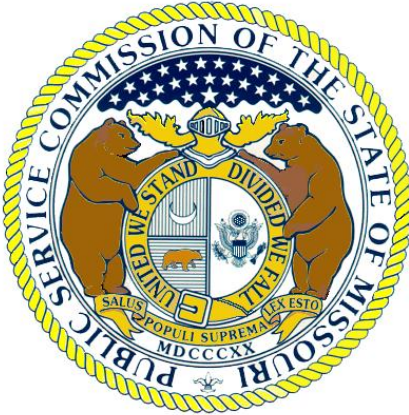


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



In the Matter of KCP&L Greater Missouri Operations)
Company for Authority to Implement Rate Adjustments)
Required by 4 CSR 240-20.090(4) and the Company's) File No. EO-2008-0216
Approved Fuel and Purchased Power Cost Recovery)
Mechanism.)

REPORT AND ORDER ON REMAND

Issue Date: August 30, 2011

Effective Date: September 9, 2011

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The Missouri Public Service Commission determines the following as to KCP&L Greater Missouri Operations Company's ("GMO") fuel adjustment clause ("FAC").

- A. The Commission has authority to order a refund or adjustment.
- B. The initial accumulation period begins on July 5, 2007.¹
- C. The amounts over-recovered were \$1,975,363 from GMO's MPS district and \$484,626 from GMO's L&P district.
- D. The adjustment mechanism shall be an adjustment to the FAC by tariff.
- E. No accounting authority order shall issue for such adjustment.

The Commission makes those rulings in compliance with the mandate of the Missouri Court of Appeals, Western District ("Court of Appeals"), in State ex rel. AG Processing, Inc. v. Public Service Comm'n for the State of Missouri² ("the Opinion"). The Opinion found that, to base a rate on cost data, a tariff describing that data must be in effect before the cost is incurred. That holding and its consequences are the subject of this *Report and Order*.

¹ All dates are in 2007 unless otherwise noted.

² 311 S.W.3d 361, 367 (Mo. App., W.D. 2010) ("the Opinion").

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Background

The Opinion ruled on an FAC so the Commission begins by discussing the FAC in terms further explained under the Findings of Fact and Conclusions of Law.

The Commission prescribes a public utility's ("utility") services and rates for all customers in an action commonly called a "general rate case." In a general rate case, the Commission determines rates based, in part, on what it costs a utility to provide its service. Those costs include fuel, purchased power, and associated costs ("fuel") to generate electricity, so the Commission includes an amount for fuel costs ("base cost") as a component of the rate.

But fuel costs fluctuate frequently and fuel is available only in a limited market. Therefore, the utility has little control over what it pays for fuel. As fuel costs fluctuate and the rate remains unchanged, a windfall may occur for customers when fuel costs rise, or for the utility when fuel costs fall.

To moderate such windfalls, Section 386.266³ (“the FAC statute”) provides that a utility’s rate may include devices like an FAC. An FAC passes fuel cost fluctuations—up or down—more directly to customers than the lengthy general rate case process as the courts explain:

[The FAC statute] explicitly authorizes “periodic rate adjustments *outside of general rate proceedings* to reflect increases and decreases in its prudently incurred costs, whether capital or expense, to comply with any federal, state, or local environmental law, regulation, or rule.” (Emphasis added.) [The FAC statute] is consistent with the Supreme Court’s directive that “[i]f the legislature wishes to approve automatic adjustment clauses, it can of course do so by amendment of the statutes.” Stated another way, [the FAC statute] permissibly authorizes a *single issue* ratemaking mechanism that allows periodic (automatic) adjustments outside a general rate case where other costs and revenues are *not* considered. In enacting [the FAC statute], the General Assembly understood the different roles between *single issue* ratemaking mechanisms and *full rate case* proceedings. The General Assembly understood that the role of full rate case proceedings is to set base rates upon a consideration of all relevant factors. The General Assembly understood that by enacting [The FAC statute], an [FAC] could only first be established in a full rate case proceeding, at which time base rates would be established upon a thorough review and consideration of “all relevant factors.” The legislature “is presumed to know the state of the law and to pass only those statutes which have some effect or purpose,” and the legislature is presumed to have intended a change in existing law by enacting new statutes. Succinctly stated, [the FAC statute] authorizes a change in the law—that periodic *single issue* ratemaking mechanisms

³ RSMo Supp., 2010.

are authorized after first being established in a *full rate case* proceeding.^{4]}

The FAC starts with the base cost and measures fuel cost fluctuations during a period (“accumulation period”). It puts the increase or decrease on customer bills during a later period (“recovery period”). Periods of accumulation and recovery continue through the years in recurring and overlapping cycles.

