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 For Electric Service	))))	Case No. ER-2010-0356

RESPONSE TO GMO APPLICATION FOR REHEARING

COME NOW Ag Processing, Inc. a cooperative, and the Sedalia Industrial Energy Users' Association (collectively referred to herein as "Industrial Intervenors") by and through undersigned counsel, and for their Response to GMO's May 13, 2011 Motion for Clarification / Application for Rehearing respectfully state as follows:

I. INTRODUCTION AND OVERVIEW

1. While addressing the issues in the same order as they are addressed in GMO's Application for Rehearing, it is apparent that the real focus of GMO's attention is: (1) the Commission's valuation of the Crossroads unit and (2) the Commission's denial of costs associated with transmitting the energy over 500 miles from the Crossroads unit in Mississippi to the Missouri ratepayers. In an effort to address the importance of these two issues, while simultaneously allowing the Commission to logically flow between the GMO's Rehearing and this Response, the Industrial Intervenors will provide a short synopsis of its response to the Crossroads valuation and transmission issues.

In its Report and Order, the Commission, in a unanimous 5-0 decision, addressed the appropriate value of the Crossroads unit for purposes of including it in GMO's rate base. While recognizing that GMO has previously valued Crossroads at $51.6 million in

various SEC filings,[1] the Commission inexplicably rejected this valuation in favor of a valuation that was based upon the sale of other identical combustion turbines to AmerenUE. Based upon this third-party valuation of $205.88 / kw, the Commission held that Crossroads had a value of $61.8 million.[2] In addition, the Commission held that the inclusion of Crossroads in rate base would only be prudent if it: (1) disallowed the transmission costs associated with Crossroads being located in Mississippi[3] and (2) recognized the entirety of the deferred tax balance.[4]

It should be recognized that the Commission's valuation methodology (valuing Crossroads based upon the sale of combustion turbines to AmerenUE) is undoubtedly generous. The evidence indicates that the combustion turbines sold to Ameren were located in the same RTO. Therefore, Ameren would not incur any of the administrative or transmission costs that now plague the Crossroads unit. On the other hand, Crossroads is located 500 miles away in Mississippi and presents administrative and transmission complications and headaches associated with delivering the energy to the Missouri captive ratepayers. As such, any comparison between these two units is obviously a comparison of "apples and oranges."

In order to remedy the obvious complications and headaches associated with the location of Crossroads in Mississippi, the Commission found that it was necessary to disallow the transmission costs associated with bringing the energy from Crossroads to the Missouri customers. The disallowance of these transmission costs is necessary aspect

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[1] See, *Report and Order*, at pages 92-93.
[2] *Id.* at page 95.
[3] *Id.* at page 91. "The decision to include Crossroads in the generation fleet at an appropriate value was prudent with the exception of the additional transmission costs. . . Paying the additional transmission costs required to bring energy all the way from Crossroads . . . is not reasonable." See also, "the Commission concludes that but for the location of Crossroads, customers would not have to pay the excessive cost of transmission." *Id.* at page 99.
[4] *Id.* at page 96.

of the Commission's decision to include Crossroads at the $205.88 / kw valuation. The Commission has recognized these two issues are inherently intertwined. "In addition, the decision to include Crossroads in the generation fleet at an appropriate value was prudent ***with the exception of the additional transmission expense***."[5] Obviously, the decision to include Crossroads in rate base at $205.88 / kw cannot be separated from the exclusion of the transmission costs and the recognition of all deferred taxes.

The Industrial Intervenors ask that the Commission maintain its decision with regard to the Crossroads unit. The evidence indicates that Crossroads was an albatross around the neck of GPE. For the past several years, Aquila and GPE have both attempted to sell Crossroads. In fact, while it had successfully sold all of its other deregulated assets, Aquila could not find a single bidder for Crossroads. Once these efforts failed GPE eagerly sought to saddle captive ratepayers with this albatross. Ratepayers should not be treated as abused step-children. Ratepayers should not simply be given the leftovers of Aquila's failed foray into the deregulated marketplace. Instead, in order to protect these captive ratepayers, the Commission should continue to require the disallowance of all transmission costs and the recognition of all deferred taxes in any Crossroads transaction.

