

**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.	)	

**KCP&L GREATER MISSOURI OPERATIONS COMPANY’S  
ANSWER AND AFFIRMATIVE DEFENSES**

KCP&L Greater Missouri Operations Company (“GMO” or “Respondent”), pursuant to Missouri Public Service Commission (“Commission” or “PSC”) Rule 4 CSR 240-2.070(9) and the Commission’s January 30, 2012 Notice of Complaint, Notice of Contested Case, and Order Preserving Discovery, submits this Answer and Affirmative Defenses to the Complaint<sup>1</sup> filed by Ag Processing, Inc. (“AgP”). In support of its Answer and Affirmative Defenses, Respondent states as follows:

**Introduction**

The Complaint asks this Commission to review a natural gas hedging program for Respondent’s steam operations at the Lake Road Plant in St. Joseph (“steam hedging program”) that Aquila, Inc. (“Aquila”), now known as GMO, implemented in February 2006 pursuant to the Nonunanimous Stipulation and Agreement (“Stipulation”) that resolved Aquila’s 2005 Steam Rate Case, Case No. HR-2005-0450 (“2005 Steam Rate Case”). AgP alleges that Aquila’s use of its steam hedging program to mitigate natural gas price volatility for its steam operations was imprudent during the 2009 Quarterly Cost Adjustment (“QCA”) period covered by those

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<sup>1</sup> AgP filed a Prudence Challenge in the form of a Complaint in Case No. HR-2010-0028 on January 29, 2012. Subsequently, the Commission severed the complaint from this case and filed the Complaint in the subject docket, Case No. HC-2012-0259, on January 30, 2012.

proceedings. The QCA process, as well as the steam hedging program, were implemented pursuant to the 2005 Steam Rate Case stipulation.

AgP seeks an order from the Commission requiring GMO to refund, with interest, the entirety of the \$1,224,510 in natural gas hedging settlement costs for 2009, even though no other customer has joined this Complaint.

This Commission has encouraged hedging programs for many years. See Order Finding Necessity For Rulemaking, In re Proposed Rulemaking Concerning Mitigation of Natural Gas Price Volatility, Case No. GX-2002-478 (Apr. 16, 2002); 4 CSR 240-40.018(1)(A) & (C) (hedging programs designed to “mitigate upward natural gas price spikes” could result in higher than spot market prices, but “this is recognized as a possible result of prudent efforts to dampen upward volatility [emphasis added]”); Joint Report on Natural Gas Market Conditions, PGA Rates, Customer Bills & Hedging Efforts of Missouri’s Natural Gas Local Distribution Companies at 3, In re Investigation into Status of Missouri’s Natural Gas Local Distribution Companies’ Compliance with 4 CSR 240-40.018, Case No. GW-2006-0110 (Feb. 24, 2006) (“hedging strategies that obtain price certainty in lieu of price variability may not result in the lowest costs”).

It is, therefore, important to understand how a hedging program mitigates upward price volatility, and that a prudent hedging program does not always result in savings to net fuel costs, as the foregoing statements by the Commission and its Staff recognize. The Commission has previously determined that Aquila was prudent in adopting its steam hedging program and that the program was properly designed in its September 28, 2011 Report and Order in Case No. HC-2010-0235.

Although the Commission found in that case that Aquila had not demonstrated that the hedging program was prudently operated, GMO respectfully disagrees with that finding, and

believes that the evidence in this case will show that the program was properly administered. The evidence will also show that Aquila entered into its steam hedging program with the knowledge and agreement of AgP because of then existing and projected natural gas market conditions.

Procedurally, Complainant AgP bears the burden of demonstrating any imprudence by Aquila in the implementation or administration of its steam hedging program. AgP brought its Complaint, which it entitled a “Prudence Challenge,” pursuant to Tariff Sheet 6.4 of the QCA Rider, attached as Exhibit B to the Complaint. Section 8 of Tariff Sheet 6.4 provides:

Any customer or group of customers may make application to initiate a complaint for the purpose of pursuing a prudence review by use of the existing complaint process.

