BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Determination of Carrying Costs for the Phase-In Tariffs of KCP&L Greater Missouri Operations Company	))))	File No. ER-2012-0024

POST-HEARING BRIEF
OF KCP&L GREATER MISSOURI OPERATIONS COMPANY

COMES NOW KCP&L Greater Missouri Operations Company ("GMO" or "Company"), pursuant to 4 CSR 240-2.080 and the *Order Directing Filing of Briefs* issued on January 19, 2012, and for its Post-Hearing Brief states as follows:

I. PROCEDURAL HISTORY

On May 4, 2011, the Commission issued its *Report and Order* in GMO's last rate case, File No. ER-2010-0356. In its *Report and Order,* the Commission determined that it was appropriate to adopt a different method of allocating the costs of Iatan 2 between the MPS and L&P divisions than that proposed by GMO, based largely upon the recommendations of the Commission Staff.[1] In its findings of fact, the Commission specifically found: "The Iatan 2 Allocation is more akin to a rate design issue since it determines the relative amount of the rate increase that will be received by both the MPS and the L&P service areas rather than the overall revenue requirement impact of Iatan 2."[2] As a result of this rate design determination, a larger increase was adopted for the L&P division than originally proposed by GMO.

Timely applications for rehearing were filed by GMO, Ag Processing Inc., a cooperative ("AGP"), the Office of the Public Counsel ("OPC"), and Dogwood Energy, LLC ("Dogwood") on various issues. After receiving additional responses and arguments,

[1] *Report and Order*, pp. 195-204.
[2] *Report and Order,* p. 196.

the Commission held an on-the-record question and answer session on May 26, 2011, in order to better understand the requests for rehearing and clarification regarding the Iatan allocation issue.

On May 27, 2011, the Commission issued its *Order of Clarification and Modification* in which it determined that:

> Because of the magnitude of the rate increase and the effects on the ratepayers in the L&P service area, the Commission determines in its discretion that a just and reasonable method of implementing this large increase is by phasing it in over a reasonable number of years. The Commission further concludes that rates for L&P service area should initially be set at an amount equal to the $22.1 million originally proposed by GMO with the remaining increase plus carrying costs being phased-in in equal parts over a two year period.

Following the issuance of that order, GMO filed tariffs (Tariff File Nos. YE-2011-0608, YE-2011-0609, and YE-2011-0610) to implement the phase-in plan, including carrying costs. OPC and AGP objected to the proposed carrying costs and additional filings were made regarding the subject.

On June 24, 2011, GMO filed its Writ of Review of the Commission's *Report & Order* in File No. ER-2010-0356 with the Cole County Circuit Court appealing issues not related to the phase-in plan. On or about June 30 and July 20, 2011, respectively, AGP and OPC filed their Writ of Review with the Cole County Circuit Court. On August 1, 2011, the Circuit Court issued its Order Consolidating Cases. (Consolidated Case Nos. 11AC-CC00415, 11AC-CC00432, and 11AC-CC00474).

On June 25, 2011, the Commission issued its *Order Approving Tariff Sheets and Setting Procedural Conference* stating that additional evidence was needed to determine the appropriate carrying costs. On June 28, 2011, a procedural conference was held and the parties who participated at the conference filed a joint proposed procedural schedule, including the filing

of pre-filed testimony, a list of issues, order of witnesses, order of cross-examination, and evidentiary hearings.

On July 22, 2011, the Commission issued its *Order Opening A New File And Adopting Procedural Schedule* in File No. ET-2012-0017 [Tariff Nos. YE-2011-0608, YE-2011-0609, and YE-2011-0610], stating:

> In addition, the Commission opens this new file for the proceeding related to a determination of the carrying costs for the phase-in and approval of those tariffs. The parties to File No. ER-2010-0356 shall be made parties to this file without the need for intervention. In addition, the pleadings, tariffs, orders, and other documents on the docket sheet in File No. ER-2010-0356 beginning on May 27, 2011 to the date of this order, shall be copied to this docket. Any discovery or data requests in ER-2010-0356 relevant to the issues in this file may be utilized in this file the same as if they had been proposed in this matter.

