

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

In the Matter of KCP&L Greater	)	
Missouri Operations Company for	)	
Authority to File Tariffs Changing	)	HT-2013-0456
the Steam QCA for Service Provided	)	
to Customers in its Service Terri-	)	
tory		

PROTEST, APPLICATION TO INTERVENE, REQUEST TO SUSPEND  
AND REQUEST TO SET HEARING AND SUGGESTIONS IN SUPPORT

COMES NOW AG PROCESSING INC A COOPERATIVE ("AGP") and for its Protest of Tariff, Request for Suspension and Request to Set Hearing states as follows:

1. On April 15, 2013 KCP&L Greater Missouri Operations Company ("GMO") filed a new tariff purporting to modify its existing Quarterly Cost Adjustment ("QCA") tariff.

2. GMO provides steam service in St. Joseph, Missouri through its utility services there provided from its Lake Road generating plant.

3. The QCA was adopted by this Commission as a part of a settlement of File/Case HR-2005-0450 which was a steam rate filing by Aquila, Inc. which entity has subsequently been acquired by Great Plains Energy Company and thereafter renamed GMO.

4. The QCA explicitly provides for recovery of certain fuel costs incurred by GMO in the generation of steam, to wit:

3. The Company will make quarterly rate filings with the Commission to adjust the Quarterly Cost Adjustment Rider. **Each quarterly rate adjustment will include the fuel costs from the preceding quarter.** The Current Quarterly Cost Adjustment factors will be calculated by dividing the fuel costs by the preceding twelve (12) month billing determinants; provided, however, that in the event that steam BTU billing units in a computation period increase or decrease by more than five percent (5%) compared to the corresponding period one year earlier Company may make an adjustment to the historic billing determinants for use in the denominator of the Current Quarterly Cost Adjustment rate computation. Each Quarterly Cost Adjustment will remain in effect for twelve (12) months. (Emphasis added).<sup>1/</sup>

5. The QCA explicitly does not provide for recovery of costs that have not been incurred during the previous calendar quarter. Examination of the filing made by GMO indicates that the costs that it is seeking to recover were not incurred during the previous calendar quarter but were incurred, if at all, years before the prior calendar quarter.

6. Despite the QCA providing for prudence reviews, to-wit:

4. There are provisions for prudence reviews and the true-up of revenues collected with costs intended for collection.

and providing a process for the conduct of such prudence reviews by the Commission Staff and also by steam customers:

8. Any customer or group of customers may make application to initi-

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<sup>1/</sup> Emphasis added. Though not in this provision, the QCA was modified pursuant to a settlement in File/Case No. HR-2009-0092.

ate a complaint **for the purpose of pursuing a prudence review by use of the existing complaint process.** The application for the complaint and the complaint proceeding will not be prejudiced by the absence of a full (Step Two) prudence review by Staff[,] (emphasis added)

apparently there has been no recognition that the **form** of such prudence review should not be permitted to modify the **substance** of the prudence review. In effect, the provision for a prudence review has been read out of the QCA. As a result of a recent ruling by the Missouri Court of Appeals, such retrospective prudence review may only be conducted if the customers (and presumably the Commission Staff also) are willing to accept a reversed burden of proof. Hence, performing this review **in advance** of authorizing GMO to collect its charges while the burden of proof remains on the requesting utility per Section 393.130 as well as the requirement for the Commission to conduct a contested case. While this result was not intended by the approach of the QCA, it is apparently compelled not only by this recent court decision but also by the Commission's following order. It is apparently the result that is desired by the Court, the Commission, the Commission Staff, and by GMO.

7. Missouri law prohibits retroactive ratemaking. GMO failed to preserve its position in the recent appeal through requesting and obtaining a stay either from the Commission or from the reviewing court. Further, the Court did not order what GMO is seeking to do and there is no authority for this charge.

8. The Commission is not a court and does not have power to enter a money judgment.

9. A lawfully approved tariff becomes the equivalent of state law and the Commission is without power to change it unilaterally. Moreover, retroactive ratemaking is not permitted under Missouri law.

