STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 27th day of May, 2011.

In the Matter of the Application of KCP&L Greater Missouri Operations Company for Approval to Make Certain Changes in its Charges for Electric Service	)))	**File No. ER-2010-0356**

ORDER OF CLARIFICATION AND MODIFICATION

Issue Date: May 27, 2011 Effective Date: June 3, 2011

On May 4, 2011, the Commission issued its Report and Order. Timely applications for rehearing were filed by KCP&L Greater Missouri Operations Company (GMO), Ag Processing Inc., a cooperative, the Office of the Public Counsel, and Dogwood Energy, LLC. After receiving additional responses and arguments, the Commission held a brief on-the-record question and answer session on May 26, 2011, in order to better understand the requests for rehearing and clarification regarding the Iatan allocation issue.

Section 386.500.1, RSMo Cum. Supp. 2010, states that the Commission shall grant an application for rehearing if "in its judgment sufficient reason therefor be made to appear." With the exception of the portions of the applications for rehearing addressed below, those applications merely restate positions and arguments the Commission has previously rejected in its Report and Order. Except as set out below, in the judgment of the Commission, the parties have not shown sufficient reason to rehear the Report and Order and the Commission denies the applications for rehearing.

With regard to the requests for clarification, the Commission also finds no sufficient reason to clarify the Report and Order except as set out below.

Stipulation and Agreement

GMO and Staff filed a Second Nonunanimous Stipulation and Agreement Regarding Pensions and Other Post-Employment Benefits on May 13, 2011. The agreement was intended to revise the previously approved agreement settling these issues in accordance with the allocation of Iatan 2 to the MPS and L&P service areas. No objections to the stipulation and agreement were received. Under 4 CSR 240-2.115 if no party objects to an agreement and no hearing is requested, then it is deemed to be a unanimous agreement. The Commission has reviewed the agreement and finds it just and reasonable. Therefore the agreement is approved.

Correction

On May 13, 2011, Ag Processing and the Sedalia Industrial Energy Users' Association (SIEUA) filed a motion for clarification. The motion requests that the Commission correct an error in the Report and Order at page 100, which included the wrong number of months of depreciation for the Crossroads facility. GMO requested a similar clarification in its May 13, 2011 pleading. The Commission will correct this error.

Crossroads Accumulated Deferred Income Tax Reserve Amount

GMO further requested clarification of the Report and Order regarding the accumulated deferred income tax reserve amount for the Crossroads facility. GMO argues that because the Commission valued Crossroads at $61.8 million, which is less than the valuation put forth by GMO, the amount of accumulated deferred income tax also needs to be recalculated based on that lower valuation.

Ag Processing and SIEUA oppose this clarification. Ag Processing and SIEUA argue that because Aquila Merchant was not profitable, it would have never been able to take the benefits of a depreciation deduction without its affiliation with a profitable regulated business. Secondly, Ag Processing and SIEUA argue that, as found by the Commission, Great Plains Energy (GPE) would have considered this deferred tax balance in its valuation of Crossroads when conducting its due diligence before the purchase. Third, AG Processing and SIEUA argue that the Commission's valuation of Crossroads is already generous and thus, the Commission should not further "increase" the value by recalculating the deferred income tax reserve amount.

The Commission agrees with Ag Processing and SIEUA's assessment. The Commission set the value of Crossroads considering all relevant factors presented and found that GPE had conducted due diligence in its purchase of Aquila, Inc. Therefore, the Commission need not clarify this point in the Report and Order.

Rebased Fuel and Purchased Power Amounts

In its request for clarification, GMO requested that the Commission clarify whether GMO's MIDAS™ model or Staff's historical model should be used to calculate the revenue requirement fuel numbers for the "rebased" fuel and purchased power amounts. GMO indicated that the revenue requirement filing made by Staff on May 11, 2011, uses the Staff's historical model for these costs. In addition, GMO argues that Staff's model does not include many of the energy costs which the Commission stated in its Report and Order should be rebased to match the FAC. GMO filed an additional response on May 25, 2011, which included specific revenue requirement numbers to support its clarification request.

