

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

In the Matter of KCP&L Greater Missouri	)	
Operations Company for Authority to	)	
Implement Rate Adjustments Required By	)	<b><u>Case No. EO-2008-0216</u></b>
4 CSR 240-20.090(4) and the Company's	)	(On Remand)
Approved Fuel and Purchased Power Cost	)	
Recovery Mechanism.	)	

**PUBLIC COUNSEL'S INITIAL BRIEF**

**I. Introduction.**

This matter is again before the Commission, with the Commission mandated to take action consistent with the opinion of the Western District Court of Appeals. There are three substantive issues<sup>1</sup> that the Commission must address in order to comply with the opinion and mandate. First, at what date should the initial accumulation period begin? Second, what is the difference between the amounts accumulated from June 1 and the amounts accumulated from the appropriate beginning date? Third, how should a refund of that difference be accomplished?

These are not terribly complex or difficult questions. The first question is entirely one of law, and the third is entirely one of policy. None of the facts necessary to resolve any of the three appear to be in dispute, and the only need for additional evidence is on the quantification of the difference in the second question. Even on that question, Public

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<sup>1</sup> Based upon discussions on the record at the prehearing conference, it may be that KCPL-GMO, f.k.a. Aquila, will argue in its initial brief for the opportunity to make a new record in order to convince the Court of Appeals that the Court erred. If so, that will be an additional issue that Public Counsel will address in its reply brief.

Counsel does not anticipate that the parties will disagree on the facts; it is simply a matter of getting the facts in the record so that the Commission can proceed with a refund.

The remainder of this brief will briefly address each of these three issues.

## II. At what date should the initial accumulation period begin?

The Court of Appeals found that the accumulation period cannot begin at a point prior to the effective date of the Commission's approval of the FAC tariffs, which was July 5, 2007. The Court's opinion is very clear on this point, and that opinion is now the law of the case. No amount of argument and no additional evidence can change that result. But simply concluding that the accumulation period cannot have begun before July 5 does not fully resolve the question.

Commission regulations 4 CSR 240-3.161(1)(G) and 4 CSR 240-20.090(1)(I) provide that: "True-up year means the twelve (12)-month period beginning on the first day of the first calendar month following the effective date of the commission order approving a RAM ...." Thus the appropriate date on which to begin the initial accumulation period is the "first day of the first calendar month following" July 5, 2007, or August 1, 2007. Beginning on a day other than the first day of a calendar is against the Commission's rules.

## III. What is the difference between the amounts accumulated from June 1 and the amounts accumulated beginning on August 1?

This is a question of fact that must be established through an evidentiary hearing or through a stipulation of facts, and is thus outside the scope of this brief.

#### IV. How should a refund be accomplished?

Because rates set pursuant to an FAC are explicitly made interim, subject to refund, the FAC itself provides a mechanism for refunding the amounts collected through unlawful retroactive ratemaking. The Commission should order KCPL-GMO to include a credit for all amounts collected for changes in fuel and purchased power expense between the dates of June 1, 2007 and July 31, 2007 in its calculation of its next fuel adjustment filing. In addition, consistent with Section 386.266.4(2) and 4 CSR 240-20.090(5)(A), such refunded amounts should include interest at Aquila's short-term borrowing rate.

Respectfully submitted,

OFFICE OF THE Public Counsel

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been emailed to parties of record this 31st day of August 2010.

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