II. CROSSROADS DEPRECIATION PERIOD

2. At pages 1-2 of its Application for Rehearing, GMO asks that the Commission adjust the applicable depreciation reserve for the Crossroads issue from 32 months to 29 months.

3. As indicated in its Motion for Clarification filed prior to GMO's Application for Rehearing, the Industrial Intervenors agree with GMO's request. In its

[5] *Id.* at page 91.

proposed findings of fact, counsel for the Industrial Intervenors mistakenly quantified the number of months following the transfer of Crossroads at 32 months. Counsel failed to account for the December 31, 2010 true-up date. The practical effect of this mistake is to include too much depreciation reserve and thus reduce the rate base and resulting revenue requirement for Crossroads. As such, the Industrial Intervenors agree with GMO, and renew their previous request to reduce the number of months of accumulated depreciation reserve from 32 to 29 months.

III. CROSSROADS DEFERRED TAX RESERVE

4. Unlike the depreciation issue where the Industrial Intervenors support, and in fact initially raised the need for clarification of the Commission's order, the Industrial Intervenors **oppose** GMO's request to reduce the deferred income tax reserve ("deferred taxes") offset.[6] This was highly contentious issue that was raised solely by the Industrial Intervenors and which was ultimately decided on in their favor. Competent and substantial evidence exists to support the Commission's finding.

Relying on the well-recognized error associated with the depreciation reserve (see, *supra*), GMO inappropriately seeks to tie this deferred tax issue with the depreciation reserve issue.[7] In reality, however, these issues are entirely unrelated and no change should be made to the Commission's Report and Order for deferred taxes. GMO's requested change in the Commission's Order is wrong for at least three separate reasons.

5. ***First***, as with all other tax deductions, the depreciation deduction underlying the deferred tax balance is only relevant to the extent that an entity has

[6] GMO Application for Rehearing, pages 2-3.
[7] *Id.*, page 2, paragraph 6 ("GMO believes that, similar to the depreciation expense and the accumulated reserve for depreciation. . . ").

income. In other words, absent any income, Aquila Merchant would never have been able to ever recognize the benefits of the Crossroads depreciation deduction. At the time that the Crossroads depreciation deduction was being taken, however, Aquila Merchant was not profitable. It is this lack of profitability that caused the value of deregulated generating assets like Crossroads to become "depressed."[8] As such, on a stand-alone basis, Aquila Merchant would never have been able to take the benefits of the depreciation deduction.

Instead, the depreciation deduction underlying the deferred tax balance is solely a result of Aquila's Merchant's affiliation with the profitable Aquila regulated operations. In this case, Aquila Merchant's ability to take the depreciation deduction is entirely attributable to the fact that it had income from regulated operations to take the deduction against. For this reason, the deferred tax balance is properly assigned to the ratepayers of the regulated operations that provided the sole basis for the deduction. As such, the entirety of the deferred tax balance should be recognized in the valuation of the Crossroads unit.

6. ***Second***, in its Report and Order, the Commission noted that, at the time that it acquired Aquila, GPE would have conducted extensive due diligence and would have considered the impact of transmission constraints on the value of Crossroads.

> When conducting its due diligence review of Aquila's assets for determining its offer price for Aquila, GPE would have considered the transmission constraints and other problems associated with Crossroads. It is incomprehensible that GPE would pay book value for generating facilities in Mississippi to serve retail customers in and about Kansas City, Missouri. And, it is a virtual certainty that GPE management was able to negotiate a price for Aquila that considered the distressed nature of Crossroads as a merchant plant which Aquila Merchant was unable to sell despite trying for several years. Further, it is equally likely that GPE was

[8] See, *Report and Order*, page 96, paragraph 275. See also, page 94, paragraph 271.

> in as good a position to negotiate a price for Crossroads as AmerenUE was when it negotiated the purchases of Raccoon Creek and Goose Creek, both located in Illinois, from Aquila Merchant in 2006.[9]

Similarly, at the time that it acquired Aquila, GPE also would have conducted due diligence on the magnitude of the Crossroads deferred tax balance and "would have considered" that deferred tax balance when it valued Aquila as well as the underlying Crossroads asset. Now, GMO asks that the Commission ignore its previously expressed logic and allow GMO shareholders to solely benefit from the deferred tax balance. As the Commission's Report and Order recognizes, however, GPE undoubtedly was aware of the deferred tax balance and considered the magnitude of that balance in its valuation of Crossroads.