The Opinion held that, to count any such fluctuations in the FAC, a rate schedule (“tariff”) describing those fluctuations must be in effect before those fluctuations occur. A tariff is a multi-page document controlling all rates for any utility. The utility must file its tariff with the Commission and a filed tariff becomes effective unless the Commission rejects it.

Procedure and Appearances

This action is before the Commission on remand under the Opinion.⁵ What further proceedings are consistent with the Opinion was the subject of written and oral argument. The Commission convened limited hearings⁶ and set forth a list of issues.⁷ The parties filed direct testimony,⁸ rebuttal testimony,⁹ and a list of issues.¹⁰ The Commission heard oral argument.¹¹ The parties appeared through counsel as follows:
For GMO:

Karl Zobrist
SNR Denton US LLP
4520 Main Street, No. 1100, Kansas City, Missouri 64111,

⁴ *State ex rel. Office of Public Counsel and Missouri Indus. Energy Consumers v. Missouri Public Service Comm'n*, 331 S.W.3d 677, 690 (Mo. App., W.D. 2011).

⁵ Issued July 2, 2010.

⁶ August 10, 2010; September 20, 2010; and May 17, 2011.

⁷ By order issued on December 22, 2010.

⁸ On April 1, 2011.

⁹ On April 22, 2011.

¹⁰ On May 6, 2011.

¹¹ On May 17, 2011.

and

James M. Fischer

Fischer & Dority, P.C.

101 Madison Street, Suite 400, Jefferson City, Missouri 65101.

For the Commission's staff ("Staff"):

Nathan Williams, Deputy Counsel

Office of the Staff Counsel

Missouri Public Service Commission, P.O. Box 360, Jefferson City, MO 65102.

For Ag Processing, Inc., a Cooperative, and the Sedalia Industrial Energy Users Association (SIEUA), (together, "Industrial Intervenors"):

David Woodsmall

Finnegan, Conrad & Peterson, LC

428 East Capitol Avenue, Suite 300, Jefferson City, Missouri 65101.

For the Office of the Public Counsel ("OPC") and the public:

Lewis R. Mills, Jr., Public Counsel

Office of the Public Counsel

Post Office Box 2330, Jefferson City, Missouri 65102,

The Commission makes each ruling on consideration of all allegations and arguments of each party, and the substantial and competent evidence upon the record made in File No. ER-2006-0044¹² ("general rate case"), and in this action, but does not specifically address matters that are not dispositive. The Commission's findings reflect its determinations of credibility. On those grounds, the Commission makes the following findings of fact.

Findings of Fact

1. GMO originally sought an FAC in the general rate case.

¹² Section 536.070(6).

I. General Rate Order

2. On July 3, 2006, GMO (then known as Aquila, Inc.) filed a tariff proposing new rates and terms for its electrical service, initiating the general rate case.

3. On May 17, the Commission issued its report and order (“the general rate order”), which:

- a. included a base cost in GMO’s rate,
- b. authorized the use of an FAC,
- c. rejected the tariff,
- d. required GMO to file a new tariff in compliance with the general rate order’s provisions (“compliance tariff”), and
- e. included, in that requirement, pages (“ tariff sheets”) to define the workings of the FAC (“FAC compliance tariff sheets”).

4. GMO filed the compliance tariff, including a first attempt at FAC compliance tariff sheets. The Commission approved the compliance tariff, except the FAC compliance tariff sheets, which the Commission rejected.¹³

5. On May 27, the general rate order became effective.

6. GMO filed a second attempt at FAC compliance tariff sheets and the Commission rejected those tariff sheets.¹⁴

II. The FAC Compliance Tariff Sheets

7. On June 18, GMO filed FAC compliance tariff sheets. Those tariff sheets bore a proposed effective date of July 18, but GMO asked for expedited treatment approving the FAC compliance tariff sheets to be effective on July 1.

¹³ On May 25.

¹⁴ On June 14, 2010.

