

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

Ag Processing, Inc.,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. HC-2010-0235
	)	
KCP&L Greater Missouri Operations	)	
Company,	)	
	)	
Respondent.	)	
	)	
Ag Processing, Inc.,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. HC-2012-0259
	)	
KCP&L Greater Missouri Operations	)	
Company,	)	
	)	
Respondent.	)	

**PROPOSED PROCEDURAL SCHEDULE OF  
KCP&L GREATER MISSOURI OPERATIONS COMPANY**

KCP&L Greater Missouri Operations Company (“GMO”), pursuant to the Missouri Public Service Commission’s (“Commission”) February 27, 2013 Order Regarding Remand (“Order Regarding Remand”), files this Proposed Procedural Schedule.

Because GMO and Complainant Ag Processing, Inc. (“AGP”) disagree on the extent to which the Commission has reopened the evidentiary record, GMO is unable to join in AGP’s proposed procedural schedule. However, GMO and AGP generally agree on the schedule for the filing of testimony, the pre-hearing filings, and the date of the hearing.

GMO files this proposed procedural schedule on the following basis regarding the extent to which the Commission has reopened the evidentiary record in its Order Regarding Remand:

1. As noted in the Order Regarding Remand, the Commission found and it is now law of the case that Aquila was not imprudent in adopting and designing its natural gas hedging program. See Order Regarding Remand at 3; Report and Order, ¶ 25 at 9-10, ¶ 31 at 11, No. HC-2010-0235 (Sept. 28, 2011) (“Report and Order”). Applying the lower “serious doubt” burden of proof, the Commission held that AGP “failed to present sufficient evidence to create a serious doubt” about the adoption or design of Aquila’s steam hedging program. Id.

2. AGP did not apply for rehearing of the Commission’s 2011 decisions on adoption or design of the hedging program under Section 386.500.1,<sup>1</sup> and neither of those issues were raised on appeal. The Commission’s determination that GMO was not imprudent in the adoption and design of its hedging program is the law of the case and cannot be revisited. See Hinton v. Director of Revenue, 21 S.W.3d 109, 113 (Mo. App. W.D. 2000); State ex rel. Hertzog v. Young, 937 S.W.2d 416, 421-22 (Mo. App. W.D. 1997). “In situations where there is a reversal after appeal, where not all appealable issues were appealed, a reversal . . . affects only the lower court issues that were appealed from . . . . Thus, if there is a severable portion of the judgment which is not appealed by the parties, a reversal of the case on the issues actually presented on appeal would not disturb or affect those other, severable, portions of the original judgment from which no appeal was taken.” Edmison v. Clarke, 61 S.W.3d 302, 308 (Mo. App. W.D. 2001).

3. Consequently, the only substantive factual issue before the Commission in the remand of Case No. HC-2010-0235 is the operation of the hedging program, which must be assessed under the preponderance of the evidence standard. See Order Regarding Remand at 6-8; Report and Order Decision at 19. Because the Commission held that AGP failed to demonstrate imprudence on the adoption or design of Aquila’s steam hedging program applying the lower “serious doubt” burden of proof, and no party appealed that holding, the Commission

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<sup>1</sup> Unless otherwise indicated, all statutory references are to the Missouri Revised Statutes (2000), as amended.

cannot consider whether AGP has met the higher preponderance of the evidence burden regarding such issues. AGP is precluded from re-litigating what has already been determined by the Commission. State ex rel. Missouri Gas Energy v. PSC, 224 S.W.3d 20, 26 (Mo. App. W.D. 2007).

4. Accordingly, when the Commission reopened the record in Case No. HC-2010-0235 to take “additional” evidence, noting that the parties do not have to re-introduce evidence already admitted into the record, the only relevant questions before the Commission that such evidence should address concern the operation of the hedging program and proof of harm. See Order Regarding Remand at 8. GMO’s Proposed Procedural Schedule, therefore, notes that AGP and GMO may supplement the record in HC-2010-0235 with additional evidence regarding the operation of the hedging program.

5. GMO’s Proposed Procedural Schedule also reflects the fact that testimony has been submitted in Case No. HC-2012-0259, and that the Commission has not specifically ordered additional evidence to be filed in that matter. AGP filed direct testimony in Case No. HC-2012-0259 on June 1, 2012. GMO filed its rebuttal testimony on July 2, and on August 21 Staff filed its Report and Recommendation, as well as rebuttal testimony. On September 18, 2012 GMO filed its response to Staff, and AGP filed its response to Staff and surrebuttal testimony. These filings completed the submission of testimony as ordered in the Commission’s April 5, 2012 procedural schedule in the 2012 case.

6. Thereafter, the Commission stayed Case No. HC-2012-0259, suspending the procedural schedule and holding the case in abeyance until the Missouri Court of Appeals issued its mandate in the appeal of Case No. HC-2010-0235. See Order Staying Case and Holding Case in Abeyance at 2, Case No. HC-2012-0259 (Sept. 25, 2012). By lifting the stay and reactivating

the 2012 case in its Order Regarding Remand, the Commission has not ordered the filing of any additional evidence.

7. However, given the Commission's statements regarding proof of harm in the Order Regarding Remand, GMO proposes to allow limited testimony on that issue. With that exception, the procedural schedule for Case No. HC-2012-0259 resumes with a discovery cut-off date and pre-hearing filings.

8. With these considerations in mind, GMO proposes the following procedural schedule for the consolidated Case Nos. HC-2010-0235 and HC-2012-0235:

Additional Direct Testimony by Complainant (a) in HC-2010-0235 on the operation of the hedging program and (b) in both cases on proof of harm	May 15, 2013
Additional Rebuttal Testimony by Respondent	June 14, 2013
Additional Surrebuttal Testimony by Complainant	July 15, 2013
Last Day to Serve Discovery Requests in HC-2012-0259	July 24, 2013
List of Issues, Witnesses, and Order of Witnesses in HC-2010-0235 and HC-2012-0259	July 29, 2013
Position Statements in HC-2010-0235 and HC-2012-0259	August 2, 2013
Evidentiary Hearing in HC-2010-0235 and HC-2012-0259	September 9-11, 2013

WHEREFORE, GMO respectfully requests that the Commission approve the Proposed Procedural Schedule of KCP&L Greater Missouri Operations Company.

Respectfully submitted,

/s/ Karl Zobrist

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Co.

**Certificate of Service**

A copy of the foregoing has been emailed this 14th day of March, 2013 to all counsel of record.

/s/ Lisa A. Gilbreath

Attorney for KCP&L Greater Missouri  
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