7. ***Third***, it is imperative that the Commission recognize that its valuation of Crossroads is already high. In its Report and Order, the Commission expressly recognizes GPE's previous valuation of Crossroads establishing a fair market value of $51.6 million.[10] Despite GPE's admissions that Crossroads is only valued at $51.6 million, the Commission nonetheless established a valuation of $61.8 million that is based upon AmerenUE's purchase from Aquila of identical combustion turbines located in Illinois. Nowhere, however, does the Commission explain why it is ignoring GPE previous $51.6 million valuation. As such, without any explanation, the Commission has already given GMO a rate base value that is at least $10.2 million too high. The recognition of the deferred tax balance is an appropriate response to the overly generous valuation placed on Crossroads.

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[9] *Report and Order*, page 94, paragraph 271.
[10] See, *Report and Order*, page 90, paragraph 263; page 92, paragraph 267; and page 93, paragraph 268.

IV. CHANGES TO PENSIONS / OPEBs

8. Industrial Intervenors take no position on the need to modify the Pension / OPEBs Stipulation to account for the Commission's allocation of Iatan 2 between MPS and L&P.[11]

V. REBASED FUEL AND PURCHASED POWER AMOUNTS

9. At pages 4-7, GMO argues for a higher level of fuel and purchased power expense. GMO claims that "[a] controversy between the Company and Staff has resulted over what is the appropriate fuel and purchased power model to use, Staff's or the Company's."[12] Recognizing the higher fuel cost resulting from its model, GMO asks that the Commission adopt the fuel expense associated with the MIDAS™ model.

> The Company believes that the Commission's Report and Order indicates the MIDAS™ model was the preferred modeling choice for GMO's fuel and purchased power expenses and therefore, the Company used MIDAS™ to model its fuel and purchased power expenses to reflect the Commission's direction.

While the Industrial Intervenors understand that Staff will be correcting certain aspects of its fuel quantification, GMO's approach is schizophrenic. Reaching a correct result has ceased to be the appropriate goal. Rather, in all instances, the only goal for this company is reaching a result that provides a higher revenue requirement.

10. In the recent KCPL rate case, this identical issue arose between KCPL and the Staff. In that case, however, given the **higher** fuel and purchased power expense that resulted from Staff's model, KCPL ***abandoned*** its use of the MIDAS™ model and sought to adopt the Staff's model. At no time during that controversy did KCPL ever

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[11] GMO Application for Rehearing, pages 3-4.

[12] *Id.*, page 4, paragraph 10.

acknowledge the superiority of Staff's model or methodology. Rather, KCPL greedily sought to grab the extra $10 million of revenue requirement that came with Staff's model.

11. But now, in this case, the same controversy over the true-up level of fuel and purchased power expense has arisen again between Staff and the Company. Unlike the KCPL case, however, the Staff's true-up level of fuel and purchased power expense is now slightly **lower** than GMO's level. No longer does GMO seek to abandon its level of fuel and purchased power expense in an effort to adopt Staff's results. Rather, unlike the KCPL case in which it readily abandons its model and results, GMO trumpets the superiority of the MIDAS™ model.[13] GMO is consistent only in seeking higher revenue.

12. GMO's position represents the epitome of a "heads I win, tails you lose" proposition. Where it suits their desired goal of a higher revenue requirement, GMO will eagerly cast aside any of its positions as it did in the KCPL case. At no time, does GMO or KCPL actually consider the correct result, the inherent hypocrisy in its position, or the impact on ratepayers. Rather, GMO and KCPL will eagerly do or say anything in pursuit of the higher profits associated with an increased revenue requirement. Obviously, the Commission should not only question GMO's position on fuel expense, but also its positions on all the other issues raised in this rehearing.

13. Further, given the existence of the fuel adjustment clause, GMO's hypocrisy is even more surprising. GMO's fuel adjustment clause allows the utility to capture 95% of any changes in its fuel and purchased power expense. The utility should be essentially disinterested as to the level of fuel and purchased power placed into rates.[14]

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[13] GMO refers to MIDAS™ as the "preferred modeling choice."