10. Absent authority provided under the QCA, GMO would have the ability to prepare and file a rate case seeking to recover these costs provided such filings were timely. Were it to do so, Section 393.130<sup>2/</sup> would fully apply and any burden of proof would be fixed upon GMO regarding the prudence of the costs that it has claimed to have incurred. The burden of proof imposed by Missouri law exists for several reasons, not the least of which is that the utility -- and the utility alone -- has access to the data on which its claims would be based. It is singularly inappropriate, incorrect and not consistent with either the Commission's rate adjustment mechanism and its preexisting purchased gas adjustment clause to impose a burden of proof upon customers.

11. Additionally, examination of the claimed costs that GMO seeks to recover through the QCA appear to include interest charges. An earlier request by AGP for consideration of interest was rejected by the PSC in that the QCA did not authorize interest charges to be collected. The QCA still does not authorize interest charges to be collected. Staff's recommenda-

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<sup>2/</sup> Applied to steam service by Section 393.290 RSMo.

tion to approve does not even mention the interest charges that are included.

12. Despite being an intervening party in Case No. HR-2005-0450 and most recently having submitted a prudence challenge to GMO's recovery of certain hedging costs claimed to have been incurred in connection with the provision of natural gas for the Lake Road generating station, AGP was not included on the Commission's service list for this matter that differs from that of the general public and has not received formal notice from the Commission of any proposed increase in steam rates submitted by a regulated utility. Once again, Staff appears to ignore AGP's interest in the matter and did not send a copy of its recommendation to counsel. Staff, however, cannot rid itself of its earlier conclusion that Aquila (now GMO) was imprudent in its administration of the hedging program.

13. Upon information and belief, no other steam customer served by GMO has received any notice of any proposed tariff change from the Commission.

14. With respect to AGP's proposed intervention in this proceeding, the following information is submitted:

a. AGP is GMO's largest steam customer at the above facility and uses roughly 60 percent of the process steam that is produced by GMO at the above facility. AGP therefore has an interest in this matter and will be directly affected by any Commission order issued in this matter.

b. AGP operates a major processing facility in St. Joseph, Missouri where it is believed to be the largest industrial steam customer of the applicant utility in the St. Joseph service area.

c. AGP's interest in proceedings affecting the rates, terms and conditions of steam and other utility services from GMO has been previously recognized by the Missouri Public Service Commission in permitting AGP's intervention in prior Aquila and/or GMO rate design and rate-related proceedings. AGP has actively participated in such cases.

d. Correspondence or communications regarding this application, including service of all notices and orders of this Commission, should be addressed to:

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and to:

Mr. Gary Chesnut  
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e. As the largest steam service customer supplied by GMO, AGP's preliminary calculations indicate that its rates for steam service could increase more than \$2 million were this proposed rate change allowed to become effective.

f. Accordingly, AGP is vitally interested in issues that are or may be raised by or developed as a result of the investigation of GMO's steam rate proposal including, without limitation: (1) the revenues which will or may be realized under such rates and the increase over revenues resulting from former rates in effect before the current filing; (2) the amount and prudence of expenses and purported matching revenues to be charged to the appropriate test period; (3) the proper allocation of fuel costs to the Lake Road generating station and the relationship of the claimed increase in natural gas costs to the Lake Road operations; and (4) the design and structure of rates needed to raise revenues sufficient to meet a proper cost of service for GMO. Contemporaneously, AGP is requesting that these proposed tariffs be suspended for the maximum statutory period for investigation and review.

g. AGP will be bound or adversely affected by any Commission order in this proceeding. Because of the structure of the rate schedules under which GMO sells industrial steam to AGP, and because of AGP's size and consistency of steam usage for production purposes, AGP is in the special position of representing its own interest that is direct, immediate, different from that of the general public, and that cannot adequately be represented by any other party. Therefore, it will aid the Commission and serve and protect the public interest that AGP be permitted to intervene in this proceeding to protect its interests.

h. For purposes of 4 C.S.R. 240-2.075(2), AGP states that it opposes the discriminatory and excessive pricing of public utility services, including imprudent charges or charges that are not authorized by law, which includes those proposed by GMO in this proceeding.

