

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 20th day
of March, 2013.

AG Processing, Inc.,)	
)	
Complainant,)	
)	
v.)	<u>File No. HC-2012-0259</u>
)	
KCP&L Greater Missouri Operations Company,)	
)	
Respondent.)	

**ORDER REGARDING MOTION FOR RECONSIDERATION, MOTION
FOR STAY OF COMMISSION ORDER, AND MOTION FOR APPROVAL
OF RECONCILIATION**

Issue Date: March 20, 2013

Effective Date: March 20, 2013

On March 4, 2013, AG Processing, Inc. ("AGP") filed what it captioned as an "Application for Rehearing," a "Motion for Stay of Commission Order," and a "Motion for Approval of Reconciliation" (collectively, "March 4th Filings"). AGP claims, in its application for rehearing, that the Commission's February 27, 2013 "Order Regarding Remand" ("Order") is unlawful. No other party sought reconsideration of the Commission's Order, or responded to AGP's motions.

AGP's initial complaint is that it had insufficient time between the issuance date of the Order and its effective date in order for it to file a complete and thorough "Application for Rehearing." The Commission must begin by noting that its Order is an interlocutory, procedural order. It is not a final order and does not dispose of this file, HC-2012-0259; nor

does it dispose of the consolidated file, HC-2010-0235.¹ Because it addresses an interlocutory order, AGP's "Application for Rehearing" is incorrectly captioned.² Consequently, the Commission will treat AGP's application appropriately as an application for reconsideration.³ Commission Rule 4 CSR 240-2.160(2) provides:

Motions for reconsideration of procedural and interlocutory orders may be filed within ten (10) days of the date the order is issued, unless otherwise ordered by the commission. Motions for reconsideration shall set forth specifically the ground(s) on which the applicant considers the order to be unlawful, unjust, or unreasonable. At any time before a final order is issued, the commission may, on its own motion, reconsider, correct, or otherwise amend any order or notice issued in the case.

AGP was mistaken about the deadline for seeking reconsideration. The deadline for filing a motion for reconsideration of the Commission's Order was March 9, 2013. Because the deadline fell on a Saturday, by operation of Commission Rule 4 CSR 240-2.050(1), the deadline was automatically extended until Monday, March 11, 2013. Moreover, AGP could have filed a request for an extension of time and sought even more time to complete its motion.⁴

¹ These two files were consolidated in the Order. Interlocutory orders are not final orders under Section 386.510, RSMo 2000, and not subject to judicial review. Interlocutory orders are tentative, provisional, contingent and subject to recall, revision or reconsideration until such time as the agency arrives at a terminal, complete resolution of the case before it. *State ex rel. Riverside Pipeline Co., L.P. v. Public Service Comm'n of State of Mo.*, 26 S.W.3d 396, 398-401 (Mo. App. 2000).

² Commission Rule 4 CSR 240-2.160(1).

³ Commission Rule 4 CSR 240-2.160(2).

⁴ Regardless of AGP's mistaken belief on the filing deadline, it should be noted that the time elapsing between the Mandate of the Court of Appeals and the Commission's Order was 98 days. The time elapsing between when the parties filed their new briefs and the Commission's Order was 51 days. During that 51-day interval the parties were allowed to file responsive pleadings six times. The Commission discussed these two matters at four Agenda sessions – three of which were prior to it issuing its Order. The parties were familiar with the issues after the Court of Appeals remanded HC-2010-0235. The parties were aware of the direction the Commission was following when it issued its Order. More importantly, the parties had already fully briefed and reargued the issues. A motion for reconsideration could be easily crafted before the effective date of the order given the parties had previously reduced all of their arguments to writing. AGP amply demonstrated this with its March 4th Filings.

The deadline for reconsideration of a procedural or interlocutory order has no bearing on the effective date of the order. Such orders could be made effective immediately upon issuance and that would have no impact on the deadline to seek reconsideration.

Although AGP had more time to seek reconsideration and it may believe its requests were somehow truncated, AGP's March 4th Filings are extensive, comprising twenty pages in total. With regard to the merit of those filings, the Commission finds no sufficient basis articulated to reconsider its Order or grant the additional relief requested. If AGP feels it needs to amend or add to its requests, it is welcome to file a motion seeking leave for such.

THE COMMISSION ORDERS THAT:

1. AG Processing, Inc.'s motion for reconsideration, motion for stay of the Commission's February 27, 2013 "Order Regarding Remand" and motion for approval of a reconciliation are denied.
2. This order shall become effective immediately upon issuance.

BY THE COMMISSION



Shelley Brueggemann
Acting Secretary

R. Kenney, Chm., Jarrett, Stoll, and
W. Kenney, CC., concur.

Stearley, Deputy Chief Regulatory Law Judge