

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 22nd day
of December, 2010.

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)	<u>File No. EO-2008-0216</u>
Approved Fuel and Purchased Power Cost Recovery)	
Mechanism.)	

**ORDER DENYING REQUEST TO TAKE ADDITIONAL EVIDENCE
REGARDING RETROACTIVE RATEMAKING AND DIRECTING THE FILING
OF PROPOSED PROCEDURAL SCHEDULE**

Issue Date: December 22, 2010

Effective Date: December 22, 2010

This case is before the Commission on remand from the Missouri Western District Court of Appeals of the Commission's decision approving the fuel adjustment clause revision tariffs (FAC tariffs) of Aquila, Inc. (n.k.a. KCP&L Greater Missouri Operations Company and referred to in this order as "Aquila" or "GMO"). The Cole County Circuit Court issued its Mandate which "vacates the PSC's Order and remands for future proceedings consistent with the Court of Appeals opinion." It is the interpretation of that remand and a determination of what proceedings should be held that the Commission will address in this order. In preparation for this determination, the parties have submitted initial and reply briefs and presented oral arguments regarding their positions and what action is needed by the Commission to comply with the Courts' orders.

I. Should the Commission take additional evidence, in order to explain why its earlier decision approving tariffs effective March 1, 2008, was not retro-active ratemaking?

GMO argues that because the Court stated, “Nothing in the Commission’s Order even attempts to justify its disregard of the applicable statutory language and the prohibition on retroactive ratemaking . . . ,” the Commission is able to fix its order by including evidence and additional findings of fact which will justify its position. GMO wants the Commission to take additional evidence regarding the effect of the July 5, 2007 tariffs versus the effect of the March 1, 2008 tariffs. GMO argues that because the 2007 tariffs were “pro forma” tariffs containing only zeros in the adjustment amounts, the customers could not have known any more on July 5, 2007, than on June 1, 2007, about how to calculate their rates under the FAC clause. It was not until March 1, 2008, that tariffs with actual rates became effective. Thus, GMO believes that the Commission can take this additional evidence and explain to the Court of Appeals that this was not retroactive ratemaking.

Public Counsel argues that even if the Commission agrees that the Court of Appeals made the wrong decision, there is nothing the Commission can do now that the appeal is final. The opinion is final and this is the law of this case. Therefore, the Commission must simply undo its unlawful actions by determining how much money should be refunded to ratepayers and under what mechanism. The intervenors, Ag Processing, Inc., and Sedalia Industrial Energy Users Association, agree with Public Counsel.

Staff agrees that the Court of Appeals decision has found the Commission’s order unlawful and no additional evidence should be taken in an attempt to fix the order

with additional findings of fact. Staff disagrees that the Commission can order any type of refund.

As GMO argues, the Court of Appeals did state that the Commission's order did not explain why its decision was not retroactive ratemaking. The Court of Appeals was clear, however, when it said, "any adjustment to the cost of electricity based on electricity that had already been consumed by Aquila customers prior to the effective date clearly constitutes retroactive ratemaking." The Court of Appeals was also very clear that the accumulation period could not begin before the tariff effective date. To do so, according to the Court of Appeals is retroactive ratemaking. Thus, the Commission will not take additional evidence on this point. GMO's request for hearing on this issue is denied.

II. What further Commission proceedings are necessary?

Having decided not to take additional evidence on why this is not retroactive ratemaking, the Commission must now determine what further proceedings are necessary in this matter. Still at issue in the case are: 1) the date that the initial accumulation period begins; 2) whether the Commission has the authority to order a refund or adjustment in a future FAC period for the over-collection; 3) what the amount of the refund or adjustment is; and 4) the exact mechanism for a refund or adjustment. These items at issue will require the taking of additional evidence or argument. Therefore, the Commission will direct the parties to file proposed procedural schedules including a hearing for the taking of additional evidence.

THE COMMISSION ORDERS THAT:

1. GMO's motion to take additional evidence regarding the issue of retroactive rate-making is denied.
2. No later than January 12, 2011, the parties shall file either jointly or separately proposed procedural schedules which include dates for a hearing and the taking of additional arguments on the issues set out above.
3. This order shall become effective upon issuance.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Clayton, Chm., Gunn and Kenney, CC.,
concur.

Davis, C., dissents; separate dissenting
opinion may follow.

Jarrett, C., dissents, with separate dissenting
opinion to follow.

Dippell, Deputy Chief Regulatory Law Judge