BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

AG PROCESSING INC A COOPERATIVE, Complainant,	)	
vs.	)	**HC-2010-0235**
KCP&L GREATER MISSOURI OPERATIONS COMPANY, Respondent.	)	
Ag Processing, Inc., Complainant,	)	
v.	)	**HC-2012-0259**
KCP&L Greater Missouri Operations Company, Respondent.	)	

AG PROCESSING INC A COOPERATIVE
APPLICATION FOR REHEARING[1/]

COMES NOW AG PROCESSING INC A COOPERATIVE ("AGP") and applies for rehearing of the Order Regarding Remand of February 27, 2013 in the above file ("Order") on the following grounds:

1. The Commission has provided insufficient time between the issuance date of this Order and its effective date of the Order for a complete and thorough Application for Rehearing to be filed. In so acting the Commission has acted unlawfully in

[1/] This pleading is captioned in both the HC-2010-0235 and HC-2012-0259 files without prejudice to AGP's contention that the consolidation of these two cases is neither warranted nor justified as noted herein. The consolidation exceeds the mandate of the reviewing court and is, itself, unlawful.

a manner calculated to deny AGP due process. The Commission's action is, therefore, unlawful.

2. It is not disputed that GMO failed to seek or obtain a stay from either the Commission or from the Court. The Order ignores the implications of this failure and attempts to restore to GMO moneys that have been finally returned to steam customers. In so doing the Commission acts contrary to law and its decision is unlawful and void.

3. The Order does not comply with the reviewing court's mandate that did not order either a vacation of the earlier order or a temporary adjustment. In so doing the Commission Order is unlawful and void.

4. The is no evidentiary support for consolidation of this case with File No. HC-2012-0259. Consolidation was also not ordered or directed by the mandate of the reviewing court. The two matters address entirely different periods of time and raise and will raise different evidentiary issues. Accordingly the Commission Order is both unlawful and unreasonable.

4. The Commission Order creates a requirement regarding damage that is not properly part of the Commission's authorization. The Commission is not a court and cannot in any event order or direct damages. The Order also ignores that damage to ratepayers was shown by collection from all steam ratepayers through the Quarterly Cost Adjustment ("QCA") and that the utility acted toward these steam customers as a class or group of customer based on their utilization of the steam distribution

system and each customer was charged these amounts based on their usage. Further, refunds were made through the QCA to all steam customers based on their usage of steam in as is shown by collection through the QCA and was not a specific charge to each individual customer. Accordingly the Commission Order is both unlawful and unreasonable.

5. The Commission Order appears to find that 2006-2007 program resulted in losses because the amount Aquila over-hedged was based on forecasts for usage from Aquila customers. There is no citation to the record regarding such finding insofar as such basis or forecasts were causative of or for Aquila's actions. There is no competent and substantial evidence on the whole record that supports this conclusion and it is contrary to the competent and substantial evidence on the whole record that does exist. Accordingly the Commission Order is both unlawful and unreasonable.

6. The original hearing examiner who heard the witnesses and the evidence in this case, and was in a position to judge the credibility of such witnesses left the Commission before an order was drafted. A second hearing examiner was assigned to write an order which the Commission then issued. Now a third hearing examiner has drafted yet another order which the Commission has issued. The Order was then prepared by this hearing examiner while only three of the existing Commissioners had possibly heard any of the evidence in this matter. All this procedure has resulted in a violation of the principle of *Morgan*

v. US,[2/] that he who decides must hear and has further resulted in an Order that is unlawful, unreasonable and void.