[14] Certainly, GMO cannot argue that its request for the higher level of fuel expense is driven by the 5% of fuel and purchased power expense that it may be required to absorb. After all, GMO has not sought to

In fact, this disinterest drove GMO to not even seek to rebase the rates in its fuel adjustment clause. On the other hand, customers are deeply concerned with any attempts to needlessly increase rates at this point in time. GMO customers are facing their third rate increase in the last four years. In fact, with its Report and Order in this case, L&P customers are facing an increase of 21.0%. Certainly, the impact of this additional fuel expense is meaningful and detrimental to these long-suffering customers.

VI. NEED FOR WRITE-OFFS

14. At pages 9-10 (paragraph 25), GMO asks that the Commission reconsider its decision based solely on the impact of that decision. GMO asserts that it "may be required to write off from its financial books a significant portion of the net book value of Crossroads." In this regard, GMO's argument provides nothing new for the Commission's consideration. KCPL and GMO have repeatedly raised its concern regarding the potential for financial write-offs.[15] As such, this matter has already been considered and raising the matter again in the Application for Rehearing provides the Commission nothing new to consider.

15. Furthermore, the need to possible write-offs associated with the value of the Crossroads unit is **not** a result of the Commission's Report and Order, but rather the result of GMO's refusal to take that write-off on a timely basis. As the Commission has previously recognized, GPE made SEC filings as to the fair value of Crossroads. In those filings, GPE has previously warned about the need to make a "$66.3 million adjustment" (i.e., a write-off) associated with the depressed value of the Crossroads units.

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change its base level of fuel expense since it initially received a fuel adjustment clause in 2007. The impact of absorbing 5% of increased fuel and purchased power expenses is not material to this utility.

[15] See, KCPL / GMO Initial Brief on Joint Issues at pages 3 and 134-137.

> The pro forma adjustment represents the adjustment of the estimated fair value of certain Adjusted Aquila non-regulated tangible assets and reduction of depreciation expense associated with the decreased fair value. The adjustment was determined based on Great Plains Energy's estimates of fair value based on estimates of proceeds from sale of units to an unrelated party of similar capacity in the current market place. The preliminary internal analysis indicated a fair value estimate of Aquila's non-regulated Crossroads power generating facility of approximately $51.6 million. This analysis is significantly affected by assumptions regarding the current market for sales of units of similar capacity. The $66.3 million adjustment reflects the difference between the fair value of the combustion turbines at $51.6 million and the $117.9 million book value of the facility at March 31, 2007. Great Plains Energy management believes this to be an appropriate estimate of the fair value of the facility.[16]

Despite the recognized need for such a write-off in 2007, GMO refused to accept the necessary write-off.[17] Instead, GMO apparently waited so that it could blame the need for such write-offs on the Commission's decision.

As is apparent, however, from the GPE filing with the SEC, the Commission's Report and Order is not the cause for the necessary write-off in the value of the Crossroads unit. Rather, the ***sole*** basis for the write-off is the diminution in value of deregulated assets that occurred as a result of the implosion of Enron and the deregulated marketplace. It is disingenuous for GMO to lay the responsibility for this write-off at the Commission's feet. The need for this write-off has been known to GMO for at least 4 years. That GMO decided to wait until now to recognize the write-off does not diminish the fact that the fair market value, as a result of the decline of the deregulated electric market, is $66.3 million less than the net book value.

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[16] *Id.* at page 12 (citing to Great Plains Energy & Aquila Joint Proxy Statement / Prospectus, filed with the SEC on May 8, 2007, at page 175) (emphasis added).

[17] GMO Reply Brief at page 16.

VII. VALUATION OF CROSSROADS

16. At pages 10-16 (paragraphs 26-41), GMO bemoans the $61.8 million fair market value assigned by the Commission to the Crossroads Energy Center. As an initial matter, the Commission should recognize, as previously pointed out, that the Commission's valuation of Crossroads at $61.8 million is a ***GIFT***! Sworn SEC filings made by GPE at the time of the acquisition of Crossroads admitted that the value of Crossroads was only $51.6 million.[18] While the Commission recognized this admission in its Report and Order, the Commission failed to provide any rationale why it should disregard this admitted value and instead adopt a valuation for Crossroads that is $10.2 million higher than GPE told its investors. The $61.8 million valuation of Crossroads is an obvious gift that seems unrecognized only by GMO.