Ag Processing and SIEUA oppose this clarification and argue that the fuel and purchased power expense should not be clarified in this manner and questioned GMO's motives for requesting the clarification.

Staff also filed a response to the fuel and purchased power clarification request. In its response Staff agrees that it erred in not including certain fuel-related costs in its model. Staff also agrees that those items should be included in determining revenue requirements for GMO. Staff indicates that to include the additional items in the fuel-related costs would increase those items by a total of $5.5 million for GMO ($5.1 million for MPS and $479,000 for L&P).

To the extent needed the Commission will clarify the Report and Order. The Report and Order is clear that the Commission determined the MIDAS™ model should be used for spot market purchased power prices. In addition, the Commission adopted the method presented by GMO for determining natural gas costs. All other variable components should be calculated as presented to the Commission using Staff's traditional historical model. In addition, the Report and Order intends for the items admittedly missing from Staff's calculations but ordered to be included in the FAC calculation to be included in the revenue requirement.

Iatan 2 Allocation Between MPS and L&P

The Commission received applications for rehearing from Ag Processing and Public Counsel based on the decision of the Commission to allocate the L&P portion of GMO's rate increase to an amount that was greater than the amount GMO originally asked to be attributed to the L&P division. The specific objection was to the lack of notice to the L&P customers of a 21% increase since the original notices stated that the

company was requesting a 13.78% increase. GMO also requested that the Commission reconsider or rehear its decision with regard to the Iatan allocation and adopt instead the allocation presented by the company. And, the City of St. Joseph filed a response urging the Commission to reconsider its decision with regard to the severe effect that a 21% increase in base rates would have on L&P customers.

In addition to the requests for rehearing and reconsideration, the Commission received objections from Ag Processing and SIEUA and Public Counsel to the compliance tariffs filed by GMO alleging that the compliance tariffs should not become effective for the same reasons as argued in the applications for rehearing. Ag Processing also suggested as a possible solution that the rate increase for L&P customers be phased-in. This phase-in option was argued in-depth during the on-the-record session on May 26, 2011.

Section 393.155.1, RSMo, states that the Commission may phase in a rate increase that is "primarily due to an unusually large increase in the corporation's rate base." Rate base in GMO's previous rate case[1] was $190,475,404. Rate base as a result of this case is $422,039,507. Thus, there is an "unusually large increase" in rate base in this case.

The Commission previously heard evidence on the effect a large rate increase would have on GMO's customers.[2] In fact, the Commission has already taken that effect into consideration in deciding how much of Iatan 2 to allocate between the MPS and L&P service territories.[3] After reviewing the requests for rehearing and the

[1] File No. ER-2009-0090.

[2] *Report and Order*, Finding of Fact 546.

[3] *Report and Order*, Finding of Facts 546-557.

objections to the tariffs, and after hearing additional oral arguments on the allocation issue, the Commission has reconsidered the effect on the customers. The Commission determines that it has made a just and reasonable determination as to the proper allocation of Iatan 2 between the MPS and L&P territories. However, because of the large increase in rate base in this case, and considering the effects of such an unusually large increase on L&P's customers, a just and reasonable alternative is to phase in the rate increase for the L&P customers pursuant to Section 393.155.1, RSMo 2000.