On July 25, 2011, the Commission issued its *Notice Closing File* in File No. ET-2012-0017 stating that:

> The Commission has determined that this matter should be classified as a rate case rather than a tariff case. Therefore, File No. ER-2012-0024 has been opened and will contain all filing that would have occurred in this file. The Data Center shall place a copy of the Order Opening a New File and Adopting Procedural Schedule, issued July 22, 2011, in File No. ER-2012-0024. The procedural schedule adopted in that order is the procedural schedule for ER-2012-0024.
>
> File No. ET-2012-0017 is closed.

On July 25, 2011, the Commission issued its *Notice of Opening Case, and Notice Opening A New File and Adopting Procedural Schedule* in File No. ER-2012-0024. The Commission also filed in File No. ER-2012-0024 various tariffs and pleadings that had been previously filed in GMO's last rate case, File No. ER-2010-0356. On July 25, 2011, the Commission also issued its *Notice Closing File* in File No. ER-2010-0356.

On August 16, 2011, GMO file its Motion To Suspend Procedural Schedule to allow the parties to discuss settlement of the case. On August 17, 2011, the Commission issued its *Order Granting Motion To Suspend Procedural Schedule*.

On September 2, 2011, GMO and Staff filed a Non-Unanimous Stipulation And Agreement which recommended that the Commission approve the use of a 3.25 percent carrying cost in GMO's phase-in tariffs. In addition, the Non-Unanimous Stipulation And Agreement recommended that the Commission should order that the attached tariff schedules for the second, third and fourth year of the phase-in plan shall become effective automatically in each subsequent year on June 25 without further order of the Commission, unless suspended by the Commission for good cause shown.

OPC, Robert Wagner, Dogwood, the Missouri Department of Natural Resources and Union Electric Company d/b/a Ameren Missouri have indicated that they do not oppose the Stipulation.

On September 8, 2011, AGP filed its Objection to the Non-Unanimous Stipulation And Agreement, and requested a hearing.

II. ARGUMENT

A. The Commission Has Jurisdiction in This Case.

Pursuant to Missouri statutes, all orders of the Missouri Public Service Commission ("Commission" or "PSC") shall be in force and shall be prima facie lawful and reasonable until found otherwise. *See* Section 386.270.[3] Orders of the Commission remain in force until changed by the Commission or found to be unlawful:

> Every order or decision of the commission . . . shall continue in force either for a period which may be designated therein or until changed or abrogated by the

[3] Unless otherwise indicated, all statutory references are to the Missouri Revised Statutes (2000), as amended.

> commission, unless such order be unauthorized by this law or any other law or be in violation of a provision of the constitution of the state or of the United States. [Section 386.490.3]

A party's dissatisfaction with a Commission order and the pendency of any appeal of that order has no bearing on its effect. Commission orders remain in effect despite a pending application for rehearing. *See* Section 386.500.3. The Commission's orders also remain in effect despite a pending writ of review. *See* Section 386.520.1. "Unquestionably, the orders of the Commission were presumptively valid under the provisions of § 386.270 prior to the ruling of the circuit court." State ex rel. GTE North, Inc. v. PSC, 835 S.W.2d 356, 366 (Mo. App. W.D. 1992). Indeed, the statute is clear:

> The pendency of a writ of review shall not of itself stay or suspend the operation of the order or decision of the commission, but during the pendency of such writ, the circuit court in its discretion may stay or suspend, in whole or in part, the operation of the commission's order or decision. [386.520.1]

Accordingly, orders of the Commission enjoy a presumption of validity throughout their review. *See* State ex rel. Kansas City Power & Light Co. v. PSC, 76 S.W.2d 343, 350 (Mo. 1934); State ex rel. Midwest Gas Users' Assoc. v. PSC, 976 S.W.2d 470, 476 (Mo. App. W.D. 1998). Even an adverse ruling on a Commission order by the circuit court does not invalidate that order while the appeal continues. Id. at 368.

A party aggrieved by a Commission decision has the right to protect its interests by applying to the circuit court for a stay of enforcement of the Commission's order pursuant to Section 386.520. State ex rel. GTE North, Inc. v. PSC, 835 S.W.2d 356, 366-67 (Mo. App. W.D. 1992). "This section provides the opportunity to stay the Commission's order upon issuance of a stay order by the circuit court and the filing of a bond." Id. at 367.