Under longstanding Missouri law, the Commission presumes that the actions of the utility are prudent unless a party raises “a serious doubt” concerning the prudence of its actions. State ex. rel. Public Counsel v. PSC, 274 S.W.3d 569, 578, 587 (Mo. App. W.D. 2009); Associated Natural Gas, 954 S.W.2d at 528-29; In re Kansas City Power & Light Co., 28 Mo. PSC (N.S.) 228, 279-82 (1986). Only where a challenger “creates a serious doubt as to the prudence of an expenditure” does a utility “have the burden of dispelling these doubts and proving the questioned expenditure to have been prudent.” State ex rel. Public Counsel v. PSC, 274 S.W.3d at 586.

Therefore, the burden is upon AgP to create serious doubt as to the prudence of Aquila’s steam hedging program. Should AgP create such serious doubt, GMO then has the opportunity to dispel and rebut those doubts before the Commission.

## **ANSWER**

Except as specifically admitted herein, Respondent denies each and every allegation, averment, and statement in the Complaint, and specifically denies that Aquila, Inc. or GMO was imprudent as alleged in the Complaint.

### **COUNT I – COMMON ALLEGATIONS**

1. Respondent admits the allegations in Paragraph 1 of the Complaint.
2. Respondent denies the allegations of the first sentence of Paragraph 2, but admits the second and third sentences of Paragraph 2 of the Complaint.
3. Respondent denies the allegations of Paragraph 3 except to admit that GMO and Kansas City Power & Light Co. are wholly owned subsidiaries of Great Plains Energy Incorporated.
4. Respondent denies the allegations in Paragraph 4 except to admit that GMO, formerly known as Aquila, Inc., is a wholly owned subsidiary of Great Plains Energy Incorporated.
5. Respondent denies the allegations of Paragraph 5 of the Complaint except to admit that GMO was formerly named Aquila, Inc.
6. Respondent denies the allegations of Paragraph 6 of the Complaint except to admit that GMO provides steam service to AgP's facility in St. Joseph, Missouri.
7. Respondent admits the allegations in Paragraph 7 of the Complaint.
8. Respondent denies the allegations in Paragraph 8 of the Complaint, except to admit that a rate adjustment mechanism was approved by the Commission in Case No. HR-2005-0450.
9. Respondent denies the allegation except to admit that Complainant has attached what appears to be a copy of the Commission's order as Exhibit A in Case No. HR-2005-0450.

10. Respondent denies the allegation except to admit that Complainant has attached what appears to be a copy of the Nonunanimous Stipulation and Agreement as Exhibit B in Case No. HR-2005-0450.

11. Subject to the denial stated in Paragraph 8 above, Respondent admits the allegations in Paragraph 11 of the Complaint.

12. Subject to the denial stated in Paragraph 8 above, Respondent admits the allegations in Paragraph 12 of the Complaint.

13. Subject to the denial stated in Paragraph 8 above, Respondent admits the allegations in Paragraph 13 of the Complaint.

14. Respondent denies the allegations in Paragraph 14 of the Complaint.

15. Subject to the denial stated in Paragraph 8 above, Respondent admits the allegations in Paragraph 15 of the Complaint.

16. Respondent denies the allegations contained in Paragraph 16 except to admit that AgP is a steam customer of GMO.

17. Respondent denies the allegations in Paragraph 17 of the Complaint.

18. Respondent denies the allegations in Paragraph 18 of the Complaint.

19. Respondent denies the allegations in Paragraph 19 of the Complaint.

20. Respondent admits the allegations in Paragraph 20 of the Complaint.

21. Respondent denies the allegations in Paragraph 21 of the Complaint, except to state that its steam hedging program was prudently administered.

