BEFORE THE PUBLIC SERVICE COMMISSION
FOR 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 Approved Fuel and Purchased Power Cost Recovery Mechanism.	)))))	Case No. EO-2008-0216

RESPONSE OF KCP&L GREATER MISSOURI OPERATIONS CO. TO MOTION TO SCHEDULE PREHEARING CONFERENCE

KCP&L Greater Missouri Operations Company ("GMO" or "Company"), formerly Aquila, Inc., hereby responds to the Motion to Schedule Prehearing Conference filed by Ag Processing Inc. and the Sedalia Industrial Energy Users' Association ("Ag Processing"):

1. The Company agrees with Ag Processing that it is appropriate for the Commission to schedule a prehearing conference in this case as a result of the decision of the Missouri Court of Appeals, and intends to be present at the August 10 conference ordered by the Commission on August 4.[1] However, the Commission should proceed in a manner that offers all parties to this case an opportunity to present their positions on the meaning and effect of the Court of Appeals decision.

2. The Commission itself should to review its previous decisions and orders which led to the appellate litigation and this remand. Those Commission decisions include:

(a) The May 17, 2007 Report & Order in Aquila's general rate case, No. ER-2007-0004 ("Aquila Rate Case"), which authorized a Rate Adjustment Mechanism and the Fuel Adjustment Clause (FAC) that is the subject of this case;

[1] This Order erroneously stated that the "Western District Court of Appeals issued an opinion on February 29, 2008 …." However, the decision affecting this proceeding was issued on March 23, 2010 in Case No. WD70799, now found at State ex rel. Ag Processing, Inc. v. PSC, 311 S.W.3d 361 (Mo. App. W.D. 2010).

(b) The tariffs that were approved in the Aquila Rate Case by the Commission in its Order of May 25, 2007 (effective May 31, 2007), including Tariff Sheets 2, 18, 19, and 21 through 25, which clearly advised customers that an FAC had been approved by the Commission.

(b) The June 29, 2007 Aquila Rate Case Order (effective July 5, 2007) that approved the pro forma FAC tariff and the first accumulation period (June 1- November 20, 2007), but which contained only zeros in the cost categories and approved no charges to customers; and

(c) The February 14, 2008 Order (effective March 1, 2008) in Aquila's first FAC proceeding -- this Case No. EO-2008-0216 -- which did approve the collection of additional charges from customers pursuant to the FAC.

3. The Commission should be given an opportunity to address the deficiencies in its orders that were found by the Court of Appeals, and supplement the record to explain why under the specific facts of this case it did not engage in retroactive ratemaking. Without prejudice to presenting additional facts and arguments to the Commission, the Company notes the following important issues that should be analyzed and discussed.

4. The Court of Appeals stated: "Nothing in the Commission's Order even attempts to justify its disregard of the applicable statutory language and the prohibition on retroactive ratemaking ...." State ex rel. Ag Processing, Inc. v. PSC, 311 S.W.3d 361, 367 (Mo. App. W.D. 2010). Given that both the Court of Appeals and the Cole County Circuit Court have directed the Commission to conduct "further proceedings consistent with" the Court of Appeals' decision, sufficient time should be set aside for a careful review of the facts and the law in this case. Therefore, the Commission should review its decisions in this proceeding and the Aquila Rate

Case, and make clear why it did not disregard Section 386.266, the filed rate doctrine and the ban on retroactive ratemaking.

5. Clearly, the Commission believed that it did not engage in retroactive ratemaking, but the Court of Appeals found the record lacking in why that was so. In this regard, the Commission's February 14, 2008 Order did not fully explain in the context of the prohibition on retroactive ratemaking why it considered the June 29 Order "more or less a ministerial act of less significance" when compared with the FAC decisions made in the Rate Case. See Order Approving Tariff to Establish Schedules for Fuel Adjustment Clause, No. EO-2008-0216 (Feb. 14, 2008) at 3-4.

6. For example, the Commission failed to explain how consumers would not be deprived of the ability to make changes in their future purchasing decisions because the tariff approved in the June 29 Order did not contain any cost information and did not set forth any rates, let alone implement a rate increase. This concept of prospective decision-making is a critical element of any retroactive ratemaking analysis, as noted by the Court of Appeals. See State ex rel. Ag Processing Inc. v. PSC, 311 S.W.3d at 365; State ex rel. Associated Natural Gas Inc. v. PSC, 954 S.W.2d 520, 531 (Mo. App. W.D. 1997). The Commission should explain why that concept is fully complied with here because no rate change was implemented until 2008, well after the tariff filings in the summer of 2007.

7. Furthermore, if a refund is to be ordered in this case, there are both factual and legal issues surrounding whether such a refund should only be applicable to the period June 1 through July 4, 2007, given that the effective date of the tariff was July 5, 2007. See Order Granting Expedited Treatment and Approving Tariff Sheets, Aquila Rate Case, No. ER-2007-0004 (June 29, 2007). Ag Processing apparently believes that any refund must apply not only to the month of June but the entire month of July simply because the Commission's rules define a

"true-up year" as "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." See 4 CSR 240-20.090(1)(I). See also 4 CSR 240-3.161(1)(G).

8. The inclusion of an additional 27 days in the calculation of any refund when the charges collected during those days were perfectly legal would constitute an impermissible penalty upon the Company. If the situation were reversed and GMO were seeking to recover for under-charges, it is doubtful that Ag Processing would find it fair to be assessed such costs.

9. There are also issues regarding the form that any refund should take, how it should be processed, and the effect of any such refund on subsequent FAC charges approved by the Commission.

WHEREFORE, KCP&L Greater Missouri Operations Company concurs with the request for a prehearing conference in this proceeding.

Respectfully submitted,

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ATTORNEYS FOR KCP&L GREATER MISSOURI OPERATIONS COMPANY

Certificate of Service

I hereby certify that on this 9th day of August, 2010 copies of the foregoing have been mailed, transmitted by facsimile or emailed to all counsel of record.

/s/ Karl Zobrist
Attorney for KCP&L Greater Missouri Operations Company