

BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI

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TRANSCRIPT OF PROCEEDINGS  
Evidentiary Hearing  
November 18, 2010  
Jefferson City, Missouri  
Volume 2

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Ag Processing, Inc., a	)	
Cooperative,	)	File No. HC-2010-0235
	)	
Complainant,	)	
	)	
v.	)	
	)	
KCP&L Greater Missouri	)	
Operations Company,	)	
	)	
Respondent.	)	

NANCY M. DIPPELL, Presiding  
DEPUTY REGULATORY LAW JUDGE  
TERRY M. JARRETT,  
ROBERT S. KENNEY,  
COMMISSIONERS

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Tracy Taylor, CCR No. 939  
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A P P E A R A N C E S

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1 JUDGE DIPPELL: Okay. Then let's go  
2 ahead and go on the record. This is Case No.  
3 HC-2010-0235, Ag Processing, Inc. a Cooperative,  
4 versus KCPL, Greater Missouri Operations Company.

5 My name's Nancy Dippell. I'm the  
6 Regulatory Law Judge assigned to this matter and we've  
7 come here today on November 18th, 2010 for an  
8 evidentiary hearing in this matter. And I'm going to  
9 begin by asking the attorneys to make their entries of  
10 appearance. And can we begin with the complainant?

11 MR. CONRAD: Your Honor, let the record  
12 show, please, the appearance of Stuart W. Conrad and  
13 David L. Woodsmall, the law firm of Finnegan, Conrad  
14 and Peterson. Office in Kansas City is 3100 Broadway,  
15 Suite 1209 and that's Kansas City, Missouri 64111.  
16 Mr. Woodsmall's office is located here in Jefferson  
17 City.

18 JUDGE DIPPELL: Thank you. And  
19 respondent?

20 MR. ZOBRIST: Karl Zobrist, Lisa  
21 Gilbreath, the law firm of SNR Denton, D-e-n-t-o-n,  
22 US, LLP, 4520 Main Street, Suite 1100, Kansas City  
23 Missouri 64111. Also with me are Roger W. Steiner  
24 from Kansas City Power & Light Company and Jim Fischer  
25 from Fischer and Dority here in Jefferson City.

1 JUDGE DIPPELL: Thank you. And for  
2 Staff?

3 MR. RITCHIE: Good morning. Representing  
4 the Staff of the Missouri Public Service Commission,  
5 Samuel D. Ritchie and Kevin Thompson, PO Box 360,  
6 Jefferson City, Missouri 65102.

7 JUDGE DIPPELL: Thank you. Begin with an  
8 apology for the delay. We had an issue with the court  
9 reporting so we -- court reporter so we've all been  
10 sitting around getting to know each other a little  
11 better here.

12 we'll go ahead and begin with addressing  
13 a couple of housekeeping issues and that is we had had  
14 a Motion to Strike. The Motion to Strike has been  
15 withdrawn pursuant to the filing of amended testimony.  
16 That amended testimony of Mr. Clemens was actually put  
17 in the docket system by our clerks as a simple  
18 replacement for the original filed testimony.

19 So what shows up as docket item I believe  
20 it's Item No. 28 is the amended testimony with some  
21 information that had been the subject of that Motion  
22 to Strike redacted. So I'm going to put a notice in  
23 the case file in the docket sheet just showing that  
24 that replacement had occurred so that we have a nice  
25 documentation of that. And is there any objection to

1 that being handled in that manner?

2 MR. CONRAD: There is none from our part,  
3 Judge. Forgive me if you had mentioned this, but  
4 there also was a substituted exhibit.

5 JUDGE DIPPELL: Right. One of the --

6 MR. CONRAD: It was not just the  
7 testimony, but --

8 JUDGE DIPPELL: One of the amendments was  
9 to GLC-3, I believe.

10 MR. ZOBRIST: That's correct.

11 JUDGE DIPPELL: And that is attached to  
12 that testimony. All right then. So that will be  
13 handled in that manner. And then -- all right. I  
14 think that that is then all the pending motions at  
15 this time that need to be addressed. So I think we  
16 can go ahead and get started with opening statements.  
17 And --

18 MR. CONRAD: Did you want to mark  
19 exhibits or --

20 JUDGE DIPPELL: Let's just -- oh, we did  
21 talk about marking exhibits when we were off the  
22 record. And we decided that the complainant's  
23 exhibits would begin with No. 1 and then we would  
24 begin the respondent's exhibits with the No. 100 and  
25 go in that order.

1           Let's just mark those as we go -- as we  
2 bring the witnesses up today. If there needs to be  
3 some reference to the exhibit number as you go through  
4 cross-examination, we can address that at that time.

5           MR. ZOBRIST: I was just going to say, I  
6 looked at my exhibit list and for some reason we  
7 listed our first exhibit as 101. So our first exhibit  
8 for the respondent will be 101.

9           JUDGE DIPPELL: All right. In this case  
10 also we decided the order of witnesses would be as  
11 proposed on GMO's order of witness list and that we  
12 will probably carry this over and not try to cram  
13 everybody in to one day today.

14           All right then. Is there anything else  
15 before we go to opening statements? Then let's go  
16 ahead and begin. And are we beginning with the  
17 complainant?

18           MR. CONRAD: Good morning and may it  
19 please the Commission. I looked at the back of my  
20 head as I was going by the monitor here and I -- I  
21 didn't like the looks of that. That hair  
22 transplant --

23           JUDGE DIPPELL: And Mr. Conrad, your  
24 voice is very soft today so I'm going to need you to  
25 speak up and speak into the microphone so -- the fans

1 are running and I can --

2 MR. CONRAD: Are you able to that hear  
3 that?

4 JUDGE DIPPELL: I can hear you now.  
5 Thank you.

6 MR. CONRAD: Well, let me begin just by  
7 thanking the Commission for taking time to hear this  
8 matter today. At base, this looks like a very  
9 complicated case, but it really is not. It boils down  
10 to just a handful of some fairly straightforward  
11 issues. There are some challenging details, but at  
12 base it simply comes down to a utility that in our  
13 view did not really understand what had been  
14 negotiated with its steam customers in an earlier  
15 proceeding.

16 In an earlier proceeding, which we'll  
17 talk about I think probably as HR-2005-0450, what was  
18 identified as a quarterly cost adjustment mechanism  
19 was established. Now, the witnesses will probably  
20 talk some about that and perhaps at some length. But  
21 it was -- it was actually unique because at the time  
22 that -- that QCA as we'll call it was implemented,  
23 there was no fuel adjustment. Senate Bill 179 had not  
24 been approved so there was no electric fuel  
25 adjustment. There was no correspondent issue or no

1 correspondent function on the electric side.

2           And as the witnesses and the facts will  
3 show, that established a three-month, as its name  
4 suggests, quarterly capturing period, established a  
5 base level of fuel costs for steam generation. And  
6 would -- would capture variations above and below that  
7 base over a subsequent and overlapping 12-month  
8 period.

9           So if you think about that, if you would  
10 have four quarters in a year as you went through a --  
11 a full year, you would potentially have four 12-month  
12 periods that would overlap. And at any one point in  
13 time that would be the -- the sum of those plus or  
14 minus would be what the current adjustment for the  
15 steam customers was.

16           As the facts will show, however, despite  
17 the agreement to that process -- and, of course, the  
18 purpose of that as the facts will show, was to  
19 mitigate price volatility. Aquila, however -- and I'm  
20 going to use the term -- I should drop a footnote  
21 here, Judge. Aquila, as I'm going to use it here  
22 today, and GMO -- KCP&L Greater Missouri Operations  
23 Company shorthanded GMO are the same. One is simply  
24 the successor in interest, we have determined, to the  
25 other.



1           But Aquila, rather than rely on that QCA  
2 mechanism, stuck to a -- an existing strategy that it  
3 had, which you'll hear referred to as one-third  
4 strategy, which put one-third -- actually two-thirds  
5 in options of two different types and then floated a  
6 third of their cost on the open market.

7           It appears to have done so -- Aquila  
8 appears to have done so and we believe the facts will  
9 show without any analysis of the implications of that  
10 quarterly cost adjustment on mitigation of price  
11 variations.

12           And rather than, as the facts will show,  
13 Aquila based its decision to go forward with that  
14 rather than on opinions and consultation with its  
15 steam customers, it appears to have based its decision  
16 to go forward with that on silence, that nobody  
17 objected to it. Everybody knew about that, but nobody  
18 objected. So we'll -- we'll explore that in some -- I  
19 suspect in some detail.

20           Aquila continues to claim -- claim then,  
21 claims now to a failure to understand that while  
22 customers have allowed room in that QCA mechanism for  
23 a hedging program, they did not authorize an imprudent  
24 exercise in the name of that program.

25           Hence, you will see -- and I would simply

1 ask you to be sensitive to this as it comes up -- in  
2 GMO's testimony, you will see a flip-flop between  
3 language that talks about the hedging program, which  
4 at least where I went to school, that was a definite  
5 article "the," the -- the hedging program, to  
6 something that then in the very next sentence  
7 sometimes or even the next line becomes a hedging  
8 program.

9           And I sense that the argument is from  
10 their perspective, well, we had this hedging program  
11 which they referred to as the hedging program and that  
12 was accommodated and nobody objected to it so that  
13 must have been the hedging program in the QCA. But  
14 when the witnesses talk about that, they shift gears  
15 on you. And they move from the hedging program to a  
16 hedging program.

17           In discussion of a hedging program that  
18 was within the ambit of the QCA turned out to be a  
19 duplicative hedging program. The QCA, by its design,  
20 operated to mitigate price volatility above and below  
21 that base. But consistently Aquila has put forward  
22 the idea that our hedging goal, our objective was to  
23 mitigate price volatility without any sensitivity that  
24 that was already taken care of.

25           Another issue that you'll hear about

1 discussed forecasts. Aquila seems to want to point  
2 fingers at the customers. So you will hear that a  
3 lot. It's all the customer's fault. They gave us  
4 numbers that the facts are going to show that Aquila  
5 took those numbers and then sent them back to home  
6 office, at that time Kansas City, and then used those  
7 numbers to create a forecast. Sounds okay.

8           The forecast was wildly off. And it was  
9 off long. By that I mean that their budget for  
10 forecast was far in excess of what they needed. And  
11 the result of that ultimately was to put them into an  
12 over-hedged position.

13           Again, there's no analysis of the purpose  
14 that they had behind this, their objective was never  
15 clear. They appeared in a matter of frankly a few  
16 minutes to somehow make a decision to move forward  
17 with this. But, again, it's the customer's fault.

18           Now, I've been at this game for a long  
19 time. And it is interesting to me that when the  
20 utility makes a misjudgment or makes a mistake, it's  
21 the customer's fault. But on the other hand, when the  
22 customers want to get in and say, well, do this, how  
23 about doing that or perish the thought that the  
24 Commission would ever want to get in and say, well,  
25 how about doing this what -- what response do you get

1 from the utility? That's a management deal. Get  
2 out -- get out of our management hair. So it's kind  
3 of they want it -- their cake and they want to eat it  
4 too.

5           They want to have the ability to forecast  
6 these things internally and then use them for their  
7 budgeting process and use them ultimately to purchase  
8 gas with, but it's all the customer's fault, but the  
9 customers didn't have anything to do with it and  
10 that's what the facts are going to show.

11           Not only that, but after it became  
12 apparent -- and you will see evidence of this -- that  
13 the forecast that had been made were excessive by --  
14 by several factors two and three times, you will see  
15 evidence that knowing that, they did nothing. They  
16 took no action to adjust their purchasing.

17           And, in fact, you will see evidence that  
18 their assertion was it's too late to do anything and  
19 they purchased the entire 2006 hedge positions in one  
20 fell swoop. Just boom, bought -- bought many hedged  
21 months rather than what the hedging program said. And  
22 you'll see pretty clear evidence of that.

23           All the parties seem to agree, even GMO,  
24 that if you're going to do a hedging program, you need  
25 to figure out what it is you're doing. Just like if

1 you're going to take a drive, you need to have some  
2 objective in mind. They never did that. No analysis.  
3 Just in a matter of a few minutes, just kind of treat  
4 one hedging program as though it's fungible and you  
5 can just simply take that and plug it in anywhere  
6 without any kind of an analysis as to what is involved  
7 with the steam load, what part of it is a base load,  
8 what part of it is a swing load, what part of it  
9 really needs to be hedged, indeed what part of it can  
10 be hedged.

11           And at least to our investigation, your  
12 Honors, there was no clear separation of the fuel that  
13 was used to generate steam from the fuel that was used  
14 to generate electricity. Again, the programs seem to  
15 us to be treated fungibly, that you could just cookie  
16 cutter approach a hedging strategy from one -- from  
17 one situation, electric, to another, steam. And  
18 they're radically different.

19           I think the other thing that should not  
20 be missed, there are only six steam customers. We are  
21 talking essentially about the Lake Road plant, which  
22 used to be a major plant for St. Joseph Light & Power  
23 until UtiliCorp acquired that entity back in the early  
24 2000's. And it is today used to generate electricity  
25 as well as industrial steam.

1 But there are only six steam customers.  
2 One of them, my client, takes steam at two different  
3 pressure levels. One a very high pressure level,  
4 850 service they call it, 850 pounds per square inch;  
5 and another at the -- at the more standard lower  
6 level. So there's two.

7 But you have folks like -- like Triumph,  
8 used to be Premium Pork, you'll hear those names  
9 discussed. You'll hear Albaugh, you'll hear Nestles,  
10 used to be Friskies. They're all pretty compact.

11 I don't know if -- if your Honor or the  
12 Commissioner has ever been on the site up there at the  
13 Lake Road plant. But if you were to go, you would see  
14 the steam pipes. They're wrapped in what looks like  
15 aluminum foil. I'm sure it's not that. They're  
16 shiny. And they go across the road from Lake Road  
17 plant to my client's facility and they also go  
18 (indicating) a large over-- overpass over the road to  
19 a number of other facilities out there. But it's a  
20 very close, compact system.

21 By its nature, you can't send steam  
22 because you're really talking about pounds of steam.  
23 You can't send that a long ways like you can  
24 electricity. So they're all compact. They're all  
25 right there. And you will hear evidence that there

1 was not an attempt -- I won't say an attempt, but  
2 there was not an effort made to contact them and say,  
3 Do you want to do this hedging program in the way that  
4 we're choosing to do it.

5           They want essentially to hide behind,  
6 well, you should have known about this and you didn't  
7 say anything, which is interesting because on that  
8 side, silence is acquiescence, but when it comes time  
9 to use the numbers, then it's all our fault because  
10 it's what we told them.

11           Nevertheless, Aquila, as your evidence  
12 will show, decided to implement this program in  
13 basically just a few minutes. So very quickly.  
14 Mr. Johnstone will talk about and has talked about in  
15 his direct and rebuttal testimony the hedging  
16 instruments that were used. And they really did not  
17 fit the application. But I think it's important to  
18 kind of sum up.

19           AGP -- excuse me, Aquila wants to make  
20 much of AGP's, my client's involvement in the  
21 HR-2005-0450 settlement. That settled that entire  
22 case. But QCA was part of it. Of course we were  
23 involved. But because apparently we were involved,  
24 we're somehow tagged with -- with guilt.

25           QCA, as it was designed, could

1 accommodate any number of different hedging  
2 approaches, not just this one. Even an implicit  
3 authorization to implement a hedging program cannot  
4 usefully or helpfully or solvently argue to be an  
5 entitlement to over-hedge and to act imprudently when  
6 designing and administering the program.

7 My analogy is very simple. You get a  
8 driver's license. You go take a test that you can  
9 parallel park maybe. But you get a driver's license.  
10 And a driver's license is a permit -- some states call  
11 them permits to operate a motor vehicle on the roads  
12 of the state. It is not, however, a permit to operate  
13 that vehicle recklessly. And that, your Honors at  
14 base is what we're talking about.

15 The result of all this was a significant  
16 over-hedge, which when gas prices declined and because  
17 of the nature of the instruments they had chosen to  
18 use resulted in those -- in the settlement costs of  
19 the hedges being passed onto customers, yes, Aquila  
20 had to absorb 20 percent of that. The customers,  
21 however, had to absorb and thus far have done so,  
22 80 percent. And these are significant numbers.

23 I think everyone is going to agree that  
24 an accurate forecast of gas volumes is needed. I  
25 think everyone is going to agree in hindsight that the



1 QCA that was designed is a relevant matter that needed  
2 to be taken into consideration. And I think all are  
3 going to agree that an appropriate goal or objective  
4 for a hedging program is needed. But from there on,  
5 it seems to break down.

6           we have, I believe, just under a million  
7 dollars if you take the 80/20 out of it in year one of  
8 the 2006 period, which is a partial period, and then  
9 year seven is about 1.9 million. And those numbers  
10 are detailed and can be explained in Mr. Johnstone's  
11 testimony.

12           we have only the one witness. As I  
13 indicated to the judge earlier before the  
14 Commissioners came, I feel like David in the lion's  
15 den here. GMO's brought four lawyers. Mr. Zobrist  
16 was kind enough to tell me that they did not decide to  
17 spend 2 or 3 more million dollars on the Schiff-Hardin  
18 people having already exhausted I guess their  
19 \$20 million budget in the Kansas case.

20           so at least I don't have to deal with  
21 them, but I would appreciate, since I am here pretty  
22 much doing this one on my own against lots of lawyers  
23 who are, by the way, funded by the steam customers so  
24 we end up paying twice, I would appreciate any  
25 accommodation that you all can give me in that regard.

1 I do thank you for your attention here  
2 this morning. I suspect that most of what I've said  
3 will not be a surprise to GMO. I also do not have a  
4 wonderful PowerPoint to show you as they do so I'm  
5 sure you will enjoy that, but hopefully I've covered  
6 the area.

7 Do you -- Judge, do you want to take any  
8 questions now at this point or do you want to hold  
9 those or --

10 JUDGE DIPPELL: I can ask if the  
11 Commissioners have any questions at this point.  
12 Commissioner Jarrett, do you have anything?

13 COMMISSIONER JARRETT: I don't have any  
14 questions. Right now, thank you.

15 JUDGE DIPPELL: Commissioner Kenney?

16 COMMISSIONER KENNEY: No. Thank you.

17 JUDGE DIPPELL: Thank you, Mr. Conrad.

18 MR. CONRAD: Thank you. Appreciate your  
19 attention.

20 JUDGE DIPPELL: Mr. Zobrist? And I  
21 believe Mr. Zobrist does have a PowerPoint  
22 presentation along with his opening statement so bear  
23 with us on the technical side of things just a little  
24 bit.

25 MR. ZOBRIST: That's correct. Thank you.

1 I can do a test, Judge, just to see if I can flip this  
2 over. There we go.

3           Okay. Well, may it please the  
4 Commission. Good morning. My name is Karl Zobrist  
5 and I'm here with my colleague, Lisa Gilbreath and  
6 we'll be trying the case. Mr. Steiner is, of course,  
7 here. Mr. Fischer is actually visiting. He handled  
8 part of this case but he won't be involved in the  
9 hearing.

10           This case is about a customer who in  
11 GMO's view wanted it both ways. They wanted a hedging  
12 program for natural gas and they got it as part of the  
13 QCA. The hedging program did not make any money in  
14 2006 and in 2007. And now AGP says we never asked for  
15 hedging and we didn't know anything about the program  
16 that you implemented. We think this is a classic  
17 catch-22. I'd like a hedging program if it makes me  
18 money. I don't want a hedging program if I lose  
19 money.

20           Now, the quarterly cost adjustment that  
21 Mr. Conrad told you about is an 80 percent cost  
22 sharing mechanism. Aquila, the utility, picks up  
23 20 percent of the cost, and the customers, the steam  
24 customers, pick up 80 percent of the costs. It  
25 contains a 12-month cost spreading mechanism. You

1 take the costs -- the gas costs and the financial  
2 instruments cost that were accrued over a quarter and  
3 it is spread over 12 months. It is cost sharing and  
4 it is cost spreading, but it does not necessary his  
5 mitigate upward price volatility. It merely spreads  
6 or averages the effects of the price changes.

7 All gas requirements if you do no hedging  
8 and you have a QCA, are still purchased at full cost.  
9 The one-third hedging program, which I'm going to  
10 describe and our witness will talk about at length,  
11 mitigated the market risk, the market risk of upward  
12 price volatility. It limits exposure to upward  
13 price -- upward market prices and not all gas is  
14 purchased at full cost.

15 Now, because in 2006 and 2007 the steam  
16 hedging program lost money, Ag Processing now claims  
17 they never wanted hedging. Although Mr. Conrad now  
18 appears to be taking a slightly position than he did  
19 earlier in the case and saying, well, we just didn't  
20 want this hedging program or we didn't really know  
21 about this hedging program. He says the customers  
22 never were consulted and the hedging program was not  
23 designed properly and it was not executed properly.  
24 Those four claims will be rebutted by our evidence in  
25 this case.

1 Now, the facts are that the one-third  
2 strategy as a concept was discussed several years  
3 before it was implemented with the steam customers.  
4 It was first discussed in detail with staff and with  
5 counsel beginning in 2004 in an integrated resources  
6 planning session. And that program -- those relevant  
7 portions of that one-third strategy are attached in a  
8 schedule to Mr. Clemens' testimony.

9 The relevant documents of the one-third  
10 hedging program were disclosed to a wider audience,  
11 including AGP and others, in 2005 as part of the  
12 litigation in both the 2005 steam case that applied to  
13 Aquila as well as to the electric case.

14 And in that 2005 steam rate case, AGP's  
15 expert witness, Maurice Brubaker, submitted pre-filed  
16 testimony urging that hedge programs be adopted to  
17 benefit the customers. Now, the one-third program did  
18 begin on the electric side. It began in the -- the  
19 Missouri public service division of Aquila in 2004.  
20 It was initiated for this portion of the company, the  
21 steam customers, in St. Joseph on February 16th, 2006.

22 And it is divided into three parts.  
23 One-third is fixed price futures. In other words, you  
24 buy a contract in the future with a set price. So if  
25 the price goes above that, you have essentially capped

1 what you would buy the gas at. One-third is at  
2 options, which it would be a series of puts and calls.  
3 The ability to, again, manage your risk if the price  
4 goes up. And one-third would float with the market to  
5 take advantage of any downward prices.

6 Now, in a rising price environment, you  
7 are protected by the one-third of fixed price futures  
8 contracts because you have capped the price so that  
9 the market -- the market risk of the rising price and  
10 that exposure is mitigated. The one-third of options  
11 also caps the price if it is going up. The final  
12 third floats with the market and there is no price  
13 mitigation. It would be just like averaging under the  
14 QCA if you had no hedging.

15 Now, if costs decline, if prices decline,  
16 the one-third that you bought with the fixed price  
17 futures, you've got to pay that. And if the price has  
18 declined below the price, you're locked in and you  
19 will -- that will not -- that will not -- that will be  
20 out of the money.

21 The one-third of options, although you  
22 have purchased them at a premium and you have to pay  
23 the premium, you don't have to exercise those options  
24 and then you can follow the market down and buy at the  
25 lower price. And, of course, if prices were going

1 down, you'd take your one-third where you're floating  
2 with the market and take advantage of the falling  
3 prices.

4           so the one-third hedging program always  
5 gives you approximately two-thirds of the portfolio to  
6 take advantage of the market trends. That kind of a  
7 mechanism is absent from the QCA which is simply  
8 averaging whatever the price would be. You have no  
9 market protection. You may not always make money in a  
10 hedging program, but you have protection.

11           Now, Mr. Conrad says that his client did  
12 not like this program. Aquila, as the one-third  
13 hedging program was playing out into 2006 and 2007,  
14 became aware that AGP, particularly in 2007, was  
15 concerned about the losses. And it compared the  
16 losses of the one-third program with a program that  
17 was run by the Kase Company, capital K-a-s-e, which at  
18 least it represented that it would be good to deal  
19 with small volumes as we experienced at the steam --  
20 with the steam customers at the Lake Road plant.

21           And the evidence will show that in 2006  
22 and 2007, the Kase losses exceeded the one-third  
23 program losses by a total of over \$1.5 million. And  
24 what we think the evidence shows is that hedging is a  
25 risky game and it's something that you don't go into

1 with a crystal ball. You don't have assurances as to  
2 whether it's going to make money or whether it's going  
3 to lose money. But all programs are different and  
4 they will operate in different ways.

5           And the Kase hedge program, which has  
6 been recommended by Commissions and other experts,  
7 actually left the -- would have left these customers  
8 with greater hedging costs than did the one-third  
9 program. I skipped one.

10           Now, Mr. Conrad and AGP also complain  
11 about the execution of the program. We did rely on  
12 customer data and it was not always accurate. Now  
13 we're not blaming the customers. In fact, Mr. Fangman  
14 will talk about his efforts to communicate with the  
15 customers.

16           The -- the evidence will show that the  
17 Lake Road plant was in a period of -- of increasing  
18 use. AGP was increasing its capacity, Albaugh  
19 Chemical was attempting to increase its capacity.  
20 Nestles was increasing its capacity and Triumph Foods,  
21 which was initially known as Premium Pork, was a  
22 brand-new customer. So given the reliability needs of  
23 the steam customers, Aquila could not second guess the  
24 estimates of its customers. That is the point that we  
25 are making.



1 I want to talk a little bit about the  
2 Lake Road plant and why reliability is so important up  
3 there and why if a utility were to commit an error in  
4 any side of the matter, it would be to err on the side  
5 and to believe the customers and to believe their  
6 estimates to make certain that they had steam.

7 The purchases of the one-third program  
8 occurred on a day when the futures contract expires  
9 and it was designed to do that to reduce the  
10 volatility risk within each month of the purchases.  
11 The purchases of the hedges were also modified when  
12 necessary and when we could do it when there were  
13 sudden spikes or there was lack of equality.

14 So Mr. Gottsch, who was actually the  
15 person that administered this program and has provided  
16 testimony, will explain what he did because he did  
17 make modifications when new data came in and when it  
18 was prudent to do so.

19 But the greatest variability in this  
20 whole story, which Mr. Conrad I'm surprised did not  
21 even mention, was the unprecedented volatility in the  
22 natural gas markets. And to ignore that is to ignore,  
23 you know, the critical background, the critical  
24 context in which this case arises.

25 Let me just show you a few pictures.

1 This is the Lake Road generating station up at  
2 St. Joseph. This is simplified. And I know it looks  
3 complicated, but for purposes of this case it is the  
4 left box that says Steam Customers at the bottom that  
5 we're concerned with here. The five or six boilers  
6 that feed into the 900 PSI plant or the three turbines  
7 their, T1, T2, T3.

8           Now it says this is simplified too, but I  
9 agree with Mr. Conrad. It's a rather complex process  
10 there. The two arrows I'd like you to see are the two  
11 arrows to the left. The first is the AGP 850 sales.  
12 Those come off of what is called the 900 PSI header.  
13 And that is the high intensity steam service that AGP  
14 takes.

15           Then the bottom where it says 150 PSI  
16 sales, that comes off the 200 PSI headers. That  
17 service is provided to AGP as well as the four other  
18 existing customers. At one point in time there were  
19 six customers at the Lake Road plant, six steam  
20 customers. There are only five today.

21           This is a diagram of what the steam sales  
22 system schematic looks like. The dark green is the  
23 Lake Road plant. AGP has two centers that take -- and  
24 the dark line that goes to the AGP rectangle just to  
25 the right of the plant is the high 850 service. Then

1 AGP's plant with the other four plants you'll see  
2 Nestle, Friskies Pet Food, Albaugh Chemical, Triumph  
3 Foods and then off to the left, Omnium, which is a  
4 division of Land O'lakes Cooperative. They take the  
5 150 PSI service.

6 Now, Mr. Fangman is going to talk about  
7 the frequent and timely communications that he  
8 conducted with the St. Joseph steam customers. Ed  
9 Blunk, who was a Kansas City Power & Light employee,  
10 he was not at Aquila at the time, has reviewed this.  
11 It's his duty -- it's part of his job duties right now  
12 when Great Plains Energy and KCPL took over the  
13 operations of Aquila, to become familiar with the  
14 hedging program.

15 And he will talk about how the two-thirds  
16 hedging program contained flexibility in its design,  
17 about the one-third that floats with the market and so  
18 it floated with fuel requirements. And so if you had  
19 an issue where budget did not meet actual, you  
20 actually had the ability to decrease your purchases.  
21 And I should mention that Joe Fangman was an Aquila  
22 employee at the time. So he has first-hand knowledge  
23 of the communications that Aquila had with its  
24 customers.

25 Let me go through a brief chronology. As

1 I said, the introduction of the one-third strategy  
2 began in July of 2004 with an integrated resources  
3 presentation to the Public Service Commission. I  
4 believe it was Staff and Public Counsel at that time.  
5 In 2005, the Aquila steam rate case was pending and  
6 the one-third strategy memo, which we have introduced,  
7 was attached to the direct testimony of Mr. Hyneman.  
8 And it was produced to all parties, including Ag  
9 Processing in August of 2005.

10           And in that October direct testimony that  
11 is where Mr. Brubaker submitted his pre-filed  
12 testimony requesting hedging and where Mr. Hyneman  
13 attached the Aquila strategy notes. So there was no  
14 secret about what program it was that Aquila was  
15 following. The only hedging program that Aquila  
16 followed was the one-third strategy.

17           And this highlights what Mr. Brubaker's  
18 testimony stated: Especially in light of the high and  
19 volatile gas prices currently being faced, it is  
20 appropriate for the effects of the hedging program to  
21 be reflected in determining the fuels and purchase  
22 power costs properly chargeable to consumers.

23           The hedging program was the one-third  
24 program and this was followed -- filed in the steam  
25 case in October 2005.

1 Now, in 2006 -- and these are attached to  
2 several of the schedules of our witnesses -- Gas Daily  
3 was predicting that prices would hover through \$10 --  
4 near \$10 through 2007. The parties began their  
5 discussions to settle the case and it actually settled  
6 in principle on February 15th. And you'll -- you'll  
7 see an e-mail where Denny Williams, who formerly  
8 worked for Aquila, now he works for Missouri American  
9 Water Company, said, you know, we're going to initiate  
10 a hedging program.