8. The FAC compliance tariff sheets proposed that GMO's FAC include the following steps:

- a. GMO accumulates data on fuel costs ("accumulation period").
- b. GMO files tariff sheets reflecting how fuel costs fluctuated in the accumulation period, and the Commission determines the FAC amount.
- c. GMO adjusts bills for fluctuations so that GMO, or the customers, recover the fluctuations during a later period ("recovery period").

9. The FAC compliance tariff sheets proposed that GMO's accumulation period 1 runs from June 1, through November 30.

10. On June 29, the Commission approved the FAC compliance tariff sheets to be effective on July 5.

11. On July 10, the Commission denied motions for rehearing, concluding the general rate case.

III. The Cycle 1 Order and the Opinion

12. On December 28, GMO filed tariff sheets describing the cycle 1 ("the cycle 1 tariff sheets"). The cycle 1 tariff sheets sought to use fuel cost fluctuations occurring from June 1 through November 30 ("accumulation period 1") to calculate a recovery period starting on March 1, 2008 and ending on February 28, 2009 ("recovery period 1"). The Commission approved the cycle 1 tariff sheets ("cycle 1 order").¹⁵

13. Pursuant to the cycle 1 order, GMO used fuel cost data from the entire accumulation period 1 to calculate and bill the FAC .

¹⁵ Issued on February 14, 2008, effective on March 1, 2008.

14. Eliminating cost data for the following portions of accumulation period 1 reduces the FAC recovered from customers as follows.

Dates	MPS district	L&P district
June 1 through July 4	\$1,975,363	\$484,626
June 1 through July 31	\$7,084,354	\$1,710,484

15. Pursuant to petitions for writs of review,¹⁶ the Circuit Court of Cole County affirmed the cycle 1 order.

16. Pursuant to notices of appeal,¹⁷ the Court of Appeals reversed the Circuit Court and the Commission in the Opinion.¹⁸ In connection with the Opinion, the Court of Appeals issued its mandate to the Circuit Court of Cole County.¹⁹ The Circuit Court of Cole County remanded the case to the Commission.²⁰

17. GMO's recovery period 9 begins on March 1, 2012.

Conclusions of Law

The Commission has jurisdiction to decide this matter under the mandate in the Opinion. The mandate constitutes the court's instructions to the Commission.²¹ The Commission's further proceedings are circumscribed in the mandate.²²

I. The Mandate

A mandate that remands an action is one of two kinds. A mandate may be general, which does not provide specific direction and leaves all issues open to consideration in a new hearing.²³ A mandate may be with directions, which requires the

¹⁶ Filed on March 16 and April 11, 2008.

¹⁷ On March 16, 2009.

¹⁸ Issued on March 23, 2010.

¹⁹ Issued on July 2, 2011.

²⁰ Judgment entered on July 19, 2010.

²¹ *Bird v. Missouri Bd. For Architects, Prof'l Engineers, Prof'l Land Surveyors and Landscape Architects*, 309 S.W.3d 855, 859 -860 (Mo. App., W.D. 2010).

²² *Guidry v. Charter Communications, Inc.*, 308 S.W.3d 765, 768 (Mo. App., E.D. 2010).

²³ 308 S.W.3d at 768.

Commission to enter a report and order in conformity with the mandate.²⁴ The latter describes the mandate because the mandate provides:

Now on this day, the judgment is reversed, and the cause is remanded to the Circuit Court of Cole County for further proceedings in conformity with the opinion of this court.

The opinion states that the remand is:

. . . with directions to remand to the Commission for further proceedings consistent with this opinion.

The Circuit Court of Cole County, on remand, issued this judgment:

The Court of Appeals, mandate dated 7-2-10, having found the Commission disregarded the applicable statutory language and the prohibition on retroactive rate making without any statutory or other authority to do so, this Court . . . remands for future proceedings consistent with the Court of Appeals opinion. [²⁵]

To understand what further proceedings are consistent with the Opinion's instructions requires an examination of the Opinion.²⁶

II. The Opinion

The Opinion held that a tariff effective on July 5 cannot start accumulation period 1 on June 1 for a later recovery period.