Think about it, the Commission has allowed GMO to alleviate itself of a huge problem - it has allowed GMO to place in rate base a generating unit that is located in Mississippi, over 500 miles away. The generating asset has suffered from historic transmission constraints, has admittedly little value, and could not be sold. We are aware of no other examples requiring customers of a regulated utility to pay for a generating facility that is so distant – in fact in another RTO. Nevertheless, the Commission solved this problem and generously gave GMO additional rate base of $61.8 million. Epitomizing the notion of "looking a gift horse in the mouth", GMO wants more (i.e., net book value) and continues to seek a value that is approximately double the value that GPE placed on Crossroads in 2007.

17. The generous nature of the Commission's decision aside, GMO's application for rehearing regarding the valuation of Crossroads raises no new facts or

[18] See, *Report and Order* pages 92-93.

matters which would justify changing the Commission's decision. In fact, paragraphs 27-41 represent the panoply of arguments already raised by GMO's and rejected by the Commission. GMO argues that the Commission "completely disregards the Company's evidence" as to: (1) its explanation of the previous SEC filings and (2) the valuation provided by the RFP. GMO's assertion is incorrect. In its Report and Order, the Commission expressly notes that:

> The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.[19]

18. As mentioned, despite the admission contained in the SEC filing that the fair value of Crossroads was only $51.6 million, the Commission rejected this valuation in favor of a valuation that was based upon the sale to Ameren of identical combustion turbines. Despite the fact that the Commission did not rely on the valuation in the SEC filing, GMO spends the entirety of paragraphs 28-37 attempting to explain why the valuation contained in the SEC filing was incorrect. Clearly, GMO's continued focus on the valuation in the SEC filing, because it was implicitly rejected by the Commission, is **irrelevant** to the current inquiry.

19. Finally, after spending several pages attacking the previous valuation contained in the SEC filings, GMO addresses the actual methodology relied upon by the Commission. GMO claims "the Commission's use of the average installed dollar per kilowatt basis that AmerenUE paid for the combustion turbines at the Goose Creek and Raccoon Creek units to arrive at a valuation of Crossroads also is arbitrary and

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[19] *Report and Order*, at page 10.

capricious."[20] GMO claims that these transactions did not occur "at the same time as the acquisition of Crossroads."[21]

20. The sale price of the Goose Creek and Raccoon Creek units are, despite GMO's whines to the contrary, relevant to the Commission's valuation inquiry. The unchallenged evidence indicates that, beginning in 2005, Aquila attempted to sell all of its deregulated generating facilities. Given its willingness to sell these facilities in a fire sale, Aquila was able to sell several combustion turbines that are identical to the Crossroads facility. In fact, Aquila was able to sell the Goose Creek and Raccoon Creek facilities at a price of $205.88 / kw.[22] In doing so Aquila wrote-off of $99.7 million.[23] Still again, Aquila sold other three other identical combustion turbines to utilities in Nebraska and Colorado. These turbines sold for a still lower price of $157.30 / kw.[24] Thus, combustion turbines identical to those found at the Crossroads Energy Center were valued, in arms-length transactions, at a cost of $157.30 / kw to $205.88 / kw.

21. The value of Crossroads should be even less. During this same point in time, and despite its willingness to accept large financial write-offs, Aquila was unsuccessful in selling the Crossroads unit even at fire sale prices. In 2005, Aquila contacted 79 parties in an attempt to sell the Crossroads Energy Center. Despite its willingness to accept depressed prices, Aquila did not receive a single bid for the Crossroads units. The value of Crossroads is undoubtedly less than the $157.30 / kw

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[20] Application for Rehearing, page 14, paragraph 38.
[21] *Id.*
[22] Ex. 215, page 51 (citing to Aquila's SEC Form 8K filing with the Securities Exchange Commission, filed December 16, 2006).
[23] *Id.*
[24] *Id.* at page 48.

value received in the sale of combustion turbines in Colorado and Nebraska. The Commission's valuation is, indeed, generous.

