

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

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

**RESPONSE OF  
KCP&L GREATER MISSOURI OPERATIONS COMPANY  
TO ORDER REGARDING MEDIATION AND MOTION FOR STAY**

KCP&L Greater Missouri Operations Company (“GMO” or “Respondent”) hereby responds to the Commission’s Order of August 23, 2012, and moves for a stay of this case pending the outcome of the Respondent’s appeal at the Missouri Court of Appeals related to the Complainant’s first steam complaint case decided by the Commission in 2011.

In support of its response and its motion to stay, GMO states the following:

1. On August 21, 2012 the Staff filed its Report and Recommendation which stated in part that the “Commission should encourage the parties to attempt to mediate the dispute, whether through a technical conference or a formal mediation for the parties to reach a fair resolution of the dispute between the steam customers and GMO.” See Staff’s Report and Recommendation, ¶ 3 (4) at p. 2.
2. Thereafter, on August 23, 2012 the Commission issued its Order Directing Responses requiring the Complainant and the Respondent to respond to Staff’s recommendation on mediating this dispute no later than September 4.

3. Although GMO is not opposed to mediation as a possible means to resolve this dispute, it is opposed to mediation at this time, given the pending proceedings at the Missouri Court of Appeals regarding the Complainant's first steam complaint case.

4. Ag Processing's first complaint case, No. HC-2010-0235, related to the hedging practices of GMO's predecessor Aquila, Inc. that occurred in 2006 and 2007. The Commission's September 28, 2011 Report and Order in that case found that GMO was not imprudent in implementing a natural gas hedging program for its steam service and that the program was not imprudently designed. See Report and Order at 10-11. However, the Commission did conclude that "Aquila had the burden of proving that it operated the hedging program in a prudent manner" and that it "failed to meet that burden." Id. at 19.

5. Subsequent to the denial of rehearing, GMO appealed the case to the Missouri Court of Appeals for the Western District, where it is currently pending as Case WD74601. The appeal has been fully briefed, and oral argument is scheduled to occur on Wednesday, September 19, 2012.

6. There are a number of issues pending in the appeal that will have implications for this proceeding. They include whether the burden of proof was properly shifted from the Complainant to the Respondent, and whether the measure of damages was properly calculated. Decisions by the Court of Appeals on these and other issues related to 2006-07 hedging issues will govern not only that first steam complaint, which could be remanded to the Commission for further proceedings, but also this second complaint case related to 2009 hedging issues.

7. Therefore, GMO moves to stay this complaint case now pending before the Commission until the Court of Appeals issues a decision in the first steam complaint case. At that time the parties will be able to better assess the legal and factual issues in both steam

complaint cases, and decide whether mediation of the present proceeding, as well as the first complaint case would be productive.

Respectfully submitted,

/s/ Karl Zobrist

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**Certificate of Service**

A copy of the foregoing was emailed this 4th day of September 2012 to all counsel of record.

/s/ Karl Zobrist

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