A. Retroactive Rate-Making

The Opinion's premise is that, at any time, the rate recovered must match the tariff in effect. That premise stands on Missouri statutes cited in the Opinion:

²⁴ *Id.*

²⁵ The omitted language reads "vacates the PSC's Order and[.]" OPC argues that the cycle 1 order is vacated but the Court of Appeals neither vacated, nor authorized the circuit court to vacate, the Cycle 1 order. The Commission is within the supervisory authority of the Court of Appeals, Western District. Mo. Const. Art. V, Section 1, clause 2. Proceedings outside the mandate's directions are void. 308 S.W.3d 765 at 769.

²⁶ *Frost v. Liberty Mut. Ins. Co.*, 813 S.W.2d 302, 304–05 (Mo. banc 1991).

Section 393.140(11)[²⁷] provides that “[n]o corporation shall charge, demand, collect or receive a greater or less or different compensation for any service rendered or to be rendered than the rates and charges applicable to such services ***as specified in its [tariff]s filed and in effect at the time.***” [²⁸]

Corollaries of that statute include:

- No utility can recover any amount before the effective date of a tariff authorizing recovery of that amount, and
- No tariff can authorize recovery of any amount for any period that is before that tariff’s effective date.

The premise and corollaries articulated above are commonly called the “filed rate doctrine” and go by that name in the Opinion. As to the latter corollary, a transgression is commonly called “retroactive ratemaking.” ²⁹

Retroactive ratemaking applies to an FAC because the statutes apply tariff procedure to an FAC:

1. Subject to the requirements of this section, any electrical corporation may make an application to the commission to approve [tariff]s authorizing an interim energy charge, or periodic rate adjustments outside of general rate proceedings to reflect increases and decreases in its prudently incurred fuel and purchased-power costs, including transportation. The commission may, in accordance with existing law, include in [FAC tariff]s features designed to provide the electrical corporation with incentives to improve the efficiency and cost-effectiveness of its fuel and purchased-power procurement activities.

* * *

²⁷ RSMo 2000.

²⁸ Opinion, 311 S.W.3d at 365.

²⁹ *Id.*

4. The commission shall have the power to approve, modify, or reject adjustment mechanisms submitted under subsections 1 to 3 of this section [³⁰]

Therefore, an FAC is subject to the ban on retroactive ratemaking.

Retroactive ratemaking is not an issue in the cycle 1 order as to the recovery of GMO's FAC. The effective date of the cycle 1 tariff sheets preceded any recovery. Those facts, under any reading, do not constitute retroactive ratemaking.

B. Invalid Accumulation Period Start Date

Nevertheless, retroactive ratemaking was the basis for reversing the cycle 1 order.

In the cycle 1 order, the Commission concluded that the FAC was authorized as of the general rate order's effective date. The next month's first day, according to the cycle 1 order, started accumulation period 1 because the Commission's regulations so provide:³¹

The Commission interprets its regulation as establishing a recovery period beginning on the first day of the first month following the Report and Order, and not following the approval of the implementing tariff.³²

Because the general rate order was effective on May 27, June 1 started the accumulation period, according to the cycle 1 order.

That ruling constituted retroactive ratemaking, according to the Opinion, because:

Only costs incurred after the effective date of an appropriate tariff may be recovered under [an FAC.³³]

³⁰ The FAC statute.

³¹ 4 CSR 240-3.161(1)(G) and 4 CSR 240-20.090(1)(I).

³² Cycle 1 order at page 4.

³³ Opinion, 311 S.W.3d 361, 367 (Mo. App. 2010), citing State ex rel. Associated Natural Gas Co. v. Public Service Comm'n of the State of Mo., 954 S.W.2d 520 (Mo. App., W.D. 1997). The emphasis is the Commission's.

Under that language, no tariff shall use cost data from any time to calculate an FAC, unless a tariff describing that time is in effect before that time. Thus, the Court of Appeals found retroactive ratemaking, not in the FAC's recovery, but in the FAC's calculation.

C. Other Arguments

GMO offers arguments to show that starting accumulation period 1 on June 1 did not constitute retroactive rate-making. GMO's arguments include the following. The general rate order authorized GMO's FAC as of May 27. The cycle 1 order used historical costs to set the FAC for succeeding periods. Cost data is not recovery. No rate changed on June 1. No rate was based on any service already consumed. Tariff sheets showing customer's FAC took effect before GMO recovered the FAC. No FAC amount appeared on customer bills until after the cycle 1 order.