11 And it began. Mr. Gottsch made the  
12 purchases on February 16th. And it is true for 2006  
13 he made all the purchases on February 16th. And he  
14 will tell you why it was prudent for him to do that.

15 The stipulation was filed with the  
16 Commission on February 17th and ten days later there  
17 was an on-the-record presentation here at the Public  
18 Service Commission where all of these facts were  
19 discussed. The Commission approved the order the next  
20 day, it became effective in early March and the QCA  
21 filings began.

22 The first filing was made on July 14th,  
23 the second filing was made on October 16th. And these  
24 contain the spreadsheets that -- we will show you some  
25 of those, I suspect. They contain a separate line

1 item for hedging costs. And these filings went again  
2 through 2007.

3           And toward the end of 2007, Ag Processing  
4 was the only customer that had questions about the  
5 program, but they requested on I believe it was  
6 October 29th that this hedging stop. And GMO, at that  
7 time Aquila, stopped the program at the customer's  
8 request.

9           we filed the fourth quarter 2007 in early  
10 January -- mid-January 2008. In July of 2008 is when  
11 Great Plains Energy acquired Aquila. In August of  
12 2009, Mr. Conrad served some discovery requests and  
13 filed the complaint on behalf of AGP January of this  
14 year.

15           The natural gas markets were  
16 unpredictable and volatile on historic proportions  
17 during the last decade. The Commission may recall  
18 that back in January 2001 when prices ranged between  
19 what were then considered, you know, enormous ranges  
20 of \$4.48 and \$9.97, it recognized that something must  
21 be done to deal with volatility and it sort of came  
22 out of the working group in January 2001. But then  
23 prices became even more volatile. And particularly in  
24 December 2005 post-Hurricanes Rita and Katrina, it was  
25 above \$15, a spike of 125 percent versus just

1 12 months before.

2           And then there was a collapse in 2006.  
3 what nobody predicted, that gas prices would fall,  
4 happened in the fall of 2006, a collapse of  
5 73 percent. And then in July of 2008, it spikes again  
6 to \$13.58. And then as we know, a drop that we've  
7 seen last year that's essentially continued to this  
8 year -- prices are higher today, but a drop of  
9 82 percent between July of 2008 and -- and  
10 September of 2009. And these -- this volatility is  
11 depicted in Mr. Blunk's Schedule 12.

12           And in 2006, the Commission itself was  
13 conducting hearings with regard to hedging strategies  
14 for natural gas local distribution companies and  
15 endorsed hedging strategies. And indeed there was a  
16 regulation that was passed by the Commission that  
17 endorsed natural gas price volatility mitigation  
18 rules.

19           so the reasonable expectations in early  
20 2006 when the one-third strategy hedging program began  
21 for Aquila Steam, the US Department of Energy's Energy  
22 Information Administration projected Henry Hub prices  
23 to average close to \$10 in 2006 and just under \$9 in  
24 2007. And these -- these sources are quoted at  
25 schedules to our witnesses' testimony.

1 Raymond James and Associates said prices  
2 are to hover near \$10 in 2007. And a gas broker at  
3 the very day that the hedging were placed for 2007 was  
4 expecting summer gas -- summer gas of \$7.80. So this  
5 was the context in which the decisions were made.

6 what else changed for natural gas? The  
7 onset of shale gas, which was totally unexpected. If  
8 you saw the program on 60 Minutes this Sunday night,  
9 it showed how the natural gas industry, you know, is  
10 just totally different today than it was a few years  
11 ago.

12 Natural gas reserves increased  
13 12.6 percent from 2006 to 2007 while this hedging  
14 program was in effect. It was the largest  
15 year-over-year increase in 60 years. In between 2004  
16 and 2007, proved gas reserves increased almost  
17 25 percent; the Marcellus Shale Field hit the market.

18 And so although in 2002 the US Geological  
19 Survey estimated that there was 1.9 trillion cubic  
20 feet of natural gas available, six years later a study  
21 authorized -- authored by professors at Penn State and  
22 The State University of New York estimated at it  
23 500 trillion cubic feet. So the -- it's clear that  
24 the overabundance of natural gas also caused the price  
25 of gas to drop precipitously.



1           So the conclusion that my client would  
2 leave you with is that hedging was clearly part of the  
3 QCA. It was deemed to be a financial instrument  
4 within the meaning of Section 8.1 of that and that the  
5 cost of hedging when settled would be included in  
6 costs passed to customers, at least the 80 percent  
7 worth, and that hedging mitigates the market risk of  
8 upward price volatility; whereas, the QCA does not  
9 address the market risk.

10           There was only one hedging program, it  
11 was the one-third strategy. It was the only program  
12 that Aquila used during this time period. The  
13 one-third strategy addresses both price volatility and  
14 a rising market. It was disclosed to Staff, AGP and  
15 others during the period of 2004 and '05. The  
16 customers requested hedging and never criticized the  
17 one-third strategy.

18           when they did object, we stopped it. For  
19 them at this point in time to essentially indicate  
20 that they were -- either didn't know or that we had to  
21 do something more I think is -- is both unfair and  
22 contrary to what actually happened.

23           And finally the hedging program was  
24 properly executed. Aquila properly relied upon the  
25 estimates of customers, consistent with the

1 reliability requirements up at Lake Road plant. We're  
2 not blaming anybody. We're just saying this is what  
3 we felt we needed to do to -- to conduct ourselves  
4 properly as a regulated public utility. The budgets  
5 and the forecasts and the purchases were adjusted as  
6 best they could prudently in light of the customer  
7 requirements and that they were administered in the  
8 face of volatile natural gas markets and historically  
9 unprecedented price swings.

10 We believe that when the evidence is  
11 looked at totally and fairly, that there is no basis  
12 to the complaint and that the Commission's decision  
13 should exonerate Aquila, doing business today as KCP&L  
14 Greater Missouri Operations Company, in total. Thank  
15 you.

16 JUDGE DIPPELL: Thank you. Are there any  
17 questions for Mr. Zobrist?

18 COMMISSIONER JARRETT: I have no  
19 questions.

20 COMMISSIONER KENNEY: No. No thank you.

21 JUDGE DIPPELL: Okay. Thank you,  
22 Mr. Zobrist.

23 would staff like to make some opening  
24 remarks?

25 MR. RITCHIE: Yes. Thank you.

1 JUDGE DIPPELL: You can go ahead.

2 MR. RITCHIE: Good morning. May it  
3 please the Commission. This is a complaint case  
4 brought by a large industrial steam customer, Ag  
5 Processing, against KCP&L Greater Missouri Operations.

6 Ag Processing's complaint alleges that  
7 Aquila, now known as KCPL GMO, was imprudent in its  
8 use of hedging to mitigate fuel price volatility for  
9 steam operations during the 2006 and 2007 quarterly  
10 cost adjustment periods. Ag Processing seeks refunds  
11 from GMO in the amounts of \$1,164,960 and \$2,441,860,  
12 excuse me, with interest to its steam customers in  
13 St. Joseph.

14 Staff has not performed an audit  
15 regarding this matter. Staff does not intend to call  
16 any witnesses and does not anticipate having any  
17 questions for the witnesses called today. Further,  
18 neither AGP nor GMO has subpoenaed a Staff witness or  
19 placed one on its list of witnesses. Therefore, as  
20 stated in our position -- as stated in our position  
21 statement, Staff has taken no position in this  
22 litigation before the Commission today. Thank you.

23 JUDGE DIPPELL: Are there any questions  
24 for Mr. Ritchie?

25 COMMISSIONER JARRETT: I don't have any.

1 COMMISSIONER KENNEY: No.

2 JUDGE DIPPELL: Thank you very much.

3 I'm having technical difficulties with  
4 the camera. All right then. Let's take just a  
5 five-minute break here and then when we come back,  
6 we'll begin with the first witness.

7 MR. ZOBRIST: Judge, just to clarify, you  
8 want us to mark exhibits as we go through each of the  
9 witnesses rather than pre-marking?

10 JUDGE DIPPELL: Yes. Thank you. Let's  
11 go off the record.

12 (A recess was taken.)

13 JUDGE DIPPELL: All right. Back on the  
14 record. I believe then we're ready to begin with our  
15 first witness, which is Ag Processing witness.

16 MR. CONRAD: Your Honor, we would call to  
17 the stand Donald E. Johnstone. Ask that he be sworn,  
18 please.

19 JUDGE DIPPELL: Mr. Johnstone, would you  
20 please raise your right hand.

21 (Witness sworn.)

22 JUDGE DIPPELL: Thank you. And we were  
23 going to pre-mark your exhibits or -- yes, two  
24 exhibits, Nos. 1 and 2. And those weren't HC, were  
25 they?

1 MR. CONRAD: I do not believe -- your  
2 Honor, I do not believe any portion of them -- we can  
3 ask Mr. Johnstone to confirm that, but I do not  
4 believe any portion of them was HC.

5 JUDGE DIPPELL: All right. Thank you.  
6 (Exhibit Nos. 1 and 2 were marked for  
7 identification.)

8 MR. CONRAD: Do I have leave?

9 JUDGE DIPPELL: Go right ahead. Please  
10 state your name.

11 DONALD E. JOHNSTONE,  
12 being first duly sworn, testified as follows:

13 DIRECT EXAMINATION BY MR. CONRAD:

14 A. Donald E. Johnstone.

15 Q. And what is your business address, sir?

16 A. 384 Black Hawk Drive, Lake Ozark,  
17 Missouri.

18 Q. Are you the same Donald E. Johnstone who  
19 caused to be submitted to the Commission on or about  
20 September 22, 2010 in this proceeding direct testimony  
21 in question and answer form and it appears two  
22 attached schedules?

23 A. Yes.

24 Q. The attached schedules were prepared by  
25 you or under your direction or supervision?

1 A. Actually, not -- Schedule 2 is a copy of  
2 some e-mails that we received from GMO. So I prepared  
3 it in the sense that I put the label on it, but it's  
4 their document.

5 Q. But assembled it into the packet that you  
6 submitted?

7 A. Yes.

8 MR. CONRAD: And, your Honor, I believe  
9 that was to be marked as Exhibit 1.

10 BY MR. CONRAD:

11 Q. Let me ask, Mr. Johnstone, are there any  
12 highly confidential materials in that filing, to your  
13 knowledge?

14 A. No.

15 Q. And with respect to what has now been  
16 marked as Exhibit 1, if I were to ask you those  
17 questions today, would your answers to them -- those  
18 matters be the same?

19 A. Yes.

20 Q. Now, I show you also what has been marked  
21 as Exhibit 2 and ask if you had prepared and caused  
22 that material to be submitted to the Commission? That  
23 consists of appears to be 30 pages of prepared  
24 direct -- or prepared testimony, this being rebuttal  
25 testimony in question and answer form?

1 A. Yes.

2 Q. There are no exhibits to the rebuttal  
3 testimony?

4 A. No.

5 Q. Now, Mr. Johnstone, you have previously  
6 advised me, but I'll ask you for the record, do you  
7 have any additions or corrections that you would  
8 choose to make to either the direct or your rebuttal  
9 testimony as we have marked them here?

10 A. Yes. I have a correction to the direct  
11 testimony. And I prepared a revised page 3 and 4  
12 which incorporates the change.

13 On page 4 of the direct testimony there  
14 was a Chart 1 which shows the fuel cost, the gas costs  
15 actually with and without the hedge. The cost with  
16 the hedge was not correct. It was -- simply  
17 referenced a wrong cell in the spreadsheet. That's  
18 been corrected. And there are corresponding changes  
19 on page 3, line 18 and line 19.

20 Q. Now, Mr. Johnstone, do you have a sheet  
21 that you had prepared to capture those changes?

22 A. I do.

23 MR. CONRAD: Your Honor, how would you  
24 prefer --

25 JUDGE DIPPELL: We can either mark it as

1 Exhibit 3 or we can just amend it -- let's just attach  
2 it to the testimony and call it amended.

3 MR. CONRAD: Do you have those? This is  
4 a front and back document.

5 JUDGE DIPPELL: You can go ahead and give  
6 me the other Commissioners' copies.

7 MR. CONRAD: There's more here.

8 JUDGE DIPPELL: Has counsel seen this?

9 MR. CONRAD: He has not.

10 JUDGE DIPPELL: There's another one if  
11 they need it.

12 MR. THOMPSON: Thank you, sir.

13 BY MR. CONRAD:

14 Q. Now, Mr. Johnstone, I have asked the  
15 judge in her discretion is that these revised pages,  
16 pages 3 and 4 with the changes you have indicated  
17 verbally, simply be appended to -- with the Exhibit 1,  
18 would it not, sir?

19 A. That's correct.

20 Q. And no changes to Exhibit 2?

21 A. That's correct.

22 Q. Okay. Looking then at both Exhibit 1 as  
23 now revised by that sheet and Exhibit 2, are the  
24 answers that you have given true and correct to the  
25 best of your knowledge and information and belief?



1 A. Yes, they are.

2 MR. CONRAD: Your Honor, with that, I  
3 would move admission into the record of Exhibit 1, as  
4 now revised with that supplemental sheet, and  
5 Exhibit 2. And pending your ruling, would tender the  
6 witness for cross.

7 JUDGE DIPPELL: Would there be any  
8 objection to Exhibit 1 as revised?

9 MR. ZOBRIST: Since we just got it, I'd  
10 like to withhold position on that until we've  
11 concluded cross-examination and had -- my clients have  
12 had an opportunity to examine it.

13 JUDGE DIPPELL: All right. Would there  
14 be any objection to Exhibit 2?

15 MR. ZOBRIST: No objection to the  
16 rebuttal, to which I understand there were no  
17 corrections.

18 JUDGE DIPPELL: That's correct. All  
19 right. Then I will admit Exhibit No. 2 at this time.

20 (Exhibit No. 2 was received into  
21 evidence.)

22 JUDGE DIPPELL: And we'll withhold ruling  
23 until after we've had a chance to review that a little  
24 more.

25 All right then. Mr. Zobrist?

1 MR. CONRAD: By the way, your Honor, I --  
2 for my part, I will have no objection if counsel would  
3 prefer and find it convenient to work from counsel  
4 table. It's up to your Honor, of course. I would  
5 hope that the same courtesy would be extended over  
6 here.

7 JUDGE DIPPELL: And that's fine too. You  
8 may choose whichever location you're more comfortable  
9 in.

10 MR. ZOBRIST: Okay. Thank you. I've got  
11 some exhibits I'm probably going to show  
12 Mr. Johnstone, so at the beginning at least it's  
13 probably easier for me to stand at the lectern here.

14 JUDGE DIPPELL: All right.

15 CROSS-EXAMINATION BY MR. ZOBRIST:

16 Q. Good morning.

17 A. Good morning.

18 Q. Now, Mr. Johnstone, looking at Exhibit 1  
19 to your direct testimony, am I correct that you have  
20 never worked for a securities broker or dealer that  
21 had either designed or operated a hedging program?

22 A. That's correct.

23 Q. And you stated that you had worked for a  
24 public utility, a large midwestern utility. Was that  
25 Union Electric Company?

1 A. That's correct.

2 Q. Okay. And that's from 1973 to 1981?

3 A. Yes.

4 Q. Okay. During the time that you worked  
5 for Union Electric, were you involved in designing any  
6 hedging program that Union Electric carried out?

7 A. No.

8 Q. Okay. And were you involved in  
9 administering or carrying out any hedging program that  
10 Union Electric might have been conducting at that  
11 time?

12 A. No.

13 Q. Okay. Now, let me just ask you  
14 personally, either including any of your experience at  
15 UE or other experience, have you, yourself, ever  
16 designed a hedging program?

17 A. I considered hedging program for my  
18 personal portfolio about two years and did not pursue  
19 it, unfortunately.

20 Q. And so it would be fair to say then you  
21 have never operated a hedging program either. Is that  
22 a fair statement?

23 A. Yes.

24 Q. And in that context, although you didn't  
25 either design or operate a hedging program, have you

1 ever -- for an employer or on your behalf, ever bought  
2 financial instruments in the instance of puts and  
3 calls, things like that?

4 A. No.

5 Q. Now, in the 2005 Aquila steam rate case,  
6 which bears number HR-2005-0450, you submitted direct  
7 testimony; is that correct?

8 A. Yes.

9 Q. Okay. Did you prepare direct testimony  
10 with regard to hedging programs?

11 A. No.

12 Q. Okay. And as I recall, your testimony  
13 involved cost of service issues, fuel cost issues and  
14 the interim energy charge; is that true?

15 A. Yes.

16 Q. And was it Maurice Brubaker who testified  
17 on behalf of a variety of issues, but including  
18 hedging issues, on behalf of Ag Processing in that  
19 proceeding?

20 A. The -- the fuel cost responsibility was  
21 primarily his and hedging was part of that.

22 Q. So is the answer to my question yes, that  
23 it was Mr. Brubaker who submitted testimony in the  
24 2005 steam case dealing with hedging?

25 A. Yes.

1 Q. Okay. And Mr. Brubaker is not a witness  
2 on behalf of any party in this proceeding; is that  
3 correct?

4 A. That is correct.

5 Q. Now, is it true that section 8.1 of the  
6 stipulation and agreement which Mr. Conrad has  
7 attached to the complaint in this case contains the  
8 phrase "financial instruments went south"; is that  
9 correct?

10 A. Yes.

11 Q. Are puts and calls financial instruments?

12 A. Yes.

13 Q. And are fixed price futures contracts  
14 financial instruments?

15 A. Yes.

16 Q. And when settled -- when a settlement of  
17 those instruments occurs, what does that mean?

18 A. The -- the practical effect is we were  
19 trying to align the effect of the financial  
20 instruments with the month and the quarter in which  
21 they were intended to have effect. In other words, if  
22 it was a July contract, we were trying to get the  
23 effects of the July hedge into July.

24 Q. And so "settled" means when a financial  
25 instrument contract was concluded?

1 A. Yes.

2 Q. At either a loss or a profit; is that  
3 true?

4 A. Or neither, yes.

5 Q. Or neither. I guess it could be flat,  
6 correct.

7 Now, am I correct that in the stipulation  
8 and Agreement that AGP and Aquila agreed to, along  
9 with other parties, that there was no requirement for  
10 Aquila to obtain prior approval from any signatory to  
11 the -- to the stipulation before they purchased any  
12 financial instruments?

13 A. That's correct.

14 Q. Okay. And am I correct that the  
15 stipulation contained no requirement for Aquila to  
16 obtain the prior approval of either Staff, Public  
17 Counsel, Ag Processing or anyone else with regard to  
18 purchases that it made of financial instruments?

19 A. Yes.

20 Q. Now, you're -- are you familiar with the  
21 QCA quarterly reports that began to be filed in  
22 July of 2006?

23 A. Yes.

24 Q. Okay. Just lost my exhibit list.

25 MR. ZOBRIST: Judge, I'm going to ask the

1 court reporter to mark as Exhibit 106 a submission in  
2 the first QCA docket.

3 (Exhibit No. 106 was marked for  
4 identification.)

5 BY MR. ZOBRIST:

6 Q. Mr. Johnstone, do you have before you  
7 what the court reporter has marked as Exhibit 106?

8 A. Yes.

9 Q. And is this the first quarterly cost  
10 adjustment submission that Aquila made to the  
11 Commission after the stipulation was approved back in  
12 February 2006?

13 A. Yes.

14 Q. And if you would turn, sir, to the last  
15 page, do you see the spreadsheet there that is  
16 entitled Total Steam MMBTu Sales-2005?

17 A. Yes.

18 Q. And do you see in the fifth line down  
19 where it states Hedge Costs-2006?

20 A. Yes.

21 Q. Okay. And have you seen this document  
22 prior to today?

23 A. Yes.

24 Q. Okay. And were you at all surprised by  
25 the fact that there was a specific line item

1 concerning hedge costs in this QCA filing?

2 A. Let me answer that two ways. Certainly  
3 there were -- there was a provision for hedge costs in  
4 the QCA. So in that sense, no. I was not aware that  
5 there was a steam hedge program, however. So in that  
6 sense, I don't know if I'd call it surprise. It was  
7 certainly news.

8 Q. Did you make any recommendations to AGP  
9 with regard to the hedge costs that you saw listed on  
10 the last page of Exhibit 106?

11 A. No.

12 MR. ZOBRIST: Move the admission of  
13 Exhibit 106.

14 JUDGE DIPPELL: would there be any  
15 objection to Exhibit 106?

16 MR. CONRAD: No, objection, your Honor.  
17 I believe this is a filing at the Commission.

18 BY MR. ZOBRIST:

19 Q. Thank you. Let me show you what I'm  
20 going to ask the court reporter to mark as  
21 Exhibit 107, which is the next QCA filing that was  
22 made.

23 JUDGE DIPPELL: And I guess I should say  
24 that I will admit Exhibit 106, but that's all right.

25 (Exhibit No. 106 was received into



1 evidence.)

2 MR. ZOBRIST: Pardon me. Thank you.

3 Thank you, Judge.

4 (Exhibit No. 107 was marked for  
5 identification.)

6 BY MR. ZOBRIST:

7 Q. Mr. Johnstone, have you had an  
8 opportunity to look at Exhibit 107?

9 A. Yes.

10 Q. Now, I'll represent to you that all the  
11 pages of 107 except the first page were filed here at  
12 the Commission. Would you agree with that as to the  
13 best of your knowledge?

14 A. To the best of my knowledge.

15 Q. And this would have been, again, pages 2  
16 through the end of Exhibit 107, the QCA filing made on  
17 October 16th, 2006. Correct?

18 A. Yes. I mean, obviously I don't have the  
19 original here to compare, but based on your  
20 representation, I imagine this is it.

21 Q. Now, the first page of Exhibit 107 is an  
22 e-mail from Susan Braun, B-r-a-u-n, to Lena Mantle and  
23 three other -- three or four other individuals here at  
24 Staff. Do you see that, sir?

25 A. Yes.

1 Q. And that was dated the same day,  
2 October 16th, 2006; is that correct?

3 A. Yes.

4 Q. And I believe as far as the copy holders,  
5 am I correct that you are the second copy holder?

6 A. Yes.

7 Q. Okay. And Mr. Conrad is the first copy  
8 holder?

9 A. Yes.

10 Q. Okay. Did you receive this on or about  
11 the early afternoon of October 16th, 2006?

12 A. I'm sure I received it timely. Exactly  
13 when, I couldn't tell you.

14 Q. Okay. Thank you. Now, if you would  
15 turn, sir, to page 4 of Exhibit 107, which is the  
16 spreadsheet, and am I correct that that also contains  
17 a specific line item -- I believe it's the fourth one,  
18 fifth one down -- that says Hedge Costs-2006?

19 A. Yes.

20 Q. Okay. And this being the second QCA  
21 filing, the numbers are filled in for July, August and  
22 September of 2006 for hedge costs as well as the other  
23 fuel costs; is that correct?

24 A. Yes.

25 Q. Okay. Now, you stated that you weren't

1 exactly sure when you got it, but you believe you  
2 received this in a timely manner; is that true?

3 A. Yes.

4 Q. Okay. And did you see the hedge costs  
5 that were listed in this QCA filing made in October  
6 2006?

7 A. Yes.

8 Q. And did you have any discussions or make  
9 any recommendations to Ag Processing at the time with  
10 regard to the hedge costs that were set forth in this  
11 document?

12 A. I frankly can't tell you what I told AGP  
13 at the time. I mean, I just don't recall.

14 Q. Is it fair to say that in October 2006  
15 that you had communication with a representative of Ag  
16 Processing about these hedge costs?

17 A. What I can tell you is we had  
18 communications from time to time and -- and I -- no  
19 doubt in my mind that when we had those  
20 communications, we would have talked about this.

21 Q. Did you have any communications with  
22 Aquila at this time about hedge costs?

23 A. Not that I can recall.

24 MR. ZOBRIST: Judge, move the admission  
25 of Exhibit 107.

1 JUDGE DIPPELL: would there be any  
2 objection to Exhibit 107?

3 MR. CONRAD: No objection. I would note  
4 I think that -- Mr. Zobrist, even with the e-mail,  
5 this is one of Mr. Clemens' exhibits also.

6 MR. ZOBRIST: Okay. Thank you. I just  
7 wasn't certain.

8 MR. CONRAD: We don't have any objection  
9 to this.

10 JUDGE DIPPELL: You're just saying it's  
11 also attached to Mr. Clemens'?

12 MR. CONRAD: It will be duplicative,  
13 yeah.

14 JUDGE DIPPELL: All right. All right.  
15 Seeing no objection then, I'll go ahead and admit it  
16 as Exhibit 107 even if it may be duplicative.

17 (Exhibit No. 107 was received into  
18 evidence.)

19 MR. ZOBRIST: Thank you, Judge.

20 At this time just to avoid giving the  
21 other QCAs to Mr. Johnstone, I would ask that the  
22 Commission take official or administrative notice of  
23 the QCA filings made in Case No. HR-2007-0028 and Case  
24 No. HR-2007-0399. These are the two QCA dockets that  
25 were established at the Commission in 2006 and then in

1 2007.

2 JUDGE DIPPELL: would there be any  
3 objection to the Commission taking notice of those  
4 filings? I'm assuming you're meaning the original  
5 filings from the company and not -- you're not talking  
6 all the filings in those cases, but just --

7 MR. ZOBRIST: well, I guess I will ask  
8 that the whole file be -- that administrative or  
9 official notice be taken of the whole files. They're  
10 not very long. I'm particularly interested in the QCA  
11 filings and the spreadsheets filed by Aquila, but as  
12 long as we're taking administrative and official  
13 notice, might as well be of the whole file because I  
14 can't recall if there might be something useful in  
15 there.

16 JUDGE DIPPELL: well, I don't really like  
17 that approach, but -- Mr. Conrad?

18 MR. CONRAD: well, Judge, insofar as  
19 counsel's initial proposal being the -- I think in  
20 both of those cases that he's mentioned, it was the --  
21 would have been the initiating filing and the later  
22 case in the 399 docket and one of the sequential  
23 filings for the quarterly adjustment in the 0028  
24 docket. we don't have any objection for the -- for  
25 the Commission taking official notice of those

1 materials.

2 with respect to whatever else is in the  
3 file, I haven't in all candor looked at EIFS. And now  
4 even though we do have wi-fi, I have -- I don't know  
5 if I should take time right now. I'll be happy to do  
6 that, but I would concur with your Honor's feeling.

7 I do want to recall that -- however, that  
8 there was an early order -- and actually I believe and  
9 I may be -- somebody might want to correct me on this.  
10 I believe that our complaint was actually filed in  
11 those two cases. And subsequent to that, to - the  
12 Commission, in its discretion, initiated this case.

13 And one of the concerns that -- that I  
14 had was that some of the -- the materials that had  
15 been developed in that discovery and otherwise not  
16 become somehow stranded in those -- in those earlier  
17 dockets. That -- I probably confused the issue more.  
18 It's not my intention to. His original proposal is  
19 not -- is not objectionable.

20 MR. ZOBRIST: Judge, given the concern of  
21 the Commission, I'll limit my request for official or  
22 administrative notice to the QCA filings and the  
23 attachments that were made that initiated the filings  
24 within those dockets.

25 JUDGE DIPPELL: Okay. I think that would

1 be better. I think as Mr. Conrad was speaking, my  
2 memory was refreshed also that we did make provision  
3 for those two dockets to become part of this one, but  
4 so that we have an evidentiary record, it's clear to  
5 take notice of those two filings which may, in fact,  
6 actually be part of this record as well.

7 MR. CONRAD: And no objection to that,  
8 your Honor.

9 JUDGE DIPPELL: All right. So the  
10 Commission will take official notice of those initial  
11 filings and their attachments, those QCA filings in  
12 HR-2007-0028 and HR-2007-0399.

13 MR. ZOBRIST: Thank you.

14 BY MR. ZOBRIST:

15 Q. Now, Mr. Johnstone, did you read the QCA  
16 filings as they were made by Aquila after October of  
17 2006? I think the next one was January 2007. Did you  
18 read each of those applications?

19 A. In the sense of sit down and read every  
20 page of these as they came in, the answer would be no.

21 Q. Let me ask you this: Did you review the  
22 spreadsheets that were attached to the QCA filings?

23 A. Generally I at least had a quick look-see  
24 at the spreadsheets.

25 Q. And is it true that each of those

1 spreadsheets had a line item for hedge costs for each  
2 year that hedge costs were accumulated?

3 A. well, for each month.

4 Q. Pardon? Right. I'm sorry. For each  
5 month of the years that they pertain to?

6 A. Yes.

7 Q. Okay. Now, the stipulation in the 2005  
8 steam rate case did not prohibit any particular kind  
9 of financial instruments being purchased by Aquila; is  
10 that true?

11 A. I believe that's true.

12 Q. And is it also true that there was no  
13 prohibition on Aquila taking the one-third program  
14 that it had used in its electric operations and using  
15 it in its steam operations?

16 A. That's correct.

17 Q. And is it true that you and other  
18 representatives of Ag Processing were aware in late  
19 February 2006 that Aquila had already initiated the  
20 one-third hedging strategy?

21 A. With respect to steam?

22 MR. CONRAD: Could counsel clarify  
23 whether -- well, maybe that's -- that's the question,  
24 whether it's electric or steam.

25 BY MR. ZOBRIST:



1 Q. Okay. Is it true that you and other  
2 representatives of Ag Processing were made aware in  
3 late February 2006 that Aquila had already initiated  
4 the one-third hedging program for steam?

5 A. No.

6 Q. Now, were you present at the  
7 February 27th, 2006 on-the-record proceeding that the  
8 Commission conducted in the steam case HR-2005-0450?

9 A. I believe I was.

10 MR. ZOBRIST: Judge, if I could have that  
11 marked as Exhibit 108.

12 JUDGE DIPPELL: I'm sorry. That was the?

13 MR. ZOBRIST: It's the tran-- it's going  
14 to be a transcript of the on-the-record proceeding.

15 (Exhibit No. 108 was marked for  
16 identification.)

17 BY MR. ZOBRIST:

18 Q. Now, Mr. Johnstone, I've had marked as  
19 Exhibit 108 a transcript of proceedings of the  
20 on-the-record presentation dated February 27th, 2006  
21 before the Commission in Case No. HR-2005-0450. Is  
22 that what that appears to be?

