

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 29th day of
July, 2009.

In the Matter of the Application of KCP&L
Greater Missouri Operations Company
Containing its Annual Fuel Adjustment
Clause True-Up

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File No. EO-2009-0431

**ORDER APPROVING
ANNUAL FUEL ADJUSTMENT CLAUSE TRUE-UP**

Issue Date: July 29, 2009

Effective Date: August 8, 2009

On May 29, 2009, KCP&L Greater Missouri Operations Company (KCPL-GMO) filed an application containing the company's annual fuel adjustment clause true-up to remedy what the company claimed to be an under collection of \$1,136,160 for the territory formerly served by Aquila Networks-MPS and an under collection of \$188,893 for the territory formerly served by Aquila Networks-L&P. On June 1, the Commission issued an order notifying the public and interested parties of KCPL-GMO's filing. That order also directed that any party wishing to intervene file an application to do so by June 19. By Commission rule,¹ the parties to KCPL-GMO's most recent rate case, ER-2007-0004, are automatically parties to this case. No additional parties applied to intervene.

The Commission's rule regarding fuel adjustment clauses requires the Commission's Staff to examine and analyze the information submitted by the company and to submit a

¹ 4 CSR 240-3.161(10)(A).

recommendation within 30 days.² Staff filed its initial recommendation on June 25. In that initial recommendation, Staff proposed two adjustments to the true-up amounts identified by the company. First, Staff adjusted the short-term interest rates utilized in the company's calculations, reducing the company's proposed under collection by \$3,729 for the MPS territory and \$968 for the L&P territory. Second, Staff contended that 100 percent of off-system sales revenue should be netted against fuel and purchased power cost before calculating the 95 percent of fuel and purchased power costs that should have been recovered in the fuel adjustment clause recovery period. Staff's second adjustment would have turned the under collections identified by KCPL-GMO into over collections of \$2,963,976 for the MPS territory and \$1,015,531 for the L&P territory.

The Commission ordered KCPL-GMO to respond to Staff's recommendation by July 6. The Commission also ordered that any other party wishing to respond to Staff's recommendation do so by July 6. KCPL-GMO filed its response on July 6. No other party responded to Staff's initial recommendation. In its response, the company accepted Staff's first proposed adjustment relating to short-term interest rates, but rejected the much larger adjustment relating to the netting of fuel and purchased power costs. In light of the disagreement between Staff and the company, the Commission scheduled a prehearing conference for July 23 to discuss how to proceed to resolution of this matter.

On July 16, Staff filed a revised recommendation in which it withdrew its proposed adjustment relating to the netting of fuel and purchased power costs. As a result, Staff reports that it now agrees with KCPL-GMO's proposed true-up, subject to Staff's adjustment relating to short-term interest rates. Specifically, Staff's revised recommendation indicates KCPL-GMO under collected \$1,132,431 for the MPS territory

² 4 CSR 240-20.090(5)(D).

and \$187,925 for the L&P territory.

After receiving Staff's revised recommendation, the Commission ordered that any party wishing to respond to Staff's revised recommendation do so by noon on July 22. KCPL-GMO responded on July 20, indicating its agreement with Staff's revised recommendation. No other party responded to Staff's revised recommendation.

However, on July 22, AG Processing, Inc., and Sedalia Industrial Energy Users' Association (Industrial Intervenors) filed a pleading entitled "Objection to True-Up." The objection does not respond to the specifics of Staff's revised recommendation. Rather it contends fuel adjustment clauses unconstitutionally deny due process in that they allow for retroactive ratemaking. The Industrial Intervenors' pleading does not request an evidentiary hearing and the Industrial Intervenors did not appear at the prehearing conference held on July 23. The parties who did appear for the prehearing conference agreed that no factual matters are in dispute and indicated no evidentiary hearing would be necessary.

The Industrial Intervenors contend any fuel adjustment clause would be unconstitutional. However, section 386.266, RSMo (Supp. 2008), specifically authorizes the Commission to approve a fuel adjustment clause. The Industrial Intervenors may wish to argue that section 386.266 violates the Constitution, but the declaration of the validity or invalidity of a statute is purely a judicial function.³ This Commission is not a court and thus has no authority to declare a statute unconstitutional.⁴ There are no related factual issues that require the Commission's attention. Therefore, the Commission does not need to further address the Industrial Intervenors' constitutional argument, and will deny their

³ *State Tax Com'n. v. Administrative Hearing Com'n.*, 641 S.W.2d 69, 75 (Mo. 1982).

⁴ *State ex rel. Missouri Southern Railroad v. Public Service Com'n.*, 259 Mo. 704, 727, 168 S.W. 1156, 1164 (Mo. banc 1914).

objection to the true-up.

Based on the revised recommendation of its Staff, the Commission will approve the under collection amounts described in Staff's revised recommendation and will authorize KCPL-GMO to include those amounts in its next accumulation period.

THE COMMISSION ORDERS THAT:

1. The Objection to True-Up filed by AG Processing, Inc., and Sedalia Energy Users' Association is denied.

2. KCP&L Greater Missouri Operations Company is authorized to include the following under collection amounts in its next accumulation period, covering the six-month period ending May 31, 2009:

\$1,132,431 for the territory formerly served by Aquila Networks-MPS; and
\$ 187,925 for the territory formerly served by Aquila Networks-L&P.

3. This order shall become effective on August 8, 2009.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Clayton, Chm., Davis, Jarrett,
and Gunn, CC., concur.

Woodruff, Deputy Chief Regulatory Law Judge