BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Ag Processing, Inc., a Cooperative,		
Complainant,	**)**	
	)	
v.	**)**	**HC-2010-0235**
	)	
KCP&L Greater Missouri Operations	**)**	
Company,	**)**	
Respondent.	**)**	

MOTION TO DISMISS, ANSWER, AND
AFFIRMATIVE DEFENSES

COMES NOW KCP&L Greater Missouri Operations Company ("GMO" or "Respondent"), pursuant to Missouri Public Service Commission ("Commission") Rule 4 CSR 240-2.070(8) and the Commission's Notice Of Complaint, Notice Of Contested Case, Order Separating Complaint From Quarterly Cost Adjustment Cases, And Order Preserving Discovery issued in this matter on February 11, 2010, and respectfully submit its Motion to Dismiss, Answer And Affirmative Defenses to the Complaint filed by Ag Processing, Inc. ("AGP").

INTRODUCTION

Following GMO's exercise of its contractual right to terminate a Special Contract with Ag Processing, Inc. ("AGP"), AGP filed a Complaint in Case Nos. HR-2007-0028 and HR-2007-0399. Subsequently, the Commission severed the matter into Case No. HC-2010-0235.

The AGP Complaint alleges that GMO's use of hedging to mitigate fuel price volatility for its steam operations was "imprudent" during the 2006 and 2007 Quarterly Cost Adjustment ("QCA") periods. Without explaining the manner in which GMO's

hedging program was imprudent, AGP seeks an order from the Commission requiring GMO to refund the sum of $1,164,960 and $2,441,860 with interest to steam customers for whose benefit the hedging program was adopted in the 2006 and 2007 QCA periods. For the reasons stated herein, this Complaint should be summarily dismissed.

As the Commission knows, the Commission has had a long history of encouraging its public utilities to enter into hedging programs to reduce price volatility of natural gas and other fuels. In fact, as early as 2002, the Commission issued its Order Finding Necessity For Rulemaking in *In re: Matter of Proposed Rulemaking Concerning Mitigation of Natural Gas Price Volatility*, Case No. GX-2002-478 designed to address this important issue. This rulemaking proceeding lead to the adoption of 4 CSR 240-40.018 (effective in December 30, 2003) which has the following stated purpose:

> *PURPOSE: This rule represents a statement of commission policy that natural gas local distribution companies should undertake diversified natural gas purchasing activities as a part of a prudent effort to mitigate upward natural gas price volatility and secure adequate natural gas supplies for their customers.*

Under the provisions of 4 CSR 240-40.018, public utilities are required to structure their portfolios of contracts with various supply and pricing provisions in an effort to mitigate upward price spikes, and provide a level of stability of delivered fuel prices. The Commission clearly recognized in the rule that hedging programs that are designed to "mitigate upward natural gas price spikes, and provide a level of stability of delivered natural gas prices" could result in higher than spot market prices at times, but that "this is recognized as a possible result of prudent efforts to dampen upward volatility." *See* 4 CSR 240-40.018(1)(A) & (C). (*Emphasis added*)

Following the adoption of 4 CSR 240-40.018, the Commission has routinely required and encouraged public utilities to adopt hedging programs to mitigate pricing volatility.[1] In some years, the hedging programs have reduced the overall costs of fuel to customers, but in other years, the hedging programs have resulted in pricing stability but not necessarily lowered net fuel costs. As the Commission recognized in its Natural Gas Price Volatility Mitigation Rule, this is the expected result of a "prudent effort to dampen upward volatility." *Id*.

Unfortunately, AGP apparently does not recognize that a prudent hedging program does not always result in savings to net fuel costs, even though the hedging program may result in pricing stability. This appears to be the essence or gravaman of AGP's Complaint in this proceeding. To the extent that AGP is complaining that GMO's hedging program resulted net fuel costs that were higher than if GMO had not adopted a hedging program, then the Commission should dismiss AGP's Complaint for failure to state a claim upon which relief may be granted since the Commission has already found that this can be the expected result of prudent efforts to dampen upward price volatility in some years.