7. The Order proceeds on the basis that the QCA is similar to a FAC. It is not. Not only is there no evidence to support this assertion it is contrary to the evidence that even the Commission so acknowledges in the Order. The QCA is entirely dependent upon its terms and it is not at all similar to a FAC which is a matter regulated by Commission rule. The terms of the QCA govern its operation, including without limitation, the provision that the "complaint mechanism" is to be used to initiate a prudence challenge. The Order imposes upon the steam customers, including without limitation, AGP, provisions that were not bargained for and are not part of the QCA process or the tariff clause. That clause, enshrined as a tariff, has the force of law and cannot be arbitrarily or unilaterally changed either by the Commission or by Aquila. Accordingly the Commission Order that attempts to effect such change by setting up a system for GMO to charge its 2013 steam customers costs that it claims were incurred in 2006 and 2007 and previously completely refunded to them is unlawful, unreasonable, and void.

8. The Order attempts to state that there was a claim for "money lost." There was no claim for money "lost" but rather a claim pursuant to the QCA for a determination of prudence as to charges that were collected from steam customers at a time that was consistent with the operation of the QCA, *i.e.*, the prior

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[2/] 298 U.S. 468, 480 (1936).

quarter. Correctly or incorrectly, those amounts were fully refunded to steam customers and cannot now be recovered from their hands. No stay was sought from the Commission and no stay was sought or obtained from the reviewing court under applicable law. Accordingly no remedy can be granted to the utility under the QCA as the Order attempts to do because it pertains only to costs that were incurred in the prior quarter. Accordingly, the Order, to the extent that it attempts to exceed the terms and conditions of the QCA is unlawful, unreasonable and void.

9. Charges under the QCA were originally recovered from all steam customers based on their utilization of the steam system. The QCA was not limited to a specific "complaining" customer. Attempts by the Commission to limit relief to only those specific customers who complained is not only unlawful but without evidentiary support, is not supported by competent and substantial evidence on the whole record and is contrary to the competent and substantial evidence on the whole record. It is, therefore, unlawful, arbitrary, capricious, and unreasonable.

10. The Order acknowledges that Aquila’s successor GMO fully completed the Commission ordered refund to steam customers, but fails to note that GMO did not seek or obtain a stay at either the Commission level or the level of the reviewing court. Therefore the Order attempts to direct GMO to recover amounts that were not retained by GMO or placed in any impoundment ordered by either Commission or reviewing court and attempts to

provide to GMO relief that the Commission is without power to order. It is, therefore, unlawful and unreasonable and void.

11. The Order exceeds the mandate of the reviewing court in that the reviewing court did not order consolidation. Nor did the reviewing court order a temporary adjustment. The matter was remanded only for "further consideration under the appropriate burden of proof." "Further consideration" is not a license to "reopen" and existing and established record. To the extent that the Order exceeds this directive it is in excess of the mandate of the reviewing court and is neither lawful nor reasonable.

12. The Order treats this matter as a general rate case. The Commission has not provided adequate notice and time to all potentially impacted steam customers. The retroactive rate increase would be a violation of due process for all steam customers. In so doing the Order is unlawful and unrasonable.

13. The Order relies upon *State ex rel. Associated Natural Gas CO. v. Public Service Comm'n*,[3/] case for certain claims of authority. However, the reviewing court has determined that this case is not applicable. Proof of harm was not required by the mandate of the reviewing court nor is a showing of causation required by the mandate of the reviewing court. There was no dispute by GMO regarding how the original charges were applied to customer bills. No notice has been sent to potentially affected steam customers who may have their rates raised by

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[3/] 954 S. W.2d 520 (Mo. App. 1997).

reason of the Order and no timely notice may now be sent to them retroactively. In so doing and in failing to do, the Order is unlawful and unreasonable.

14. The Order asserts that the Commission is acting pursuant to the QCA but the QCA does not permit recovery of costs that were incurred, if at all, outside of the most recent quarter. Accordingly the Order asserts that the Commission has the power to make rates retroactively and is therefore unlawful and unreasonable and void.

15. The mandate of the reviewing court does not make the Commission into a court nor does it empower the Commission with powers that were reserved to the reviewing court by the legislature. In attempting to substitute for the reviewing court, the Order is unlawful, arbitrary, capricious and unreasonable.