The Commission observes that although the Report and Order had an effective date of May 14, 2011, it is well settled law that an order lacks finality "while it remains tentative, provisional, or contingent, subject to recall, revision or reconsideration by the issuing agency."[4] The Commission's decisions are not final decisions while applications for rehearing are pending.[5]

Based upon its review of the record, the Commission will, on its own motion, modify its Report and Order with regard to the allocation of Iatan 2 between the L&P and MPS rate classes by adding the following Conclusions of Law at page 204 of the Report and Order:

> 65A. Section 393.155.1, RSMo, states that the Commission may phase-in a rate increase that is "primarily due to an unusually large increase in the corporation's rate base." Because of the magnitude of the rate increase and the effects on the ratepayers in the L&P service area, the Commission determines that, in its discretion, a phase-in of the rate increase is a just and reasonable method of implementing this large increase. The Commission further concludes that rates for L&P service area should initially be

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[4] *City of Park Hills v. Public Service Comm'n of State of Mo*., 26 S.W.3d 401, 404 (Mo. App. 2000).

[5] *State ex rel. AG Processing, Inc. v. Public Service Comm'n*, 276 S.W.3d 303 (Mo. App. 2008). Furthermore, Missouri courts have recognized the Commission's authority to amend or abrogate its prior orders pursuant to Section 386.490, RSMo 2000, even after an order has become final. *State ex rel. Jackson County v. Public Service Commission*, 532 S.W.2d 20, 29 -30 (Mo. banc 1975).

> set at an amount equal to the $22.1 million originally proposed by GMO with the remaining increase being phased-in in equal parts over a two year period.
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> 65B. In addition, GMO shall be allowed "to recover the revenue which would have been allowed in the absence of a phase-in . . . ."[6]

And, the Report and Order shall be modified by adding the following sentences to the end of the Decision paragraph on page 204:

> Because of the magnitude of the rate increase and the effects on the ratepayers in the L&P service area, the Commission determines in its discretion that a just and reasonable method of implementing this large increase is by phasing it in over a reasonable number of years. The Commission further concludes that rates for L&P service area should initially be set at an amount equal to the $22.1 million originally proposed by GMO with the remaining increase plus carrying costs being phased-in in equal parts over a two year period.

Compliance Tariffs and Motions for Expedited Treatment

In order to comply with the Commission's Report and Order as issued on May 4, 2011, GMO filed tariffs on May 12, 2011, and revised tariffs sheets on May 16 and 17, 2011. GMO filed motions requesting expedited treatment of the tariffs so that they would become effective in less than 30 days on June 4, 2011.

As previously mentioned, objections to the tariffs were filed by Public Counsel and Ag Processing on the basis of the allocation of Iatan 2 between the MPS and L&P service territories. Public Counsel, Ag Processing, and the Sedalia Industrial Energy Users' Association (SIEUA) also objected to the fuel adjustment clause (FAC) portions of the tariff sheets.

On May 17, 2011, Staff filed a recommendation to approve the tariffs. Staff indicated that in its opinion, the tariff sheets comply with the Report and Order.

[6] Section 393.155.1.

Public Counsel, Ag Processing, and SIEUA argue that the FAC portion of the tariffs cannot become effective on June 4, 2011 as requested, but rather, must become effective on the first of the month following the effective date of the Commission order approving the FAC. Public Counsel, Ag Processing, and SIEUA argue that Section 386.266.4(2), RSMo Cum. Supp. 2010, states that an FAC must provide for "an annual true-up which shall **accurately** and appropriately remedy any over- or under-collections, including interest . . ."[7] Public Counsel further argues that the Commission promulgated 4 CSR 240-3.161(1)(G) in order to implement this requirement. That definition provides:

> 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 [rate adjustment mechanism] unless the effective date is on the first day of the calendar month.

GMO filed a response to Public Counsel, Ag Processing, and SIEUA on May 25, 2011. In its response, GMO argues "the request that the tariffs become effective on June 4 does not relate to the definition of 'true-up year' in the regulations." The Commission disagrees.

As Public Counsel, Ag Processing, and SIEUA argue, this rule is designed around the fact that utilities keep financial records on a monthly, not a daily, basis. Thus, the FAC could not have an **accurate** true-up as required by Section 386.220.4 if the true-up begins on a day other than the first day of the month.