No stay has issued in this case. Thus, the Commission's May 4, 2011 *Report and Order* and the May 27, 2011 *Order of Clarification and Modification* in File No. ER-2010-0356 both remain effective and valid.

What's more, the Commission has express statutory authority under Section 393.155 to direct a utility to file tariffs reflecting the phase-in of rates authorized in a rate case after the conclusion of the rate case hearing:

> If, after hearing, the commission determines that any electrical corporation should be allowed a total increase in revenue that is primarily due to an unusually large increase in the corporation's rate base, the commission, in its discretion, need not allow the full amount of such increase to take effect at one time, but may instead phase in such increase over a reasonable number of years. Any such phase-in shall allow the electrical corporation to recover the revenue which would have been allowed in the absence of a phase-in and shall make a just and reasonable adjustment thereto to reflect the fact that recovery of a part of such revenue is deferred to future years. In order to implement the phase-in, the commission may, in its discretion, approve tariff schedules which will take effect from time to time after the phase-in is initially approved. [Section 393.155.1].

Indeed, the Commission has acted upon this statutory authority in previous rate cases. *See Report and Order*, In the Matter of the Determination of In-Service Criteria for the Union Electric Co.'s Callaway Nuclear Plant and Callaway Rate Base and Related Issues, File Nos. EO-85-17, ER-85-160, 27 Mo. P.S.C. (N.S.) 183, 318 (Mar. 29, 1985); *Report and Order*, In the matter of Kansas City Power & Light Company for authority to file tariffs increasing rates for electric service provided to customers in the Missouri service area of the Company, and the determination of in-service criteria for Kansas City Power & Light Company's Wolf Creek Generating Station and Wolf Creek rate base and related issues, File Nos. ER-85-128, EO-85-185, EO-85-224, 28 Mo. P.S.C. (N.S.) 228, 424 (Apr. 23, 1986).

Importantly, the Commission does not lose its jurisdiction to exercise such ministerial functions after the filing of the notice of appeal. In Union Electric Company's 1984 rate case,

the Commission issued its report and order by which it phased-in the utility's increased rates over a period of eight years. *See Report and Order*, In the Matter of the Determination of In-Service Criteria for the Union Electric Co.'s Callaway Nuclear Plant and Callaway Rate Base and Related Issues, File Nos. EO-85-17, ER-85-160, 27 Mo. P.S.C. (N.S.) 183, *3271-72 (Mar. 29, 1985). Several industrial users intervened in the rate proceeding. After the Commission issued its report and order, those industrial users filed a petition for writ of review in the Circuit Court of Cole County. Nevertheless, the Commission continued to implement its report and order, phasing-in the utility's rates until it issued a report and order in 1987 in which it determined that the phase-in should be ended. *See Report and Order*, Staff of the PSC vs. Union Electric Co., File Nos. EC-87-114, EC-87-115 (Dec. 21, 1987).

The Commission's actions in this docket are also ministerial acts, implementing its orders issued in File No. ER-2010-0356. The Commission here is not modifying or changing the order now before the Circuit Court. Merely because the original *Report and Order* in File No. ER-2010-0356 has been appealed does not usurp the Commission's authority under Section 393.155 to decide issues related to the phase-in plan contained in the Company's tariff filings.

In addition, it is very common for the Commission to spin-off dockets from rate cases in order to examine additional issues. For example, the Commission has ordered the creation of new dockets to review rate design, tree trimming policies and other issues related to previously decided rate cases and other complaint proceedings. *See e.g.*, In re Aquila, 2005 WL 2039745, File Nos. ER-2005-0436 (August 23, 2005); Re Kansas City Power & Light Company, File No. ER-94-199 and ER-94-197; File No. ET-97-113 (June 13, 1997); Re Union Electric Company, *Order Regarding Union Electric's Tree Trimming Policies and Closing Case*, File No. EW-

2004-0583, 2005 WL 742841 (April 10, 2005); Re St. Louis County Water Co., *Report and Order*, File No. WO-98-223 (February 13, 2001).