16. The Order states that there was no evidence as to particular customers' portions of the hedging costs, however there was no evidence that charges were based on any other variable than steam usage which was the same for all customers and charges were made by Aquila to all steam customers based on their usage. Not only does the Order exceed the mandate of the reviewing court in this aspect but it attempts to impose a different standard than that used by the utility to charge the costs in the first instance. Accordingly the Order is unlawful and unreasonable and void.

17. The mandate from the reviewing court did not instruct the Commission to do other on remand than to give further consideration to its order in view of the shifted burden of proof. The Commission grants to GMO relief that GMO failed to seek or obtain on its own in the form of a stay and attempts to recover retroactively from customers amounts that have been returned to them through a final and unstayed Commission decision. In so doing the Order is unlawful and unreasonable and void.

18. In asserting that the Commission has authority to make a temporary rate adjustment when the utility neither sought nor obtained a stay of the Commission's original order from the Commission nor sought nor obtained a stay from the reviewing court, and failed to comply with the requirements of the controlling statute. The Commission attempts to grant to the utility relief that it neither requested nor obtained from the original issuing Commission nor from the reviewing court. In so doing the Order is unlawful and unreasonable.

19. The QCA does not permit retroactive rate increases but only allows recovery of costs from the prior quarter. In attempting to allow the utility to recover costs from customers that were incurred if at all several years prior, the Commission attempts to give retroactive effect to the QCA which is not provided by its terms. The Commission cannot lawfully impose upon customers a retroactive rate increase. In so doing the Order is unlawful, arbitrary and capricious, and unreasonable.

20. The QCA is not an FAC but is entirely based on the terms and conditions of the QCA agreement. That agreement was approved by the Commission and is not subject to having its terms unilaterally altered by the Commission. The ability of GMO to impose charges upon its steam customers is entirely based on the terms and conditions of the QCA and those terms and conditions may not be altered by the Commission without entirely vitiating the agreement or without the consent of AGP and other a steam customers. The Commission cannot supplant one agreement that the Commission earlier approved with an agreement that the Commission did not approve and that the parties did not accept. To the extent that the Order seeks to do that and to alter the terms and conditions of the QCA in a manner that was not agreed and was not accepted by the Commission, the Order is unlawful, arbitrary and capricious and unreasonable.

21. The Order states that the Commission must make a decision at this time arguing that it is compelled to do so by Section 386.520.3. the Commission is miskaken as to the applicable law in that it was not "instructed on remand to approve temporary rate adjustments." The reviewing court did not issue any such instructions (and could not have done so because of the failure of both GMO and the Commission to provide a reconciliation, and the Commission’s effort through this Order to leapfrog around the requirement that GMO obtain a stay from either the Commission or the reviewing court and either retain the funds or pay them into an appropriate respository grants to GMO relief

that it did not request and is not now entitled to have. The Commission thus appears to consider Section 386.520.3 as controlling. As a result of the Commissino's mistake of law, the Order is unlawful, arbitrary and capricious and unreasonable.

22. The Order assumes that "the QCA is a two-way cost adjustment mechanism" and attempts to substitute a different version of the QCA than that agreed upon by the parties, accepted by the Commission, restated into tariff form and approved by the Commission. In concluding that the agreed upon and approved QCA contains terms that permit GMO to rebill long past amounts that have already been refunded to steam customers without benefit of a judicial or adminstrative stay creates terms and condititions that were not part of the QCA as agreed upon by the parties, seeks retroactively to modify the terms and conditions of the QCA and retroactively apply a rate increase to customers that is in violation of the terms and conditions of the QCA. There is no evidence of records that can support such a determination. In so doing the Order is unlawful, arbitrary, capricous and unreasonable.

23. The Order attempts to predetermine a result by ignoring unrefuted evidence that Aquila failed to comply with its own conditions and terms of its "hedging strategy," which the Commission also predetermins to have been effected. In so doing the Order is not supported by competent and substantial evidence of record and is contrary to the substantial competent evidence

that is of record and is, thereofore, arbitrary, capricious and unreasonable.