23 A. That's what it appears to be.

24 Q. And, sir, if you will turn to -- at the  
25 top you will see numbers. They're not at the bottom.

1 They're up at the top just above the lines. On  
2 page 31 are the entry of appearances and Mr. Conrad is  
3 there representing the Sedalia Industrial Energy  
4 Users' Association and Ag Processing. Correct?

5 A. Yes.

6 Q. And if you turn, sir, to page 89, line 1  
7 indicates that you, Donald Johnstone, had just been  
8 sworn in and gave some testimony in response to  
9 questions from Commissioner Gaw; is that correct?

10 A. Yes.

11 Q. And I believe you had spoken earlier at  
12 the hearing around pages 62 and 63, if you can find  
13 those. I think it's actually page 62 where you're  
14 noted as being at the hearing on line 10. And then on  
15 the next page, which is 63 at line 7, you give a brief  
16 answer; is that correct?

17 A. Yes.

18 Q. Now, sir, would you turn with me, please,  
19 to page 57? Do you have that before you?

20 A. Yes.

21 Q. On line 5, "Commissioner Clayton: Does  
22 Aquila have a hedging program or a gas purchasing  
23 program in the steam operation which would be similar  
24 to its gas operations?

25 "Answer by Mr. Clemens: Yes.

1 "Line 10, Commissioner Clayton: And the  
2 \$6.70, how far out does that go where you can identify  
3 6.70 as the price? When I say how far out, is how far  
4 out in the future is Aquila hedged at that price?

5 "Mr. Clemens: We're not hedged at that  
6 price.

7 "Commissioner Clayton: You're not?

8 "Mr. Clemens: No. No.

9 "Commissioner Clayton: What price are  
10 you hedged at? Is that public?

11 "Mr. Clemens: It's \$8.42 is what we're  
12 hedged in for 2006. That's only for two-thirds of our  
13 gas. We still have another third that we aren't  
14 hedged."

15 Now, did I read those questions and  
16 answers correctly?

17 A. Yes.

18 Q. Okay. Now, sir, if you would turn to  
19 page 77, on line 7. Are you there, sir?

20 A. Not yet. I'm there.

21 Q. Okay. Line 7, "Chairman Davis: About  
22 five years period. And we've already heard some  
23 testimony from you that you're about -- was it  
24 two-thirds hedged for natural gas for '06; is that  
25 correct?

1 "Mr. Clemens: That's correct. That's  
2 the current plan.

3 "Chairman Davis: Okay. So is there any  
4 way -- way feasible that you can beat this \$3 per  
5 million BTU amount?

6 "Mr. Clemens: well, the other third gas  
7 that we have not hedged, we are in the process of  
8 buying that at a lower rate just through efficiencies.  
9 And if we can burn more coal at that plant, that would  
10 lower the ratio. If we can burn higher than the 2.1  
11 that's built into the rate, that would give an  
12 opportunity for us. It gives us incentive to try to  
13 be efficient on the --

14 "Chairman Davison: On the coal side?

15 "Mr. Clemens: On the coal side, yeah.

16 "Chairman Davis: Okay. So you're  
17 telling me that it is feasible then that you could  
18 potentially beat this number and Aquila could actually  
19 make some money on this?

20 "Mr. Clemens: It's feasible.

21 "Chairman Davis: But not likely?

22 "Mr. Clemens: With current prices,  
23 possibility not, but I don't know. See how the market  
24 goes in the future."

25 Did I read those questions and answers

1 correctly?

2 A. Yes.

3 Q. And now on the next page, page 79,  
4 Mr. Clemens isn't really answering a question, but I'd  
5 like to read his testimony.

6 Page 79, line 1, "Mr. Clemens: I might  
7 add, on our two-thirds hedge, half of that are call  
8 options which we would just pay the premium -- so I  
9 mean, we would have an advantage to buy the cheaper  
10 gas. If they weren't -- weren't in the money, we  
11 would just pay the cost of that premium and then buy  
12 gas at the market rate. So we'd still have some  
13 opportunities to lower that gas price."

14 Did I read that correctly?

15 A. Yes.

16 Q. So is it true that at the on-the-record  
17 presentation in the settlement of the steam case, that  
18 the one-third hedging program was publicly discussed  
19 in response to Commissioner questions?

20 A. I'd say yes, with a qualification.

21 Q. Okay.

22 A. Qualification being is that it's not an  
23 accurate description of what we now know to be the  
24 program.

25 Q. Now, did -- at the conclusion of that

1 hearing did you ask Mr. Clemens or any other  
2 representative of Aquila for details on the one-third  
3 hedging program?

4 A. No.

5 Q. Okay. Now, is it correct that in 2006  
6 after the QCA reports came in, you didn't personally,  
7 as a representative or consultant for AGP, object to  
8 the hedging program; is that true?

9 A. That's true.

10 Q. And in 2007 is it also true that you, as  
11 a representative of AGP, did not raise any objection  
12 with regard to the one-third hedging strategy to  
13 anyone at Aquila?

14 A. I don't -- I don't believe that would be  
15 true with respect to 2007.

16 Q. Now, do you know how long the 2006  
17 positions were in the money?

18 A. In the sense of being in the money and  
19 having a positive result, my understanding they never  
20 were.

21 Q. They never were at any time in 2006?

22 A. Not according to the results of the QCA.

23 Q. Well, was there a time at the conclusion  
24 of any month when the positions were in the money, say  
25 at the end of July 2006?

1 A. I wouldn't have had that information for  
2 future months. That was not provided.

3 Q. Did you ever request it?

4 A. Eventually we did, yes.

5 Q. Okay. And Aquila gave you that  
6 information. Correct?

7 A. Yes.

8 Q. Okay. Do you recall, for example, at the  
9 end of July 2006 what the positions were?

10 A. I didn't have the information.

11 Q. I'm sorry. I thought you said that  
12 Aquila eventually did give you that information.

13 A. Oh, I'm sorry. I thought you were asking  
14 if I in July knew that.

15 Q. My question is, is once you got this  
16 information and you examined it, do you know what the  
17 positions were, whether they were in the money or out  
18 of the money as of the end of July 2006?

19 A. I don't recall them being in the money.

20 Q. Okay. Now, isn't it true that on the  
21 one-third program, that if there is upward movement of  
22 price, that it does limit the exposure by virtue of  
23 the fixed price in future contracts that are bought?

24 A. Yes.

25 Q. And the strike price of the call options

1 when prices are going up, also limits the exposure to  
2 upward price movement?

3 A. Yes.

4 Q. And when prices are going down, is it  
5 true that the one-third that is always bought on the  
6 spot market can take advantage of the falling prices?

7 A. No.

8 Q. Okay. It cannot?

9 A. Correct.

10 Q. The one-third that you buy at spot market  
11 you can't just go out and buy it in the spot market if  
12 it's a lower price?

13 A. Well, you see the point is you're  
14 assuming one-third can be bought at the spot market  
15 and that was not the reality in I think seven of  
16 the -- six of the seven quarters that we looked at.  
17 So if -- if, in fact, there had been some to buy, yes,  
18 but the reality of that is no because the assumption  
19 there is wrong.

20 Q. Let me ask you this: with regard to the  
21 one-third of options, if they were not exercised --  
22 the premium was paid but they were not exercised,  
23 isn't it true you could buy that one-third or a  
24 portion of that at the spot market?

25 A. Well, again, it's a yes and no because



1 they weren't just call options. They were bought as a  
2 collar with a put. And so your ability to participate  
3 in the down market was limited because they sold the  
4 insurance with the puts.

5 Now, if there had been just the call  
6 option for that one-third, your statement would be  
7 correct, but that was not, in reality, what they did.  
8 So what's described to the Commission here is not a  
9 program and then, of course we've talked about that in  
10 the testimony.

11 Q. Now, it's your position in this case that  
12 the volume should have been based primarily on  
13 historical levels; is that correct?

14 A. That's certainly the touchstone. That's  
15 where you start, yes, sir.

16 Q. Now, Triumph Foods, at that time known as  
17 Premium Pork, that was new load coming onto the  
18 system. Correct?

19 A. Yes.

20 Q. And it didn't actually come onto the  
21 system until early January of 2006. Correct?

22 A. That's my understanding.

23 Q. So there --

24 A. There might have been some before that,  
25 but that's approximately when it came on in

1 substantial volumes.

2 Q. So there would have been no historical  
3 record for Premium Pork, now known as Triumph Foods,  
4 for 2005 or 2004. Correct?

5 A. That's correct.

6 Q. And the historical levels at -- for steam  
7 customers at the Lake Road plant would not have  
8 considered the expansion that customers like Ag  
9 Processing and Nestle were going through in 2006 and  
10 2007; isn't that true?

11 A. That's true. Well, I -- maybe I'm just a  
12 little bit too quick there. Obviously there is a  
13 history in -- in -- there is a trend through history  
14 and growth typically comes from your existing  
15 customers, most of it. This was an exception with  
16 Triumph. So I don't want to quibble with you, but  
17 certainly there's an element of history even in that  
18 growth.

19 Q. But your point I think is you have to pay  
20 attention to what the customers are telling you. If  
21 they're anticipating a load growth, if there's new  
22 load like Triumph Foods, the utility has an obligation  
23 to pay attention to that. Correct?

24 A. Yes.

25 Q. Okay. Now, in your recommendation to --

1 pardon me.

2 In the recommendation at page 12 on your  
3 rebuttal, it's lines 14 through 20 where you talk  
4 about the policy that you think should be implemented,  
5 and this is lines 14 through 20, the single-spaced  
6 indented paragraph. Do you see that, sir?

7 A. Yes, I do.

8 Q. Now, you speak about in the last  
9 sentence, Cost implications to accomplish the  
10 objective should be considered under alternative  
11 approaches; is that correct?

12 A. Yes.

13 Q. Okay. Now, you don't set forth any  
14 alternative approaches per se in your testimony, do  
15 you?

16 A. No, I don't.

17 Q. Okay. And you talk about all relevant  
18 factors. You don't define relevant factors in your  
19 testimony, do you?

20 A. No.

21 Q. Okay. And is it also true that in your  
22 testimony you don't offer any benchmarks or  
23 percentages in terms of how much should be hedged  
24 under what types of financial instruments?

25 A. That's correct.

1 Q. I'm going to show you a chart,  
2 Mr. Johnstone, that we prepared and ask you some  
3 questions about it. This will be Exhibit -- could  
4 somebody tell me what exhibit I'm up to?

5 MS. GILBREATH: 109.

6 MR. ZOBRIST: 109. Thank you.

7 (Exhibit No. 109 was marked for  
8 identification.)

9 MR. ZOBRIST: Judge, I neglected to offer  
10 into evidence Exhibit 108, the on-the-record  
11 proceeding. I think we could probably take official  
12 notice of that, but I --

13 JUDGE DIPPELL: Would there be any  
14 objection to the transcript?

15 MR. CONRAD: I don't think I do. It's --  
16 is counsel representing this as from the EIFS record?

17 MR. ZOBRIST: Yes, sir.

18 MR. CONRAD: We have no objection.

19 JUDGE DIPPELL: All right. Then I will  
20 admit Exhibit 108.

21 (Exhibit No. 108 was received into  
22 evidence.)

23 BY MR. ZOBRIST:

24 Q. Mr. Johnstone, I've handed you a bar  
25 chart marked Exhibit 109 that's entitled Natural Gas

1 Volumes for Steam Production, Total Volume for  
2 April 2006, December 2007. And I recognize you did  
3 not prepare this, but I want to ask you, on the first  
4 column that says Actual Burn, based upon your research  
5 of the issues in this case, does that appear to be an  
6 accurate statement as to what the actual burn was for  
7 the period from April 2006 to December 2009 [sic]?

8 A. I'm sorry. What time period?

9 Q. At the top, sir, April 2006 through  
10 December 2007. Was that the actual burn for that  
11 period of time, to the best of your knowledge?

12 A. I'd have to -- to look that up. I could  
13 I guess take it subject to check and look at it later.

14 Q. Well, does that seem to be about  
15 reasonable that during that -- what is it, a 20-month,  
16 18-month period that about 1,500,000 MMBtus were  
17 burned at Lake Road plant for steam production?

18 A. That's in the ballpark.

19 Q. Okay. And looking at the second column,  
20 is the depiction there of the actual hedges that were  
21 placed under the one-third plan, were they at about  
22 the area of 2 million MMBtus based upon your research?

23 A. Well, in the sense that it -- it shows  
24 that the hedges exceeded actual so that there was  
25 nothing bought at the one-third market as we talked

1 about earlier. I think it's a little bit misleading  
2 because there was actually one quarter when -- when  
3 there was some bought for the one-third of market.  
4 But -- but it certainly illustrates that the hedge  
5 positions that were intended to be two-thirds, in  
6 fact, greatly exceeded the actual on an average basis.

7 Q. And so those -- those two bars -- those  
8 two columns are consistent with your review of the  
9 facts in this case?

10 A. You know, the absolute numbers I couldn't  
11 swear to, but directionally, they're close.

12 Q. Okay. Now, looking at the last two bars,  
13 based upon your review of the historical records in  
14 this case, if the two-thirds hedging program had been  
15 based on either one year of historical information,  
16 which would have been April 2005 to the end of  
17 March of 2006 or two years, which would have been gone  
18 back April 2004 through March 2006, would those have  
19 been the levels at which the hedges would have been  
20 purchased if the strategy had been carried out based  
21 upon historical usage?

22 A. Again, I can't corroborate that  
23 independently, but it appears to be in the ballpark.

24 Q. So if Aquila had hedged based only on  
25 historical usage, there would have been significant

1 volumes of actual use that would have been  
2 unprotected?

3 A. well, let me just say that if they had  
4 hedged based on the actual burns, there would have  
5 been about a million BTU by this chart and so there  
6 would have been substantial volumes unprotected if it  
7 had operated as intended also.

8 MR. ZOBRIST: Judge, I'm not going to  
9 offer that so I'm going to retrieve that exhibit and I  
10 may lay some more foundation later on. I'll just pick  
11 that up from Mr. Johnstone later.

12 BY MR. ZOBRIST:

13 Q. Now, Mr. Johnstone, in the opinions  
14 you --

15 JUDGE DIPPELL: Just one moment,  
16 Mr. Zobrist. I'm getting some puzzled looks.

17 MR. ZOBRIST: well, I can either move the  
18 admission, but I was going to just -- I don't mean  
19 withdraw it in terms of remove it from the record. I  
20 was going to retrieve and hold it.

21 JUDGE DIPPELL: And that's what I wanted  
22 to clarify.

23 MR. ZOBRIST: Mr. Conrad can keep his  
24 copy.

25 JUDGE DIPPELL: well, and I would like it

1 to remain marked --

2 MR. ZOBRIST: It's marked for  
3 identification.

4 JUDGE DIPPELL: -- though it's not  
5 admitted. And so the court reporter will retain her  
6 copy.

7 MR. CONRAD: The only problem, I guess  
8 would be it's -- it's a bit unusual if there's no  
9 foundation and then we just use -- use a document and  
10 put a bunch of questions in the record and then all of  
11 a sudden we -- we've yanked the document out.

12 I mean, if there's -- if there's  
13 foundation for it, counsel, we probably should have it  
14 in. If there's no foundation for it, then we  
15 shouldn't have it at all and we probably ought to go  
16 back and wipe out what's happened.

17 MR. ZOBRIST: Well, I believe the witness  
18 is -- has stated, you know, a sufficient basis for it  
19 to be admitted at this time. I may have another  
20 witness who prepared it who may be able to explain  
21 more of it. I think Mr. Johnstone did say that the  
22 first two columns were generally accurate and that the  
23 second two columns, based upon his knowledge of the  
24 historical record, were generally accurate. So I  
25 think there's sufficient basis to move it. I'll move



1 admission. I didn't mean to hide the document. I was  
2 just going to retrieve it for future --

3 MR. CONRAD: Your Honor, I don't --  
4 it's -- as I get older, it gets difficult for me to  
5 even remember what I had for breakfast this morning.  
6 But I think I heard the witness indicate that he was  
7 willing to -- to take this subject to check and that  
8 he would -- he would do so.

9 Now, I know that there's been -- we've  
10 kind of oscillated within the Commission whether we  
11 want to take stuff subject to check. I -- I'm happy  
12 to -- to take it under that kind of a proffer and  
13 don't intend to have an objection about that if he's  
14 willing to do that.

15 JUDGE DIPPELL: I'm sorry, Mr. Conrad.  
16 You lost me there. Are you wanting to reserve your  
17 objection?

18 MR. CONRAD: Well, if he's -- if he's  
19 going to have the opportunity to check the numbers,  
20 which I understood that's what this is about and it  
21 can be taken subject to check, then I don't -- I'm not  
22 going to have an objection about it. That's what I'm  
23 trying to do -- I'm trying to say. He's made the  
24 proffer, but the witness also made that comment.

25 JUDGE DIPPELL: Well, we either take it

1 or we don't. So I mean, you either have an objection  
2 or you don't.

3 MR. CONRAD: Okay. We will have --

4 JUDGE DIPPELL: Or you can wait and make  
5 your objection later after he's had an opportunity to  
6 review it further if you'd like.

7 MR. CONRAD: Why don't we handle it that  
8 way since that's what your Honor would prefer we do.

9 JUDGE DIPPELL: So at this point it has  
10 been offered but it has not yet been admitted. So  
11 let's --

12 MR. ZOBRIST: We'll proceed.

13 JUDGE DIPPELL: -- proceed.

14 BY MR. ZOBRIST:

15 Q. Mr. Johnstone, in the testimony that you  
16 provided to the Commission you expressed opinions as  
17 to prudence; is that correct?

18 A. Yes. Yes.

19 Q. And is it true that prudence is measured  
20 by a standard of reasonable care in this -- in this  
21 jurisdiction?

22 A. If you're asking me what the legal  
23 standard is, I couldn't tell you.

24 Q. Did you, in coming to the opinion and  
25 opinions that you offered with regard to prudence,

1 measure it yourself by a standard of reasonable care?

2 A. I looked up the term "imprudence" and the  
3 dictionary meaning was unwise. I think that what  
4 Aquila did was unwise. I think that based on my lay  
5 understanding of reasonable care, I think that could  
6 very well be part of it also.

7 Q. Did you base your opinions on prudence on  
8 hindsight, looking back, or did you base your opinions  
9 upon what Aquila knew at the time that it made the  
10 decisions in this case?

11 A. Well, there's no escaping the fact that  
12 we're looking at it now. And so in that limited  
13 sense, we're looking back. But certainly the -- the  
14 goal is to look at what was known and knowable at the  
15 time and the course of action that I think would have  
16 been prudent in the alternative at the time.

17 Q. Okay. Now, the QCA was developed at a  
18 time and -- and drafted with input from you as well as  
19 officials at Aquila; is that correct?

20 A. Yes.

21 Q. Okay. And the idea was to have the  
22 80 percent/20 percent sharing between the customers  
23 and the utility; is that true?

24 A. That's part of it.

25 Q. And the costs on a quarterly basis would

1 be spread out over 12 months; is that true?

2 A. Yes.

3 Q. And then there was the provision for  
4 financial instruments. Correct?

5 A. Yes.

6 Q. And at any time as the stipulation was  
7 being developed, did -- did you or Ag Processing  
8 communicate what kind of program you felt that Aquila  
9 should have implemented if it were to implement a  
10 program of financial instruments?

11 A. I did not.

12 Q. Okay.

13 A. I am not aware of everything that Ag  
14 Processing did. For example, they had Mr. Brubaker  
15 and they had Mr. Fangman in talking to the plant  
16 people. So those are all other possibilities, but to  
17 my knowledge, it was not.

18 Q. And I think you've testified previously  
19 that after hedging and the one-third program was  
20 discussed at the on-the-record presentation, you  
21 personally didn't take any opportunity to file an  
22 objection or a protest or -- or otherwise object to  
23 the one-third strategy to Aquila or any of its  
24 representatives?

25 A. I think the point is that for one reason

1 or another, I missed that fact at the hearing.

2 Q. Okay.

3 A. And, therefore, I lodged no comments or  
4 objections.

5 Q. Okay. Now, in the stipulation is it --  
6 is it true that there was an attachment to the  
7 stipulation that quoted Tim Nelson with regard to  
8 certain production cost models that would be run at  
9 the Lake Road plant with regard to both steam and  
10 electricity?

11 A. Yes.

12 Q. Okay. And part of his direct testimony  
13 filed in this case was actually attached to the  
14 stipulation; isn't that correct?

15 A. Yes.

16 Q. Okay. And the production cost modeling  
17 software that he spoke of there was designed to  
18 develop a forecast or to forecast what the fuel needs  
19 would be at the Lake Road plant for both electricity  
20 and steam customers?

21 A. I don't believe that's correct. What was  
22 attached did not deal with forecasts, but dealt with  
23 the allocation of cost after the fact. And our  
24 concern was that there not be an ability to -- to  
25 adjust cost allocations in a way that would shift

1 costs to steam given that they could now pass through  
2 more or less automatically.

3 Q. But the purpose of the production cost  
4 model, apart from the allocations, is to make a  
5 projection as far as what the fuel needs would be  
6 based upon customer demand at Lake Road plant; isn't  
7 that true?

8 A. well, that's not the purpose of why we  
9 attached it. The reason we attached it was solely  
10 related to the allocation of costs after the fact.

11 Q. But the testimony does speak in terms of  
12 the production cost modeling with regard to fuel usage  
13 and customer needs at the Lake Road plant?

14 A. There's no question that model can be  
15 used for many things. And I haven't looked at that  
16 testimony lately. I'm sure it speaks for itself.

17 Q. Now, was one of the issues at the Lake  
18 Road plant the customer's desire to have as much  
19 reliability as they could with regard to steam  
20 service?

21 A. That may be an overstatement when you say  
22 as much as they could. They certainly need and had a  
23 desire for a high level of reliability.

24 Q. And isn't it true that none of those  
25 customers had alternative sources of steam so they had

1 to rely upon Aquila to provide their steam service?

2 A. Well, in the short run, that's true.

3 Q. Now, is it true that Ag Processing in its  
4 own business conducts and operates hedging programs?

5 A. It's my understanding that they engage in  
6 hedging. And calling them programs and actually what  
7 they do would be beyond my knowledge, but I'm aware  
8 that they do hedge.

9 Q. And Ag Processing has actually a vice  
10 president of hedging; is that correct?

11 A. I don't know.

12 Q. Okay. I'm going to have marked as  
13 Exhibit 110 the 2008 Ag Processing Annual Report. I'm  
14 only really interested in a couple of pages out of  
15 that, but for identification purposes I'm going to  
16 have the court reporter mark this as Exhibit 110. Is  
17 that what I said? Yeah.

18 JUDGE DIPPELL: Did you say 2008?

19 MR. ZOBRIST: 2008.

20 (Exhibit No. 110 was marked for  
21 identification.)

22 MR. ZOBRIST: For the record, I'm just  
23 going to give Commission and counsel the actual pages  
24 I'm interested in, but I wanted to present the witness  
25 with the whole annual report just in case he needed to

1 confirm that's what it was.

2 BY MR. ZOBRIST:

3 Q. Mr. Johnstone, does that appear to be Ag  
4 Processing's Annual Report for 2008?

5 A. Yes.

6 Q. I'm going to hand you what I'm going to  
7 ask the court reporter to mark as Exhibit --

8 MR. ZOBRIST: Judge, with your  
9 indulgence, 110-A, which is just the pages that I  
10 really want to get into evidence or I can switch them  
11 out now that Mr. Johnstone's identified the entire  
12 document.

13 JUDGE DIPPELL: Yeah. Let's just call it  
14 110 and give -- only put just the pages and the covers  
15 into the record. That would be fine.

16 (Exhibit No. 110 was remarked for  
17 identification.)

18 BY MR. ZOBRIST:

19 Q. Mr. Johnstone, you can either turn to the  
20 last page of the thin Exhibit 110 or the yellow tab in  
21 the full report. There are two lines of people that  
22 are listed under management Staff. Does it appear  
23 that the third person in on the top row is Daryl,  
24 D-a-r-y-l, Dahl, D-a-h-l, vice president of hedging  
25 for AGP?



1 A. Yes.

2 Q. Do you know Mr. Dahl?

3 A. No.

4 Q. Okay. Have you heard of him?

5 A. No.

6 Q. Okay. Have you consulted with him or any  
7 of his staff with regard to the hedging programs that  
8 should have been employed for the steam customers at  
9 St. Joseph?

10 A. I know who I consulted with at AGP and I  
11 don't know their relationship, if any, to Mr. Dahl.

12 Q. Now, is it true that at the time that the  
13 stipulation was agreed to in the 2005 steam rate case,  
14 that AG Processing had not recommended a specific  
15 hedging program or a program of financial instruments  
16 to be used in the QCA?

17 A. To my knowledge -- to my knowledge,  
18 that's true. I don't -- as I mentioned earlier, there  
19 were other people involved, but from where I sat,  
20 that's true.

21 MR. ZOBRIST: Judge, I'd offer the  
22 Exhibit 110 that consists of I think six or seven  
23 pages as opposed to the full annual report.

24 JUDGE DIPPELL: would there be any  
25 objection to Exhibit 110?

1 MR. CONRAD: I -- well, you've kind of  
2 got a foundation problem, but I -- I haven't actually  
3 seen this so I can't -- I can't verify it. I'd like  
4 to have -- why don't you -- if you don't mind, why  
5 don't you reserve and let me -- let me check on that  
6 over the break.

7 JUDGE DIPPELL: Okay.

8 MR. CONRAD: I suspect -- you know,  
9 Counsel is an honorable man.

10 MR. ZOBRIST: Well, I got it off the AGP  
11 website, so that's the extent of my due diligence.

12 MR. CONRAD: Well, I could get lots of  
13 things off of websites.

14 MR. ZOBRIST: Well, I got it off your --  
15 your client's website, not something else, so --

16 MR. CONRAD: I would -- I'd like to check  
17 before I --

18 JUDGE DIPPELL: All right. We will  
19 reserve those objections for after our next break.

20 BY MR. ZOBRIST:

21 Q. I just have a couple more questions,  
22 Mr. Johnstone. In conducting your research for your  
23 testimony in this case, did you compare the results of  
24 the Aquila one-third hedging strategy with the Kase,  
25 K-a-s-e, ezHedge strategy?

1 A. I had seen that before and -- and I can't  
2 tell you that I did anything new in the context of  
3 preparation for this case.

4 Q. Did you, yourself, have any  
5 communications with anyone at Kase and Company?

6 A. No. Not that I'm aware of.

7 Q. Okay. Are you aware that Kase  
8 represented its ezHedge program as being a -- a good  
9 way to go, a best way to go at Lake Road plant because  
10 the steam loads were relatively small compared to,  
11 say, electric loads?

12 A. I'm aware that when we had seen it  
13 before, we looked at it, I reviewed it with my client  
14 and they thought it was not a good way to go.

15 Q. Okay.

16 A. Not an acceptable alternative.

17 Q. And -- and do you agree with the analysis  
18 that Aquila did, I think it was late in 2007 after the  
19 program was halted -- the one-third program was  
20 halted, that the ezHedge program sustained greater  
21 losses than did the one-third hedging program?

22 A. Of course the problem is it started with  
23 the same bad assumptions with respect to volumes. And  
24 I mean the numbers are what they are. I don't dispute  
25 that the numbers are what they are, but whether it was

1 a proper approach I think is -- is dubious. It's not  
2 an approach that -- that based on my analysis and  
3 input from my client that we think is a reasonable  
4 approach.

5           Based on the fact that the analysis  
6 replicated all the errors that were part of the  
7 one-third program, it's -- I mean it -- it shows that  
8 you could have gone out and done something different  
9 and incurred a worse result, but beyond that, I don't  
10 think it stands for much.

11           Q.     Now, as far as the damages in this case,  
12 it is true that the only customer that is seeking a  
13 declaration of damages in this case is Ag Processing;  
14 is that true?

15           A.     That's the nature of the complaint that's  
16 been filed.

17           Q.     Okay. There's no other customer who has  
18 retained your services except for Ag Processing.  
19 True?

20           A.     For the purpose of this case, that's  
21 correct.

22           Q.     Okay. And the percentage of the load of  
23 the -- load for which the hedge profits or losses were  
24 incurred, we're only dealing with AGP's load in this  
25 case, not of Triumph or Albaugh or Omnium or Nestles.

1 Correct?

2 A. That's not my understanding.

3 Q. well, there's no other customer here in  
4 the hearing room, correct, that's being represented  
5 except Ag Processing?

6 A. well, I assume that if the program is  
7 found to be imprudent, that the refund will go to all  
8 the customers, not just AGP. So I'm not sure that I'm  
9 understanding your question. This is not imprudence  
10 just with respect to AGP, but imprudence with respect  
11 to the program which would then benefit all customers.

12 Q. well, no other customer is complaining  
13 about this program except AGP; isn't that true?

14 A. That doesn't make it prudent.

15 Q. My question is, is there any other  
16 customer here today before the Commission that's filed  
17 a complaint case alleging that this program was  
18 imprudent?

19 A. I believe we know the answer to that.

20 Q. Okay. The answer is what, sir?

21 A. To my knowledge, there is only one  
22 complaint that's been filed and it's been filed by  
23 AGP.

24 Q. Okay. Now, did AGP hedge itself as a  
25 company, as a customer, any of its natural gas

1 exposure at the Lake Road plant?

2 A. Not to my knowledge.

3 Q. Okay. Now, AGP, as you said, has a  
4 hedging operation and they buy financial instruments  
5 for their agricultural commodities; is that true?

6 A. Yes. It's my understanding.

7 Q. But they didn't do anything to hedge  
8 natural gas as far as their facilities at the Lake  
9 Road plant?

10 A. Well, they don't buy natural gas at the  
11 Lake Road plant. They buy steam. And of course,  
12 natural gas is one of the fuels used in indeterminate  
13 amounts. So it would be very difficult from where  
14 they sit to have any sort of a practical way to  
15 implement a hedge program for that.

16 Q. Okay. But although they have a hedging  
17 operation, they did not make any effort to try to  
18 hedge whatever risks that they faced with regard to  
19 fuel costs at the Lake Road plant; is that true?