The Commission does agree, however, with GMO's next argument that the Commission is not prohibited from determining a different effective date of a tariff if

[7] Emphasis added.

good cause exists to do so.[8] In this case, however, there is no good cause to do so for the FAC portion of the tariffs. Because the current FAC will remain in effect until replaced by these tariff sheets, GMO will not be harmed by the delay. The only way to reconcile the language of the statute requiring an accurate true-up with the language of the regulation under the facts of this case is for the FAC to become effective on the first of the month, because the evidence demonstrated that the utility maintains financial records on a monthly basis and not a daily basis.

The Commission, therefore, denies the motions for expedited treatment with regard to the FAC portion of the tariffs. Because the Commission has made other decisions in this order which will affect the FAC tariffs, the Commission will reject those tariff sheets and require GMO to file revised tariff sheets to implement the FAC, with a tariff effective date of July 1, 2011.

Because the Commission has clarified and modified its Report and Order, new tariff sheets must be filed to comply with those clarifications and modifications. The tariffs as filed will be rejected. The Commission finds good cause, however, to grant expedited treatment for all but the FAC portions of GMO's compliance tariffs to become effective on less than 30 days notice and GMO need not file an additional motion requesting expedited treatment with its new tariff filing.

THE COMMISSION ORDERS THAT:

1. The Second Nonunanimous Stipulation and Agreement Regarding Pensions and Other Post-Employment Benefits is approved. The signatories of that agreement are ordered to comply with its terms.

[8] Section 393.140(11), RSMo.

2. The Motion for Clarification filed by Ag Processing, Inc. a cooperative, and the Sedalia Industrial Energy Users' Association and similar request made by KCP&L Greater Missouri Operations Company to correct the number of months of depreciation for the Crossroads facility is granted. Page 100 of the Report and Order is corrected to read:

> Given the subsequent 29 months through the ordered true-up date, the fair market value of Crossroads for purposes of establishing rate base in this case should also reflect 29 months of depreciation on that unit.

3. Except as set out in the ordered paragraphs above, the Motion for Clarification and/or Reconsideration and Application for Rehearing of KCP&L Greater Missouri Operations Company on May 13, 2011, is denied.

4. Dogwood Energy, LLC's Application for Rehearing is denied.

5. Public Counsel's Application for Rehearing is denied.

6. The Application for Rehearing by Ag Processing Inc., a cooperative, is denied.

7. The requests for clarification are determined as set out in the body of this order and the Report and Order is clarified as indicated above. All other requests for clarification are denied.

8. With regard to the allocation of Iatan 2 between the MPS and L&P service areas, the Report and Order is modified as stated in the body of this order.

9. The motions for expedited treatment are granted in part and denied in part as set out above.

10. The fuel adjustment clause (FAC) tariff sheets, Tariff No. YE-2011-0577, are rejected, and KCP&L Greater Missouri Operations Company is authorized to refile

those tariff sheets in compliance with this order including an effective date of July 1, 2011.

11. The remaining compliance tariff sheets, Tariff No. YE-2011-0567, are rejected and KCP&L Greater Missouri Operations Company is authorized to refile those tariff sheets in compliance with this order and may file those tariff sheets with an effective date of June 4, 2011, without the need for filing an additional motion for expedited treatment.

12. KCP&L Greater Missouri Operations Company shall file any revisions necessary to comply with the correction and clarifications set out in this order no later than May 31, 2011, at 1:00 p.m.

13. Any objections to the compliance tariffs containing a June 4, 2011 tariff effective date shall be filed no later than June 2, 2011, at 9:00 a.m.

14. This order shall become effective on June 3, 2011.

BY THE COMMISSION

Steven C. Reed
Secretary

(S E A L)

Gunn, Chm., Davis, Jarrett, and
Kenney, CC., concur;
Clayton, C., dissents, with separate
dissenting opinion to follow;
and certify compliance with the
provisions of Section 536.080, RSMo.

Dippell, Deputy Chief Regulatory Law Judge