24. The Order seeks to redetermine facts that are already in the evidentiary record, exceeds the direction of the mandate of the reviewing court in so doing, when facts and evidence in file HC-2010-0235 were established in a noticed hearing in which all parties were provided an opportunity to present all evidence they desired. The mandate of the reviewing court did not direct the Commission to "reopen the record" but rather simply required that the Commission reconsider the evidence that was already provided in the record with respect to file/case No. HC-2012-0235. In going beyond this mandate the Commission attempts to act as a court and to exercise powers that were not provided to it by the legislature. In so doing the Order is unlawful, arbitrary, capricious and unreasonable.

25. The Order attempts to predetermine results by stating a standard that was not directed by the reviewing court, and is not law as regards the facts supported by the evidence of record. The initial decision reviewed found that Aquila had acted imprudently in implementing its hedging program and the Order's effort to shift the question to "external factors that are beyond [Aquila's] control" is an effort to redetermine the standard of proof in a manner calculated to prejudice the steam customers in their effort to retain funds already restored to them through an unstayed Commission order. In so doing the Order is unlawful, arbitrary, capricious and unreasonable.

26. Ordered 3 of the Order references a new Quarterly Adjsutment Clause Tariff that inititate the "return of the improvidently ordered refund" to its steam customers. The use of the terms "improvidently ordered" demonstrates that the Commission has alrady reached a decision regarding the return of these refunds making even before evidence has been introduced or reconsidered. Accordingly the Order is unlawful, arbitrary, capricious and unreasonable.

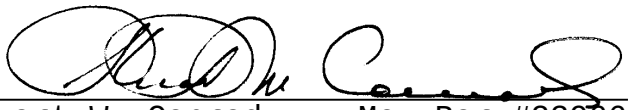
27. Section 386.420.4 RSMo requires that a reconciliation be filed so that the reviewing court could determine how the utility's rates and charges would need to be temporarily adjusted. A reconciliation was neither requested nor filed by GMO in its appeal nor did the Commission comply with the requirements of the statute (". . . the commission shall cause to be prepared. . . and shall approve . . . ." The Commission defaulted on this requirement and neither the Commission nor GMO submitted such a reconciliation to the court. It cannot be retroactively supplied. Only the reviewing court could direct such an adjustment. It did not. The Commission has no power granted by the legislature to substitute its whims for the authority of the reviewing court. The reviewing court did not order a temporary adjustment and the Commission has repetively been told that it is not a court and does not have the powers of a court. The Commission has no power to provide this reconciliation retroactively. The Order constitutes a collateral attack upon the mandate of the reviewing court. Accordingly the Order has no basis on which it

can proceed to grant relief and the Order is unlawful, arbitrary, capricious and unreasonable.

WHEREFORE for the foregoing reasons, rehearing should be granted.

Respectfully submitted,

FINNEGAN, CONRAD & PETERSON, L.C.

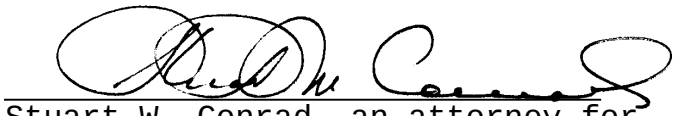


Stuart W. Conrad Mo. Bar #23966
3100 Broadway, Suite 1209
Kansas City, Missouri 64111
(816) 753-1122
Facsimile (816)756-0373
Internet: stucon@fcplaw.com

ATTORNEYS FOR AG PROCESSING INC.

SERVICE CERTIFICATE

I certify that I have served a copy of the foregoing pleading upon identified representatives of the parties hereto per the EFIS listing maintained by the Secretary of the Commission by electronic means as an attachment to e-mail, all on the date shown below.



Stuart W. Conrad, an attorney for
Ag Processing Inc a Cooperative

March 4, 2013