20 A. Well, what I'm saying is as a practical  
21 matter, all of the difficulties that -- that Aquila  
22 had would have been multiplied many times over because  
23 they didn't have access -- they, AGP, did not have  
24 access to the information as a practical matter. And  
25 so I certainly agree with you that they didn't do it.

1 I'm just telling you that it would have been virtually  
2 impossible to have an effective program

3 MR. ZOBRIST: Nothing further, Judge.

4 JUDGE DIPPELL: Thank you. Are there  
5 questions for Mr. Johnstone, Commissioner Jarrett?

6 COMMISSIONER JARRETT: Good morning,  
7 Mr. Johnstone. I don't have any questions. Thank you  
8 for your testimony.

9 THE WITNESS: You're welcome, sir. And  
10 good morning to you also.

11 JUDGE DIPPELL: Commissioner Kenney?

12 COMMISSIONER KENNEY: I have no  
13 questions. Thank you.

14 THE WITNESS: You're welcome.

15 QUESTIONS BY JUDGE DIPPELL:

16 Q. Then I do have just a few questions and  
17 I'm going to -- give me just a moment to make sure  
18 they haven't all been answered.

19 Mr. Johnstone, I am not a person that has  
20 been involved with futures markets or hedging programs  
21 or calls inputs, so I'm going to ask you just a few  
22 basic questions just so I can make sure that it's  
23 clear to me and it's clear in the record what each of  
24 some of these items are.

25 A. Very good.

1 Q. Just some -- some simple terminology.  
2 Because I think it gets kind of assumed when everyone  
3 is an expert in their field that the Commission is  
4 also an expert and so I want to make sure that it's  
5 clear. Can you -- one of the terms that was used was  
6 "swap contracts." Can you explain what a swap  
7 contract is?

8 A. A contract is 10,000 MMBtu and what the  
9 swap does is allows you to lock in a fixed price.  
10 It's essentially a take or pay. You're going to buy  
11 that amount of gas or the financial equivalent at some  
12 future month. It's a way to lock down the effect of  
13 what you're paying for the gas.

14 Q. And do you have your testimony in front  
15 of you there?

16 A. I do.

17 Q. Can you look at your direct testimony on  
18 page 13.

19 A. I'm there.

20 Q. And down at line 20 it says,  
21 Approximately 25 percent were placed in February. Can  
22 you just clarify for me what was placed? 25 percent  
23 of --

24 A. They had a fuel budget for the year 2007  
25 and it was their intent to -- to hedge 75 percent of



1 the volumes. In fact, they did. 75 percent according  
2 to the budget ultimately as revised. And instead of  
3 doing that in one fell swoop, they -- they bought  
4 one-fourth at each of four different points in time.

5           And so, for example, they had gas  
6 requirements each month, January through December of  
7 2007. The program wasn't large enough that they could  
8 buy a prorata share of each month, but they -- they  
9 spread it out through the year and they bought a few  
10 contracts in February, they bought a few in March and  
11 April, they bought some in May and June and the last  
12 fourth was placed in July through October.

13           But each -- each time they bought  
14 specific contracts for a few of the months in the  
15 following year. And when they got all finished, they  
16 had bought contracts equal to 75 percent of the budget  
17 volumes.

18           Q.     Okay. I started out with a lot of  
19 questions when I started reading your testimony and by  
20 the time I got through the whole thing, I had most of  
21 them answered so I apologize as I kind of dig through  
22 here.

23           On page 16 of your testimony, it  
24 actually -- the sentence actually starts on page 15.  
25 You say down at the very bottom, If volumes go down a

1 little, the impact of the program is amplified.

2 Can you just tell me what you mean by the  
3 impact being amplified?

4 A. I don't know if you're a graphical  
5 person, but I would take you to page 27 where I have  
6 Chart 5. And if you had -- are you there?

7 Q. Yes.

8 A. If you look at Chart 5, there is a  
9 reference no hedge line. And if they simply block  
10 asset the market, you pay the market price and so a  
11 \$10 market, you pay \$10. That's pretty  
12 straightforward and you get a nice line at a 45-degree  
13 angle.

14 Their intent was to hedge two-thirds of  
15 the volumes. And if you do that, you get the blue  
16 line. And -- and the blue dashed line there. And  
17 what that tells us is they're not going to lock in the  
18 price at a fixed level, but it's going to mitigate the  
19 increase and it's going to mitigate the decrease.

20 If the volumes had varied 5 or 10 percent  
21 from the design volume, the slope of that line would  
22 have just shifted one way or the other. The problem  
23 was there was a monumental bust in the actual volumes  
24 as compared to the forecast and it shifted  
25 dramatically and actually moved in the opposite

1 direction.

2           So you asked a very good question. Small  
3 changes in volumes would just move that line a little  
4 bit and nobody would be terribly concerned. It's when  
5 they had the very large variations that it created the  
6 very large problems.

7           Q.     Okay. And then on page 19 and elsewhere  
8 you talk about the role of natural gas as a swing  
9 fuel. Can you just explain to me that -- that term  
10 "swing fuel"?

11           A.     They make steam with coal and with  
12 natural gas. Throughout this relevant period here,  
13 coal has been cheaper. And so to the extent that the  
14 coal-fired boiler is available, you make all you can  
15 with coal first. Then what's left over gets generated  
16 with natural gas.

17           The reason that's important is that if  
18 you have a change in load, which they did have, which  
19 they did project, most of that increase is going to  
20 have to come out of the natural gas because you're  
21 already using the coal in most hours, all that you  
22 can. Now, there would be probably some weekend hours  
23 and some hours where you could use some more coal, but  
24 by and large, it's already at a very high utilization.

25           So since this is a swing fuel, if you

1 have a small increase in overall system steam load,  
2 there was a disproportionate increase in the amount of  
3 natural gas that's going to be used. That created  
4 volatility in their forecast of natural gas volumes.  
5 I think that's part and parcel of why they missed the  
6 forecast so severely.

7           It was -- certainly there were changes in  
8 load, but it was amplified because natural gas was a  
9 swing fuel that was operating only after they used  
10 everything they could on coal.

11           Q.    Okay. Okay. And then on page 26 of your  
12 testimony you talk about red flags that were sent up.  
13 And what is it that you are suggesting could have or  
14 should have been done at that point when trouble was  
15 signaled, as you say?

16           A.    Essentially they needed to back out of  
17 the excessive hedge positions. And it's my opinion  
18 that that became -- or should have become obvious  
19 almost immediately. Now, we have had talk about  
20 revisions to the forecast. That -- that's the subject  
21 here. And under the steam hedge program, it was  
22 designed with annual updates.

23                    Another difference to the electric  
24 program that's not really been fleshed out is that on  
25 the electric program, they had quarterly updates. So

1 part of what happened here is they made one forecast,  
2 they did revise it immediately before they began the  
3 program in February of 2006, but then it just -- from  
4 everything I have been able to see, they just sat  
5 there with those excessive volumes and that throughout  
6 2006 they did have the annual update to their budget  
7 for 2007. That was during the course of the calendar  
8 year 2006 that they prepared the next year's budget.

9           But as near as I've been able to  
10 determine, nobody was really monitoring the fact that  
11 the -- the volumes were so far off. And they -- if  
12 they were aware of it, they didn't appreciate the  
13 significance of it or they didn't think it had  
14 significance. Ultimately that's what cost an awful  
15 lot of money, in my opinion.

16           Q.     So you say they should have backed out of  
17 their hedge positions at that time?

18           A.     Yes, ma'am.

19           Q.     How do you back out of a hedge position?

20           A.     You go to the market where you bought it  
21 and you sell it back to the market.

22           Q.     So does that also come with its own costs  
23 and --

24           A.     There is a transaction cost, but in my  
25 opinion, that would be nominal. Let me just say this:

1 There's two aspects to the cost. The transaction cost  
2 per se and that -- that is not really the impediment,  
3 but the market moves through time.

4 Mr. Zobrist in his questioning was  
5 suggesting that there was a time when they were in the  
6 money. To the extent they're in the money, that means  
7 that they cannot only exit, but they could exit with a  
8 profit. So whether it would have cost them money or  
9 whether it would have made money really depends on the  
10 point in time and what the market was doing at that  
11 point in time.

12 And if they'd have made the decision in  
13 May, it would have been one thing. If they'd made the  
14 decision in October, it would have been another,  
15 but -- but there were opportunities virtually  
16 continuously along the way to make the adjustments and  
17 would have been a question of when and how. But as  
18 near as I can tell, they never entered into that  
19 analysis.

20 Q. Okay. On page 30 of your testimony  
21 you're talking about -- the question is: How should  
22 uncertain gas volumes impact the design of a hedging  
23 program? And in that you go onto discuss and then at  
24 line four you say: However, I've seen no indication  
25 that the uncertainty was considered at all.

1                   what -- what would have been an  
2 indication to you that uncertainty had been  
3 considered? I mean what were you looking to find?

4           A.     I apologize. Would you give me the  
5 reference again first?

6           Q.     Yeah. I'm sorry. It's page 30.

7           A.     Okay. On my direct?

8           Q.     Yes. Of your direct. And up at the top  
9 on line 4 it's -- the sentence starts: However, I've  
10 seen no indication that the uncertainty was considered  
11 at all.

12                   And I'm just wondering what -- what would  
13 have signaled to you, what would you have -- what kind  
14 of documentation or what that you could have found  
15 that you would have said, okay, they considered that?

16           A.     I think that I would identify two things.  
17 One very direct way is with the one-third factor.  
18 Aquila liked to say that, gee, we've got one-third  
19 floating in market. Well, in reality they did not.  
20 And the reason is volumes were so far off. So one  
21 very direct way would be to have hedged less.

22                   The other way would be to have monitored  
23 the actual results as compared to the forecast to have  
24 a policy of perhaps quarterly forecast updates like  
25 they had on electric rather than the annual updates.

1 I have no idea why they -- they only looked at it  
2 annually, but nevertheless, that was the design and  
3 that's apparently what they did. There was -- there  
4 was a provision for the possibility of additional  
5 updates, but as near as I can tell, once the program  
6 was started, they did not occur.

7 Q. And sort of the same question in your  
8 rebuttal testimony at page 13. You say: There's  
9 nothing to indicate -- down on line 23 of page 13:  
10 There's nothing to indicate that any aspect of the  
11 program was there to accommodate the swing nature of  
12 natural gas requirements in combination with the  
13 uncertain forecast of natural gas volumes.

14 what would have been an indication that  
15 they were accommodating the swing nature of the fuel,  
16 in your opinion?

17 A. I would direct your attention to the  
18 chart on page 14.

19 Q. Okay.

20 A. And essentially my answer's the same as  
21 the one I just gave you a minute ago. It would have  
22 been potentially an adjustment to the one-third. And  
23 the other point would be to adjust the forecast so  
24 that they could have backed out of their hedge  
25 positions. And the indications were that throughout



1 the two-year period, there was very little gas  
2 actually that was effectively bought at market.

3           Now, I hesitate to go there, but -- but  
4 let me just add one clarifying point. On a day-to-day  
5 basis, they bought all their physical gas at the  
6 market price. But the point is the volumes of the  
7 hedges, the financial instruments were in such  
8 quantities that they overwhelmed the amount that was  
9 being bought on a physical basis. And that's really  
10 the problem here.

11           Q.     Okay. On page 17 you were asked about  
12 Mr. Fangman's discussions with customers. Were you  
13 one of the -- did you have any discussions with him  
14 personally?

15           A.     I met him at one meeting in St. Joe, as I  
16 recall, maybe two, but not in the sense of this  
17 testimony. I would not have been the person he was  
18 talking to.

19           Q.     Okay. Okay. And another terminology  
20 explanation for me on page 18, at line 12 and 13 you  
21 say: In one instance he questions whether the  
22 customer data was expected steam consumption or simply  
23 connected load.

24                     Can you explain to me expected steam  
25 consumption and simply connected load?

1           A.     Think of it this way: If you bought a  
2 window air conditioner, you turned it on and it ran  
3 full blast all the time, you'd be using the connected  
4 load 100 percent of the time. As a practical matter,  
5 you're only going to want to use it when you need it.  
6 And that's the consumption piece.

7                     And so steam consumption is how much they  
8 use the equipment that translates into pounds of steam  
9 purchased. The connected load would be if they ran it  
10 100 percent of the time or the maximum load.

11           Q.     Okay. On page 27 -- and I think this is  
12 my last one of your rebuttal. Up at the top you're  
13 talking about the Kansas Commission proceeding and you  
14 say: The implication is that Missouri steam customers  
15 should have reviewed Aquila's program up front on the  
16 record and that the Commission should have provided a  
17 prudence determination, thereby avoiding an  
18 after-the-fact prudence review of the design.

19                     Are you familiar with the Kansas  
20 proceeding that reviewed the hedge program?

21           A.     I read the attachment to Mr. Blunk's  
22 testimony. To that extent --

23           Q.     Okay.

24           A.     -- only.

25           Q.     So you didn't participate in that

1 proceeding at all?

2 A. I did not.

3 Q. And you're not an attorney. Right?

4 A. That's correct.

5 Q. Okay. Then I won't ask you my next  
6 question.

7 JUDGE DIPPELL: Okay. That's all the  
8 questions I had. And I realize that I never asked  
9 Staff if they had any cross-examination, but I believe  
10 you indicated you didn't have any questions.

11 MR. RITCHIE: That's correct, we do not.  
12 Thank you.

13 JUDGE DIPPELL: Is there in further  
14 cross-examination based on my questions, Mr. Zobrist?

15 MR. ZOBRIST: I just had one, Judge.

16 FURTHER CROSS-EXAMINATION BY MR. ZOBRIST:

17 Q. The judge asked you, Mr. Johnstone, about  
18 natural gas as a swing fuel. Is it -- is it your  
19 opinion that the officials who ran the AGP plant or  
20 plants at Lake Road in St. Joseph, that they  
21 characterized themselves natural gas as being a swing  
22 fuel? I mean did they use that terminology?

23 A. With respect to what?

24 Q. The gas that was providing them steam  
25 service, as well as, as I understand, the gas that

1 they were purchasing to make hydrogen at the plant.

2 A. Well, I'd say -- let me take that in a  
3 couple of pieces. As far as what they were purchasing  
4 for their own needs, I have no idea of whether it was  
5 base or swing or whatever. It's completely separate  
6 from what we're doing here.

7 Now, with respect to them using the terms  
8 "swing fuel," I think it gets to the question earlier  
9 of whether they could have hedged on their own with  
10 respect to their steam purchases. And my point was  
11 they bought steam, not gas.

12 And it would have been -- if it was  
13 difficult for Aquila to predict how much gas was going  
14 to be used, it was that much more difficult for the  
15 customers because they didn't have all the data on how  
16 the system operated, the fuel models, et cetera, or  
17 for that matter, the other customer information.

18 So to come back to your question was  
19 whether or not they understood it was a swing fuel or  
20 used that term. I think they understood the  
21 difficulty from the conversations we had. And I -- I  
22 don't know if they used that terminology or not, but I  
23 think they certainly were aware of the concept and the  
24 difficulties with them trying to do it on their own.

25 Q. Were you aware that AGP at their Lake

1 Road facilities bought natural gas apart from the  
2 utility service that they took from Aquila?

3 A. I believe I was.

4 Q. Okay. And did they engage in any hedging  
5 or financial instrument program with regard to the  
6 natural gas that they purchased at their plants?

7 A. My best recollection is that with respect  
8 to that facility, the gas didn't -- usage didn't rise  
9 to a level that it warranted a program.

10 MR. ZOBRIST: Nothing -- nothing further.

11 JUDGE DIPPELL: Thank you.

12 Mr. Conrad, do you have redirect?

13 MR. CONRAD: Yes, your Honor, a few.

14 JUDGE DIPPELL: Is it truly just a few?

15 MR. CONRAD: Well, it's probably a page.

16 JUDGE DIPPELL: Let me just ask counsel  
17 quickly. It's five minutes until 12:00. Would it be  
18 better to finish this witness and then do lunch? I'm  
19 seeing heads nodding yes, so let's go ahead then.

20 Mr. Conrad, go ahead with your redirect.

21 REDIRECT EXAMINATION BY MR. CONRAD:

22 Q. First of all, Mr. Johnstone --

23 MR. CONRAD: Again, your Honor, is it  
24 okay if I proceed from here?

25 JUDGE DIPPELL: Yes, that's fine. Go

1 ahead.

2 BY MR. CONRAD:

3 Q. You were presented with a copy of what  
4 was marked as Exhibit 108. Do you have that before  
5 you?

6 A. Yes.

7 Q. And it's my recollection that counsel  
8 queried you with respect to the program that was  
9 discussed with the Public Service Commission at that  
10 time. Do you recall that series of questions?

11 A. Yes.

12 Q. And I believe you made a comment that it  
13 was not accurately described as the program. And I  
14 wondered if you would expand further on that, please?

15 A. The one point that I -- that just jumps  
16 out at me -- and I really haven't had time to read  
17 this and look at it carefully, but the one point that  
18 jumps out at me is the idea that they can fully  
19 participate with two-thirds of the volumes in a down  
20 market.

21 I mean, the fact of the matter is that  
22 they sold puts and that restricted their ability to  
23 participate in a down market. Indeed that's -- the  
24 effect of that is illustrated in my testimony in  
25 October 2006 where it came home to roost in a big way.

1                   And so I think it's fundamentally  
2 inaccurate to suggest that the system and indeed the  
3 fuel costs will be protected fully two-thirds in a  
4 down market. It's -- you don't participate two-thirds  
5 in a down market because they sold puts.

6                   Now, beyond that, I'd have to look  
7 through this and see what other concerns I might have,  
8 but that's the one that jumped out at me.

9           Q.       Now, counsel also queried you about the  
10 effect of the one-third purchase spot market. And I  
11 believe he was also using or had laid before you what  
12 was marked at that time as Exhibit 109. It's the blue  
13 bar chart.

14                   And you made a comment, sir, why that was  
15 not a valid example to be looking at the actual burn  
16 and the actual hedges. Did that have to do with that  
17 one-third business or something else?

18           A.       Let me explain it this way. If the  
19 forecast had been accurate -- and understand that  
20 nobody expects 100 percent accuracy. But for the sake  
21 of discussion, assuming that the forecast had been  
22 equal to the actual burn and let's round it to a  
23 million and a half, according to the design of the  
24 program, approximately 1 million would have been  
25 covered with hedges. What this shows is the actual

1 hedges were 2 million so they were over twice what we  
2 would have liked them to have been if the forecast had  
3 been accurate.

4           So I think the -- the hedges, if based on  
5 historical -- I mean, I'm assuming that they reflected  
6 the two-thirds in that number there, would be one  
7 thing. But you wouldn't compare them to what they  
8 actually were and you wouldn't compare them to actual.  
9 You'd compare them to the 1 million.

10           So I think in my mind you have to be very  
11 careful about the conclusions that you would draw from  
12 this chart. Now, this is all, of course, subject to  
13 check and making sure that I understand these numbers  
14 to be what I think they mean.

15           Q. Counsel also queried you about  
16 consideration of alternatives. And there were no  
17 alternatives that were offered. And I believe you  
18 offered a comment about all relevant factors that may  
19 actually have been in his -- in his question. Do you  
20 recall that line of questioning, sir?

21           A. Yes.

22           Q. Have you completed your -- your answer  
23 and your response with respect to his question?

24           A. I don't recall not completing it.

25           Q. Okay.



1 A. That's the best I can do right now.

2 Q. All right. And I believe counsel also  
3 directed you to a portion of the stipulation and  
4 Agreement that contained Mr. Nelson's testimony. And  
5 I believe you and he had a -- had an exchange about  
6 co-costs and something about allocation of costs and  
7 why Mr. Nelson's testimony was there. Why was  
8 Mr. Nelson's testimony there?

9 A. Since the Lake Road plant is used to both  
10 generate electricity and steam and it's a joint  
11 operation, you have to determine how to -- to split  
12 the cost between the two after the fact. And the  
13 purpose of attaching Nelson's testimony was to simply  
14 be as clear as we could with respect to how that was  
15 going to be done, how that would continue to be done  
16 as it had been done historically.

17 Q. Counsel also queried you toward the end  
18 of his examination about a comparison with the Kase  
19 ezHedge program. And it was my recollection that --  
20 well, first of all, do you recall that line of  
21 questioning?

22 A. Yes.

23 Q. And I think you made a response about a  
24 bad set of assumptions. Why would -- why would  
25 whether assumptions were bad or good make a

1 difference?

2           A.     I think the simple answer is garbage in,  
3 garbage out. Now I don't want to go too far in that  
4 direction, but my point is there's a fundamental  
5 problem with the design of the hedge program with the  
6 volume level.

7                     And there was also the fact that from --  
8 from the AGP perspective at least, well, there --  
9 there would be interest in having protection from the  
10 very high costs, there was certainly a desire to  
11 participate when the market went down -- when the gas  
12 price market went down. They want their fuel costs to  
13 be as low as possible. They were not willing to give  
14 that up.

15                     And so you have the assumption in the  
16 ezHedge that you want to mitigate volatility. One,  
17 that's an assumption that AGP would not agree with.  
18 And you had the wrong volumes. And so if you start  
19 the analysis with those two premises, you're not going  
20 to get a result that's favorable. I don't want to  
21 suggest -- I mean obviously you can do the analysis,  
22 you can use the assumptions that they did and the  
23 result is what it is.

24                     There was a scenario out there, another  
25 way to hedge that would have been more expensive. I

1 don't -- I don't quarrel with that. I just don't  
2 think it's anything that the customers would have ever  
3 agreed to in the first place had they had the  
4 opportunity to agree or not.

5 Q. In your opinion, is that a proper  
6 comparison to make?

7 A. I think its usefulness is very limited.  
8 In the context of the explorations that the company  
9 was making at the time trying to look at alternatives  
10 apparently, I'm not going to say that they should not  
11 have looked at it. I'm just saying that -- that to  
12 pick that up and to somehow suggest that that  
13 validates what was being done in the -- in the  
14 one-third hedge program for steam as it was  
15 implemented I think is incorrect.

16 Q. Counsel also questioned you about what he  
17 characterized as the damages from the complaint.  
18 Is -- is the material that you have looked at related  
19 uniquely to AGP's loads or are they class loads for  
20 the steam customers?

21 A. It is not uniquely AGP. It is the  
22 industrial class, which is the entire system, in fact.

23 Q. Now, Judge Dippell asked you or queried  
24 you about -- and I had it down here as 75 percent of  
25 the budget volumes. Do you recall that line of

1 questioning?

2 A. I think that was in regard to the 2007  
3 purchases, if I recall correctly.

4 Q. Is -- is the real crux of that  
5 question -- of the judge's question the volumes rather  
6 than the 75 percent?

7 A. That's what the 75 percent is about, yes.

8 Q. Now, she also queried you about the use  
9 of the term "swing fuel."

10 MR. CONRAD: And I actually think as I  
11 look at my notes here, Judge, I think he probably  
12 made -- made a sufficient answer there.

13 BY MR. CONRAD:

14 Q. I believe Judge Dippell questioned you  
15 also about some material on page 30. And I think it  
16 may have been of your rebuttal, Mr. Johnstone. Now, I  
17 believe -- pardon me, I believe it was on direct. I'm  
18 finding it there.

19 Up at the top, answer that begins on  
20 line 1, and counsel for GMO also asked you a little  
21 bit about the fluctuations in the gas price. When you  
22 talk about uncertainty there in response to judge's  
23 question, what is the nature of the uncertainty that  
24 you're talking about there?

25 A. It's the extraordinary changes in the

1 natural gas requirements of the system. So they  
2 really were at a period of transition from when gas  
3 had been relatively small amount of the fuel burn into  
4 a period when it would be used substantially more.  
5 And that -- that engendered a big volumetric  
6 uncertainty as to how much gas would be needed and,  
7 therefore, how much would be hedged.

8           And the point is that to have the  
9 benefits of a hedge program, it needs to be tied to  
10 the gas volumes that you're actually going to burn.  
11 If you don't have gas volumes, we get into the things  
12 that the traders do, they speculate. And of course  
13 there's some banter back and forth in the testimonies  
14 about whether this was speculation or not.

15           My point is if you have hedge positions  
16 for which there is no corresponding physical gas burn,  
17 it starts to look a lot more like speculation. But  
18 that's -- that's where this all goes. That's why it's  
19 so important to get the volumes right. That was not  
20 their intent to speculate. The intent was to hedge a  
21 portion of the gas needs.

22           After the fact, it turns out that --  
23 well, almost immediately starting in April and every  
24 month thereafter -- virtually every month they were  
25 just way off on the volumes and, therefore, it didn't

1 work as intended.

2 Q. Now, looking again with -- with that  
3 thought in mind, back -- if I might ask you to turn  
4 back to our blue chart example or Exhibit 109 that was  
5 marked for identification and that you were going to  
6 check the numbers on, is there anything particularly  
7 revealing about the period April 2006 through  
8 December 2007?

9 A. Well, as -- as I explained a few minutes  
10 ago, if they'd been able to predict their burns  
11 accurately, the actual hedges would have been  
12 two-thirds by their design so they would have been  
13 roughly 1 million.

14 what stands out on this chart is the  
15 actual hedges were roughly twice that -- more than  
16 twice that actually at more than 2 million. So  
17 assuming that this -- I'm understanding this chart and  
18 I'll attempt to verify that, I think that's a very  
19 important point that's made here. That -- that is a  
20 manifestation of the uncertainty in the forecasts of  
21 natural gas volumes that came home to roost in a big  
22 way.

23 Q. And to put a finer point on that and  
24 winding this up, the uncertainty again is not the  
25 uncertainty in the price of the commodity itself, but

1 rather the volume?

2 A. That's correct. And -- and it's  
3 certainly the uncertainty. And prices were important.  
4 I'm not here to suggest that they were not. The  
5 intent was to mitigate the uncertainty in the price of  
6 gas, but the reason it failed so miserably is because  
7 of the uncertainty in the volumes, along with the fact  
8 that the program as it was designed to merely mitigate  
9 highs and lows is simply not an approach that AGP  
10 would have preferred had we focused on it, had it been  
11 brought to us, had we talked about it with Aquila.  
12 That's not where we would have ended up, I'm quite  
13 sure.

14 MR. CONRAD: Judge Dippell, that's all I  
15 have, I believe, on redirect. Thank you.

16 JUDGE DIPPELL: Thank you. All right  
17 then. I believe that concludes the questioning for  
18 this witness. And Mr. Zobrist, you look like you want  
19 to say something? No. You're just anxious to go to  
20 lunch.

21 So it is a quarter after 12:00 and I  
22 believe then we will break for lunch for one hour and  
23 we can come back at a quarter after 1:00. We can go  
24 off the record.

25 (A recess was taken.)

1 JUDGE DIPPELL: Let's go ahead and go  
2 back on the record. Okay. We are back on the record  
3 after our lunch break and we're ready to begin with  
4 our second witness. I believe that was the only  
5 witness for Ag Processing; is that correct?

6 MR. CONRAD: That's correct. And, Judge,  
7 before we maybe do that, I wanted to indicate on the  
8 record, I had told you and counsel we have -- I have  
9 cleared Exhibit 109 so there's no longer any reason to  
10 hold on that unless you wish to. I have not been able  
11 yet to close the loop on 110.

12 JUDGE DIPPELL: Okay.

13 MR. CONRAD: And I did have one -- this  
14 is in the nature of an exhibit, but I do have a  
15 document here that I provided to counsel and by your  
16 leave would mark it as 3. And it is a copy of the  
17 responses to request to admit interrogatories and  
18 production requests that were originally filed in the  
19 2--0028 and 0399 cases but have never made it over  
20 into this docket. So if that's a way to handle that.

21 JUDGE DIPPELL: Okay. And are you just  
22 marking those at this time?

23 MR. CONRAD: Well, I'm not intending to  
24 put somebody on, but they are -- I don't know whether  
25 counsel has an objection to their admission. I have



1 showed him copies beforehand.

2 MR. ZOBRIST: I do not.

3 JUDGE DIPPELL: Okay. Then I will admit  
4 Exhibit 3.

5 (Exhibit No. 3 was marked for  
6 identification and received into evidence.)

7 JUDGE DIPPELL: And I'm sorry. Was it  
8 109 that you were saying you didn't have any objection  
9 to?

10 MR. CONRAD: No. We have no objection on  
11 109.

12 JUDGE DIPPELL: Okay. Then I will also  
13 admit Exhibit 109.

14 (Exhibit No. 109 was received into  
15 evidence.)

16 JUDGE DIPPELL: What about the direct  
17 testimony with the corrections on Exhibit 1?

18 MR. ZOBRIST: We have no objection.

19 JUDGE DIPPELL: Okay. Then I will also  
20 admit Exhibit 1.

21 (Exhibit No. 1 was received into  
22 evidence.)

23 JUDGE DIPPELL: Okay. In that case, Ag  
24 Processing didn't have any more witnesses. Correct?

25 MR. CONRAD: That's correct.

1 JUDGE DIPPELL: All right. Then let's go  
2 to GMO's first witness.

3 MR. ZOBRIST: GMO will call Mr. Gary  
4 Clemens.

5 JUDGE DIPPELL: Please raise your right  
6 hand.

7 (Witness sworn.)

8 JUDGE DIPPELL: Go ahead, Mr. Zobrist.

9 MR. ZOBRIST: And pursuant to our  
10 agreement, I'll have Mr. Clemens' direct testimony and  
11 the schedules -- and these are the ones that have been  
12 reformed or revised pursuant to my agreement with  
13 Mr. Conrad -- as Exhibit 101.

14 JUDGE DIPPELL: All right.

15 (Exhibit No. 101 was marked for  
16 identification.)

17 GARY L. CLEMENS,  
18 being first duly sworn, testified as follows:

19 DIRECT EXAMINATION BY MR. ZOBRIST:

20 Q. Could you state your name.

21 A. Gary Clemens.

22 Q. And where are you employed, Mr. Clemens?

23 A. I'm a self-employed consultant.

24 Q. And did you cause to -- to be prepared  
25 nine pages of direct testimony with six schedules to

1 that testimony?

2 A. Yes.

3 Q. Okay. And these questions and answers  
4 are your questions and answers?

5 A. Yes.

6 Q. Okay. And if I were to ask you those  
7 questions here today, would your answers be the same  
8 as depicted in Exhibit 101?