Also, the same court that issued the Opinion has re-examined the "filed rate doctrine" in the context of an FAC. State ex rel. AG Processing v. Public Service Comm'n.³⁴ In that opinion, the court stated:

We conclude that forward-looking rate adjustments approved by the PSC pursuant to a previously-adopted [FAC] do not constitute unlawful ratemaking, and accordingly affirm.

Id., slip op. at 1. The order affirmed the Commission's approval of certain tariff sheets. Those tariff sheets reflected cost data from an accumulation period from June 1, 2008 through November 30, 2008. GMO filed those tariff sheets on December 30, 2008.

³⁴ Case No. WD71987 (Mo. App., W.D. Mar. 1, 2001), Ahuja, J. Mandate issued July 1, 2011.

Nevertheless, the law of the case doctrine bars re-litigation of issues decided on appeal,³⁵ so the Commission must address the accumulation period's start date.

III. Further Proceedings Consistent

June 1 is not accumulation period 1's valid start date. A valid start date is in dispute. So are the consequences of having used June 1 cost data in recovery period 1, including the existence of an over-recovery, and remedies for over-recovery.

A. Authority

If no remedy is possible, the remaining issues are moot, so the threshold issue is the Commission's authority to order a remedy. That authority must appear in the mandate and opinion. GMO argues that the Opinion does not set forth a remedy. But the Opinion does direct further proceedings. That directive requires the Commission to address the consequences of the invalid start date.

GMO and the Staff argue that the Commission cannot return money recovered under approved tariffs to customers. GMO argues that ordering a refund or adjustment is confiscatory and violates its due process rights. GMO cites case law providing that:

Due process prevents any court or legislative body from taking money from a utility collected from ratepayers pursuant to lawful rates[.³⁶]

That argument is a further corollary of the "filed rate doctrine." But that citation, like other authorities cited in support, does not address the FAC statute.

Under the FAC statute, FAC amounts are always conditional and subject to adjustment on a continuous cycle. Also, the FAC statute provides that no FAC tariff is lawful unless it includes a device to remedy "any" inaccurate recovery:

³⁵ *Rodriguez v. Suzuki Motor Corp.*, 996 S.W.2d 47, 61 (Mo. banc 1999).

³⁶ *Lightfoot v. Springfield*, 361 Mo. 659, 236 SW 2d 348, (Mo. 1951).

. . . The commission may approve [an FAC tariff if] it finds that the adjustment mechanism set forth in the schedules:

* * *

(2) Includes provisions for an annual true-up which shall accurately and appropriately remedy any over- or under-collections, including interest at the utility's short-term borrowing rate, through subsequent rate adjustments or refunds [³⁷]

No party cites evidence or authority to define a “true-up” but the context suggests that it signifies a review for events that affect an account after the usual audit period. An annual true-up means that the FAC is unlike a base cost or other conventional rate-making devices. Under those devices an amount is vested when the tariff is effective. But an FAC is continuously contingent and subject to adjustment as the statute provides.

GMO and Staff also argue that the time for a remedy has passed because the true-up period and prudence review associated with recovery period 1 are passed. But the FAC statute provides no such limitation. It provides that the FAC's:

. . . annual true-up . . . shall accurately and appropriately remedy any over- or under- collections [³⁸]

Shall means must in the present tense.³⁹ Any means every.⁴⁰ Those words require the FAC to include yearly review for adjustments—favoring either the customer or the utility—and include no time limitation.

In other words, GMO and Staff assume that the true-up and prudence review associated with cycle 1 are the only opportunities to adjust the FAC. But, as the history of this case proves, utility litigation takes years to finalize, and the Commission

³⁷ Section 386.266.4.

³⁸ Emphasis added.

³⁹ *State ex rel. Scott v. Kirkpatrick*, 484 S.W.2d 161, 164 (Mo. banc 1972).

⁴⁰ *State v. Williams*, 24 S.W.3d 101, 115 (Mo. App., W.D. 2000).

presumes the General Assembly to know that. The statute's plain language preserves remedies and refutes GMO's assumption that mere delay negates the FAC's benefits.

No party cites any authority under which the Commission can declare the FAC statute unconstitutional, or restrict the FAC statute's operation by approving a tariff:

The Public Service Commission is a creature of statute and can function only in accordance with the statutes. Where a procedure before the Commission is prescribed by statute, that procedure must be followed. [⁴¹]

Therefore, the Commission will order a remedy for any over-collection that occurred under the cycle 1 order.

