

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

In the Matter of the Tariff Schedules Filed to)
Adjust the Fuel Adjustment Clause of KCP&L) **Case No. EO-2009-0254**
Greater Missouri Operations Company)

APPLICATION FOR REHEARING

COME NOW, Ag Processing Inc., a cooperative, and Sedalia Industrial Energy Users' Association ("Industrial Intervenors") and for their Application for Rehearing state as follows:

1. On December 30, 2008, KCP&L Greater Missouri Operations Company f/k/a Aquila, Inc. ("KCPL – GMO") filed rate schedules designed to implement a change in rates to reflect an increase in historical fuel and purchased power expense. On February 9, 2009, the Industrial Intervenors filed their motion to reject those tariffs. In that motion, the Industrial Intervenors point out that the rate schedules, since they seek to retroactively collect money for past losses associated with fuel and purchased power expense, are unlawful and unconstitutional.

2. In its February 19, 2009 Order Denying Motion to Reject, and Approving Tariff to Adjust Rate Schedules for Fuel Adjustment Clause ("Order"), the Commission summarily dismissed the Industrial Intervenors' argument. Obviously misunderstanding the argument, the Commission claims that "the declaration of the validity or invalidity of

a statute is purely a judicial function. The Commission is not a court and thus has no authority to declare a statute unconstitutional.”¹

3. The Industrial Intervenors have not, as yet, claimed that Section 386.266 is unconstitutional. Rather, the Industrial Intervenors clearly alleged that “*[a]s implemented by this Commission*” the fuel adjustment clause seeks to “redetermine rates already established and paid.”² Therefore, the fuel adjustment clause deprives the consumer “of his property without due process.”³ Contrary to the Commission’s interpretation of the argument, the Industrial Intervenors have not focused on the statute, but instead on the Commission’s implementation. By emphasizing the method by which the Commission has implemented the fuel adjustment clause, the Industrial Intervenors have placed the focus on the lawfulness and constitutionality of the Aquila fuel adjustment clause tariff and the Commission’s rules. Contrary to the Commission’s claim to the contrary, the lawfulness and constitutionality of a utility’s tariff and the Commission’s rules is certainly within the ambit of this Commission’s authority.

4. Therefore, as explained in the Motion to Reject, the Commission’s February 19, 2009 Order is unconstitutional in that it seeks to *redetermine rates already established and paid* and thereby deprive consumers of their property without due process.

WHEREFORE, AGP / SIEUA respectfully request that the Commission grant rehearing in this matter and issue its Order on Rehearing consistent with this Application.

¹ Order Denying Motion to Reject, and Approving Tariff to Adjust Rate Schedules for Fuel Adjustment Clause, issued February 19, 2009, at page 2.

² Motion to Reject Tariffs at page 2.

³ *Id.*

Respectfully submitted,



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ATTORNEYS FOR AG PROCESSING,
INC. AND SEDALIA INDUSTRIAL
ENERGY USERS' ASSOCIATION

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing pleading by email, facsimile or First Class United States Mail to all parties by their attorneys of record as provided by the Secretary of the Commission.



David L. Woodsmall

Dated: February 26, 2009