9 A. Yes.

10 Q. Okay. And have you prepared an affidavit  
11 that is attached to this testimony that these  
12 questions and answers were given under oath?

13 A. Yes.

14 Q. Are there any corrections to your direct  
15 testimony?

16 A. I have one on page 5, line 13. In the  
17 middle of the sentence where it says "would set"  
18 should say "would be set." Insert the word "be" in  
19 line 13.

20 Q. So line 13 would read: Pursuant to which  
21 one-third of gas purchases would be set by fixed  
22 futures -- I'm sorry, fixed price futures contracts,  
23 comma?

24 A. Correct.

25 Q. Any other corrections?

1 A. No.

2 MR. ZOBRIST: I would move the admission  
3 of Exhibit 101 at this time and tender the witness for  
4 cross-examination.

5 JUDGE DIPPELL: Would there be any  
6 objection to Exhibit 101?

7 MR. CONRAD: No objection.

8 JUDGE DIPPELL: All right then.

9 (Exhibit No. 101 was received into  
10 evidence.)

11 JUDGE DIPPELL: We can go to  
12 cross-examination. Anything from Staff?

13 MR. RITCHIE: No. Thank you, Judge.

14 JUDGE DIPPELL: Ag Processing?

15 MR. CONRAD: We have a few, Judge.

16 CROSS-EXAMINATION BY MR. CONRAD:

17 Q. Good afternoon, Mr. Clemens.

18 A. Good afternoon.

19 Q. Let me ask you to turn to page 2 of your  
20 testimony to begin with. And there is a question that  
21 appears at line 13 and following. Let me know when  
22 you have that reference.

23 A. I have it.

24 Q. On line 14 there is a phrase that the  
25 company did not discuss the hedging program, talking

1 about what Mr. Johnstone suggests.

2 Do you find that, sir?

3 A. Yes.

4 Q. which hedging program are we talking  
5 about there?

6 A. The one-third program that we've  
7 discussed this morning.

8 Q. well, now, the electric, Mr. Clemens, or  
9 steam? Because we've discussed both this morning.

10 A. We've discussed the one-third program.  
11 That's the one that I'm referring to.

12 Q. All right. what is the one-third  
13 program?

14 A. It's the one-third program that we had  
15 utilized in the electric steam -- the electric  
16 business and also utilized that method in the steam  
17 business.

18 Q. so you're talking about the same programs  
19 on the electric side as now you're saying on the steam  
20 side; is that right?

21 A. It's the same philosophy, yes.

22 Q. well, now you slipped a gear on me there.  
23 suddenly we're becoming philosophical. It's the same  
24 program, the same concept or the same philosophy?  
25 which is it?

1 A. The same concept.

2 Q. And let's try and put, if we can, a  
3 little finer point on it. When you say "concept,"  
4 what is the concept that is referred to there on  
5 line 14?

6 A. The one-third strategy.

7 Q. Now, your question says: Did not discuss  
8 the hedging program with the steam customers prior to  
9 implementing the program.

10 Do you see that reference?

11 A. Yes.

12 Q. what is the program?

13 A. The steam program.

14 Q. Okay. On line 14 I thought we were  
15 talking about the electric program.

16 A. We were talking about the one-third  
17 strategy.

18 Q. Okay. Now that's yet another term.  
19 we've talked about concept, we've talked about  
20 program, we've talked about philosophy. And I thought  
21 you had settled on concept.

22 A. They could be the same.

23 Q. well, they can be the same or they are  
24 the same?

25 A. They are the same in this reference.

1 Q. In this reference they're the same?

2 A. Yes.

3 Q. That's your testimony?

4 A. Yes, it is.

5 Q. Now, look on down in the answer, lines 19

6 and 20.

7 A. Yes.

8 Q. Do you find that?

9 A. Yes.

10 Q. And right at the end of line 19 there's a

11 reference to a program for natural gas hedging, with

12 reference earlier in that line to the development of

13 the QCA which was designed to include a program.

14 which program, Mr. Clemens?

15 A. The one-third strategy program.

16 Q. The one-third strategy, one-third

17 concept, one-third program, one-third philosophy?

18 A. Strategy.

19 Q. That's -- now it's become strategy?

20 A. One-third program.

21 Q. well --

22 A. To me they're one and the same.

23 Q. Okay. so all those terms to you are

24 synonymous?

25 A. Yes.

1 Q. Now, was the QCA that you're discussing  
2 there designed specifically to accommodate that  
3 program or could it have accommodated other programs?

4 A. Could accommodate other programs.

5 Q. And do you see anything in the QCA  
6 mechanism that references one-third, one-third,  
7 one-third?

8 A. No.

9 Q. All right. Move with me, Mr. Clemens, to  
10 page 3 and there's an answer beginning at line 7. Let  
11 me know when you're there.

12 A. I have it.

13 Q. Okay. And you have a quote from a  
14 portion -- or from section 8.1 of the stipulation. Do  
15 you see that?

16 A. Yes.

17 Q. Is that a complete quote of Section 8.1?

18 A. No, it's -- I think there's additional --

19 Q. And --

20 A. -- information.

21 Q. -- for that -- well, what was omitted?

22 A. I would have to read it. I'd have to go  
23 back and find -- find it to read the whole thing.

24 Q. What was omitted?

25 A. I don't recall. We could go to



1 Schedule 1.

2 Q. And Schedule GLC-1 is what, sir?

3 A. Is the stipulation.

4 Q. And if you looked at that, could you tell  
5 me what was omitted?

6 A. The first sentence.

7 Q. Which says?

8 A. The cost of fuel will be the amounts  
9 expended in Account 501. The amounts expended will  
10 continue to be based on the cost definitions currently  
11 used for the inclusion of costs in this account and on  
12 the currently used cost allocation method as explained  
13 in some additional detail.

14 Q. Now, that's -- you're reading from GLC-1  
15 at page 5?

16 A. Correct. Section 8.1.

17 Q. 8.1?

18 A. And then the last section also is not  
19 included.

20 Q. Is there a reference in your copy of that  
21 stipulation to cost of coal?

22 A. That's the second half of -- I just did  
23 the front part. I said the second sentence also is  
24 excluded. The second sentence, if you'd like for me  
25 to read that into the record, it refers to the cost of

1 coal.

2 Q. And it also refers to the cost allocation  
3 method, does it not?

4 A. Correct. Correct.

5 Q. why would a cost allocation method,  
6 Mr. Clemens, be important?

7 A. well, the cost allocation method would --  
8 would be important so we could separate the cost  
9 between the coal and the gas to the steam customers.

10 Q. The cost of -- of coal and gas for the  
11 steam customers. That's your answer?

12 A. Correct. Correct.

13 Q. Now, let's just take the cost of coal for  
14 a second. why was it important to separate the cost  
15 of coal for the steam customers as compared to what?

16 A. Because of the sharing mechanism inside  
17 the QCA, it was important to keep those -- those coal  
18 costs separate between the steam and the electric  
19 customers. So I think as Mr. Johnstone stated  
20 earlier, so there wouldn't be any misallocation of  
21 those costs and have the -- one -- one customer  
22 subsidizing another being the electric customer versus  
23 the steam customers.

24 Q. Is the same true with respect to the gas  
25 portion?

1 A. Correct.

2 Q. Now, I'm not -- I'm not going to ask you  
3 to -- to refer to Mr. Nelson's material there, but  
4 just answer for me this question. In the line on 8.1,  
5 the cost of coal expenses to Account 501 -- and then  
6 read with me -- will continue to reflect. Do you see  
7 that phrase there?

8 A. Yes.

9 Q. Does that suggest to you that some kind  
10 of an allocation method was going on before?

11 A. There was an allocation method going on  
12 before.

13 Q. Between coal and gas for the electric as  
14 compared to the steam customers?

15 A. Yes. To my knowledge, there was a  
16 separation between the coal and the steam, yes.

17 Q. Now, given that separation, the method  
18 that you're talking about that you have variously  
19 referred to as the hedging program, the hedging  
20 concept, the hedging philosophy, what did that cover?

21 A. That covered financial instruments for  
22 gas costs.

23 Q. Did it -- excuse me. I didn't mean to  
24 interrupt you. Had you completed your answer?

25 A. I did.

1 Q. Did that cover the electric operation,  
2 the steam operation or both?

3 A. The steam operation.

4 Q. The program that we're talking about up  
5 here on the preceding page that we've talked about the  
6 hedging program, that was the steam concept program or  
7 meth-- or mechanism; is that right?

8 A. Correct.

9 Q. So then if you go back to page 2 on  
10 line 15, the discussion with the steam customers prior  
11 to implementing the program, if it was already going  
12 on, how could it have been prior, Mr. Clemens?

13 A. You'll have to repeat your question. I'm  
14 not following.

15 Q. I'll let the reporter read it back if she  
16 will.

17 THE COURT REPORTER: "Question: So then  
18 if you go back to page 2 on line 15, the discussion  
19 with the steam customers prior to implementing the  
20 program, if it was already going on, how could it have  
21 been prior, Mr. Clemens?"

22 THE WITNESS: The program that was in  
23 place prior to this was the electric program.

24 BY MR. CONRAD:

25 Q. Okay. It was the electric program?

1 A. The electric program which was the  
2 one-third methodology was --

3 Q. I understand.

4 A. -- utilized in the electric program.

5 Q. I understand that's your story and you're  
6 sticking to it. But which program is it that was in  
7 place that we're talking about here?

8 A. The program that was in place was the  
9 one-third methodology that we were using in our  
10 electric business.

11 Q. And it included electric only?

12 A. Electric only.

13 Q. So if you look then at 8.1 and we pick up  
14 that phrase again "Account 501 will continue to  
15 reflect," in what sense would 501 continue to reflect?

16 A. This was the cost of coal. Wasn't part  
17 of the hedge. It was -- it was the allocation of  
18 the -- of the coal cost.

19 Q. Coal -- coal was not being hedged?

20 A. Gas was being hedged -- was going to be  
21 hedged for this program.

22 Q. Well, we're talking about Account 501  
23 will continue to reflect.

24 A. The average inventory of coal, the coal  
25 cost, yes.

1 Q. For which program?

2 A. Either program it would continue.

3 Q. For which program, Mr. Clemens?

4 A. For this concept -- for this reference,  
5 it was for the steam hedge program.

6 Q. In 80-- 8.1?

7 A. Correct.

8 Q. I understand. But in 8.1 it says, 501  
9 will continue to reflect. That's not new if it's  
10 continue. Right?

11 A. Correct.

12 Q. So if it's not new, where was it being  
13 done before?

14 A. It was doing -- on the books.  
15 Account 501 is on the books.

16 Q. I understand Account 501 is an account on  
17 your books. Correct?

18 A. Correct.

19 Q. And we're talking about here will  
20 continue to reflect. What is continued?

21 A. The cost of -- the expense of coal to  
22 Account 501 will continue on the average method.  
23 Average cost of coal inventory. That same methodology  
24 was not going to change.

25 Q. So would you agree with me then that

1 prior to 8.1, there was no hedging program for steam?

2 A. Yes, I would agree with that.

3 Q. And this was the device used to allocate?

4 A. This was used to allocate the cost -- the  
5 fuel cost between the electric and steam customers.

6 Q. And since as you've so generously pointed  
7 out, Account 501 is an account on your books, it takes  
8 a few days for something to hit the books, doesn't it,  
9 Mr. Clemens?

10 A. Yes.

11 Q. So this would be an after-the-fact  
12 allocation. Correct?

13 A. Yes.

14 Q. Not a before-the-fact allocation?

15 A. The -- the allocation of actual dollars  
16 would occur after the fact. The methodology was  
17 applied based on allocations that were previously set  
18 up.

19 Q. Mr. Clemens, I need to ask you something  
20 here that's perhaps a little unusual. And maybe this  
21 is one reason why we have such rules in -- in  
22 Missouri. Are you answering these questions from your  
23 own knowledge or are you being prompted from somebody  
24 that is behind me and to my right?

25 A. I have --

1 Q. Answer honestly, sir.

2 A. They are --

3 Q. Because you keep looking over here  
4 (indicating).

5 A. There are -- I'm just looking around. No  
6 one's prompting me with any answers at all. This is  
7 my own knowledge.

8 Q. Okay. Just -- just kind of wanted to get  
9 that out.

10 A. Sure.

11 Q. Okay. How was -- well, let's strike that  
12 and start again here with this.

13 Now, prior to Section 8.1 being accepted,  
14 was there a steam business in St. Joseph?

15 A. Yes.

16 Q. And coal was burned and gas was burned to  
17 support that?

18 A. Yes.

19 Q. And this account continued to be used to  
20 allocate?

21 A. This account was not -- this account was  
22 allocated.

23 Q. And we've decided that that was an  
24 after-the-fact allocation. Right?

25 A. Correct.



1 Q. You do hedges ahead of the game or after  
2 the game is played?

3 A. Ahead of the games.

4 Q. And look with me, please, on page 3,  
5 line 17 -- well, let's -- let's start with line 16.  
6 There we're talking about a response to Staff's data  
7 request MPSC 0266. Do you see that reference?

8 A. Yes.

9 Q. And you have incorporated that in your  
10 materials as Schedule GLC-2?

11 A. Yes.

12 Q. Now, Mr. Clemens, at least in my copy of  
13 it it's marked as HC. Do we still need to go  
14 in-camera to talk about this? It's at the very top of  
15 page 2 it says something about confidential.

16 A. I don't think we need to go into camera  
17 at this point.

18 Q. Now, as a consultant, do you have the  
19 authority to waive that?

20 A. I don't. If it is objected, I'm sure my  
21 attorney will object.

22 MR. ZOBRIST: I think we can discuss this  
23 in public and we'll re-designate it as not HC. When  
24 it was initially provided to Staff back in 2004, my  
25 understanding is, is that it was deemed to be highly

1 confidential.

2 JUDGE DIPPELL: So Schedule GLC-2, is  
3 that --

4 MR. CONRAD: Yes, ma'am.

5 JUDGE DIPPELL: -- what we're --

6 MR. ZOBRIST: I believe that's  
7 Mr. Conrad's reference, yes.

8 MR. CONRAD: Uh-huh.

9 JUDGE DIPPELL: So GLC-2 there's no need  
10 for it any longer to be designated highly  
11 confidential?

12 MR. ZOBRIST: I believe that's correct.

13 JUDGE DIPPELL: Okay. Thank you.

14 BY MR. CONRAD:

15 Q. So at the time, Mr. Clemens, that this  
16 was responded to by Aquila -- and check me on this --  
17 were you -- were you with Aquila at the time this was  
18 responded to?

19 A. Yes.

20 Q. And you were involved in preparation to  
21 the response?

22 A. Yes.

23 Q. But at that time it was marked as highly  
24 confidential. Am I correct?

25 A. That's correct.

1 Q. And that has some -- that has some  
2 meaning. Right?

3 A. HC has --

4 Q. Uh-huh.

5 A. -- meaning, yes.

6 Q. Now, if I correctly read lines 16 and 17  
7 and that reference, Aquila's response to Commission  
8 Staff data request and then the number describes the  
9 gas hedging program and its procedures. Have I read  
10 that correctly?

11 A. Yes.

12 Q. And look with me on page 1 of 20 of  
13 Schedule GLC-2. Are you there, sir?

14 A. Yes.

15 Q. Aquila, Inc. and then at the very top of  
16 that, Aquila Networks Missouri. And then what's that  
17 word there?

18 A. Electric.

19 Q. And the case number underneath it is what  
20 case number?

21 A. ER-2005-0436.

22 Q. Is that a gas number or a -- or an  
23 electric number?

24 A. It's an electric number.

25 Q. Date of request was August 4. Right?

1 A. Correct.

2 Q. Date due August 14?

3 A. Yes.

4 Q. Appears at the bottom August 10th, 2005  
5 responded to. Right?

6 A. Correct.

7 Q. Was there a steam -- or excuse me, a gas  
8 hedging program existing at that time?

9 A. There was a net-- a gas hedging program  
10 for the electric business, yes.

11 Q. And that is what is described here on --  
12 starting on page 2 and continuing through page 4 of  
13 your schedule GLC-2. Right?

14 A. Correct.

15 Q. Let's take a look at that for a few  
16 moments. Now, we're referencing an action of the  
17 MoPSC in April of 2004. Right?

18 A. Yes.

19 Q. And the settlement agreement there or  
20 stipulation agreement details the -- and what's  
21 that -- what are those words there?

22 A. The IEC, is that what --

23 Q. Uh-huh.

24 A. The interim energy charge.

25 Q. And then it goes on: By which Aquila is

1 allowed to recover production fuel and purchased  
2 power. So far so good?

3 A. Yes.

4 Q. Is the IEC that you had there like a fuel  
5 adjustment?

6 A. Yes. It has similar qualities, yes.

7 Q. Can you describe for me how an IEC works?

8 A. The interim energy charge was a -- sets a  
9 fuel base and you get to recover costs that are above  
10 or below that base similar to a fuel adjustment  
11 clause. You get to share -- the incentive is you get  
12 to keep a portion of the savings. As a company, you  
13 get to keep a portion and share a piece with the  
14 customers. And interim being for a predetermined set  
15 period of time.

16 Q. Now, were you describing IECs generally  
17 or the Aquila IEC?

18 A. Generally.

19 Q. What about the Aquila IEC that's  
20 referenced there?

21 A. I don't remember the specifics of -- of  
22 the whole detail of that plan.

23 Q. Now, I wanted you to recall this last  
24 sentence to that very first paragraph starts out: To  
25 that end.

1 A. Yes.

2 Q. Do you see that reference?

3 A. Yes.

4 Q. I read it to say that Aquila continues to  
5 refine and correspondingly implement the post-2004  
6 hedging strategy detailed below. Did I do it right?

7 A. That's correct.

8 Q. What does refine mean?

9 A. Continue to improve.

10 Q. Okay. So this document then is not the  
11 final iteration?

12 A. I don't know.

13 Q. But you've -- you've reserved by the word  
14 "refined" the ability to come in here and improve this  
15 program. Correct?

16 A. That's what this document says, yes.

17 Q. Now, the -- the detail below phrase  
18 refers to what follows. Right?

19 A. Yes.

20 Q. And then this talks about two key  
21 elements of the hedging program. And in paragraph 1  
22 it talks about price mitigation -- this is the  
23 next-to-the-last sentence -- on two-thirds of its  
24 natural gas and on peak purchased power volumes. Do  
25 you see that reference?

1 A. Yes.

2 Q. And at the bottom of paragraph 2 Aquila  
3 and the PSC Staff have discussed and Aquila has  
4 implemented -- subsequently implemented a strategy of  
5 three years. Do you see that?

6 A. Yes.

7 Q. Three years refers to what?

8 A. Implemented the strategy for three years  
9 being -- buying a third, a third, a third out three  
10 years is my understanding.

11 Q. Now, move with me to page 3, which is the  
12 next page. And we've started -- it appears to start a  
13 new paragraph there. And the fifth line down sentence  
14 starts: The hedging plan is executed. Do you see  
15 that?

16 A. Yes.

17 Q. Well, read on with me: By purchasing  
18 one-third of the monthly forecast quantity for each  
19 month over a 28-month period -- excuse me, over --  
20 yes, 28-month period proportionately procured in fixed  
21 price financial contracts. Did I read that right?

22 A. Yes.

23 Q. What does that mean to you?

24 A. I would probably defer that to Gary  
25 Gottsch, who's -- does our hedging program.

1 Q. well, you're on the stand right now. Do  
2 you know?

3 A. I don't know.

4 Q. You have no idea what that means?

5 A. Other than they're going to purchase  
6 hedges one month at a time for the next -- over the  
7 28-month period, just as it says.

8 Q. You're going to purchase hedges one at  
9 time over the next 28 month?

10 A. Going to purchase one-third of the  
11 monthly forecast quantity over the next 28 months.

12 Q. And then it goes on to talk about for  
13 each month. You see that? You kind of skipped over  
14 that part.

15 A. Yes.

16 Q. For each month over a 28-month period.  
17 For each month. Right?

18 A. Correct.

19 Q. well, let's come down to near the bottom  
20 of page 3. And there is a smaller paragraph right at  
21 the very bottom that begins: If there are.

22 A. Got it.

23 Q. Do you see that? If there are  
24 significant changes in key inputs to the volumetric  
25 forecast for natural gas -- and then it continues --



1 on peak purchased power.

2 Let's just focus on the natural gas part.

3 what would you characterize as being a significant

4 change, if you know?

5 A. I don't know what they would construe as

6 a significant change to effect changing the program.

7 I don't know what qual-- what quantification number

8 you would utilize for something like this.

9 Q. Now, your answer, Mr. Clemens, was what

10 they would consider. Who is "they"?

11 A. In this case the energy forecasting

12 group -- energy resources department, excuse me.

13 Q. Did you have involvement with that at

14 this time?

15 A. No, I did not.

16 Q. Now, moving on down in that paragraph,

17 when that happens, when there's a significant change,

18 what is energy resources supposed to do?

19 A. They would make an adjustment.

20 Q. Well, let's read it and see what it says:

21 Energy Resources will re-run the fuel budget model.

22 Do you see that?

23 A. Yes.

24 Q. What does "re-run" mean?

25 A. Run the model with new data.

1 Q. New data being the changes in the key  
2 inputs?

3 A. Correct.

4 Q. Now, how frequently is that to occur?

5 A. These re-runs in the model will be done  
6 no less frequently than three months of the prior  
7 re-runs -- re-run, excuse me.

8 Q. Now, if somebody wanted to do that every  
9 six months, would that be in compliance with this  
10 sentence?

11 A. No.

12 Q. What would you have to do to comply with  
13 this sentence, Mr. Clemens?

14 A. Run it at least quarterly.

15 Q. At least every three months from what?

16 A. From the last run.

17 Q. Then let's continue because the next  
18 sentence carries over to page 4. The resulting  
19 natural gas, purchased power natural gas equivalent  
20 quantities then become what, Mr. Clemens?

21 A. The new targeted procurement quantities.

22 Q. And then what's Energy Resources supposed  
23 to do?

24 A. Adjust its purchasing to meet the new  
25 target quantities.

1 Q. Is that what was done with the steam  
2 program, Mr. Clemens?

3 A. I don't know.

4 Q. Well, can you -- can you answer the  
5 question for me that this is a different program than  
6 what the steam program is?

7 A. This write-up was done for the -- out of  
8 the electric program, yes.

9 Q. Now, the very next paragraph on page 4  
10 talks about Energy Resources. Is that a special  
11 group?

12 A. Yes. It's a separate department.

13 Q. And Commodity Risk Management. Is that a  
14 separate group?

15 A. As far as I know, yes.

16 Q. Separate from Energy Resources?

17 A. I'm just not sure if it was included or a  
18 part of, but it is a separate -- separate  
19 responsibilities.

20 Q. And I read here that they're supposed to  
21 discuss all issues relevant to this hedging process.  
22 Did I read that right?

23 A. Correct.

24 Q. How frequently, Mr. Clemens?

25 A. Monthly. At least once a month.

1 Q. And then the next sentence follows that:  
2 will record and otherwise document. Now, how would  
3 they record?

4 A. Write it up.

5 Q. And otherwise document, same thing?

6 A. Yes.

7 Q. What is it they're supposed to record and  
8 otherwise document?

9 A. All transactions, including a summary of  
10 the current valuation of the hedge accounts.

11 Q. Let me flip you back to your testimony.  
12 And I think we were on page 3 and we kind of broke out  
13 of it. Down toward the bottom --

14 A. Yes.

15 Q. -- you're referencing Mr. Brubaker's  
16 testimony. Am I correct?

17 A. Yes.

18 Q. And based on this date it was filed  
19 October 14?

20 A. Yes.

21 Q. Was that before or after or concurrently  
22 with discussions about the settlement stipulation?

23 A. This would have been before the  
24 settlement stipulation discussions.

25 Q. So if it occurred before, then almost by

1 definition would you agree Mr. Brubaker wouldn't have  
2 known anything about the settlement discussions, would  
3 he?

4 A. I wouldn't know that.

5 Q. well, you seem to suggest that you do by  
6 referencing his testimony. So I'm just asking you,  
7 would you agree with me that if -- if his testimony  
8 was filed before people started talking about  
9 settlement stipulation, he wouldn't be able to reflect  
10 that in his testimony?

11 A. He wouldn't be able to reflect that in  
12 his testimony. Yes, I agree with that.

13 Q. Now, you've quoted at the top of page 4 a  
14 fairly lengthy chunk from Mr. Brubaker's testimony.  
15 Is that -- in which case was that filed?

16 A. That was the HR-2005-0450.

17 Q. Now, help me out here in -- there on  
18 lines -- on page 4, lines 1 through about 13 I think  
19 is where that exchange ends. Do you see anything in  
20 that that suggests to you that Mr. Brubaker was  
21 approving a hedging program that was not well  
22 conceived?

23 A. He did not approve of the program, but he  
24 made a statement that the hedging program should be  
25 included in the cost of fuel.

1 Q. So when he says -- and I'm starting at  
2 line 4: The main purpose of the hedging program is to  
3 dampen price swings in the market, which was before  
4 the settlement stipulation. Right?

5 A. Yes.

6 Q. And the settlement stipulation contained  
7 the QCA mechanism, did it not, sir?

8 A. The QCA mechanism to dampen the cost but  
9 not price.

10 Q. Well, is he talking about dampen the  
11 price in the market or to dampen the price swings in  
12 the market?

13 A. The price swings.

14 Q. And that's what the QCA did, didn't it?

15 A. The QCA smoothed out the cost over  
16 12 months. It didn't -- it didn't have any pricing  
17 mechanism in it to adjust the price swing of natural  
18 gas cost.

19 Q. Well, the main purpose of the hedging  
20 program that he's referring to is to dampen the price  
21 swings in the market.

22 A. I think that is up and down price of  
23 coal -- of gas, excuse me.

24 Q. So that's the only way that that could be  
25 done is through a hedging program. The QCA couldn't

1 do that. It couldn't dampen those price swings. Is  
2 that your testimony?

3 A. It couldn't dampen the price of the gas  
4 that was purchased, no, it could not.

5 Q. You're -- you're not really answering the  
6 questions I'm asking, Mr. Clemens. Does the QCA have  
7 the effect of capturing a three-month price excursion  
8 up or down, above or below a base and spreading that  
9 variation across the following 12 months?

10 A. No.

11 Q. It does not have that effect?

12 A. It does not have the effect to adjust the  
13 price of the -- and that's -- that's what you're  
14 referring to in the gas. It has the ability to take  
15 the costs that we have accumulated, that have been  
16 charged and spread that over 12 months.

17 Q. Does it have that effect on the retail  
18 price that is passed through?

19 A. I don't understand that -- that question.

20 Q. I mean -- what part of the question don't  
21 you understand?

22 A. I don't understand what you're asking.

23 Q. Well, let's try -- do you understand what  
24 a retail price is?

25 A. I understand what a retail price is, yes.

1 Q. And does the QCA have the effect of  
2 mitigating the retail price swings that occur above or  
3 below a particular base by spreading -- over a 3-month  
4 period by spreading those over the following 12-month  
5 period, Mr. Clemens?

6 A. It has the ability to spread the costs  
7 that were charged to the steam business or the retail  
8 business, any business to be able to spread those over  
9 12 months.

10 Q. Do price swings create cost swings?

11 A. Yes.

12 Q. Move on down with me, please,  
13 Mr. Clemens, on page 4 to lines 17 through 22, the  
14 answer there. Are you there?

15 A. Yes.

16 Q. And there I'm reading starts on line 18,  
17 way to the right: Aquila decided to take the gas  
18 hedging program that had been used in its electric  
19 operations and that had been discussed with Staff and  
20 other parties and implement it with respect to its  
21 steam operations and such other.

22 Did I read that correctly?

23 A. Yes.

24 Q. Is that the same gas hedging program that  
25 you talked about in GLC-2?



1 A. The same methodology, the same strategy.

2 Q. No. Excuse me, sir. This says on  
3 line 19: Decided to take the gas hedge -- hedging  
4 program.

5 Now, GLC-2 was a description of a  
6 program. Right?

7 A. Description of the electric program, yes.

8 Q. So GLC-2 didn't have anything to do with  
9 gas?

10 A. It predated the steam.

11 Q. Listen to my question. Did it have  
12 anything to do with gas?

13 A. Yes.

14 Q. Well, then what was -- was the program  
15 that Aquila decided to implement what you have  
16 discussed on GLC-2?

17 A. We implemented the one-third strategy for  
18 this steam operation.

19 Q. I understand that, Mr. Clemens. I  
20 understand the one-third, one-third thing. I'm asking  
21 you about the whole program that's described on GLC-2.  
22 Is -- is it -- was it that program or was it some  
23 other program?

24 A. It was the same program.

25 Q. Same program. Okay. Now, who decided

1 that for Aquila?

2 A. To implement this program after  
3 discussions from the rate case, including meetings  
4 and -- that we had with Staff and AGP, the ultimate  
5 decision, as I recall, probably came from Jon Empson  
6 to go ahead and go forward with the program.

7 MR. CONRAD: Your Honor, I have an  
8 exhibit.

9 JUDGE DIPPELL: I believe you're on  
10 No. 4.

11 (Exhibit No. 4 was marked for  
12 identification.)

13 BY MR. CONRAD:

14 Q. Mr. Clemens, I'm going to -- I have shown  
15 you what's been marked at this point for  
16 identification as Exhibit No. 4. Have you ever seen  
17 this document before?

18 A. Yes.

19 Q. And toward the lower right it bears the  
20 GMO designation 000523. Correct?

21 A. Yes.

22 MR. CONRAD: Now, your Honor, the story  
23 on these is -- and counsel for GMO can confirm this  
24 was part of a packet, fairly substantial-sized packet  
25 as you can imagine from that number of documents that

1 were ultimately produced to us. And at least  
2 heretofore when we have dealt with these in other  
3 contexts, namely depositions, counsel for GMO has  
4 indicated that -- that they understand that is the  
5 source and it's from them and that has been  
6 sufficient. So before we go further with this, I want  
7 to just see whether -- and I'll just offer 4 at this  
8 point.