22. Respondent denies the allegations in Paragraph 22 of the Complaint.

23. Respondent denies the allegations in Paragraph 23 of the Complaint.

24. Respondent denies the allegations in Paragraph 24 of the Complaint.

25. Respondent denies the allegations in Paragraph 25 of the Complaint.

26. Respondent denies the allegations in Paragraph 26 of the Complaint.
27. Respondent denies the allegations in Paragraph 27 of the Complaint.
28. Respondent denies the allegations in Paragraph 28 of the Complaint.
29. Respondent denies the allegations in Paragraph 29 of the Complaint.
30. Respondent denies the allegations in Paragraph 30 of the Complaint, except to state that its steam hedging program was prudently administered.
31. Respondent denies the allegations in Paragraph 31 of the Complaint.
32. Respondent denies the allegations in Paragraph 32 of the Complaint.
33. Respondent denies the allegations in Paragraph 33 of the Complaint.
34. Respondent denies the allegations in Paragraph 34 of the Complaint.
35. Respondent denies the allegations in Paragraph 35 of the Complaint.
36. Respondent denies the allegations in Paragraph 36 of the Complaint.
37. Respondent denies the allegations in Paragraph 37 of the Complaint, except to admit that a steam hedging program was commenced in 2006.
38. Respondent denies the allegations in Paragraph 38 of the Complaint, except to admit that its steam hedging program was prudently administered.
39. Respondent denies the allegations in Paragraph 39 of the Complaint, except to admit that its steam hedging program was prudently administered.
40. Respondent denies the allegations in Paragraph 40 of the Complaint.
41. Respondent denies the allegations in Paragraph 41 of the Complaint, except to admit that there were other hedging programs implemented by Aquila.
42. Respondent denies the allegations in Paragraph 42 of the Complaint, except to admit that some of the same individuals that were involved in the Aquila Steam Hedging Program were involved in other hedging programs implemented by Aquila.

43. Respondent denies the allegations in Paragraph 43 of the Complaint, except to admit that the steam hedging program was similar to other Aquila hedging programs.

44. Respondent denies the allegations in Paragraph 44 of the Complaint, except to admit that the steam hedging program was similar to other Aquila hedging programs.

45. Respondent denies the allegations in Paragraph 45 of the Complaint, except to admit that the steam hedging program was similar to other Aquila hedging programs.

46. Respondent denies the allegations in Paragraph 46 of the Complaint.

47. Respondent denies the allegations in Paragraph 47 of the Complaint.

48. Respondent denies the allegations in Paragraph 48 of the Complaint, except to admit that Aquila engaged in prudent forecasting.

49. Respondent denies the allegations in Paragraph 49 of the Complaint, except to admit that Aquila financially settled hedges as part of the steam hedging program.

50. Respondent admits the allegations in Paragraph 50 of the Complaint.

51. Respondent denies the allegations in Paragraph 51 of the Complaint.

52. Respondent denies the allegations in Paragraph 52 of the Complaint.

53. Respondent denies the allegations in Paragraph 53 of the Complaint, except to admit that Aquila became a wholly owned subsidiary of Great Plains Energy Incorporated on July 14, 2008.

54. Respondent denies the allegations in Paragraph 54 of the Complaint.

55. Respondent denies the allegations in Paragraph 55 of the Complaint, except to admit that Aquila's corporate name was changed to KCP&L Greater Missouri Operations Company ("GMO") and that GMO operates the regulated steam business in St. Joseph, Missouri.

56. Respondent denies the allegations in Paragraph 56 of the Complaint, except to admit that GMO provides regulated steam service to AgP in St. Joseph, Missouri.

57. Respondent neither admits nor denies the allegations contained in Paragraph 57, as orders of this Commission speak for themselves.

58. Respondent neither admits nor denies the allegations contained in Paragraph 58, as orders of this Commission speak for themselves.