In its May 27, 2011 *Order of Clarification and Modification* in File No. ER-2010-0356, the Commission determined that:

> Because of the magnitude of the rate increase and the effects on the ratepayers in the L&P service area, the Commission determines in its discretion that a just and reasonable method of implementing this large increase is by phasing it in over a reasonable number of years. The Commission further concludes that rates for L&P service area should initially be set at an amount equal to the $22.1 million originally proposed by GMO with the remaining increase plus carrying costs being phased-in in equal parts over a two year period. [*Order of Clarification and Modification* at 7].

Following that order, GMO filed tariffs (Tariff File Nos. YE-2011-0608, YE-2011-0609, and YE-2011-0610) to implement the phase-in, including carrying costs. On June 25, 2011, the Commission issued its *Order Approving Tariff Sheets and Setting Procedural Conference*, stating that additional evidence was needed to determine appropriate carrying costs. A Writ of Review in File No. ER-2010-0356 was issued in Cole County Circuit Court on June 29, 2011 upon application of GMO, and on July 5, 2011 upon application of AGP.

To determine the carrying costs for the phase-in and approval of GMO's related tariffs -- that is, to implement the phase-in ordered in its valid and effective *Order of Clarification and Modification* in File No. ER-2010-0356 -- the Commission opened File No. ET-2012-0017. The Commission later classified this matter as a rate case rather than a tariff case, and opened File No. ER-2012-0024.

The filing of writs by GMO and AGP does not freeze the Commission from implementing its *Report and Order* or its *Order of Clarification and Modification*. As these orders remain valid and effective during their appeal, the Commission may continue to exercise

the ministerial function of determining the carrying costs associated with the phase-in of rates authorized by its *Order of Clarification and Modification*.[4]

B. The Commission Should Consider All Relevant Factors Related to the Determination of the Appropriate Carrying Costs in the Phase-In Tariffs.

AGP has inserted in the List of Issues in this case the following issue: "Does the Commission decision consider all relevant factors?" (List of Issues, p. 1).

AGP is suggesting that the Commission must consider "all relevant factors" in this case that would be appropriate in a new rate case intended to determine the Company's revenue requirement in 2012, 2013, and 2014. (Tr. 32). AGP is incorrect that this exercise is required by law or appropriate under these circumstances.

The issue in this case is simply the appropriate level of carrying costs to be used in the second, third and fourth year of the phase-in plan. The Commission's decision on this issue should be based upon the competent and substantial evidence in the record which includes the relevant factors required to make this determination.

Contrary to the arguments of AGP, the Commission is not required to re-try all the issues and consider "all relevant factors" that were heard in GMO's last rate case. The Commission has already considered at "all relevant factors" as it determined the overall revenue requirement of the Company in that case. Now, the only issue left to be resolved in this tariff proceeding is the appropriate carrying costs to be used in the phase-in plan.

Apparently, AGP is relying upon an order issued by Judge Dippell which changed the File No. from an ET- number to an ER- number. *See Order Closing File*, File No. ET-2012-

[4] During the evidentiary hearing, counsel for AGP expressed a "continuing objection" to the proceeding (Tr. 36) and to the introduction of testimony (Tr. 38, 40, 49, 59) on the basis of AGP's erroneous assertion that the Commission lacks jurisdiction to hear this case. For the reasons stated herein, these "continuing objections" should be overruled, and the Commission should issue its Report And Order resolving the issues on the basis of the competent and substantial evidence in the record.

0017 (July 25, 2011). From GMO's perspective, the file number does not change the nature of the issue to be resolved in this case. It certainly does not convert this tariff proceeding into a full blown rate case, as seems to be the position of AGP.

As discussed above, GMO is not filing tariffs to set a new rate that would trigger Section 393.150 rate case requirements. This proceeding is merely implementing tariff schedules, as directed by the *Order of Clarification and Modification* and as authorized by statute. Indeed, Section 393.155.1 explicitly permits the Commission to approve tariffs implementing a phase-in *after* a rate case.

Based on the foregoing, GMO suggests that the PSC's initial designation of this as a tariff case was proper. Even if the Commission properly designated this proceeding as a rate case, the Commission already considered all relevant facts bearing upon this matter in File No. ER-2010-0356, pursuant to Section 393.270.4. AGP's assertion that the Commission is ignoring the relevant facts is inaccurate.