9 MR. ZOBRIST: No objection to Exhibit 4.

10 JUDGE DIPPELL: Okay.

11 (Exhibit No. 4 was received into  
12 evidence.)

13 JUDGE DIPPELL: Just for my own  
14 purposes --

15 MR. CONRAD: Sure.

16 JUDGE DIPPELL: -- is this not the same  
17 e-mail exchange that's attached to testimony --

18 MR. CONRAD: I believe it is --

19 JUDGE DIPPELL: -- of Mr. Johnstone?

20 MR. CONRAD: -- attached to  
21 Mr. Johnstone.

22 JUDGE DIPPELL: Okay.

23 MR. CONRAD: Thank you for pointing that  
24 out, but I believe that's correct.

25 JUDGE DIPPELL: Okay. That's fine.

1 we'll go ahead and we've got a couple of duplicates,  
2 but that's okay. That's okay. It will keep it clear.

3 MR. CONRAD: And, Judge -- Judge, I feel  
4 that unfortunately there are going to be several  
5 things like that where we -- people at different  
6 places in their lives and in the assembly of the  
7 exhibits have put different things together all  
8 essentially using -- well, not all, but most of them  
9 using the same document database. So there will be  
10 some duplications.

11 But for your Honor's benefit, that's why  
12 I'm calling out that GMO number because that as far as  
13 I know, is a unique identifier to that -- to that  
14 document.

15 JUDGE DIPPELL: Okay. Thank you very  
16 much.

17 BY MR. CONRAD:

18 Q. Now, Mr. Clemens, the way these e-mails  
19 seem to work, they kind of work from bottom up. Am I  
20 right?

21 A. Correct.

22 Q. So the -- the earliest e-mail will be at  
23 the bottom and then you up from there and the  
24 further -- the higher you go, the more recent the  
25 e-mail becomes. Am I right?

1 A. Correct.

2 Q. Okay. Well, let's look at the very

3 bottom. And that seems to be coming from you?

4 A. No.

5 Q. Not coming from Gary -- I'm sorry, Gary

6 Gottsch. Yes, you're right. Forgive me. But he's

7 saying I have received from Tim Nelson -- and then

8 he's asking an interesting question here I wanted to

9 call your attention to: The discussion in the past is

10 that we may want to incorporate these volumes into our

11 Missouri Electric gas hedge plan.

12 Do you see that reference, that question?

13 A. Yes.

14 Q. Were you privy to any of those

15 discussions?

16 A. No.

17 Q. So that's news to you?

18 A. Yes.

19 Q. Do you see that he's asking four

20 questions?

21 A. Yes.

22 Q. The third of which would also be new to

23 you?

24 A. Yes.

25 Q. What was your relationship with

1 Mr. Gottsch? I'm sure it was good but --

2 A. Uh-huh.

3 Q. -- I mean as far as -- as far as internal  
4 to the company?

5 A. I worked in the rate department and Gary  
6 did the hedging program.

7 Q. Now, look with me at that. He -- what --  
8 well, let me stop -- let's just stop there. What was  
9 his function as far as you knew?

10 A. Implement the hedge program.

11 Q. And by "implement," what does that mean?

12 A. Purchase the options --

13 Q. So he --

14 A. -- the hedges. He'd actually do the --  
15 do the transactions to purchase the options.

16 Q. He would actually do the transaction?

17 A. Correct.

18 Q. Somebody was going to actually buy, get  
19 on the phone or the -- the teletype or computer or  
20 whatever and do it, he would do it?

21 A. That's my understanding, yes.

22 Q. Now, he was sending this on February the  
23 15th, 2006, 9:46 a.m. Right?

24 A. Correct.

25 Q. And then the very next communication,

1 it's kind of like he's saying, well, on further  
2 review -- what is it? Just about 21 minutes later?  
3 Did I do the math right?

4 A. That's correct. Excuse me.

5 Q. And he's making a statement here in that  
6 middle one: We are -- we are assuming that the  
7 procedure would be deemed prudent with respect to the  
8 rate stipulation's risk sharing design.

9 Do you see that?

10 A. Yes.

11 Q. What is the stipulation's risk sharing  
12 design as far as you're aware?

13 A. The QCA.

14 Q. And what part of that is the risk sharing  
15 mechanism?

16 A. The 80/20 sharing mechanism.

17 Q. Now then, ten minutes later, we get at  
18 the very top of this stack the communication from  
19 Dennis Williams. Now, who was Dennis Williams at this  
20 point?

21 A. Vice president of regulatory.

22 Q. So he's -- he's got the ring that someone  
23 would have to kiss?

24 MR. ZOBRIST: Let me just object. I  
25 don't know what that means. It's argumentative or

1 ambiguous.

2 BY MR. CONRAD:

3 Q. Okay. He's the one that's making some  
4 decisions. Am I right?

5 A. He would be one that would have input on  
6 the decisions, yes.

7 Q. Okay. Input?

8 A. Yes.

9 Q. So in the space of, let's see, 21 plus  
10 another 7 -- 28 minutes here, less than half an hour,  
11 would you agree with me that a decision has been made  
12 to implement a gas hedging program separate from the  
13 Missouri Electric gas hedge plan?

14 A. It's a -- it is a same concept as we said  
15 earlier. It's the same one-third strategy. But yes,  
16 in that amount of time the decision was made to go  
17 forward with the hedging program.

18 Q. Now, Mr. Williams is indicating in his  
19 second paragraph that the settlement hadn't yet been  
20 filed with the Commission, but he didn't think that  
21 impacted the prudence of the decision to hedge. So  
22 he's basically saying here do whatever you would  
23 ordinarily do whether or not there is a sharing  
24 mechanism. Right?

25 A. Correct.



1 Q. He's talking about the same sharing  
2 mechanism, that 80/20 again?

3 A. He's just talking about the prudence of  
4 hedging the gas.

5 Q. well, let's look at that last sentence:  
6 we should follow whatever procedure we would normally  
7 take whether or not there is sharing mechanism.

8 Same sharing mechanism or different  
9 sharing mechanism?

10 A. It's the same. It's the 80/20.

11 Q. So without regard to the 20/80 or the  
12 80/20 depending on which way you want to look at it,  
13 he's saying go do it?

14 A. Yes.

15 Q. Now, your testimony a few moments ago was  
16 that Mr. Empson had to be involved in this?

17 A. Yes.

18 Q. Do I see his name here?

19 A. No.

20 Q. Oh, and by the way, on page 4, 21 and 22,  
21 is there anybody on that memo that jumps out at you  
22 that's from AGP?

23 A. No.

24 MR. CONRAD: One moment, please, your  
25 Honor.

1 BY MR. CONRAD:

2 Q. Page 5, that's where you made your  
3 correction, line 9. There's reference to a resource  
4 planning presentation. Do you see that, sir?

5 A. Yes.

6 Q. What's a resource planning presentation?

7 A. Integrated resource planning presentation  
8 that the company made to the Staff.

9 Q. On July 9?

10 A. Correct.

11 Q. And Public Counsel on July 9, same day?

12 A. Correct.

13 Q. Now, just above that line that I was  
14 reading from, you have a reference: The response to  
15 this Staff DR also provided AGP and other parties.

16 Do you see that?

17 A. Yes.

18 Q. Now, we talked before about that highly  
19 confidential designation means, didn't we?

20 A. Yes.

21 Q. Do you have any -- any evidence that that  
22 was provided to AGP? You didn't mention AGP there at  
23 this meeting.

24 A. Mr. Brubaker referenced the same data  
25 request in his direct testimony.

1 Q. Do I see Mr. Brubaker mentioned there?

2 A. No.

3 Q. Do you have a log or anything that was  
4 kept of records who was there at that meeting?

5 A. At that meeting, no.

6 Q. Now, a little bit below that, line 16  
7 through 18, the line begins "no party" and then goes  
8 on through the first couple words of 18. Is it -- is  
9 it your -- your argument -- I won't use the word  
10 contention, because that apparently confused the issue  
11 when we had a deposition, Mr. Clemens. But is it your  
12 argument that because nobody raised any objection,  
13 that you went ahead?

14 A. That was not the only reason we went  
15 forward with the hedge program was because there was  
16 no objection. The -- there were, as I stated earlier,  
17 numerous discussions we had during the prehearing  
18 conference, we had a meeting with Mr. Brubaker down in  
19 Room 220 explain-- got a phone call with Mr. Gottsch,  
20 ex-- who explained the program. We got a --  
21 information from Mr. Johnstone wanting to include  
22 section 8.1. At the time of the settlement  
23 discussions it was 4.1 which referenced -- referenced  
24 in my schedule. Numerous conversations that we had we  
25 implied that going forward with the hedge program

1 deemed appropriate.

2 Q. And because no other party offered any  
3 other alternative, you presumed or you said that  
4 Aquila believed the program was acceptable; is that  
5 right?

6 A. Yes.

7 Q. Now, move with me, please, to page 6 of  
8 your testimony. And toward the bottom, question and  
9 answer that begin on line 15, let me know when you're  
10 there.

11 A. Yes.

12 Q. Makes reference to Mr. Johnstone's  
13 testimony that the QCA mechanism mitigated the effect  
14 on fuel cost volatility and price spikes.

15 Do you see that?

16 A. Yes.

17 Q. Then in your answer that begins on  
18 line 19, you're -- you're suggesting that the aspect  
19 of the QCA mechanism to which it appears Mr. Johnstone  
20 was referring is the 80/20 sharing formula. Right?

21 A. Yes.

22 Q. Now, we talked about that before, that  
23 80/20 thing as a risk-sharing mechanism. Right?

24 A. Yes.

25 Q. Is -- is it the risk-sharing mechanism of

1 the QCA that you believe mitigates the effect of fuel  
2 cost volatility and price spikes?

3 A. I think it -- it effects the -- the cost  
4 as I stated earlier, but not price spikes that we  
5 can't control unless you have a hedge program in place  
6 to mitigate the price volatility.

7 Q. Does the QCA mechanism mitigate the  
8 effect on retail rates of fuel cost volatility and  
9 price spikes?

10 A. It mitigates the fuel cost and price  
11 spikes. It doesn't mitigate the price that you pay  
12 for gas.

13 Q. Now, let's go to line -- excuse me,  
14 page 8 and toward the bottom, lines 20 through 22.  
15 Lines -- the sentence I'm interested in, Mr. Clemens,  
16 starts on line 20 toward the right-hand side: In  
17 response to these.

18 A. Yes.

19 Q. And you're there referring to an e-mail  
20 from Mr. Johnstone about the gas hedging program as it  
21 related to the steam operation being suspended?

22 A. Yes.

23 Q. We're talking about the same program?

24 A. Yes.

25 Q. Same concept?

1 A. Yes.

2 Q. Same philosophy?

3 A. Correct.

4 Q. Same one-third, one-third?

5 A. That's correct.

6 Q. All right. Okay.

7 MR. CONRAD: Your Honor, I have an  
8 exhibit to mark. I think this will be 5.

9 JUDGE DIPPELL: Number 5, yes.

10 (Exhibit No. 5 was marked for  
11 identification.)

12 MR. CONRAD: Your Honor, this also bears  
13 a GMO document designation 579 in this case. So as  
14 before, unless counsel has a problem with this one, I  
15 would move that 5 be admitted.

16 MR. ZOBRIST: No objection.

17 JUDGE DIPPELL: Thank you. Since there's  
18 no objection, I will receive that.

19 (Exhibit No. 5 was received into  
20 evidence.)

21 BY MR. CONRAD:

22 Q. Now, have you seen this document before,  
23 Mr. Clemens?

24 A. My e-mail address -- my home e-mail  
25 address is on this, yes.

1 Q. Your home e-mail address doesn't appear  
2 here, does it?

3 MR. ZOBRIST: I'm sorry. I didn't hear  
4 the question.

5 THE WITNESS: Yes.

6 BY MR. CONRAD:

7 Q. Oh, is that under the CC?

8 A. Yes.

9 MR. CONRAD: Now, your Honor, I guess I  
10 had not noticed that, but in some instances people  
11 have not wanted those to be public and we're certainly  
12 willing to respect that if that's Mr. Clemens' desire.

13 THE WITNESS: No. That's fine to leave  
14 it on.

15 MR. CONRAD: Okay.

16 JUDGE DIPPELL: If you're all right with  
17 that, it will be on the --

18 THE WITNESS: Yes.

19 JUDGE DIPPELL: -- internet.

20 THE WITNESS: That's fine.

21 JUDGE DIPPELL: Might be a little  
22 difficult to find.

23 MR. CONRAD: True.

24 BY MR. CONRAD:

25 Q. As before, we start at the bottom of

1 these. And who is Rooney Davis?

2 A. Davis Rooney. He was in charge of the  
3 Energy Resource Group at the -- at this time. Well,  
4 used to be.

5 Q. Not now?

6 A. Not now.

7 Q. Is it a fair summary of that that he  
8 can't find that e-mail he's referring to?

9 A. Right.

10 Q. And then we get response back from  
11 Susan -- I'm kind of catching on to how your Aquila  
12 e-mail work. You take the last name and make it  
13 first?

14 A. Yes.

15 Q. So it would be Susan Braun?

16 A. Correct.

17 Q. And she's saying, I can't find it either?

18 A. Correct.

19 Q. And then finally at the top, Mr. Gottsch  
20 indicates he doesn't -- probably doesn't have a copy  
21 of the e-mail but he's saying, I've got something  
22 else. Right?

23 A. Yes.

24 Q. And what he has is dated 11/05/07?

25 A. Yes.



1 MR. CONRAD: Your Honor, this would be 6.  
2 (Exhibit No. 6 was marked for  
3 identification.)

4 MR. CONRAD: And once again, this bears a  
5 GMO designation 580 and is marked as Exhibit 6. I  
6 would simply move its admission.

7 MR. ZOBRIST: No objection.

8 JUDGE DIPPELL: Then I will receive it  
9 into evidence.

10 (Exhibit No. 6 was received into  
11 evidence.)

12 BY MR. CONRAD:

13 Q. Have you seen this document before,  
14 Mr. Clemens?

15 A. No. I don't recall seeing it. It was on  
16 the e-mail so I may have opened it, but I just don't  
17 recall.

18 Q. And if you know -- if you don't know,  
19 don't guess -- would this appear to be minutes of a  
20 Risk Management Working Committee, November 5, 2007?

21 A. That's what it says, yes.

22 Q. And that would correspond to what we had  
23 on Exhibit 5 from Mr. Gottsch?

24 A. Correct.

25 Q. Take a moment and if -- if you would,

1 read it. I recognize you may not have seen it before.

2 You indicated though you might have been on the

3 distribution list?

4 A. Yes.

5 Q. Kind of seem to indicate that on 5,

6 wouldn't it?

7 A. Yes.

8 Q. By the way, were you -- and forgive me,

9 Mr. Clemens, I don't -- I don't remember when you left

10 Aquila. would -- would that have been in the

11 August 15, 2008 period?

12 A. I was already gone.

13 Q. You were gone by then?

14 A. Yes.

15 Q. But you were -- would have been there on

16 November 5, '07?

17 A. Correct.

18 Q. Counting the list of attendees as a

19 paragraph one, two, three -- paragraph four there's a

20 phrase -- probably Gary, I presume that means

21 Mr. Gottsch. Fair?

22 A. Correct.

23 Q. And Denny Williams, who we talked about

24 before, noted no steam positions would be executed at

25 this time using the Kase models -- that's K-a-s-e,

1 because the MO Staff and the industrial steam customer  
2 reps requested no further hedging.

3 MR. CONRAD: Your Honor, I have another  
4 exhibit.

5 (Exhibit No. 7 was marked for  
6 identification.)

7 MR. CONRAD: This also bears the GMO  
8 designations 584 and 585. Seeing those, I would move  
9 admission of 7.

10 JUDGE DIPPELL: Any objection?

11 MR. ZOBRIST: No objection.

12 JUDGE DIPPELL: Then I will receive that  
13 Exhibit 7.

14 (Exhibit No. 7 was received into  
15 evidence.)

16 BY MR. CONRAD:

17 Q. Seen this one, Mr. Clemens?

18 A. Yes.

19 Q. And the earliest one again is at the  
20 bottom. Actually it carries over to the top of the  
21 following page. And that is the e-mail that no one  
22 could seem to find. Right?

23 A. Yes.

24 Q. Look right above that. See where it came  
25 from?

1 A. Mr. Featherstone.

2 Q. Who is Mr. Featherstone?

3 A. He works for the Staff. Staff auditor.

4 Q. Kind of had to work through the Staff

5 auditor to get a copy of this e-mail. Right?

6 MR. ZOBRIST: Objection, lack of

7 foundation.

8 THE WITNESS: I think --

9 MR. ZOBRIST: Objection, lack of

10 foundation. I just don't know if Mr. Clemens knows

11 what Staff did, but --

12 MR. CONRAD: Well, he identified him as a

13 Staff auditor, so --

14 MR. ZOBRIST: I'm sorry. Maybe I

15 misunderstood the question. I thought -- if you could

16 ask the question again.

17 MR. CONRAD: He got it from -- did he get

18 it from the Staff auditor?

19 MR. ZOBRIST: Is that Mr. Clemens'

20 personally? Is that the question?

21 MR. ZOBRIST: I see Mr. Featherstone and

22 Mr. Rooney. I've got no objection to this. I just

23 think that -- maybe I'm not hearing the questions

24 right.

25 MR. CONRAD: That's why -- that's why I

1 asked the document be admitted beforehand.

2 BY MR. CONRAD:

3 Q. The flow is here. Right, Mr. Clemens?

4 A. That's the flow on this data request,  
5 which matches my data request -- or Schedule No. 6  
6 close when Susan Braun found it. That's the same  
7 e-mail as my Schedule 6 except for with some  
8 additional people involved, being Cary and Davis.

9 MR. CONRAD: Now, since we've introduced  
10 Mr. Featherstone, I have another exhibit.

11 JUDGE DIPPELL: Yes, Exhibit 8.

12 (Exhibit No. 8 was marked for  
13 identification.)

14 BY MR. CONRAD:

15 Q. Mr. Clemens, let me first ask --

16 MR. CONRAD: This also has a GMO  
17 designation with 0407 so as before, I will move  
18 admission of Exhibit 8.

19 JUDGE DIPPELL: Will there be any  
20 objection to Exhibit 8?

21 MR. ZOBRIST: No objection.

22 JUDGE DIPPELL: Then I will receive it.

23 (Exhibit No. 8 was received into  
24 evidence.)

25 BY MR. CONRAD:

1 Q. Mr. Clemens, does this look familiar to  
2 you at all?

3 A. No.

4 Q. Never seen this one?

5 A. Never seen this one.

6 MR. CONRAD: Your Honor, I believe we  
7 have one more.

8 JUDGE DIPPELL: That would be Exhibit 9.

9 MR. ZOBRIST: Judge, I might just say for  
10 the record that No. Exhibit 8 that's been entered into  
11 evidence, the HC designation down there is no longer  
12 applicable.

13 JUDGE DIPPELL: Thank you.

14 I'm sorry. Did you have another one,  
15 Mr. Conrad?

16 MR. CONRAD: Yeah.

17 (Exhibit No. 9 was marked for  
18 identification.)

19 MR. CONRAD: Exhibit marked for  
20 identification as 8 -- or excuse me, 9, pardon me,  
21 bears a GMO designation 402. And as we've been doing  
22 this, I would simply ask admission -- move admission  
23 of Exhibit 9.

24 JUDGE DIPPELL: would there be any  
25 objection to Exhibit 9?

1 MR. ZOBRIST: No objection -- objection  
2 to Exhibit 9.

3 JUDGE DIPPELL: Then it is admitted.

4 (Exhibit No. 9 was received into  
5 evidence.)

6 BY MR. CONRAD:

7 Q. Mr. Clemens, does this -- I show you now  
8 what's been marked and admitted as Exhibit 9. Does  
9 that ring a bell with you?

10 A. No.

11 Q. Never seen that?

12 A. I -- not that I recall.

13 Q. When did you leave Aquila?

14 A. In July of 2008.

15 Q. So you would have been there for at least  
16 three of these years. Right?

17 A. Yes.

18 Q. Now, I may be inexperienced in this, but  
19 it looks to me like the units here are in MMBtus. Is  
20 that meaningful to you?

21 A. Yes.

22 Q. And then below that is a list of what may  
23 be steam customers?

24 A. Yes.

25 Q. And then there's some budget and actuals

1 and variance. Do you ever deal with those in rate  
2 cases?

3 A. At some extent we used -- we used actuals  
4 for setting rate case and -- and budgets as well when  
5 we annualize customer data.

6 Q. Now, let's just take one line here,  
7 just -- and I'm not going to bother you about 2008  
8 since you said you were only there for basically half  
9 the year. Let's -- let's just look -- just so we  
10 understand what the spreadsheet is telling us, 2005  
11 look at the line for Triumph. As far as you know,  
12 Triumph is a steam customer?

13 A. Yes.

14 Q. And the amount that was budgeted for  
15 Triumph was -- was 215,782 MMBTus. Right?

16 A. That's what this says yes.

17 Q. But the actual was only 5,706?

18 A. That's what this says, yes.

19 Q. Do you recall having seen some kind of  
20 mention of an explosion at Triumph?

21 A. Yes.

22 Q. So that might have been part of it. But  
23 anyway, the variance 210,076. And because it's in  
24 parens, it means the budget is higher than the  
25 actuals. Right?



1 A. Correct.

2 Q. Okay. And that kind of goes across,  
3 larger variance number in 2006 for Triumph. But look  
4 down there at that total steam, particularly for 2006  
5 and 2007. That means that the budget in 2006 was 752  
6 and small change MMBtus above what the actual was --

7 A. Yes.

8 Q. -- right?

9 A. Correct.

10 Q. Just substitute the numbers. Same thing  
11 in 2007?

12 A. Yes.

13 Q. Now, recalling our discussion about GLC-2  
14 and how often those people were supposed to meet, what  
15 is the earliest date that you can see here from the  
16 time the steam hedging program went into effect, which  
17 I think was sometime around February 15 or February 17  
18 based on that first e-mail --

19 A. Yes.

20 Q. -- what's the earliest month here that  
21 committee should have met and taken some action?

22 A. Based on that document, it would have  
23 been May.

24 Q. of '06?

25 A. Yes.

1 Q. So if they had trimmed back or at least  
2 taken steps -- and I -- I even think on that one  
3 reading that you and I went through on GLC-2, there  
4 was one of those committees that was supposed to meet  
5 wasn't it every month and -- and review how things  
6 were going?

7 A. I recall a monthly meeting of some sort,  
8 yes.

9 MR. CONRAD: Your Honor, I think that's  
10 all I have at this point in time. Thank you.

11 JUDGE DIPPELL: Thank you. I'll tell you  
12 what, let's take just a short break before we begin  
13 with -- with any Commission questions and -- and  
14 redirect. So let's go off the record and come back at  
15 3:15.

16 (A recess was taken.)

17 JUDGE DIPPELL: Okay. Were there any  
18 Commission questions? Commissioner Jarrett's got one.

19 QUESTIONS BY COMMISSIONER JARRETT:

20 Q. Good afternoon, Mr. Clemens. How are you  
21 doing?

22 A. Great.

23 Q. I just want to make sure I got this right  
24 in my mind now. I guess prior to the stipulation that  
25 we've been discussing, Aquila purchased natural gas

1 for I guess its generation of like peaking plants,  
2 whatever, natural gas plants through a -- the  
3 hedging -- through a hedging program; is that correct?

4 A. That's correct. For the Missouri op--  
5 Missouri MPS operations, yes.

6 Q. Correct. But they didn't purchase --  
7 they didn't hedge gas for the steam operation; is that  
8 right?

9 A. That's correct. Prior to that, yes.

10 Q. So how did they purchase it? Just off  
11 the -- how did they purchase it?

12 A. Just at market prices, at the current  
13 price.

14 Q. Okay. And then I guess after the  
15 stipulation was signed, it was decided that they --  
16 you would use basically the same types of hedging  
17 program for the steam that you used for the -- for the  
18 electric; is that right?

19 A. That's correct.

20 Q. Now, was it all rolled into one big  
21 hedging system or were they kept separate?

22 A. To my understanding, it was kept  
23 separate. But Gary Gottsch is the one who operated  
24 that program and he's up next and he can give you the  
25 specifics of how it actually operates. But my

1 understanding is it was separate.

2 Q. Okay. And I take it that something went  
3 wrong at least on the steam side as far as the  
4 pricing?

5 A. The pricing -- the model itself in our --  
6 and it didn't go wrong. It was the -- could have  
7 been -- I think the -- at issue is the customer  
8 numbers we got for the volumes. And then the price of  
9 gas did drop dramatically with the market, so those  
10 two things together.

11 Q. Now, and maybe this will be a question  
12 for the next witness, but normally these hedging  
13 programs, are they -- are they like run through Staff  
14 or discussed with Staff prior to their implementation?

15 A. The hedge program was discussed with the  
16 Staff. We had gone pretty deep in it. And -- on the  
17 electric case side. So they were well aware of  
18 that -- that strategy in that program, yes.

19 Q. And did they -- do they give you any  
20 feedback or they -- I mean I know they don't  
21 formally -- it's not formally approved or anything,  
22 but do you get any type of feedback from them as far  
23 as, yeah, we've looked at this, we don't have any  
24 suggestions on how you could do it any differently or  
25 anything like that? Did you get any -- any indication

1 from Staff?

2 A. We didn't get any feedback from Staff on  
3 the steam case, but on the hedge programs and the --  
4 on the electric side, yes, we'd get feedback.

5 COMMISSIONER JARRETT: Okay. I have no  
6 further questions. Thanks.

7 JUDGE DIPPELL: Commissioner Kenney?

8 COMMISSIONER KENNEY: I thought I didn't,  
9 but now I do.

10 COMMISSIONER JARRETT: Sorry.

11 COMMISSIONER KENNEY: Only because he  
12 asked questions.

13 QUESTIONS BY COMMISSIONER KENNEY:

14 Q. What was the feedback you got from Staff?  
15 And I know you said it was just applicable to the  
16 electric side, not the steam side.

17 A. The electric side of -- of the programs  
18 beginning in -- probably in 2006 and '7, they had some  
19 concerns with the program just I think in a -- Gary  
20 Gottsch could talk about more the details of that  
21 program. But the philosophy of being one-third,  
22 one-third wasn't an issue. It was just some -- more  
23 the detail inside it.

24 Q. You said the one-third, one-third,  
25 one-third was not the problem --

1 A. No.

2 Q. -- or was?

3 A. My understanding it was just how some of  
4 the steps were implemented. But I didn't do the hedge  
5 program so it would be better to ask Mr. Gottsch for  
6 that.

7 Q. And just so I'm clear, the particular  
8 date that we're talking about is prior to February  
9 2006. Right? There was -- that was the date prior to  
10 which there was no hedging for the steam --

11 A. That's correct.

12 Q. -- production? Okay.

13 COMMISSIONER KENNEY: All right. That's  
14 all I have. Thanks.

15 JUDGE DIPPELL: Thank you.

16 QUESTIONS BY JUDGE DIPPELL:

17 Q. I just have one or two here. Attached to  
18 your testimony is the schedule GLC-2 that you and  
19 Mr. Conrad spent quite a bit of time going over. And  
20 on page 2 of that schedule there's a mention of on  
21 peak purchased power costs. Can -- can you explain  
22 that term to me?

23 A. There would be -- MPS at the time didn't  
24 have enough generation to supply all its needs so it  
25 would -- it would buy purchased power -- on peak

1 purchased power during the -- those hot days when you  
2 don't have enough resources for your demands, so you  
3 would go out and purchase those --

4 Q. Okay.

5 A. -- on peak purchase power.

6 JUDGE DIPPELL: Okay. I think that's all  
7 the questions I had.

8 Is there further cross-examination based  
9 on those questions from Ag Processing?

10 MR. CONRAD: I think I maybe just have  
11 one, your Honor, stimulated by actually your question,  
12 if you don't mind.

13 FURTHER CROSS-EXAMINATION BY MR. CONRAD:

14 Q. I understood, Mr. Clemens, in response to  
15 Judge Dippell's question in inquiring about purchase  
16 power that MPS didn't have enough capacity and so it  
17 had to power -- purchase power?

18 A. Yes.

19 Q. Does it follow from that what we were  
20 looking at in GLC-2 is really an MPS package and not a  
21 light and power division package?

22 A. Yes.

23 MR. CONRAD: Thank you. That's all.

24 JUDGE DIPPELL: Thank you. Is there  
25 anything from Staff?

1 MR. RITCHIE: No, your Honor. Thank you.

2 JUDGE DIPPELL: Is there any redirect?

3 MR. ZOBRIST: Just a few questions,  
4 Judge.

5 REDIRECT EXAMINATION BY MR. ZOBRIST:

6 Q. Mr. Clemens, on the question that the  
7 judge asked you and Mr. Conrad picked up on, was the  
8 issue of purchased power at all relevant to the steam  
9 operations in St. Joseph?

10 A. No.

11 Q. Now, Mr. Conrad was asking you about the  
12 search for the e-mail that you received from  
13 Mr. Johnstone. Do you recall those questions?

14 A. Yes.

15 Q. Now, is that e-mail that you received  
16 from Mr. Johnstone attached to your testimony?

17 A. Yes, it is.

18 Q. And what schedule is that?

19 A. Schedule 6.

20 Q. Now, the acquisition of Aquila occurred  
21 when?

22 A. July 200-- first of July of 2008.

23 Q. And -- and that was the time that  
24 Aquila's assets were then purchased by Great Plains  
25 Energy and the company was renamed KCP&L Greater



1 Missouri Operations Company. Correct?

2 A. Correct.

3 Q. So the -- is it fair to say that the  
4 difficulty in looking for the e-mail as represented in  
5 AGP Exhibit 5 occurred the month after -- August 2008,  
6 after Aquila was acquired by Great Plains Energy in  
7 July of 2008?

8 A. Yes.

9 Q. Now, Mr. Conrad asked you some questions  
10 about the testimony of Mr. Brubaker in the 2005 steam  
11 rate case. Do you generally remember those questions?

12 A. Yes.

13 Q. Now, I believe he asked you about whether  
14 Mr. Brubaker had received the responses to the data  
15 requests that had been sent to Aquila. Do you recall  
16 that line of questioning?