MOTION TO DISMISS

Pursuant to Commission Rule 4 CSR 240-2.070(6), Respondent hereby moves that the Commission dismiss the above-captioned matter for failure to state a claim upon

[1] In *Office of the Public Counsel v. Southern Missouri Gas Company, L.P.*, Case No. GC-2006-0180, the Commission approved a Unanimous Stipulation And Agreement which mandated that the public utility enter into a hedging program that requires a minimum of 20% of normal winter heating-season gas supply at fixed prices or otherwise hedged against market exposure, no later than April 30, 2006, a minimum of 40% normal winter heating-season gas supply at fixed prices or otherwise hedged against market exposure, no later than July 15, 2006, and a minimum of 55% of normal winter heating-season gas supply at fixed prices or otherwise hedged against market exposure, no later than October 1, 2006 and each year thereafter, unless good cause is shown for deviating from this benchmark. See *Order Approving Unanimous Stipulation And Agreement*, Case No. GC-2006-0180 (April 11, 2006). This Commission-approved hedging program is very similar to the hedging plan followed by Aquila during the 2006 and 2007 QCA periods.

which relief may be granted. In support of its motion, Respondent respectfully states as follows:

1. Respondent incorporates by reference the statements, legal arguments, and affirmative defenses contained in the Introduction, *supra*.

2. AGP fails to set forth in its Complaint any provision of law or any rule or order or decision of the Commission which GMO has allegedly violated. As a result, the complaint should be dismissed for failure to state a claim on which relief may be granted. 4 CSR 240-2.070(6).

3. AGP's claims are barred by the terms of GMO's tariff since any prudence review must have been completed no later than 225 days after the end of each QCA year, pursuant to the specific terms of Paragraph 7, Original Sheet No. 6.4 of GMO's steam tariffs. (See Exhibit B to Complaint, Appendix A, page 9 of 10)("Such full prudence review, if pursued, shall be complete no later than 225 days after the end of each year.") In this case, AGP waited for 1,123 days after the end of the 2006 QCA period, and 758 days after the end of the 2007 QCA period to file its Complaint.

4. AGP's claims are barred by laches since any prudence review must have been completed no later than 225 days after the end of each QCA year, pursuant to the specific terms of Paragraph 7, Original Sheet No. 6.4 of GMO's steam tariffs. (See Exhibit B to Complaint, Appendix A, page 9 of 10)("Such full prudence review, if pursued, shall be complete no later than 225 days after the end of each year.") While customers are not required to wait for a Staff prudence review to bring a complaint under the QCA tariff provisions, the lack of a Staff prudence review does not relieve the customer from initiating its complaint in a timely manner so that the Commission may

complete the prudence inquiry within the 225 days required by the QCA tariff. In this instance, AGP waited for 1,123 days after the end of the 2006 QCA period and 758 days after the end of the 2007 QCA period to file its Complaint. As a result, the legal doctrine of laches bars AGP's claims after such a long delay after the end of the 2006 and 2007 QCA periods.

The doctrine of laches acts as a bar to claims filed so late that its delay works to the disadvantage or injury of other parties. *See Re Union Electric Company*, Case No. EM-96-149, 2001 WL 1448572 (July 22, 2001); *Re Southwestern Bell Telephone Company*, Case No. TR-95-342, 1996 WL 527186 (March 6, 1996). The Missouri courts have also recognized the doctrine of laches. Laches is the delay for an unreasonable and unexplained length of time under circumstances permitting diligence to do what, in law, should have been done. *See Lake Development Enterprises v. Kojetinski*, 410 S.W.2d 261, 367 (Mo.App. 1966).

5. AGP's claims are barred by state law since the Commission has no authority to award money to AGP. *See Report & Order*, *GS Technology Operating Company d/b/ GST Steel v. Kansas City Power & Light Company*, 9 Mo.P.S.C.3d 185, 198 (July 13, 2000); *American Petroleum Exchange v. Public Service Commission*, 172 S.W.2d 952, 955 (Mo.1943).

6. AGP's claims are barred by state law since the Commission has no authority to recalculate the charges to AGP for steam service already rendered, as though GMO had not incurred hedging costs as a part of its cost of service. *See Report & Order*, *GS Technology Operating Company d/b/ GST Steel v. Kansas City Power & Light Company*, 9 Mo.P.S.C.3d 185, 199 (July 13, 2000). Such relief would constitute a

species of equitable relief and this Commission cannot do equity. The Commission lacks the authority to enforce any principle of law or equity. *Wilshire Constr. Co. v. Union Elec. Co.*, 463 S.W.2d 903, 905 (Mo. 1971); *Kansas City Power & Light Co. v. Buzard*, 168 S.W.2d 1044, 1046 (Mo. 1943); *May Dep't Stores Co. v. Union Elec. Light & Power Co.*, 107 S.W.2d 41, 48 (Mo. 1937); *DeMaranville v. Fee Fee Trunk Sewer, Inc*., 573 S.W.2d 674, 676 (Mo.App. 1978); *Hoffman v. Public Serv. Comm'n*, 530 S.W.2d 434, 438 (Mo.App. 1975); *Katz Drug Co. v. Kansas City Power & Light Co.*, 303 S.W.2d 672, 679 (Mo.App. 1957).