After consideration of the effect of the large rate increase and the allocation of rates, and after the parties, including AGP, had an opportunity to present argument on the phase-in option, the Commission determined that a just and reasonable alternative is to phase in the rate increase for the L&P customers pursuant to Section 393.155.1, and modified its *Report and Order* to reflect such a phase-in of rates. *See Order of Clarification and Modification* at 6-7. The Commission clearly made its decision in File No. ER-2010-0356 after consideration of "all facts which in its judgment have any bearing upon a proper determination," pursuant to Section 393.270.

In conclusion, GMO recommends in this proceeding that the Commission consider all the relevant factors that the Commission believes are appropriate for determining the appropriate

carrying costs to be used in the phase-in plan tariffs. GMO believes that these factors are discussed and considered in the testimony of Company witnesses Kevin Bryant and Tim Rush, and Staff witnesses David Murray, Matthew Barnes, and Curt Wells. (Bryant Direct, Ex. No. 2; Rush Direct, Ex. No. 3; Murray Direct, Ex. No. 4; Murray Rebuttal, Ex. No. 5; Barnes Direct, Ex. No. 6; and Wells Direct, Ex. No. 7).

C. AGP Should Be Estopped From Arguing Inconsistent Positions To The Detriment Of GMO

The Commission previously heard evidence on the effect that a large rate increase would have on GMO's customers. *See Order of Clarification and Modification* at 5; *Report and Order*, Finding of Fact 546. "In fact, the Commission has already taken that effect into consideration in deciding how much of Iatan 2 to allocate between the MPS and L&P service territories." *See Order of Clarification and Modification* at 5; *Report and Order*, Finding of Facts 546-557. What's more, the "phase-in option was argued in-depth during the on-the-record session on May 26, 2011." *See Order of Clarification and Modification* at 5.

In fact, during the oral argument held on May 26, 2010, counsel for AGP specifically recommended that the Commission "do the right thing" (Tr. 4986) and adopt a phase-in plan that would recover more revenues than the Company originally proposed from the L&P district:

> [Commissioner Davis]: . . . Mr. Woodsmall, I mean, you've got people on both sides of this. What would be your recommended resolution on this issue? . . .
>
> [Mr. Woodsmall]: I'll tread lightly. I see the logic of the Commission's decision. I could see the logic of a Commission decision going several ways, but certainly on a long-term basis I understand the Commission's logic saying that we believe Light and Power needed more baseload than GMO initially wanted to give them, so I understand that.
>
> Given that, I don't believe that the Commission should back away from what it thinks is doing the right thing or the logical thing based simply upon GMO filing tariffs at a certain amount. Do what's right, not based upon what that number is somewhere.

> So if you believe that that's a right decision, stick with it and phase in the remaining amount. Recognize that customers have made budgeting decisions. Put in that first amount and then tell KCP&L, File the remaining tariffs in "X" period of time, and calculate capital costs at that time. That's done all the time. . . .
>
> I don't think you need to grant rehearing to tell them, Calculate the carrying costs. So do what you think is right. I understand the logic of the Commission's decision, but recognize the budgeting decisions that customers have made and phase in. (Tr. 4982-83).
>
> * * *
>
> [Mr. Woodsmall]: Well, and again, I said before, don't let this number that was filed a year ago get in the way of doing the right thing. You made the decision that you need to rebase fuel in the FAC because of cost signals.
>
> People make decisions baced (sic) upon the energy cost for each avoided kilowatt hour. If you don't rebase the FAC, they're not getting the proper price signals, so rebasing the FAC was the right thing.
>
> Don't back away from that simply because you're shooting at an artificial target that the Company set a year ago. Just do the right thing and phase in the additional amount. (Tr. 4986).

Having now adopted the specific recommendations of AGP to phase-in the amount above the Company's original request for the L&P district, AGP should not be heard by the Commission to argue that the approach that it recommended is unlawful, and that the Commission may not proceed to implement the recommended phase-in approach in this proceeding. The general rule of law is that a party may not encourage the tribunal to take a specific action and then complain on appeal that the specific action adopted is unlawful. *See* Rosencranz v. Rosencranz, 87 S.W.3d 429 (Mo.App. 1982); State ex rel. American Standard Ins. Co. of Wisconsin v. Clark, 243 S.W.3d 526, 531-32 (Mo. App. WD 2008); Lindahl v. State of Missouri, __S.W. 3d __, 2011 WL 3273469 (Mo.App. W.D.) (Opinion Filed: August 2, 2011).