17 A. Yes.

18 Q. Okay. Did Mr. Brubaker reflect in his  
19 testimony in the steam rate case that he had reviewed  
20 the responses to those data requests?

21 A. Yes.

22 Q. Now, the e-mails -- three e-mails that  
23 are reflected in Exhibit 4, prior to these e-mails of  
24 February 15, 2006, had representatives from Aquila  
25 discussed implementing a hedging program as part of

1 the steam operations in St. Joseph?

2 A. Yes.

3 Q. And I believe that you mentioned that  
4 Mr. Gottsch had a telephone call with Mr. Brubaker.  
5 Do you recall that?

6 A. Yes.

7 Q. Okay. Would you tell the Commissioners  
8 and the Judge how that came about and what transpired?

9 A. During the prehearing process, AGP had  
10 questions concerning our hedge program. They asked if  
11 they could get an explanation of that program. We  
12 went downstairs to the meeting room, 220, which we  
13 call the dungeon room at that time to have a  
14 conference call where I scheduled Gary Gottsch to get  
15 on the call to explain the hedging strategy, the  
16 one-third, one-third, one-third program to  
17 Mr. Brubaker during the meeting.

18 Q. And -- and Mr. Brubaker was representing  
19 who at the time?

20 A. A-- Ag Processing, AGP.

21 Q. And was it in the 2005 steam rate case?

22 A. Yes.

23 Q. Were there other discussions prior to  
24 February 15, 2006 before the decision was made to  
25 initiate a hedging program at the steam operations in

1 St. Joseph?

2 A. Yes. We had several discussions. We had  
3 discussions with Mr. Johnstone and Mr. Conrad, several  
4 down at our attorney's office at the time, which was  
5 Mr. Swaengen's. At that time he brought forward  
6 Section 4.1 of I think my sche-- one of my schedules.  
7 I believe that's Schedule 3. We were talking about  
8 adding to include financial instruments associated  
9 with gas delivery, have those part of the stipulation  
10 in -- in discussing a hedge program to be included in  
11 the future.

12 Q. Was that a proposal by Mr. Johnstone on  
13 behalf of AGP?

14 A. Yes.

15 Q. After the last e-mail in Exhibit 4, were  
16 there other approvals that were obtained that day as  
17 far as you know regarding the steam hedging program?

18 A. There would have been discussions with  
19 upper management to make the final decision with Jon  
20 Empson. And others would have been involved in making  
21 that final decision.

22 Q. Now, finally, Mr. Conrad asked you --  
23 asked you a series of questions about Account 501 and  
24 the cost of coal. And you might take a look at your  
25 Schedule 1. The last sentence of Section 8.1 deals

1 with what subject matter, Mr. Clemens?

2 A. With the direct testimony of Tim Nelson  
3 as it was pre-filed in this case. And a copy was  
4 attached to Exhibit C.

5 Q. At the beginning of that sentence what  
6 does it deal with?

7 A. The cost -- the cost to coal expense in  
8 501 with -- with the cost allocation method.

9 Q. Does this deal with natural gas?

10 A. This does not.

11 Q. Okay. And does this sentence deal with  
12 financial instruments or a hedging program?

13 A. No.

14 MR. ZOBRIST: That's all I have, Judge.

15 JUDGE DIPPELL: Thank you. All right.

16 Then, Mr. Clemens, I believe that that is all for you.

17 You may be excused.

18 THE WITNESS: Thank you.

19 JUDGE DIPPELL: I think we can go ahead

20 with the next witness.

21 MR. ZOBRIST: Sure. Yeah. We would call

22 Gary Gottsch to the stand.

23 (Witness sworn.)

24 JUDGE DIPPELL: Thank you. Go ahead,

25 Mr. Zobrist.

1 MR. ZOBRIST: Thank you, Judge.

2 GARY GOTTSCH,

3 being first duly sworn, testified as follows:

4 DIRECT EXAMINATION BY MR. ZOBRIST:

5 Q. Please state your name.

6 A. Gary Gottsch.

7 Q. And by whom are you employed,

8 Mr. Gottsch?

9 A. Kansas City Power & Light.

10 Q. And did you prepare direct testimony in  
11 this case which I will hand to the court reporter and  
12 have marked as Exhibit 102?

13 A. I did.

14 (Exhibit No. 102 was marked for  
15 identification.)

16 BY MR. ZOBRIST:

17 Q. And did you set forth a series of  
18 questions and answers as well as schedules to that  
19 testimony?

20 A. I did.

21 Q. And do you have any changes or  
22 corrections to make to your testimony?

23 A. I do not.

24 Q. And were the answers that you gave in  
25 Exhibit 102 under oath?

1 A. Yes, they were.

2 Q. And if I asked you those questions today,  
3 would you be giving those same answers to the  
4 Commission today?

5 A. I would.

6 MR. ZOBRIST: No further questions,  
7 Judge. We'd move the admission of Exhibit 102 and  
8 tender the witness for cross-examination.

9 JUDGE DIPPELL: Would there be any  
10 objection to Exhibit 102?

11 MR. CONRAD: Your Honor, I have I think a  
12 couple to 102. And let me steer you in those  
13 directions. They -- they have to do with hearsay.  
14 One appears on page 6. There's a portion of an answer  
15 begins at line 12. And that's -- we can take these  
16 one at a time. I think I have maybe three, maybe  
17 four.

18 MR. ZOBRIST: Could you point that out --

19 MR. CONRAD: Do you want to take them all  
20 at once? What's your pleasure?

21 JUDGE DIPPELL: I think let's go one at a  
22 time. Can you give us the cite again for the first  
23 one?

24 MR. CONRAD: Page 6. I believe I'm --  
25 I'm on the right testimony here. Line 12 carries on

1 through part of line 14. Says something about: I  
2 understand that Aquila implemented a hedge -- gas  
3 hedging program. I think even the wording is  
4 suggesting that the witness doesn't know.

5 MR. ZORIST: I'm not finding the  
6 reference.

7 MR. CONRAD: Well, I'm hoping that I have  
8 the right --

9 JUDGE DIPPELL: Page 6, line 12: I  
10 understand that.

11 MR. CONRAD: Yeah. Starts with: I  
12 understand that.

13 MR. ZORIST: Never mind. I got the  
14 wrong witness. Pardon me.

15 JUDGE DIPPELL: Maybe I should have taken  
16 a break.

17 MR. CONRAD: I'm sorry.

18 MR. ZORIST: No, I'm -- I don't think  
19 that's hearsay, Judge. He's not quoting anybody.  
20 He's simply saying it's his understanding. He's a  
21 member of an organization, I think he's allowed to  
22 give his understanding and then be subject to  
23 cross-examination on what the basis of his  
24 understanding is.

25 JUDGE DIPPELL: Yeah. I'm going to

1 overrule that objection.

2 what's your next one, Mr. Conrad?

3 MR. CONRAD: Top of page 10. I believe  
4 it's -- I've got something obscuring my -- my line  
5 numbers, but I think it would be line 1 through looks  
6 like about line -- well, prob-- excuse me, line 2,  
7 answer begins: Per my understanding.

8 MR. ZOBRIST: I have the same response,  
9 Judge. I don't believe this is an out-of-court  
10 statement offered in court -- in the commission for  
11 the truth of the matter asserted. He's simply stating  
12 what his understanding is based upon his work at  
13 Aquila at the time. And to the extent he is subject  
14 to cross-examination, he -- his understanding can be  
15 probed.

16 JUDGE DIPPELL: And, Mr. Conrad, just so  
17 I'm clear, was your objection to just that first  
18 sentence?

19 MR. CONRAD: Yes, ma'am.

20 JUDGE DIPPELL: Okay. Your objection is  
21 overruled.

22 what's the next one?

23 MR. CONRAD: Same page, line 10 carrying  
24 through part of line 11.

25 MR. ZOBRIST: Same response. The answer



1 states: As I understood it, the Resource Planning  
2 Group based its forecast on certain things.

3           Again, it's his understanding based upon  
4 what he was doing at Aquila at the time. And to the  
5 extent he either has an improper or a different or  
6 wrong understanding or it's not as strong as it should  
7 be, I think it's subject to cross-examination and it  
8 can be given the weight it deserves, but I don't  
9 believe it's an out-of-court statement offered --

10           MR. CONRAD: This one --

11           MR. ZOBRIST: -- in court for the truth  
12 of the matter asserted.

13           MR. CONRAD: I'm sorry. I didn't mean to  
14 interrupt. Judge, this one's slightly different.  
15 Although it uses the phrase "as I understand it," it's  
16 now become a group that based its forecast on supposed  
17 needs that steam customers anticipated they would  
18 have.

19           Now, if the statement isn't offered to  
20 prove the truth of what it says, then it's irrelevant.  
21 But it's -- it's now double hearsay because supposedly  
22 this Resource Planning Group basing its forecast on  
23 what some -- in some manner steam customers  
24 anticipated and then even one step back from that, the  
25 gentleman is saying as he understands it. And

1 that's -- it's not just single-level hearsay, it's  
2 double hearsay. And, again, I'd say if it's not  
3 offered to prove its truth, than why is it here?

4 MR. ZOBRIST: Judge, this is not a  
5 statement -- this is -- this is not a statement in  
6 terms of a hearsay statement. What this is is --  
7 Mr. Gottsch is a member of an organization commenting  
8 on the data that had been received by Aquila.

9 I mean this is like saying, you know, I  
10 can't state my name because when I was three years  
11 old, my mother told me what my name is and that's  
12 hearsay. I mean, this is an organizational statement  
13 of understanding and it's not hearsay, it's not an  
14 out-of-court statement offered in court for the truth  
15 of the matter asserted.

16 JUDGE DIPPELL: I'm going to overrule the  
17 objection.

18 What's the next one, Mr. Conrad?

19 MR. CONRAD: On the next page, it would  
20 be page 13 [sic], portion of line 4 that begins: Such  
21 assurances came directly from the steam customers  
22 themselves.

23 Now, there's not even an understanding  
24 stated there.

25 JUDGE DIPPELL: Okay. Now I missed that

1 one. Did you say page 13?

2 MR. CONRAD: Page -- I believe it is --  
3 I'm sorry. Strike that. It's page -- page 11, pardon  
4 me, line 4. My mistake.

5 MR. ZOBRIST: Well, again, Mr. Gottsch is  
6 stating his understanding of the process by which  
7 information flowed from customers and others to him.  
8 And he's actually referencing the direct testimony of  
9 Mr. Fangman. I mean it's not hearsay. It is --

10 MR. CONRAD: Sure it is.

11 MR. ZOBRIST: No, it's not. Pardon me.  
12 It's a commentary on the information flow. If that  
13 were hearsay, I don't know how anything would be  
14 admitted into court where you have a corporate entity  
15 that is talking about the flow of information. You're  
16 receiving information from other sources.

17 He's saying this information was  
18 assurances from steam customers as described by  
19 Mr. Fangman. And if that's Mr. Gottsch's  
20 understanding of the process by which customer  
21 information, other inputs were received by him, I  
22 believe he's allowed to testify to that.

23 MR. CONRAD: With respect, I again  
24 suggest this statement is a different statement.  
25 Mr. Fangman, as far as we know, is scheduled to take

1 the stand. And if he had direct contact with people,  
2 he can certainly testify to that. But we, in effect,  
3 here have double hearsay. One is, well, Joe Fangman  
4 told me this. Where did he tell you? Out of the  
5 hearing room. Why are you saying it? Well, it's to  
6 prove the truth of what it says, number one.

7 And what's the truth of what it says?  
8 Well, the steam customers said this. Unidentified  
9 steam customers, unidentified assurances. We're not  
10 talking here about an understanding. It's -- this  
11 is -- this is a different wording, Judge.

12 MR. ZOBRIST: Well, if this was  
13 Mr. Gottsch's understanding of the information that he  
14 received in order to do his job as the person that  
15 operated the hedging program, I believe that he's  
16 entitled to state that he understood that assurances  
17 had come through the Aquila information gathering  
18 process from various sources, including the steam  
19 customers.

20 MR. CONRAD: Judge, again, with respect,  
21 if you look at the question above it, the question  
22 is -- is not describe your process, describe the steps  
23 you went through. The question is: Do you agree.  
24 And what's the response? No, I don't. And then it  
25 says: Such assurances came.

1 That is hearsay.

2 JUDGE DIPPELL: Okay. I'm -- I'm sorry?

3 COMMISSIONER KENNEY: Never mind. Sorry.

4 JUDGE DIPPELL: Commissioner Kenney, did  
5 you have a question?

6 COMMISSIONER KENNEY: what's the -- well,  
7 I -- I can -- no. Never mind. Go ahead. I just --

8 JUDGE DIPPELL: Okay. I'm going to  
9 sustain this one. I believe that that -- that  
10 sentence is, for one thing, merely repeating  
11 apparently what's in Mr. Fangman's testimony so  
12 hopefully it can come in in that regard, but it does  
13 appear to be hearsay so I'll sustain that one. So  
14 that sentence I guess through the reference? Is that  
15 your objection?

16 MR. CONRAD: Yes, ma'am. well, it  
17 would -- one, two, three, four, five, six, seven,  
18 eight, nine words through "steam customers  
19 themselves," comma.

20 JUDGE DIPPELL: Okay.

21 MR. CONRAD: I don't -- you know, he --

22 JUDGE DIPPELL: Okay.

23 MR. CONRAD: He can make a reference to  
24 what Mr. Fangman describes, but that's not getting  
25 into the content of what Mr. Fangman said.

1 JUDGE DIPPELL: Okay. I will not allow  
2 those nine -- those first nine words. Do you have  
3 other objections?

4 MR. CONRAD: I do have one more, Judge.  
5 And this is slightly different basis and this is on  
6 page 13, that's why I jumped. I apologize. This is  
7 at lines 18 through 20. And I can probably more  
8 tightly focus it.

9 This is a legal conclusion: Because  
10 Aquila had a duty to provide reliable service to the  
11 steam customers, it was bound by steam load  
12 information its customers provided to it.

13 That is, if anything, a legal conclusion.  
14 And I don't see that it has -- this witness has not  
15 been offered as a lawyer or legal witness. Two  
16 aspects of it; duty to provide and bound by steam load  
17 information.

18 JUDGE DIPPELL: So let me clarify real  
19 quick. Your objection is to that entire sentence?

20 MR. CONRAD: Begins "because Aquila" and  
21 ends with "provided to it."

22 MR. ZOBRIST: On the first part of the  
23 sentence, I think that anyone who's worked at a  
24 regulated public utility can testify without having  
25 gone to law school that a utility has a duty to

1 provide reliable service to its customers.

2           On the second part, if Mr. Conrad is  
3 saying that the word "bound" means like binding in a  
4 contract, I'm willing to stipulate that this was not  
5 meant to suggest a legal conclusion, but -- because  
6 he's not -- he's not a lawyer, he's not offering a  
7 legal opinion.

8           I think what the sense of the statement  
9 is, is that, you know, Aquila was bound or obligated  
10 or -- you know, obligated to respond in -- to provide  
11 reliable service in accord with the steam load  
12 information that customers provided.

13           JUDGE DIPPELL: Okay. I'm going to  
14 overrule this objection as well and allow that.

15           Did you have any other objections,  
16 Mr. Conrad?

17           MR. CONRAD: That -- that's what I had.  
18 Thank you.

19           JUDGE DIPPELL: So the remainder of the  
20 testimony you have no objection to?

21           MR. CONRAD: I have no objection to the  
22 remainder of it.

23           JUDGE DIPPELL: Okay. Then I will  
24 receive all of Exhibit 102 with the exception of the  
25 words on page 11 that I struck.

1 (Exhibit No. 102 was received into  
2 evidence with exception.)

3 JUDGE DIPPELL: Okay. All right. With  
4 that then, I believe we're ready for  
5 cross-examination. Ag Processing?

6 MR. CONRAD: Yes, ma'am.

7 CROSS-EXAMINATION BY MR. CONRAD:

8 Q. Mr. Gottsch, we had an opportunity to  
9 have a deposition together, didn't we?

10 A. Yes, sir.

11 Q. And one of the things we talked about in  
12 that was how you started the hedge program. What's  
13 the very first step you have to do when you start up a  
14 hedge program?

15 A. Get authorization to begin a program.

16 Q. And how would you go about doing that?

17 A. In my particular position, I waited for  
18 my manager to instruct me to do so.

19 Q. Okay. You just waited for him. This  
20 would have been Mr. Korte (ph.)?

21 A. At the time, correct.

22 Q. Have you ever had any instances in which  
23 you kind of said, well, I think there's a need for a  
24 hedge program here and I want to go talk to my  
25 manager?



1 A. No.

2 Q. So the only experience you have is just  
3 doing what somebody tells you to do?

4 A. With Aquila, yes.

5 Q. No -- no initiative at all?

6 A. Correct.

7 Q. well, let's -- let's just for fun kind of  
8 assume that you had some initiative. How would you  
9 start a hedge program if you were told by your manager  
10 to start a hedge program? What would be the --

11 A. I would --

12 Q. I'm sorry. Go ahead, sir.

13 A. I would define my volumes, understand and  
14 try to identify our objectives and look at what would  
15 be the best fit for a particular program.

16 Q. And when you say "objectives," help me  
17 understand what the purpose -- excuse me, what that  
18 means?

19 A. With the hedging program, you have -- you  
20 have different objectives. You can be trying to lock  
21 in a price, for all of your needs you'd be trying to  
22 use hedging tools as protection for price movements.  
23 So you do have a different variables that you need to  
24 consider when you're putting a plan together as far as  
25 what your objectives are.

1 MR. CONRAD: Just a moment, your Honor.

2 I'm sorry.

3 BY MR. CONRAD:

4 Q. Well, Mr. Gottsch, I'm struggling to find  
5 the reference here, but what did you understand the  
6 objectives of this program -- the program that's here  
7 in dispute?

8 A. To try to protect ourselves against --  
9 not ourselves, but the steam customers against a price  
10 increase primarily.

11 Q. Well, now maybe it's not a big -- a big  
12 issue, but when we -- when I think I asked you that  
13 before, you indicated that you were protecting  
14 ourselves from a rising market. And you started to  
15 make that answer and then you corrected yourself now.  
16 Do you agree?

17 A. I changed my -- I did say ourselves. I  
18 said ourselves and I said I meant to say the customer,  
19 correct.

20 Q. You had the deposition to review it  
21 and -- and correct it if you wanted to. Right?

22 A. Yes.

23 Q. Okay. Well, when we did that, you -- I  
24 can show you this if you'd like. You were asked:  
25 would you agree with that?

1                   And you answered: Again, it depends on  
2 what your objectives of the program are. My belief is  
3 that at the time we were protecting ourselves from a  
4 rising market.

5           A.     Correct.

6           Q.     well, then help me out there. what kind  
7 of a rising market? Rising -- sharply rising,  
8 gradually rising? Over what period of time rising?

9           A.     I believe we had concerns of another  
10 price spike similar to what happened post --  
11 post-Katrina in 2005.

12          Q.     Over what period of time would this  
13 market rise?

14          A.     That particular rally lasted from late  
15 August through December.

16          Q.     And recalling your deposition, did I ask  
17 you: well, over what period of time rising?

18                   And did you answer: For the foreseeable  
19 future?

20                   MR. ZOBRIST: Could I have a page cite,  
21 counsel?

22                   MR. CONRAD: Sure. Page 36.

23 BY MR. CONRAD:

24          Q.     Is that right?

25                   MR. ZOBRIST: well, I would request that

1 the witness be given an opportunity to look at his  
2 deposition just so he knows where Mr. Conrad's coming  
3 from.

4 MR. CONRAD: Happy to.

5 MR. ZOBRIST: I think he's got a copy.

6 MR. CONRAD: I've got an original.

7 THE WITNESS: And which line item?

8 BY MR. CONRAD:

9 Q. Looks like 22 on page 36. Let's be sure  
10 we match.

11 A. That does not look like what I've got  
12 there on 36, does it? I have a bad copy.

13 MR. CONRAD: What are we going to do  
14 about this, Karl?

15 MR. ZOBRIST: Let me come over and sit a  
16 little closer to you, Mr. Conrad.

17 MR. CONRAD: Why don't we go off the  
18 record a second?

19 JUDGE DIPPELL: Let's go off the record.

20 (Off the record.)

21 JUDGE DIPPELL: Let's go ahead and go  
22 back on the record. I'm okay.

23 MR. CONRAD: Why don't you show him what  
24 you found?

25 MR. ZOBRIST: Page 35, Gary.

1 THE WITNESS: Okay. What line?

2 MR. ZOBRIST: Which one is it?

3 MR. CONRAD: On down. Over what period  
4 of time.

5 MR. ZOBRIST: Line 13, page 35.

6 BY MR. CONRAD:

7 Q. Now that we've been through that,  
8 Mr. Gottsch, were you asked: well, over what period  
9 of time rising?

10 And did you answer: For the foreseeable  
11 future?

12 A. Yes.

13 Q. Now, discuss with me briefly,  
14 Mr. Gottsch, as we did in that deposition which seems  
15 to be eons ago, what your actual role was?

16 A. With the company?

17 Q. No. With respect to this gas hedge.

18 A. Basically my job is to manage the  
19 program. In other words, act upon triggers that we  
20 currently use with Kase program. And back at that  
21 particular moment, my job was to exercise the  
22 purchases on -- on the days that we decided to make  
23 the purchases.

24 Q. So is it -- is it fair -- and I don't  
25 mean this as a put-down because I'm not -- not in that

1 mode, but is it -- is it fair to say that you took  
2 instructions from somebody else, in this case, Andrew  
3 Korte, and then executed those instructions?

4 A. Correct.

5 Q. So if I was -- if I were to ask you if  
6 you had done any kind of an analysis of what might be  
7 consistent -- considered a consistent flow of natural  
8 gas or steam, you would say you didn't do that,  
9 somebody else had done that above you and you just did  
10 what they told you to do?

11 A. Regarding the flow of natural gas?

12 Q. Well, I'm sorry. That was a complicated  
13 question. I'll -- I'll back up.

14 Did you do any analysis of what might be  
15 considered a consistent flow for natural gas or steam?

16 A. No, I did not.

17 Q. And your role in the company, at least  
18 with respect to this hedge operation, somebody above  
19 you, let's call it Andrew Korte, gave you the budgeted  
20 volumes. Right?

21 A. I did not receive them from Andy, no.

22 Q. Who did you get them from?

23 A. I received them from the Resource  
24 Planning Group.

25 Q. But somebody above you in that group or

1 somebody at a different level or different group gave  
2 you --

3 A. Somebody from --

4 Q. -- those numbers?

5 A. -- a different group, correct.

6 Q. That's a yes then?

7 A. Yes.

8 Q. I talked over you and it's hard for the  
9 reporter to write two voices down at one time.

10 So they supplied you with the volumes,  
11 you executed the transactions?

12 A. Correct.

13 Q. And you've heard us talk probably ad  
14 nauseam about this one-third, one-third thing?

15 A. Yes.

16 Q. Okay. Was that your decision to do that?

17 A. It was not.

18 Q. And whose decision was that?

19 A. I received the direction from Andy to  
20 implement it. I'm not sure who made the actual final  
21 decision on that program.

22 Q. So you may not know who was up above, but  
23 your instructions came from -- you said Andy, Andrew  
24 Korte?

25 A. Yes.

1 Q. Now, did you have the understanding that  
2 this was being done with the steam customer's  
3 knowledge?

4 A. That was my understanding.

5 Q. And from whom did that understanding  
6 come?

7 A. I believe I heard that from both Gary  
8 Clemens and Andrew Korte.

9 Q. And again, I'm going to struggle with a  
10 page reference here. And Mr. Gottsch and counsel, I'm  
11 on this -- I'm at page 40, line 21, but I don't know  
12 where --

13 MR. ZOBRIST: If you could just give the  
14 question, I can probably find it.

15 MR. CONRAD: Okay. Who told you that?

16 MR. ZOBRIST: Page 39, line 14.

17 BY MR. CONRAD:

18 Q. Question -- were you asked: who told you  
19 that?

20 And did you answer: Andrew Korte?

21 A. I did.

22 Q. Mr. Gottsch, do you know anything about  
23 the nature of the analysis that was done of the steam  
24 load or whether an analysis was done at all?

25 A. I do not.



1 Q. And again, your information or your  
2 instructions, if you will, to buy or do whatever it  
3 was you did came from this -- this -- was it Energy  
4 Resources or Risk Management? I'm sorry.

5 A. which directives?

6 Q. well, to go do something, to execute a  
7 transaction.

8 A. No. To execute the transaction, we  
9 purchased daily -- I shouldn't say daily, once a month  
10 for our hedge programs. So we had a date in place to  
11 make our purchases so there was no directives other  
12 than the directive to start a program. And that came  
13 from management and then volumes came from Resource  
14 Planning.

15 Q. And do you know what they would base that  
16 on?

17 A. I do not know for a fact. I just was  
18 under the assumption it was input from customers.

19 Q. But you don't know that for a fact?

20 A. Correct.

21 Q. Now, would you find that the price of  
22 natural gas, when you went into the market, would  
23 affect your decision on how much or how little to  
24 purchase?

25 A. At the time this program was implemented?

1 Q. Uh-huh.

2 A. It wouldn't -- it did not affect the  
3 volumes, no.

4 Q. So price wasn't a component; is that  
5 right?

6 A. That's correct.

7 Q. Could that result in a danger?

8 MR. ZOBRIST: Let me just object, vague  
9 and ambiguous. I don't know what "danger" means.

10 MR. CONRAD: Well -- well, I guess I'll  
11 lead the witness then.

12 BY MR. CONRAD:

13 Q. Is there a danger of getting over-hedged  
14 in a falling market?

15 A. I'm not following you from the standpoint  
16 price direction in my understanding has nothing to do  
17 with -- with whether you're under- or over-hedged.

18 Q. Now, clarify one thing for me then. Was  
19 the Kase, K-a-s-e, you know what -- how to spell it,  
20 I'm sure.

21 A. Yes.

22 Q. Was that used on steam?

23 A. It was not.

24 Q. Now, direct you for a moment to what's  
25 been marked in an earlier iteration that I'm having

1 trouble finding myself.

2 MR. CONRAD: So just a moment, your

3 Honor. I'm sorry.

4 BY MR. CONRAD:

5 Q. I want to say it was 10, this

6 spreadsheet. Is that 402?

7 MR. CONRAD: Was that 9 or 10?

8 COMMISSIONER KENNEY: That was 9.

9 MR. CONRAD: I'm sorry. 402, GMO 402.

10 JUDGE DIPPELL: Right. Exhibit 9.

11 BY MR. CONRAD:

12 Q. Do you have Exhibit 9 up there?

13 A. I do not.

14 MR. CONRAD: Permission to approach.

15 JUDGE DIPPELL: Go ahead.

16 BY MR. CONRAD:

17 Q. Let me show you one. Have you seen that  
18 before?

19 A. About 30 minutes ago.

20 Q. Okay.

21 A. I believe I've actually seen this maybe  
22 within the last year also as we've scrounged up  
23 documents, but --

24 Q. And let's look at -- oh, just pick one  
25 here, Triumph. 683-- I'm looking at 2006, at least

1 that's one of the years in concern here. Budget was  
2 683,191 MMBTus.

3 A. I see that.

4 Q. And actual 324,637. And then there's a  
5 variance calculation. I haven't done the math but  
6 I'll -- I'll trust whoever did the spreadsheet here,  
7 358,554 variance. Looks about right. would you agree  
8 with me that that's a significance variance?

9 A. I would agree.

10 Q. Look in that same column for Albaugh.  
11 And I won't go through the budget numbers. You can  
12 read those. But a variance of 307 and change --  
13 307,000 MMBTus. MMBTus, by the way, would I be right  
14 in equating that to dekatherms?

15 A. Yes.

16 Q. Again, a fairly significant variance?

17 That's a question --

18 A. Yes.

19 Q. -- it was a significant variance?

20 And let me ask you to turn to page 4 of  
21 your testimony please, sir. Look down, if you would,  
22 kind of past the middle of the page. Am I correct in  
23 finding that on line 16 you've identified the goal as  
24 being to mitigate price volatility?

25 A. Yes.

1 Q. Designed to be market neutral?

2 A. Yes.

3 Q. Now, we had testimony I believe from  
4 Mr. Clemens, electric program was presented -- we're  
5 talking about the electric program here, are we not,  
6 in some aspects of this, by the way? Do we know that  
7 or --

8 A. The question was -- on line 10 was how  
9 was Aquila's gas hedging strategy for steam generation  
10 development.

11 Q. So we're talking about steam then?

12 A. Yes.

13 Q. Steam generation. Now, they did present  
14 the electric program to Staff and OPC in 2004. Do you  
15 recall hearing Mr. Clemens talk about that?

16 A. Yes.

17 Q. Okay. When do you know, if you do, when  
18 the steam program was presented?

19 A. The steam program was presented to who?

20 Q. OPC and Staff.

21 A. Oh, I'm sorry. I -- I do not know that.

22 MR. CONRAD: Your Honor, I have another  
23 exhibit.

24 JUDGE DIPPELL: That one would be  
25 Exhibit 10.

1 MR. CONRAD: Okay. I finally got to 10.

2 (Exhibit No. 10 was marked for

3 identification.)

4 MR. CONRAD: Your Honor, GM403

5 designation and we've marked it as Exhibit 10. So

6 based on what we've been doing before, I would move

7 admission of 10.

8 JUDGE DIPPELL: Would there be any

9 objection?

10 MR. ZOBRIST: No objection.

11 JUDGE DIPPELL: Then I will -- I'm sorry,

12 I'll receive that into evidence.

13 (Exhibit No. 10 was received into

14 evidence.)

15 JUDGE DIPPELL: Go ahead, Mr. Conrad.

16 MR. CONRAD: Thank you, ma'am. I

17 apologize. Didn't mean to step on you.

18 BY MR. CONRAD:

19 Q. Mr. Gottsch, does this ring a bell with

20 you?

21 A. It does not.

22 Q. Have you not ever seen this one before?

23 A. I do not believe I have.

24 Q. Well, sir, if you don't know anything

25 about it, I'm not going to ask you to speculate about

1 it because that would be sheer speculation.