22. While claiming that these transactions are irrelevant, GMO fails to explain why they are irrelevant. At the time that it purchased Aquila, Great Plains announced its intent to sell the Crossroads units.[25] Despite this stated intent, Great Plains, like Aquila before it, was unable to sell the Crossroads units.[26] The depressed value continued.

Given: (1) GPE's announced intention and failure to sell the Crossroads units; (2) GPE's failure to provide any evidence that the market for these assets was not depressed; (3) GPE's acknowledged value in SEC filings that Crossroads' fair value was only $51.6 million and (4) the readily available valuation provided through third-party transactions, it was reasonable that the Commission should use these third-party transactions as surrogates to value the Crossroads units. Plain and simple, GMO's claims, in this regard, as with the other issues in its pleading, amounts to an unsubstantiated money grab. The Commission should reject GMO's assertions.

VIII. DISALLOWANCE OF CROSSROADS' TRANSMISSION COSTS

23. In its Report and Order, the Commission found that "the decision to include Crossroads in the generation fleet at an appropriate value ***was prudent with the exception of the additional transmission expense***."[27] Thus, despite GMO's claims to the contrary, the Commission's finding that the inclusion of Crossroads in rate base is prudent is expressly tied to the disallowance of the "transmission costs to bring energy all

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[25] Ex. 216, page 14.
[26] *Id.*
[27] *Report and Order*, page 91 (emphasis added).

the way from Crossroads."[28] As the Commission further notes, absent the disallowance of these costs, the addition of Crossroads would not be "just and reasonable."[29]

Such a finding should not be surprising to GMO. Throughout this case, Staff and customers have defied GMO to present examples where a regulated utility has sought to include in rate base a regulated asset that is located over 500 miles away in another RTO. There are no such examples. It would be the epitome of imprudence for GMO to build an asset in Mississippi when there are plenty of locations within the GMO service area. In order to overcome this obvious imprudence, the Commission disallowed the transmission costs to bring the power from Mississippi. In doing so, the Commission has effectively treated the unit as if it were located in the service area. Absent such a disallowance, Crossroads would clearly be recognized as imprudent. Thus, GMO has a decision: (1) include Crossroads in rate base without the transmission costs or (2) find another generating alternative which does not include these unnecessary transmission costs. Interestingly, Dogwood has presented that exact alternative – ownership in a local generation option which would not incur the same transmission costs.[30]

24. Based upon the Commission's finding that it would not be "just and reasonable" (i.e., imprudent) to incur the transmission costs to bring energy from Mississippi to Missouri, GMO attempts to patch together an argument that the Commission disallowance of these costs somehow violates the "Filed Rate Doctrine."[31] Despite the fact that the decision to include Crossroads in rate base is solely a matter devoted to state jurisdiction, GMO attempts to argue that the Commission is mandated by

[28] *Id.*
[29] *Id.*
[30] See, Janssen Rebuttal, page 17 and Schedule RJ-2P.
[31] GMO Application for Rehearing, at page 21, paragraph 53.

federal preemption doctrine to include these FERC approved transmission rates in retail rates.

25. GMO's arguments are misapplied, the decision to include an asset in rate base, and the valuation of that asset, are solely matters of state jurisdiction. The several pages that GMO spends arguing that the Commission is bound to include these transmission costs (pages 21-27) are completely misplaced. As the Commission has found, it would not be prudent to include Crossroads in rate base absent the disallowance of the transmission costs. For this reason, the Industrial Intervenors continue to ask the Commission to disallow the imprudently incurred transmission costs associated with bringing the energy from Mississippi to Missouri.

IX. ALLOCATION OF IATAN 2

26. Industrial Intervenors take no position on the allocation of Iatan 2 between MPS and L&P.[32]

WHEREFORE, Industrial Intervenors respectfully request that, except for the depreciation reserve issue previously addressed in the Industrial Intervenors' Motion for Clarification, the Commission deny the entirety of the GMO Application for Rehearing.

[32] GMO Application for Rehearing, pages 27-28.

Respectfully submitted,

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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.

David L. Woodsmall

Dated: May 23, 2011