Similarly, the doctrine of judicial estoppel will lie to prevent litigants from taking a position in one proceeding, thereby obtaining benefits from that position in that instance and later, in a second proceeding, taking a contrary position in order to obtain benefits at that time.

State Bd. Of Accountancy v. Integrated Fin. Solutions, L.L.C., 256 S.W.3d 48, 54 (Mo. banc 2008) (quoting Shockley v. Dir. , Div. of Child Support Enforcement, 980 S.W.2d 173, 175 (Mo. App. E.D. 1998). The Eastern District in Vinson v. Vinson, 243 S.W.3d 418, 422 (Mo.App. E.D. 2007), outlined the following principles that pertain to the doctrine of judicial estoppel:

> While judicial estoppel cannot be reduced to a precise formula, the United States Supreme Court has indicated that whether judicial estoppel applies requires the consideration of three factors:
>
> First, a party's later position must be clearly inconsistent with its earlier position. Second, courts regularly inquire whether the party has succeeded in persuading a court to accept that party's earlier position. . . . A third consideration is whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped.

Id. (quoting Zedner v. U.S., 547 U.S. 489, 126 S.Ct. 1976, 164 L.Ed.2d 749 (2006) (quoting New Hampshire v. Maine, 532 U.S. 742, 750-51, 121 S.Ct. 1808, 149 L.Ed.2d 968 (2010) (citations and internal quotations marks omitted).

This doctrine of judicial estoppel also applies to quasi-judicial administrative actions. *See* Rissetto v. Plumbers and Steamfitters Local 343, 94 F.3d 597, 604 (9th Cir.1996). Clearly, AGP has taken inconsistent positions in these administrative proceedings—arguing on the one hand, that the Commission should "do the right thing" (presumably the legal thing) and increase the L&P rates by more than what the Company requested to account for the allocation of Iatan 2 to L&P and the rebasing of fuel costs, while in this proceeding and in the Circuit Court appeal, arguing that it is unlawful for the Commission to have accepted AGP's recommendation to increase the rates for the L&P District by more than the $22.1 million the Company had requested, and phase-in the rate increase above the $22.1 million over subsequent years with carrying costs added.

With regard to the second element of judicial estoppel, the Commission has adopted AGP's recommendations and allocated more of Iatan 2 to the L&P District and accepted fuel

rebasing, and then phased in the amount above the Company's $22.1 million request for the L&P District. *See Order of Clarification and Modification* in File No. ER-2010-0356, p. 7.

With regard to the third element of judicial estoppel, AGP will derive an unfair advantage by having lower rates, and impose an unfair detriment on GMO and its shareholders. If AGP's position is adopted in this proceeding, the Company will be deprived of the opportunity to recover the $7.7 million that was deferred under the phase-in plan plus the additional revenue not recovered in the first year of the phase-in plan, and carrying costs needed to account for the fact that the Company was not allowed to recover its full revenue requirement, as determined by the Commission's *Report and Order* in File No. ER-2010-0356.

As a result, the three elements of judicial estoppel have been met in this case, and AGP should be estopped from asserting inconsistent positions—it is "the right thing to do", and now it is "unlawful" to do what AGP recommended-- to the detriment of GMO and its shareholders.

D. The Commission Should Adopt the Position of GMO, the Commission Staff, and OPC that the Carrying Costs in the Phase-in Tariff Schedules Filed in This Proceeding Should be 3.25% Per Year.

On September 2, 2011, GMO and Staff filed a Non-Unanimous Stipulation And Agreement which recommended that the Commission approve the use of a 3.25 percent carrying cost in GMO's phase-in tariffs. OPC has also recommended in his Position Statement that a 3.25 percent carrying cost should be used in the Company's phase-in tariffs. (OPC Position Statement, p. 1).

In addition, the Non-Unanimous Stipulation And Agreement recommended that the Commission should order that the tariff schedules for the second, third and fourth year of the phase-in plan should become effective automatically in each subsequent year on June 25 without further order of the Commission, unless suspended by the Commission for good cause shown.

