

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of KCP&L Greater Missouri)
Operations Company for Authority to File) **Case No. HT-2013-0456**
Tariffs Changing the Steam QCA for Service) **Tariff No. JH-2013-0448**
Provided to Customers in its Service Territory.)

RESPONSE TO ORDER DIRECTING FILING

COMES NOW the Staff of the Missouri Public Service Commission, and for its *Response* to the Commission's *Order Directing Filing* of May 21, 2013, states as follows:

1. On April 15, 2013, KCP&L Greater Missouri Operations Company (“GMO”) filed a proposed revision to its industrial steam service tariff, Tariff File No. JH-2013-0448.
2. On May 17, 2013, pursuant to the Commission’s direction of April 17, 2013, Staff filed its *Recommendation* advising that the proposed revision be approved.
3. Also on May 17, 2013, Ag Processing, Inc., a Cooperative (“AGP”) filed its *Protest, Request to Suspend and Request to Set Hearing*, asking that it be permitted to intervene, that the proposed tariff revision be suspended for 120 days plus six months, that “proper notice” of this proceeding be directed to GMO’s steam customers, and that a prehearing conference be promptly convened and a procedural schedule adopted.
4. Staff has examined AGP’s pleading and states that it is without merit in that it advances arguments already rejected by this Commission. GMO’s proposed revised tariff at issue here includes the recovery of amounts previously refunded to GMO’s steam customers, including AGP. This recovery is due to the reversal of the

Commission decision that resulted in the refunds, Case No. HC-2010-0235. GMO included this rate component in its proposed revised tariff at the express direction of the Commission in a related case.¹ That case, Case No. HC-2010-0235, remains active as part of Case No. HC-2012-0259 and AGP's various contentions are subject to litigation therein.² Should AGP ultimately prevail, any amounts due it can and will be returned to it through the Quarterly Cost Adjustment ("QCA") mechanism. For that reason, the Commission should (1) grant AGP's application to intervene herein; (2) deny AGP's request to suspend GMO's proposed revised tariff; and (3) deny AGP's request to set a hearing, convene a prehearing conference and adopt a procedural schedule.

5. By way of background, Staff states that AGP filed a complaint against Aquila, Inc., d/b/a Aquila Networks – L&P, now known as GMO on January 28, 2010, complaining that it was overcharged for the provision of industrial steam service to AGP's soybean processing plant in St. Joseph, Missouri, in that the charges rendered and paid included imprudently incurred natural gas price hedging costs.³ That complaint was docketed as Case No. HC-2010-0235 and it related to 2006 and 2007.

6. On September 28, 2011, the Commission issued its *Report & Order* in Case No. HC-2010-0235, holding that AGP had raised doubts concerning GMO's hedging program sufficient to require GMO to prove the prudence of the same, that GMO had failed to establish that any part of the cost of operating its natural gas price hedging program for steam production in 2006 and 2007 was prudently incurred, and,

¹ ***Ag Processing, Inc., a Cooperative v. KCP&L Greater Missouri Operations Company***, Case Nos. HC-2012-0259 and HC-2010-0235 (***Order Regarding Remand***, eff. March 5, 2013), Ordered Para. 3.

² It also now includes by consolidation the remand of Case No. HC-2010-0235.

³ For convenience and clarity, the Respondent will be referred to throughout as "GMO."

consequently, that GMO must refund the entire net cost of that program to its steam customers through the QCA mechanism. Those costs amount to \$931,968 for 2006 and \$1,953,488 for 2007.

7. GMO pursued an appeal of the Commission's decision to the Missouri Court of Appeals, Western District, and on October 23, 2012, that Court reversed the Commission stating that it had incorrectly applied the burden of proof. Thereafter, on November 21, 2012, the Court's mandate issued and Case No. HC-2010-0235 was remanded to the Commission for further proceedings.

8. By November 12, 2012, GMO had already refunded the entire amount at issue to its customers through the QCA. Also, on January 30, 2012, AGP filed an identical complaint against GMO for a different period; that case was docketed as Case No. HC-2012-0259 and it concerns 2009.

9. On December 5, 2012, the Commission directed the parties to rebrief the case for a new Commission decision based upon the existing record and, in particular, to "address the issue as to whether AGP has satisfied the preponderance of the evidence standard with regard to its allegation of imprudence."

10. On January 7, 2013, the parties timely filed the requested briefs. An issue emerged as to whether or not the money previously refunded by GMO to its steam customers could be recovered by the utility. AGP asserted that it could not, relying upon statutes and appellate decisions frankly inapplicable to GMO's QCA tariff. The Commission then directed Staff to prepare and file a legal analysis of the issue, which it did on February 11, 2013.

11. Staff's detailed legal analysis of February 11, 2013, need not be repeated here. In summary, under GMO's QCA tariff, rates are charged and collected on an interim basis, subject to adjustment pursuant to regular true-ups. These adjustments can either collect additional money from GMO's customers or return money to them, according to the results of the true-up. In particular, the QCA tariff expressly allows for amounts to be collected or refunded pursuant to a Commission order following a prudence review. Consequently, none of the statutes or jurisprudence cited by AGP, relating to refunds under a traditional tariff regime, have any application here.

12. Staff agrees that AGP has shown an interest herein that supports intervention. However, AGP has not shown sufficient grounds to suspend the proposed tariff revision. The only reason for suspension articulated by AGP is "AGP seeks an investigation by the Commission as regards the timing of the costs that are claimed to have been incurred by GMO in providing current steam service."⁴ Elsewhere, AGP makes it clear that it is referring to the amount previously refunded by GMO to its customers, which amount the Commission has directed that GMO recover pending the outcome of Case No. HC-2012-0259. Thus, AGP asserts that these are "out-of-period costs" that GMO is not entitled to collect because it failed to obtain a stay.⁵ Elsewhere, AGP asserts that "[t]he QCA explicitly does not provide for recovery of costs that have not been incurred during the previous calendar quarter."⁶ AGP ignores the specific tariff

⁴ AGP's *Protest, Application to Intervene, Request to Suspend and Request to Set Hearing and Suggestions in Support*, ¶ 15.

⁵ *Id.*, at ¶ 16.

⁶ *Id.*, at ¶ 5.

language authorizing adjustments made “necessary by Commission order pursuant to any prudence review.”⁷

13. Should AGP ultimately prevail, any amounts due it can and will be returned to it through the QCA mechanism. For that reason, the Commission should (1) grant AGP’s application to intervene herein; (2) deny AGP’s request to suspend GMO’s proposed revised tariff; and (3) deny AGP’s request to set a hearing, convene a prehearing conference and adopt a procedural schedule.

WHEREFORE, Staff prays that the Commission will grant intervention to AGP, deny all other relief requested by it, and approve GMO’s proposed tariff revision, Tariff No. JH-2013-0448.

Respectfully submitted,

s/ Kevin A. Thompson
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⁷ Aquila Networks L&P, P.S.C. MO. No. 1, Original Sheet 6.3, ¶ 4.

Certificate of Service

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on this **28th day of May, 2013**, to the parties of record as set out on the official Service List maintained by the Data Center of the Missouri Public Service Commission for this case.

s/ Kevin A. Thompson