2 Let's see if we can find something here  
3 that you know something about.

4 JUDGE DIPPELL: Would you like this  
5 marked as 11?

6 MR. CONRAD: Be 11. And there is an HC  
7 designation so we'll need --

8 JUDGE DIPPELL: I'll ask counsel if this  
9 still needs to be HC?

10 MR. ZOBRIST: No, ma'am.

11 JUDGE DIPPELL: All right. So we'll  
12 disregard the HC at the bottom there.

13 (Exhibit No. 11 was marked for  
14 identification.)

15 MR. CONRAD: And this is marked as GMO  
16 document 408. And I've marked it as 11 and I would  
17 move admission of 11 on that basis.

18 JUDGE DIPPELL: Would there be any  
19 objection to Exhibit No. 11?

20 MR. ZOBRIST: No objection.

21 JUDGE DIPPELL: Then I'll receive it into  
22 evidence.

23 (Exhibit No. 11 was received into  
24 evidence.)

25 BY MR. CONRAD:

1 Q. Mr. Gottsch, have you seen this one  
2 before?

3 A. Yes.

4 Q. Tell me about it.

5 A. It looks like a DR response to a question  
6 you had asked back in 2008.

7 Q. This was something that you prepared or  
8 participated in preparing?

9 A. I believe I helped craft the language. I  
10 believe Davis Rooney actually drafted it.

11 Q. I'm sorry. I -- you did or he did or  
12 both of you did or --

13 A. Davis answered it with my input.

14 Q. Well, I want to focus on for just a  
15 moment the second paragraph of the three --  
16 three-paragraph response. Starts out actually with  
17 your name?

18 A. Uh-huh.

19 Q. Discusses observed changes. What's --  
20 what is an observed change?

21 A. I believe that would be referring to the  
22 level of volumes that were being consumed at the Lake  
23 Road power plant.

24 Q. And the plant representative, who would  
25 that be?



1 A. Wayne Seaburn (ph.).

2 Q. That would be somebody at Lake Road.

3 Right?

4 A. Correct.

5 Q. And then he would discuss with Joe  
6 Fangman to determine if variations -- variations from  
7 what?

8 A. From budget.

9 Q. If they're long term or temporary.  
10 That's pretty straightforward on that part.

11 A. Yes.

12 Q. But help me out on what a long term would  
13 be.

14 A. I think it's something the person who  
15 asks that -- I would refer to maybe a year or more is  
16 how I would define long term.

17 Q. Just kind of binary choice there, A or B.  
18 It's either long term or it's temporary. We talked  
19 about on Exhibit 9 that those changes were  
20 significant -- or those variations I think you agreed  
21 with me that they were significant?

22 A. Yes.

23 Q. Look at 9 again with me. And I mean  
24 let's just pick a line, Triumph 2005, big variance;  
25 2006, bigger variance; 2007, still bigger variance.

1 we've talked about that being significant. Is that  
2 long term or temporary?

3 A. I would say that's long term.

4 Q. would you make the same statement with  
5 respect to Albaugh since we have a negative variance  
6 in '05, a much larger one in '06, a negative variance  
7 in '07 -- although these are out of -- out of our  
8 consideration here, 2008 and year-to-date August of  
9 2009? Long term?

10 A. Yes.

11 Q. Any adjustment made?

12 A. In 2006, I would not have had information  
13 for 2007, 2008 and 2009.

14 Q. Understood. How about 2006 information  
15 from 2005?

16 A. It was my understanding that the reason  
17 why the program was implemented was because there was  
18 large increases forecasted above and beyond what the  
19 steam customers had done in the past.

20 Q. Let's try to work with my question  
21 though. was there an adjustment made?

22 A. For which year?

23 Q. well, let's take 2006 based on 2005. I'm  
24 not assuming that you were pressing. Was an  
25 adjustment made in 2006?

1 A. I believe there was an adjustment made on  
2 February 15th.

3 Q. Because of?

4 A. That's something I can't answer. That's  
5 the Resource Planning Group's function.

6 Q. How many months were there for the  
7 adjustment in 2006 expected volumes?

8 A. Say that again.

9 Q. How many months were there for the  
10 adjustment of 2006 expected volumes? I thought you  
11 indicated --

12 A. April through December.

13 Q. Go ahead. How many months for the  
14 adjustment of 2007 volumes?

15 A. I'm not sure how many months we actually  
16 adjusted, but there were adjustments made in July of  
17 2006 when the new budget run came out.

18 Q. Were the only adjustments made in July of  
19 2006 for that period?

20 A. The adjustments made in July of 2006 I  
21 believe were the years -- calendar years '07 and '08.

22 Q. And none for '06?

23 A. That's correct.

24 Q. Now, were you on either -- either this --  
25 you've heard us talk about -- I think it's called a

1 Risk Management Committee or Group?

2 A. I was a part of those meetings, yes.

3 Q. Okay. Do you recall them meeting monthly  
4 to review hedge positions on the steam hedge program  
5 or philosophy or structure?

6 A. Actually, that committee did not -- was  
7 not formed until after we had worked with Kase --  
8 Kase, Incorporated. I do not have the exact date, but  
9 I believe it was in the summer time frame of '07,  
10 maybe in the fall of '07 when those monthly meetings  
11 actually started to occur.

12 Q. Do you recall any kind of a meeting of  
13 some group, Energy Resources maybe, that was at least  
14 every three months?

15 A. Not that I was a participant of.

16 Q. Were you a participant -- would you have  
17 been a participant in those?

18 A. I think I would have been made abreast of  
19 what was discussed in them. I don't know if I would  
20 have been invited or not.

21 Q. Well, I hope I didn't bring back a bad  
22 memory for you, Mr. Gottsch.

23 A. No.

24 Q. But you would have been in line to find  
25 out what was going on?

1 A. I believe so.

2 MR. CONRAD: One moment, your Honor,  
3 please.

4 BY MR. CONRAD:

5 Q. I did have one question, Mr. Gottsch,  
6 about how you worked with Mr. Fangman. Did you -- you  
7 did have concourse with him, I take it?

8 A. I did not directly with Joe, no.

9 Q. How did you interface with him, if at  
10 all?

11 A. Through Wayne Seaburn who was a plant  
12 representative that I talked to on a daily basis.

13 Q. Okay. And you talked to Mr. Seaburn and  
14 then he would talk to Mr. Fangman. Is that how it  
15 would work?

16 A. It was my understanding that's where  
17 Wayne got some of his information, if not all of it  
18 from -- with respect to the steam business.

19 Q. All right. As -- anticipating -- and you  
20 may have read Mr. Fangman's testimony, I think he has  
21 indicated that he passed information on to a fellow  
22 named Tim Nelson. Name is familiar to you?

23 A. Yes.

24 Q. who would be -- as between you and  
25 Mr. Fangman, who would be the authority that would

1 give stuff to Mr. Nelson?

2 A. I was under the assumption it came from  
3 Joe Fangman, but I -- I don't know that first hand.

4 Q. Okay. Didn't come through you?

5 A. Correct.

6 Q. Do you know when he got the -- he, Tim  
7 Nelson, got the job of forecasting steam volumes?

8 A. I do not.

9 Q. And did he also, as far as you know, if  
10 you know, forecast the natural gas that was needed for  
11 steam?

12 A. He did.

13 Q. He did. That was -- that would have been  
14 his job?

15 A. Let me rephrase that. The gas we used  
16 for our hedging program was information I received  
17 from him, so I was the under the assumption that he  
18 did that.

19 Q. Okay. So this -- the sequence here, so  
20 I'm clear, is you got your information from Seaburn  
21 and Fangman was getting his and sending his on to  
22 Nelson?

23 A. We're talking two different things here.

24 Q. Okay. That's -- that's where I'm  
25 confused. Can you straighten me out?

1 A. I would talk to wayne regarding daily  
2 volumes for the plant since I also bought the natural  
3 gas for the facility. When I noticed discrepancies, I  
4 would ask wayne if he was aware or if he talked to the  
5 steam customers and had any knowledge of what their  
6 future intentions were and that's where he would bring  
7 up that he would have to talk to Joe about it.

8 Tim, conversely, handed me the budget  
9 volumes for the hedge program.

10 Q. And again, if I'm understanding this, the  
11 numbers -- now Mr. Seaburn was plant manager?

12 A. No.

13 Q. What was his role there at Lake Road?

14 A. I don't know his exact title. I know  
15 he's an engineer.

16 Q. And the -- the interface that you would  
17 have with him would be on a daily basis. Right?

18 A. Correct.

19 Q. What gas volumes the plant needed?

20 A. Correct.

21 Q. And the gas volumes that the plant needed  
22 would be for both electric and steam?

23 A. That is correct.

24 Q. Just about -- just about done  
25 Mr. Gottsch, but look, please, with me at page 12 of

1 your -- of your testimony, lines 18 through 19. And  
2 you're talking there about this budget update. Answer  
3 beginning on line 18: Yes. Again, hedge positions  
4 are based upon budgeted volume numbers that Aquila  
5 receives directly from customers.

6 Did you get any information directly from  
7 customers?

8 A. No.

9 Q. So how is it that you -- since you  
10 created those hedge positions, right, from what we've  
11 talked about before?

12 A. Yes.

13 Q. You established them. And your testimony  
14 here seems to be to me saying that you did that based  
15 upon budget of volume numbers that Aquila received  
16 directly from customers. So there must have been an  
17 interim step in there. If you didn't get it from  
18 customers, then what -- that's what was coming through  
19 Fangman?

20 A. Yes. This is what I received from Tim  
21 Nelson.

22 Q. And Nelson and then -- then to you?

23 A. Correct.

24 Q. So Fangman would work his magic on the  
25 numbers and Nelson would work his magic and then



1 they'd give -- then Nelson would give them to you?

2 A. I'm not sure what they did with the  
3 numbers other than the volumes I received from Tim  
4 Nelson.

5 Q. Right. That may be -- that maybe was  
6 unfair. But you got your -- you got your information  
7 from Nelson, who as far as you know was getting it  
8 from Fangman?

9 A. Correct.

10 Q. He may have been doing something with it,  
11 you don't know?

12 A. I have no idea.

13 Q. Oh, by the way, why would -- you're I  
14 think accepted as a hedging guru. Why would one ever  
15 sell puts? Why would you sell a put?

16 A. To gather the premium.

17 Q. Look with me now for just a moment. This  
18 is your GLG-1. Do you have that, sir? I think it's a  
19 single page.

20 MR. CONRAD: And it is an HC document,  
21 counsel.

22 MR. ZOBRIST: No longer HC.

23 MR. CONRAD: Okay.

24 BY MR. CONRAD:

25 Q. Are you there?

1 A. I have it.

2 Q. Okay. Toward the bottom of the last  
3 paragraph when you would purchase something  
4 proportionately, what does that mean?

5 A. When we were buying something in equal  
6 amounts spread out equitably.

7 Q. Okay.

8 A. And then there's a phrase here: For  
9 example, '07 volume will be purchased proportionately  
10 beginning with plan implementation through October  
11 '06, '08 volume to be purchased proportionately.

12 That's month by month? Is that what that  
13 means?

14 A. If you have enough volumes for each  
15 month, correct.

16 Q. Then there's -- then there's a sentence:  
17 volumes for 2006 would be covered as soon as the plan  
18 is approved by management.

19 I circled the word "covered" because I  
20 had -- all of a sudden it jumped out at me as being  
21 different. What's that mean?

22 A. I use it the same as purchased.

23 Q. Okay. Should I interpret that to be that  
24 volumes for '06 were -- were purchased month by month  
25 or something else?

1 A. It -- the meaning is the -- all of the  
2 volumes for 2006 would be purchased as soon as the  
3 plan is approved by management.

4 Q. Then that very last sentence: Updates to  
5 hedge volumes will occur with changes made to the  
6 budget as re-runs occur.

7 And we talked before in the context of  
8 Exhibit 9 about when -- when the budget changed and  
9 when budgets were redone and re-run. Were there any  
10 changes made that you can recall?

11 A. After February 15th?

12 Q. Well, this is dated February 15th, yeah,  
13 2006. And I took it -- and maybe it -- maybe this is  
14 where I'm misunderstanding. I took it to mean that  
15 that was with respect to this volumes for 2006 would  
16 be covered. Did I misread that?

17 A. No. The word "covered" again means  
18 purchased.

19 Q. Right. I got -- I think I got that part.  
20 But then that sentence, does that relate -- is that  
21 just a generic sentence to the whole deal or does that  
22 relate to the 2006 volume?

23 A. What it's trying to address is if there  
24 was changes to the budgeted volumes over particular  
25 months, we would address the issue. In other words,

1 if we were short, we would purchase more; if we were  
2 long, we would -- we would reduce some of our  
3 positions.

4 Q. During what period?

5 A. Whenever we received the information.

6 Q. Okay. Could that affect that 2006 period  
7 that was locked -- locked up or you had covered?

8 A. If I was given new updated information,  
9 yes.

10 Q. Did you ever get such information or such  
11 direction?

12 A. Not for the 2006 volumes.

13 Q. How about the 2007 volumes?

14 A. I did.

15 Q. Do you recall when that occurred?

16 A. In July of 2006.

17 Q. And that was the -- that was the annual  
18 budget?

19 A. Correct.

20 Q. So that would be reflected in the budget  
21 that I had showed you on Exhibit 9?

22 A. Well, I'm not sure what would have been  
23 reflected because I'm not sure when this document  
24 was -- was given to us.

25 Q. Okay. "The document" being Exhibit 9?

1 A. well, what I'm saying is you've got 2008,  
2 2009 volumes here.

3 Q. Sure.

4 A. And I'm not sure when these were created  
5 and added to this document.

6 Q. I understand. I understand. So you  
7 don't know whether the -- excuse me, the budgeted  
8 column there is adjusted or unadjusted?

9 A. Correct.

10 Q. Looking at what had occurred though in --  
11 in 2006, if it was adjusted, was it adjusted enough?

12 A. For which year?

13 Q. well, I think we were looking at 2007  
14 because you're indicating you did this in July of  
15 2006.

16 A. We adjusted our positions to the new  
17 budget information that was given.

18 Q. Yeah.

19 A. Yes.

20 Q. Okay. Any other subsequent adjustments  
21 that were made, Mr. Gosh?

22 A. To 2007?

23 Q. Yes, sir.

24 A. Not that I recollect.

25 MR. CONRAD: Judge, I believe that that's

1 all we have right now. Thank you.

2 JUDGE DIPPELL: All right then. Is

3 there -- are there any questions from staff?

4 MR. RITCHIE: No, thank you, Judge.

5 JUDGE DIPPELL: Are there Commission

6 questions? Commissioner Jarrett?

7 COMMISSIONER JARRETT: Thank you, Judge.

8 QUESTIONS BY COMMISSIONER JARRETT:

9 Q. Good afternoon.

10 A. Good afternoon.

11 Q. You were here when I was talking with the  
12 prior witness and he'd indicated that you might have  
13 some answers to some of those questions.

14 A. Yes.

15 Q. Do you remember that? I think one of my  
16 questions had to do with interaction with staff  
17 regarding discussions about the hedging -- the  
18 one-third, one-third, one-third hedging program on the  
19 electric side. Would you have been the person that  
20 would have talked with staff?

21 A. I attended one or two meetings with staff  
22 and the discussion did come up at one time. I cannot  
23 recall the exact date of a particular meeting, but I  
24 know Cary was present -- Cary Featherstone was  
25 present. And at the time I believe his concern about

1 the program was the inflexibility of the purchase  
2 scheduling; in other words, it was a little bit too  
3 rigid, in his opinion.

4 Q. Okay. And what did -- what did the  
5 company do about his concerns?

6 A. At that time it was the -- well, about  
7 the same time we started looking at third-party  
8 programs.

9 Q. Okay.

10 A. And that's -- that would have been  
11 sometime between late winter '06 and '07 and the  
12 summer of '07, so sometime in the spring I believe.  
13 And that's when we started to look at the Kase,  
14 Incorporated as taking a new direction with our  
15 hedging program.

16 Q. All right. So did that address these  
17 concerns?

18 A. I believe it did.

19 Q. Okay. Now, that had to do with the  
20 electric. Did you do any -- anything similar with the  
21 steam?

22 A. No. The steam program ceased on  
23 October 30th, 2007.

24 Q. Oh, okay. My other question I believe  
25 had to do with the purchasing of -- of the instruments

1 or the hedging instruments. was this all done like  
2 together with -- with the other natural gas purchases  
3 or was the steam set off by itself?

4 A. No. The steam and electric hedging  
5 programs were totally separate. In fact, we even had  
6 different purchase days to try to get away with any  
7 kind of concern about which instruments and which  
8 price were assigned to electric and which were  
9 assigned to steam. So we -- we made our purchases on  
10 separate days for the two programs.

11 Q. Okay. And so that was just simply to  
12 make sure you didn't get -- get the purchases mixed  
13 up?

14 A. Part of it. And part of it was we also  
15 wanted to kind of -- spreading out our -- our  
16 exposure.

17 Q. Now, was the -- there was some talk about  
18 this, but the concept, the philosophy, the programs  
19 were very -- were similar or --

20 A. Yes.

21 Q. -- almost exactly the same as far as how  
22 they were implemented?

23 A. Correct.

24 Q. Okay.

25 COMMISSIONER JARRETT: I don't have any



1 further questions. Thank you, Judge.

2 JUDGE DIPPELL: Thank you.

3 Commissioner Kenney, do you have any  
4 questions?

5 COMMISSIONER KENNEY: I think  
6 Commissioner Jarrett may have covered what I was going  
7 to ask.

8 QUESTIONS BY COMMISSIONER KENNEY:

9 Q. I'm sorry. You said that there was --  
10 the concerns that Cary Featherstone expressed were  
11 with respect to inflexibility of the purchasing?

12 A. Right. His -- his opinion at the time  
13 was you were making purchases each month regardless of  
14 where the price of the market was. In particular,  
15 during the run-up in prices after the Hurricane  
16 Katrina, the program continues to make purchases each  
17 month regardless of price. And his concerns at the  
18 time were that you were making purchases in September,  
19 October, November, December during that time frame.

20 Q. And when did -- when were those concerns  
21 expressed?

22 A. Again, I -- I know I was in a meeting  
23 with him and I can't recollect the exact time.

24 Q. Just the month and the year.

25 A. I thought it was in the winter of '06,

1 '07. Probably the spring of '07 I believe is when we  
2 had meetings with them.

3 Q. So the hedging program for the steam  
4 production had begun, but you weren't having  
5 discussions specifically with respect to the hedging  
6 program?

7 A. I was not personally.

8 Q. Did -- who was?

9 A. I believe it was Andy Korte, Gary  
10 Clemens.

11 Q. Mr. Clemens who just testified?

12 A. Correct.

13 Q. Well, he said he wasn't having  
14 conversations; that you would be the one that would be  
15 having conversations with Staff about hedging.

16 A. Past -- past implementation of the  
17 program.

18 Q. Okay. All right. And then the hedging  
19 program for steam production ceased in '07?

20 A. Correct. October of '07.

21 Q. Okay. Now, the programs are similar.  
22 Right? So would Mr. Featherstone's critiques or  
23 criticisms with respect to the electric side have been  
24 applicable to the steam side?

25 A. I believe that's correct.

1 Q. Even though -- even though he wasn't  
2 speaking specifically to the steam production side,  
3 the critique would have been equally as applicable?

4 A. I believe so.

5 Q. Okay. All right.

6 COMMISSIONER KENNEY: Thank you.

7 JUDGE DIPPELL: Thank you.

8 QUESTIONS BY JUDGE DIPPELL:

9 Q. I have just a couple of questions for  
10 you. I think you just answered this, but so you did  
11 the hedge program for the electric side as well as the  
12 steam side. Correct?

13 A. I did.

14 Q. And did you use the Kase, Inc. program  
15 for the electric side?

16 A. At the time we were not. We currently  
17 are using the Kase program. The Kase program for  
18 electric side began in November 2007.

19 Q. Okay. And you said you didn't use that  
20 for the steam. Correct?

21 A. Correct.

22 Q. And then if you have your testimony there  
23 in front of you, look at page 13. And just -- just so  
24 that I'm clear on what you mean here, on line 16  
25 through 18, you say: while the physical volumes did

1 not always tie out to the budgeted forecast, there was  
2 never any intention to use inaccurate data nor would  
3 Aquila have any incentive to use volumes other than  
4 those that were best available at the time.

5 Can you just explain what you mean by why  
6 Aquila wouldn't have had any incentive there?

7 A. Just that it would have served no purpose  
8 or value to not run our hedge program to the best  
9 budgeted volumes that we had in our possession at the  
10 time. If we had or if I was given new updated  
11 information, I could have responded to it rather  
12 quickly. These are -- these are financial instruments  
13 that are fairly liquid. They're fairly easy to get in  
14 and out of positions and it would not have taken much  
15 to do that.

16 Q. Okay. And then just a terminology  
17 question. On page 14 you talk about -- on line 22 you  
18 mention an average Henry Hub 2006 price. Can you tell  
19 me what a Henry Hub --

20 A. Henry Hub is the liquid market  
21 interchange down in Louisiana. And that's where --  
22 the New York Mercantile Exchange's natural gas  
23 contract is based off of delivery at that location.  
24 So when you hear people talking about future natural  
25 gas prices, that's generally what they're referring

1 to.

2 JUDGE DIPPELL: Okay. Thank you.

3 are there any further cross-examination  
4 from Ag Processing?

5 MR. CONRAD: No, ma'am.

6 JUDGE DIPPELL: Anything from Staff?

7 MR. RITCHIE: No. Thank you.

8 JUDGE DIPPELL: Any redirect?

9 MR. ZOBRIST: A few questions, Judge.

10 REDIRECT EXAMINATION BY MR. ZOBRIST:

11 Q. Mr. Gottsch, in response to Commissioner  
12 Kenney's questions, when Mr. Featherstone raised his  
13 concerns, what did you tell him about what you were --  
14 why you were carrying out the program on the steam  
15 side as you were doing so?

16 A. One of the things that this program  
17 brought to us, that -- once you're looking at it at  
18 the surface was there's no speculative nature to it.  
19 You're not trying to outguess the market. And the  
20 same thing that he finds a fault with, we fault -- or  
21 we find an advantage to, and that is you're buying  
22 each month regardless of the price. If you spread  
23 that over a -- over a length of time, which this  
24 program's intention was to run 28 months. So if  
25 you're spreading out 20 equal purchases, you're going

1 to gather the highs and the lows.

2 In -- in talking to Cary, my question to  
3 him was -- our discussions were why were you buying  
4 \$15 gas or \$14 gas in December of 2006? He goes,  
5 Everybody knew the market was going to be going lower.  
6 My comment to him was, well, Cary, you might have told  
7 me the same thing in September when the market was at  
8 \$10. And then by the time you get to September, it's  
9 at 14 or 15 dollars and you're saying, why didn't you  
10 purchase that gas in September when the market was at  
11 \$10.

12 My point is you don't know where the top  
13 is going to be. It's easy to look back after the  
14 fact. It's easy to look forward and say the market  
15 looks too high. And it might be, but you just don't  
16 know where that top is going to come in at. And this  
17 program takes the guessing out of it. It takes the  
18 guesswork out of it. You standardize your purchases  
19 and you're not trying to outguess the market.

20 Q. Now, in response to a question from  
21 Commissioner Garrett [sic], you talked about how it  
22 could be easy to get out of a position. Can you  
23 explain that to state when would it be easy or when  
24 might be it difficult depending on what the market is  
25 doing?

1 A. As far as just liquidating positions?

2 Q. Right.

3 A. The futures positions are very liquid, so  
4 it's just a matter of talking to your broker and, I  
5 want to buy ten contracts or I want to sell ten  
6 contracts in a specific month. The option contracts  
7 are a little bit dicier from the standpoint they're  
8 not nearly as liquid and you do have to work with a  
9 broker. But still it's something -- you can get out  
10 of positions within a day or two.

11 Q. My question is, are there financial  
12 questions that you would consider apart from just the  
13 ease of getting out of a contract? Would you look at  
14 where the market is?

15 A. Based on the program and based on a  
16 hedging program, when we get our volumes, we act upon  
17 them. I believe it would not be prudent to -- say we  
18 get a revised budget and it says you're ten contracts  
19 too long and then wait two weeks to get out of it  
20 because you think the market might rally a little bit.  
21 And if the market doesn't rally, then you've got to  
22 explain why you didn't get out of those contracts when  
23 you had that information available on that end.

24 Q. Now, Mr. Conrad asked you about the  
25 volumes that you purchased in 2006. And I believe you

1 told him that you purchased all the 2006 hedges in --  
2 at one time; is that correct?

3 A. That's correct.

4 Q. why did you do that?

5 A. we did not have the luxury of using a  
6 spread-out purchase process for 2006 since we were  
7 already within the calendar year. we had just had a  
8 roughly 30 percent decline in prices from the December  
9 highs that it made.

10 And after we had read some reports,  
11 looked at data, the opinion was if the customers want  
12 to participate in this program, we've had a very  
13 significant drop-off and there was fears that in the  
14 summer of 2006 there would be another active hurricane  
15 season. So our thoughts at the time were, you know  
16 what, this is -- might be the best opportunity we get  
17 to put these position in place.

18 Q. And what does normally an active  
19 hurricane season do to natural gas prices?

20 A. As evidenced in 2005, it created a spike  
21 from -- the market was trading I believe in the  
22 5 or 6 dollar range in early August and it reached a  
23 peak of \$15 and change in December.

24 Q. Now, how did the program -- steam hedging  
25 program look, say, through the summer of 2006?



1 A. The program at the end of July 2006 still  
2 had a positive value, both the '06 and '07 positions  
3 when you combined them. There might have been some  
4 months that were under water and some months that had  
5 a positive value, but if you looked at the calendar  
6 years as a whole, the entire program still had  
7 positive value on July 31st.

8 Q. So when you made the decision on  
9 February 15th to buy for the rest of 2006, was that  
10 made on contemporaneous information that had been  
11 analyzed?

12 A. Yes.

13 Q. Okay. How often did you interface with  
14 Mr. Nelson with regard to the forecast that he was  
15 providing you?

16 A. We -- we -- we talked probably every  
17 couple weeks on various issues. I'd say we discussed  
18 budget information probably every month or two.

19 Q. And -- and what -- we've had some  
20 testimony here about the changes in the budgets. Were  
21 there other adjustments that you made throughout the  
22 life of the steam hedging program?

23 A. With the exception of the July budget  
24 runs, no, there was not.

25 Q. Okay. What about when there were changes

1 in 2007? Did you take any actions at the hedging  
2 program to liquidate accounts or do anything like  
3 that?

4 A. Yes. When we received our budget numbers  
5 in July 2007, the budget run was lower than the budget  
6 that we were currently working with, which showed that  
7 we were long a few contracts in a few different  
8 months. And we liquidated those positions to get back  
9 down to plan levels.

10 Q. And what was the effect of those  
11 liquidations?

12 A. As far as were they in or out of the  
13 money or --

14 Q. well, that and just generally what effect  
15 did they have on the steam hedging program decisions?

16 A. I guess I'm not following you.

17 Q. Okay. Just what was the effect of the  
18 liquidation? I mean what did it do? How did it  
19 adjust the program is all I'm asking?

20 A. It got our positions back down to the  
21 levels that were in the budget.

22 Q. Now, prior to the presentation of the  
23 stipulation in the 2005 steam rate case, did you have  
24 a conversation with Maurice Brubaker about the  
25 one-third strategy?

1 A. I had a phone conversation with Gary  
2 Clemens and he mentioned it. Maurice was in the room  
3 with him.

4 Q. Okay. Did you have a conversation --  
5 telephone conversation with Mr. Brubaker?

6 A. Yes.

7 Q. Okay. And what did you discuss?

8 A. Basically the information was just Gary  
9 wanted me to explain generally how the one-third  
10 program operated and its benefits.

11 Q. Okay. Did Mr. Brubaker have any  
12 questions?

13 A. Not that I can recall at this time.

14 Q. Okay. Now, just one point of  
15 clarification is Exhibit -- I'm sorry, Schedule GLG-1  
16 to your testimony, is that the statement that applies  
17 to the steam hedging program?

18 A. Yes.

19 Q. Okay. That's -- that's the policy  
20 statement that was prepared by you with regard to this  
21 program, not the electric program; is that right?

22 A. Correct.

23 MR. ZOBRIST: That's all I have, Judge.

24 JUDGE DIPPELL: Thank you. I believe  
25 then that that completes your testimony, Mr. Gottsch.

1 MR. ZOBRIST: Judge, I just want to make  
2 sure that we actually got Mr. Gottsch's testimonies as  
3 well as Mr. Clemens' testimony into evidence with the  
4 one objection that was sustained.

5 JUDGE DIPPELL: I did get 102, which was  
6 Mr. Gottsch. I didn't write down that I admitted 101.

7 MR. ZOBRIST: So I'm going to offer it  
8 again.

9 JUDGE DIPPELL: Just in case, which was  
10 Mr. Clemens.

11 MR. CONRAD: That was Clemens. I don't  
12 think we had any objection.

13 JUDGE DIPPELL: Okay. Just in case we  
14 haven't already done this then, I will receive that  
15 into evidence.

16 (Exhibit No. 101 was received into  
17 evidence.)

18 JUDGE DIPPELL: And you may be excused,  
19 Mr. Gottsch. Thank you.

20 All right then. We are dangerously close  
21 to five o'clock. We had talked before we started  
22 about trying to get Mr. Fangman today, but I would  
23 prefer to wait until tomorrow if there's no major  
24 problem with him being here tomorrow. Things -- I  
25 apologize for the slow start today. I think that kind

1 of got us off on a bad foot, but I think then that we  
2 will go ahead and adjourn for the day and start back  
3 tomorrow at 9:00 a.m. All right. We can go off the  
4 record. Thank you.

5 (whereupon, the hearing was adjourned  
6 until 9:00 a.m. November 19, 2010.)

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CERTIFICATE OF REPORTER

I, Tracy Thorpe Taylor, CCR No. 939, within the State of Missouri, do hereby certify that the testimony appearing in the foregoing matter was duly sworn by me; that the testimony of said witnesses was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this matter was taken, and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

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Tracy Thorpe Taylor, CCR