc. A Cooperative (Originally filed in ER-2010-0356 on June 2, 2011)	AG Processing, Inc-(All)
<u>14</u>	7/26/2011	Staff Recommendation to Approve Tariff Sheets (Originally filed in ER-2010-0356 on June 2, 2011)	MO PSC Staff-(All)

<u>13</u>	7/26/2011	(Originally filed in ER-2010-0356 on June 2, 2011)	Commission-(All)
<u>12</u>	7/26/2011	Public Counsel's Objections to Tariffs (Originally filed in ER-2010-0356 on June 2, 2011)	Office of the Public Counsel-(All)
<u>11</u>	7/26/2011	Response of KCP&L Greater Missouri Operations Company to Suggestions Regarding Fuel Adjustment Clause Compliance Tariffs (Originally filed in ER-2010-0356 on June 2, 2011)	KCP&L Greater Missouri Operations Company-Investor(Electric)
<u>10</u>	7/26/2011	Substitute Tariff Sheets (YE-2011-0606, YE-2011-0607) (Originally filed in ER-2010-0356 on June 1, 2011)	KCP&L Greater Missouri Operations Company-Investor(Electric)
<u>9</u>	7/26/2011	Public Counsel's Notice of Objections to Tariffs (Originally filed in ER-2010-0356 on June 1, 2011)	Office of the Public Counsel-(All)
<u>8</u>	7/26/2011	Staff Reply to Response of Industrial Intervenors (Originally filed in ER-2010-0356 on June 1, 2011)	MO PSC Staff-(All)
<u>7</u>	7/26/2011	Response to Staff's Suggestions Regarding Effective Date of FAC Tariffs (Originally filed in ER-2010-0356 on June 1, 2011)	AG Processing, Inc-(All) Sedalia Industrial Energy Users Association-(All)
<u>6</u>	7/26/2011	Staff Suggestions Regarding Order of Clarification and Modification (Originally filed in ER-2010-0356 on May 31, 2011)	MO PSC Staff-(All)
<u>5</u>	7/26/2011	Notice of Meeting and Draft of Meeting Agenda (Originally filed in ER-2010-0356 on May 31, 2011)	Ameren Missouri-Investor(Electric) Ameren Missouri-Investor(Gas) Union Electric Company-Investor (Electric) Union Electric Company-Investor(Gas)
<u>4</u>	7/26/2011	Tariff Submission Pursuant to Commission's Order of Clarification and Modification Dated 5/27/2011. Please process according to the effective dates in the 5/27/2011 Order. (YE-2011-0606; YE-2011-0607; YE-2011-0608; YE-2011-0609; YE-2010-0610) (Originally filed in ER-2010-0356 on May 31, 2011)	KCP&L Greater Missouri Operations Company-Investor(Electric)
<u>3</u>	7/26/2011	Order of Clarification and Modification (Originally filed in ER-2010-0356 on May 27, 2011)	Commission-(All)
<u>2</u>	7/25/2011	Order Opening a New File and Adopting Procedural Schedule (Originally filed in ET-2012-0017 on July 22, 2011)	Commission-(All)
<u>1</u>	7/25/2011	Notice Opening File	Commission-(All)



IN THE CIRCUIT COURT OF MISSOURI, SIXTEENTH JUDICIAL CIRCUIT

STATE OF MISSOURI, ex rel )  
JACKSON COUNTY, MISSOURI, et al., )  
Relators, ) SF  
vs. ) No. 779,963  
PUBLIC SERVICE COMMISSION OF )  
MISSOURI, )  
Respondent. )

ORDER FOR REVERSAL AND REMAND OF  
ADMINISTRATIVE DECISION

Now on this 29th day of May, 1974, this cause having heretofore come on for hearing pursuant to notice duly given of a Motion for Immediate Reversal, Stay, Injunction or Impoundment of Funds filed herein on May 24, 1974, by relator Jackson County, Missouri and the parties appearing by their attorneys and the Court having granted leave to the City of Kansas City, Missouri to intervene herein as an additional relator and to join in the aforesaid motion of Jackson County, Missouri and evidence being heard and said cause being taken under advisement, now on this date, the Court having considered the briefs and arguments of counsel and being fully advised finds as follows:

1. Jackson County, Missouri, relator herein, has filed in this Court its Petition for Writ of Review of Decision of the Public Service Commission of Missouri to review the final orders and decisions of the Public Service Commission of Missouri respondent herein, in PSC cause No. 17903, entitled:

**ATTACHMENT B**

"In the Matter of Kansas City Power and Light Company of Kansas City, Missouri for authority to file tariffs reflecting increased rates for electrical service provided to customers in the Missouri service area of the Company."

2. That said petition, together with the attachments thereto, alleges that the Kansas City Power and Light Company is presently and has been since May 15, 1974, utilizing and implementing a rate structure based upon the said orders and decision of the Missouri Public Service Commission under review that is beyond the jurisdiction of respondent herein in that said orders and decision violate the statutory procedures for such cases pursuant to Sections 393.140 and 393.150 RSMo, which provide for the filing and publication of proposed rate increases and hearing thereon.

3. That said petition further alleges that the decision of the Public Service Commission granting to Kansas City Power and Light Company of Kansas City, Missouri an increase in rates exceeding the amount sought by said Kansas City Power and Light Company is in violation of Section 10, Article I of the Constitution of Missouri and of the Fourteenth Amendment to the Constitution of the United States.

The Court further finds that it has before it a sufficient record of the proceedings of the Public Service Commission in the form of the Petition for Review together with attached Exhibits and briefs, statements and arguments of counsel, that it can determine from said documents that the decision of respondent shows on its face as a matter of law that the schedule of rates to be charged by Kansas City Power and Light Company filed with the Commission on May 10, 1974 and made effective by said Commission on May 15, 1974 is not the same schedule and provides for

rates substantially in excess of the rates schedule filed by Kansas City Power and Light Company with the Commission on August 10, 1973; further, the record shows that the Commission has held no public hearings upon said schedule of rates filed May 10, 1974 and no notice to interested parties has been given nor has the schedule of rates been published as required by the Missouri Public Service Commission law, nor has the Commission issued any findings or orders justifying its procedure in making substantial rate increases effective without notice or hearing.

The Court further finds that upon the whole record, the procedure employed by the Public Service Commission of Missouri respondent, and the decision and orders of said respondent are beyond its jurisdiction and violative of the due process requirements of the Constitution of the United States of America and of the State of Missouri and the letter and spirit of the provisions of the Missouri Public Service Commission law, and particularly Sections 393.140 (11) and 393.150 RSMo. thereof.

WHEREFORE, IT IS BY THE COURT ORDERED, ADJUDGED AND DECREED that the aforementioned orders and decision of respondent Public Service Commission of Missouri granting to Kansas City Power and Light Company a rate increase are hereby reversed and set aside.

IT IS FURTHER ORDERED, this cause is hereby remanded to respondent, Public Service Commission of Missouri for such further action as may be just and proper under the law and within its jurisdiction.

IT IS FURTHER ORDERED, that the Writs of Certiorari for Review issued heretofore by this court are quashed.

  
JUDGE