15. AGP seeks an investigation by the Commission as regards the timing of the costs that are claimed to have been incurred by GMO in providing current steam service. Such an investigation will require that there be a sufficient and reasonable time for discovery and for testimony regarding these costs which will therefore require that the tariff be suspended to facilitate those processes.

16. GMO is not entitled to collect these amounts as a result of a prior order of this Commission in that it failed to obtain either an administrative stay or a judicial stay of its prior appeal and the Commission may not now reinstate these out-of-period costs for current recovery.

17. Steam customers are not the same nor are their usages the same as was the case at the time these costs were originally incurred, if at all. Accordingly any recovery will be inaccurate for this and other reasons.

18. These claimed costs are not costs of acquiring fuel for the generation of steam but are rather costs associated with certain hedging contracts which Aquila (GMO's predecessor in name) imprudently acquired and imprudently administered. Like it



or not, GMO is responsible for Aquila's imprudence which came with Aquila's acquisition.

19. In Case No. HR-2005-0450 the Commission directed suspension of the proposed tariffs, which included fuel charges, and noted therein that the burden of proof was upon the utility in accordance with Section 393.130 applied to steam companies by Section 393.290. The Commission determined to suspend the proposed tariffs for 120 days beyond the requested effective date, and for an additional six months beyond the 120th day, stating:

Thus, in order to allow sufficient time to study the effect of the proposed tariffs and to determine if they are just, reasonable, and in the public interest, the proposed tariffs will be suspended for a period of 120 days beyond the requested effective date. Furthermore, because a hearing on the proposed tariffs cannot be concluded within the period of suspension above stated, the proposed tariffs will be suspended for an additional six months beyond the 120th day following the requested effective date.

20. Given that these are new charges within the meaning and intendment of the governing statute, the Commission must provide a fair notice and opportunity for the customers affected, including but not limited to AGP, to prepare for what appears on its face to be over a \$2 million increase to steam rates supposedly regulated by the Commission.


21. Further, confirming this suspension period will also confirm that the burden of proof for such new rate or charge remains upon the public utility. Section 393.150.2 provides:

2. If any such hearing cannot be concluded within the period of suspension, as above stated, the commission may, in its discretion, extend the time of suspension for a further period not exceeding six months. At any hearing involving a rate sought to be increased, the burden of proof to show that the increased rate or proposed increased rate is just and reasonable shall be upon the gas corporation, electrical corporation, water corporation or sewer corporation,<sup>3/</sup> and the commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible.

WHEREFORE AGP requests: (1) that this protest be received and the matter be set at issue in a contested case; (2) that the proposed tariff be suspended for an appropriate period including the maximum period of suspension to permit investigation, a hearing and other appropriate process; (3) that AGP be permitted to intervene in the matter so as to protect its interests as a steam customer; (4) that proper notice to steam customers be issued by or at the direction of the Commission; and (5) a hearing and initial procedural schedule be set by the Commission and a scheduling conference be established so that the Commission and all appropriate parties may develop such other procedural schedule as may be necessary in the premises.

Respectfully submitted,

FINNEGAN, CONRAD & PETERSON, L.C.



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<sup>3/</sup> Although the quoted statute does not directly refer to steam utility, Section 393.290 applies it to steam utilities.

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ATTORNEYS FOR AG PROCESSING INC A  
COOPERATIVE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing pleading by U.S. mail, postage prepaid, or by attachment to e-mail, addressed to all parties by their attorneys of record as disclosed by the pleadings and orders herein according to the record maintained by the Secretary of the Commission in EFIS.

A handwritten signature in black ink, appearing to read "Stuart W. Conrad", written over a horizontal line.

Stuart W. Conrad

Dated: May 17, 2013