59. Respondent admits the allegations in Paragraph 59 of the Complaint.

60. Respondent neither admits nor denies the allegations contained in Paragraph 60, as orders of this Commission speak for themselves. Respondent admits that it did not seek a stay from the Commission of its order in File No. HT-2011-0343.

61. Respondent denies allegations contained in Paragraph 61, except to admit that the Commission exercises its power and authority according to Missouri law.

WHEREFORE, Respondent asks that purported Count I be dismissed in its entirety as it states no claim for relief and is simply a statement of allegations.

#### **COUNT II – 2009 QCA PERIOD**

62. Respondent incorporates by reference as though fully set forth herein its answers and denials to the allegations contained in Paragraphs 1 through 61 inclusive of the Complaint.

63. Respondent denies the allegations in Paragraph 63 of the Complaint.

64. Respondent denies the allegations in Paragraph 64 of the Complaint.

65. Respondent denies the allegations in Paragraph 65 of the Complaint.

66. Respondent denies the allegations in Paragraph 66 of the Complaint.

67. Respondent denies the allegations in Paragraph 67 of the Complaint.

68. Respondent denies the allegations in Paragraph 68 of the Complaint.

69. Respondent denies the allegations in Paragraph 69 of the Complaint.

70. Respondent denies the allegations in Paragraph 70 of the Complaint.

71. Respondent denies the allegations in Paragraph 71 of the Complaint.



72. Respondent denies the allegations in Paragraph 72 of the Complaint.

73. Respondent denies the allegations in Paragraph 73 of the Complaint.

74. Respondent denies the allegations in Paragraph 74 of the Complaint.

75. Respondent denies the allegations in Paragraph 75 of the Complaint.

76. Respondent denies the allegations in Paragraph 76 of the Complaint.

WHEREFORE, having fully answered the allegations of Count II, Respondent asks that Count II be dismissed in its entirety, and that Respondent be awarded its costs and any further relief deemed appropriate by the Commission.

### **AFFIRMATIVE DEFENSES**

77. Respondent denies each and every allegation contained in AgP's Complaint and Prudence Challenge, unless specifically admitted herein, and incorporates by reference each and every answer set forth above in response to AgP's allegations in Paragraphs 1 through 76.

78. AgP's Complaint and Prudence Challenge, and each Count thereof, fails to state a claim upon which relief can be granted.

79. Count I sets forth no claim for relief and constitutes only a general statement of allegations. It should, therefore, be dismissed.

80. AgP's claims for relief, including any asserted claim for equitable relief, are barred by the doctrines of unclean hands, unjust enrichment, and estoppel.

81. AgP's claims are barred by the doctrine of waiver.

82. AgP's claims are barred or reduced by its failure to mitigate its damages.

83. If AgP sustained any injury or damage through the actions of Respondent, which this Respondent denies, such injury or damage was caused in whole or in part by AgP's own fault or negligence, thereby barring AgP's claims or, alternatively, entitling Respondent to a

comparison of fault which will reduce AgP's right to recover damages or other compensation or refunds in this action.

84. AgP's claims for relief are barred because they do not reflect its losses and are speculative.

85. If the Commission awards any refund or damages to AgP in this proceeding, which Respondent denies that AgP is entitled to, the amount of refund or damages must be credited or paid pursuant to the provisions of the QCA tariff and over a period of time which reflects the period of time during which any such amounts were initially collected from customers.

86. The claims of AgP are barred by reason of its failure to join all necessary parties in interest.

87. Any refund or recovery awarded in this proceeding must be reduced by the failure of all necessary or indispensable parties to be joined.

88. AgP's claims are barred by the doctrine of laches.

Respectfully submitted,

/s/ Karl Zobrist

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Co.

**Certificate of Service**

A copy of the foregoing has been emailed this 29th day of February 2012 to all counsel of record.

/s/ Karl Zobrist

Attorneys for KCP&L Greater Missouri  
Operations Co.