B. Valid Start Date

Whether an over- or under- recovery occurs in any cycle depends on events in the related accumulation period. The accumulation period exists to measure the fluctuation of fuel costs daily. Daily fluctuation means that every day counted changes whether, and how much, under- or over- recovery exists. An over- recovery exists because the cycle 1 order started accumulation period 1 on June 1. July 5, according to the Opinion, is accumulation period 1's earliest possible start date. November 30 remains the end date. The parties dispute when the start date shall be and, thus, how much information will go into accumulation period 1.

i. August 1

August 1 must be the start date, according to OPC and the Industrial Intervenors, citing the FAC statute and regulations as follows. The FAC statute provides that no FAC tariff is lawful unless it includes a true-up to remedy "any" over-recovery accurately and appropriately:

⁴¹ State ex rel. Monsanto v. Public Service Comm'n, 716 S.W.2d 791, 796 (Mo. 1986).

. . . The commission may approve [an FAC tariff if] it finds that the adjustment mechanism set forth in the schedules:

* * *

(2) Includes provisions for an annual true-up which shall accurately and appropriately remedy any over- or under-collections, including interest at the utility's short-term borrowing rate, through subsequent rate adjustments or refunds [.]

That statute also requires the Commission to have implementing regulations.⁴²

Those regulations define the true-up year to start on the first day of a calendar month:

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 [an FAC] unless the effective date is on the first day of the calendar month. If the effective date of the commission order approving a rate mechanism is on the first day of a calendar month, then the true-up year begins on the effective date of the commission order. [⁴³]

Under that regulation, the true-up year's start date is the first day of the month.

On those grounds, OPC and the Industrial Intervenors argue as follows. The general rate order was effective on May 27 and ordered accumulation period 1 to start on June 1. The June 1 date is invalid under the Opinion because the cycle 1 tariff sheets were effective on July 5. The FAC statute and implementing regulation require the true-up year to start on the first of the month, and an accumulation period starting any other day will be inaccurate because all utilities keep records only on a monthly basis.

⁴² The FAC statute, subsections 9 and 12.

⁴³ 4 CSR 240-3.161(1)(G) and 4 CSR 240-20.090(1)(I) ("calendar regulations").

ii. July 5

But that assertion, which is the only assertion relating to accuracy in support of August 1, is unsupported by any citation to evidence. As for authority, the calendar regulations and the FAC statute say nothing about an accumulation period. Specifically, neither provision provides that an accumulation period starts on the first of the month.⁴⁴

Thus, as GMO and Staff note, August 1 lacks support in both law and fact. Conversely, GMO and Staff cite the tariff's effective date to start the accumulation period. Also, GMO and Staff cite persuasive evidence that an annual true-up can accurately and appropriately remedy any over- or under- collection, even if it less than perfectly in synch with a calendar month. It requires normalizing and eliminating a mere four days (July 1-4) from consideration. Eliminating the entire month from consideration is the alternative.

The standard is accuracy and the accuracy of any conclusion increases with information relevant to that conclusion. The conclusion as to cost fluctuations over a six month period was best made by examining all six months. But that pool of information is reduced under the Opinion. The Opinion leaves just under five months for the Commission to examine. OPC and the Industrial Intervenors ask the Commission to use even less. The evidence weighs in favor of July 5 as producing the more accurate remedy for over-recovery,

iii. Ruling

The Commission will order that accumulation period 1 starts on July 5.

⁴⁴ The Commission is aware of its conflicting readings of the calendar regulations, but neither reading binds the Commission in this order. State ex rel GTE North v. Missouri Public Service Comm'n, 835 S.W.2d 356, 371 (Mo. App., W.D. 1992).

C. Amount

The findings of fact show that the amount at issue is GMO's over-recovery from June 1 through July 4 is \$1,975,363 from GMO's MPS district and \$484,626 from GMO's L&P district. OPC protests that the amount is but an estimate and, therefore, not accurate. But financial accuracy generally connotes something less than an absolute truth,⁴⁵ and the FAC statute specifically tolerates approximation, as the annual true-up provision shows. OPC and the Industrial Intervenors offer no authority barring the Commission from using as close an approximation as the Commission can make.⁴⁶ Moreover, the Commission determines its findings of fact by a preponderance of the evidence.⁴⁷ That standard asks only whether a proposition is more likely true than not true.⁴⁸ On that issue the Commission's findings of fact reflect its determinations.

