

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

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

**REPLY TO GMO RESPONSE TO OBJECTION TO GMO FAC TARIFFS**

COME NOW Ag Processing, Inc. a cooperative, and the Sedalia Industrial Energy Users' Association ("Industrial Intervenors") and for their Reply to GMO's Response to the Objection to the GMO's Compliance Tariffs respectfully state as follows:

1.       On May 16, 2011, GMO filed its FAC tariff sheets and requested that such sheets be made effective on June 4, 2011. On May 20, 2011, the Industrial Intervenors and the Office of the Public Counsel filed their objection to the GMO FAC tariffs. As detailed in that Objection, the Industrial Intervenors and Public Counsel pointed out that, by making the FAC tariff effective on June 4, the Commission would preclude the parties from conducting an accurate true-up as required by Section 386.266.4(2). On May 25, GMO filed their Response to the Objection.

2.       GMO's Response is notable for the fact that it provides no reasons for the Commission to make the FAC tariffs effective in the middle of a calendar month. Rather, GMO's Response simply ventures the opinion that the Commission can make the tariff effective on June 4.<sup>1</sup> Nowhere, however, does GMO offer any reasons why the Commission should make the tariff effective on June 4.

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<sup>1</sup> The Commission should obviously be hesitant to accept GMO's legal opinion regarding the appropriate start date for a fuel adjustment clause. As the Commission is undoubtedly aware, GMO's legal opinion on the commencement of an FAC has been roundly rejected by the Western District Court of Appeals. *State ex rel. Ag Processing, Inc. v. Public Service Commission*, 311 S.W.3d 361 (Mo.App. 2010).

3. Interestingly, while failing to provide any reason why the Commission should make the FAC tariffs effective on June 4, GMO admits the very reasons underlying the Industrial Intervenors' Objection. Specifically, GMO admits that by making the tariffs effective in the middle of the month, any subsequent true-up would necessarily be "an approximation."<sup>2</sup>

4. Section 386.266.4(2) expressly provides that all amounts collected under a fuel adjustment clause shall be subjected to an annual true-up. In order to implement this requirement, the Commission has promulgated 4 CSR 240-3.161(1)(G).

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*** unless the effective date is on the first day of the calendar month.

The rationale for this rule is founded in the fact that utilities keep financial books on a monthly, not daily, basis. Given the lack of daily financial information, it is impossible for the Commission to meet the requirement contained in Section 386.266.4(2) and conduct an accurate true-up of any adjustment clause that commences on a day other than that first day of a month. Instead, any such true-up would be, at best, "an approximation." Therefore, the practical effect of the Commission's true-up year definition and the statutory requirement that the Commission conduct a true-up is that any fuel adjustment clause must commence on the first day of a calendar month.

5. GMO's continued insistence that the FAC tariffs become effective in the middle of the month is not only logically and legally erroneous, it is also baffling. As detailed in the Objection, GMO should be ambivalent as to a July 1 tariff commencement date. Unlike rate tariffs, a delay in the commencement of the FAC tariffs will not deny GMO any increased revenues. Rather, given the continued existence of its previous FAC tariff, GMO will still be

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<sup>2</sup> GMO Response, at page 3.

protected against any fluctuations in the cost of fuel and purchased power. Given GMO's continued failure to provide any legitimate reason to make the FAC tariffs effective in the middle of the month and recognizing that such an effective date will preclude any ability to conduct an accurate true-up, the Industrial Intervenors renew their request that the FAC tariffs become effective on July 1, 2011.

WHEREFORE, Industrial Intervenors respectfully request that the Commission reject GMO's request to make its FAC tariffs effective for service on June 4, 2011 and instead make those tariffs effective on July 1, 2011.

Respectfully submitted,

AG PROCESSING INC. AND THE  
SEDALIA INDUSTRIAL ENERGY  
USERS' ASSOCIATION

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing pleading by email, facsimile or First Class United States Mail to all parties by their attorneys of record as provided by the Secretary of the Commission.



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David L. Woodsmall

Dated: May 25, 2011