The Staff has reviewed and approved the tariff sheets attached to the Non-Unanimous Stipulation and Agreement. Assuming the Commission approves the Non-Unanimous Stipulation And Agreement, GMO would expect to be directed to file the tariff schedules attached to the Stipulation.

The testimony in this proceeding supports the adoption of a 3.25 percent carrying cost for the phase-in plan tariffs. In fact, the testimony suggests that this 3.25 percent level of carrying costs is really lower than the carrying costs necessary to keep GMO whole during the phase-in plan. (Bryant Direct, Ex. No. 2, pp. 4-6; Murray Rebuttal, Ex. No. 5, pp. 1-4). Company witness Bryant explained:

> The Commission's *Report And Order* in KCP&L's Wolf Creek rate case approved KCP&L's only previously approved phase-in plan stating: *"The carrying costs on the deferred revenues under the phase-in plan shall be calculated at the overall rate of return."* In the 356 Case, the Company utilized the same method for determining the carrying costs that was used in the Wolf Creek rate case—its overall rate of return on investment, or the same weighted cost of capital (i.e. 8.414%) that was authorized by the Commission in its Report And Order in the 356 Case. This method will accomplish the statutory requirement of Section 393.155.1 *"to recover the revenue which would have been allowed in the absence of a phase-in*." (Bryant Direct, Ex. No. 2, p. 4).

Staff witness David Murray also agreed that the "overall rate of return" is the appropriate carrying cost to keep the Company whole during the phase-in plan period, but he believes the overall rate of return should not be based upon the embedded cost of debt, but instead it should be based upon the current cost of debt and current cost of equity. (Murray Rebuttal, Ex. No. 5, pp. 1-2). Using the Staff's suggested approach, the overall rate of return would be 6.40%, according to Mr. Murray. (Murray Rebuttal, Ex. No. 5, pp. 3-4). As a result, both expert witnesses in this case, Mr. Bryant and Mr. Murray, have testified that the carrying costs necessary to keep the Company whole would be more than the 3.25 percent recommended in the

Non-Unanimous Stipulation And Agreement. (Murray Rebuttal, Ex. No. 5, pp. 3-4; Bryant Direct, Ex. No. 2, pp. 4-6).

As explained during GMO's opening statement and in Mr. Bryant's Direct Testimony (Bryant Direct, Ex. No. 2, p. 6), the Company is willing to settle for a lower amount of carrying costs in order to minimize the litigation regarding this issue and have the phase-in tariffs approved by the Commission. In addition, the Commission should order that the tariff schedules filed with the Non-Unanimous Stipulation And Agreement on September 2, 2011, for the second, third and fourth year of the phase-in plan be allowed to become effective automatically in each subsequent year on June 25 without further order of the Commission, unless suspended by the Commission for good cause shown (Rush Direct, Ex. No. 3).

The Commission should also state that these phased-in increases for the L&P division will automatically occur each year as separate and discrete changes in rates without regard to any other future changes in rates ordered by the Commission in other proceedings, such as (a) future fuel adjustment clause cases where increases are approved, and (b) future general rate cases where rate increases are approved.

WHEREFORE, KCP&L Greater Missouri Operations Company respectfully requests that the Commission approve the provisions of the Non-Unanimous Stipulation And Agreement, based upon the competent and substantial evidence in the record. The Commission should also state that the phased-in increases for the L&P division will automatically occur each year as separate and discrete changes in rates without regard to any other future changes in rates ordered by the Commission in other proceedings, such as (a) future fuel adjustment clause cases where increases are approved, and (b) future general rate cases where rate increases are approved.

Respectfully submitted,

/s/ James M. Fischer
James M. Fischer MBN 27543
Fischer & Dority, PC
101 Madison, Suite 400
Jefferson City MO 65101
Phone: 573-636-6758
Fax: 573-636-0383
jfischerpc@aol.com

Roger W. Steiner MBN 39586
Corporate Counsel
Kansas City Power & Light Company
1200 Main Street
Kansas City, MO 64105
Phone: 816-556-2314
Fax: 816-556-2787
Roger.Steiner@kcpl.com

Attorneys for KCP&L Greater Missouri Operations Company

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the above and foregoing was served upon counsel of record on this 2nd day of February, 2012.

/s/ James M. Fischer
Attorney for KCP&L Greater Missouri Operations Company