D. Mechanism

OPC and the Industrial Intervenors argue for a cash refund of over-recovered amounts, but the FAC mechanism is already in place,⁴⁹ and will not require a whole new set of tariff sheets. Therefore, the Commission will order an adjustment to the FAC to credit the over-recovery. The FAC statute also requires the remedy to include interest at GMO's short-term borrowing rate, so the Commission will order such interest on all amounts until credited.

The record shows that GMO's recovery period 9 begins in March 2012, which allows time to calculate the adjustments and interest, so the Commission will order the adjustment made during recovery period 9.

⁴⁵ *St. Joe Minerals Corp. v. State Tax Comm'n*, 854 S.W.2d 526, 529 (Mo. App., E.D. 1993).

⁴⁶ *Dick Proctor Imports, Inc. v. Director of Revenue*, 746 S.W.2d 571, 575 (Mo. banc 1988).

⁴⁷ *State ex rel. Dail v. Public Service Comm'n*, 203 S.W.2d 491, 499-500 (K.C. Ct. App. 1947).

⁴⁸ *Southards v. Director of Revenue*, 321 S.W.3d 458, 461 (Mo. App., S.D. 2010).

⁴⁹ Starting at P.S.C. MO. No. 1 Sheet No. 124.

GMO argues that a stay order and suspending bond are necessary under Section 386.520,⁵⁰ but Section 386.520 applies only to actions on appeal, not to the self-correction mechanisms required under the FAC tariff.

E. Accounting Authority Order

GMO asks the Commission to issue an accounting authority order (AAO) to record the adjustment that the Commission is ordering, so that GMO can eventually recover those amounts again, presumably after further appeal.

In support, GMO alleges that the over-collected amount constitutes an extraordinary item that justifies a departure from the Commission's standards for utility accounting:

[E]very electrical corporation subject to the commission's jurisdiction shall keep all accounts in conformity with the Uniform System of Accounts Prescribed for Public Utilities and Licensees subject to the provisions of the Federal Power Act, as prescribed by the Federal Energy Regulatory Commission (FERC) and published at 18 CFR Part 101 (1992) and 1 FERC Stat. & Regs. paragraph 15,001 and following (1992) [⁵¹]

Specifically, GMO cites the following regulation to support a break-out of the credit:

. . . Those items related to the effects of events and transactions which have occurred during the current period and which are of unusual nature and infrequent occurrence shall be considered extraordinary items. Accordingly, they will be events and transactions of significant effect which are abnormal and significantly different from the ordinary and typical activities of the company, and which would not reasonably be expected to recur in the foreseeable future. (In determining significance, items should be considered individually and not in the aggregate. However, the effects of a series of related transactions arising from a single specific

⁵⁰ RSMo 2000.

⁵¹ 4 MO ADC 240-20.030(1).

and identifiable event or plan of action should be considered in the aggregate.) [⁵²]

But the event giving rise to the adjustment is the Opinion's reversal of accumulation period 1's start date. An adverse ruling is not an unusual, infrequent, abnormal, or extraordinary event.

Also, nothing prevents GMO from monitoring the amounts at issue through the FAC process, as the FAC statute and GMO's tariff provide, so the Commission will deny the request for an AAO.

Decision

The Commission makes the following rulings.

THE COMMISSION ORDERS THAT:

1. In its next fuel adjustment clause tariff filing, KCP&L Greater Missouri Operations Company shall provide an adjustment in recovery period 9 crediting its customers in the amount of:

a. \$1,975,363 for GMO's MPS district; and

b. \$484,626 for GMO's L&P district.

2. That adjustment shall include interest under Section 386.266, RSMo Supp. 2010.

3. The request for an accounting authority order is denied.

⁵² 18 CFR 101 General Instruction 7 (emphasis added).

4. This *Report and Order* shall become effective on September 9, 2011.
5. This file shall close on September 10, 2011.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Gunn, Chm., Davis, and Jarrett, CC, concur;
Kenney, C., dissents;
and certify compliance with the provisions of
Section 536.080, RSMo.

Jordan, Senior Regulatory Law Judge