7. AGP's Complaint fails to comply with the requirements of 4 CSR 240-2.070(3) because the Complaint fails to include the following information: a) signature of complainant; b) telephone number of complainant; c) facsimile number of complainant; and d) electronic mail address of complainant. Pursuant to 4 CSR 240-2.070(6), the AGP Complaint should therefore be dismissed.

8. AGP's Complaint fails to comply with the requirements of 4 CSR 240-2.070(5)(c) because it fails to state the nature of the complaint and the complainant's interest in the complaint, in a clear and concise manner. For example, it is impossible to glean from the Complaint exactly what AGP is alleging was "imprudent" about GMO's hedging program, or whether it was the mere existence of a hedging program at all that troubles AGP. In addition, it is not clear from the Complaint if AGP is claiming the requested refunds for itself or acting on behalf of other steam customers. Pursuant to 4 CSR 240-2.070(6), the AGP Complaint should be dismissed since it has failed to state in a clear and concise manner the nature of the complaint, and the complainant's interest in the complaint.

ANSWER

For its Answer, Respondent states as follows:

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, and denies that the Commission has the jurisdiction or statutory authority to require that GMO to refund to AGP and/or other steam customers in St. Joseph the sums of $1,164,960 and/or $2,441,860 with interest thereon.

COUNT I – COMMON ALLEGATIONS

1. Respondent admits the allegations in Paragraph 1 of the Complaint.

2. Respondent admits the allegations in Paragraph 2 of the Complaint.

3. Respondent admits the allegations in Paragraph 3 of the Complaint.

4. Respondent admits the allegations in Paragraph 4 of the Complaint.

5. Respondent admits the allegations in Paragraph 5 of the Complaint.

6. Respondent admits the allegations in Paragraph 6 of the Complaint. In response to footnote 1, Respondent admits that AGP is challenging the lawfulness and reasonableness of the Commission Orders authorizing the acquisition of Aquila by Great Plains Energy, but denies that the allegations in this proceeding are without prejudice to the positions asserted by AGP in the pending judicial review.

7. Respondent admits the allegations in Paragraph 7 of the Complaint.

8. Respondent denies the allegations in Paragraph 8 of the Complaint. While the Commission approved the Nonunanimous Stipulation And Agreement in Case No. HR-2005-0450 which contained the tariff provisions that authorized the QCA rate

adjustment mechanism to reflect changes in fuel costs for its steam system, it was the Commission's *Order Regarding Stipulation And Agreement* and the subsequently approved tariff sheets which authorized GMO to implement the QCA rate adjustment mechanism, and not the "negotiated settlement."

9. It is unnecessary to admit or deny the allegations contained in Paragraph 9 since Exhibit A containing a copy of an *Order Regarding Stipulation And Agreement* in Case No. HR-2005-0450 speaks for itself.

10. It is unnecessary to admit or deny the allegations contained in Paragraph 10 since Exhibit B containing a copy of a Nonunanimous Stipulation And Agreement in Case No. HR-2005-0450 speaks for itself.

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

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

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

14. Subject to the qualification stated in Paragraph 8 above, Respondent admits the allegations in Paragraph 14 of the Complaint.

15. For the reasons stated in the qualification contained in Paragrpah 8 above, Respondent denies the allegations in Paragraph 15 of the Complaint, but admits that its tariff contains the statement quoted in Paragraph 15.

16. Respondent denies the allegations contained in Paragraph 16, but admits that AGP is a steam customer of GMO.

17. Respondent denies the allegations in Paragraph 17 of the Complaint. While the Complainant is not required to wait for Staff to complete its prudence review, it may not delay completing its own prudence review beyond the 225 days specified in Paragraph 7, Original Sheet No. 6.4 of GMO's steam tariff.

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

19. Respondent denies the allegations in Paragraph 19 of the Complaint, and admits that Paragraph 8.1 of the Nonunanimous Stipulation And Agreement from HR-2005-0450 as well as Appendix A, Original Sheet No. 6.2 include discussions of hedging costs.

20. Respondent admits that the Nonunanimous Stipulation And Agreement in Case No. GR-2005-0450 was approved by the Commission, but denies the remaining allegations of Paragraph 20 of the Complaint.

21. Respondent denies the allegations in Paragraph 21 of the Complaint, but admits that the hedging program began on or about February 16, 2006.

22. Respondent admits the allegations in Paragraph 22 of the Complaint, and states that the program also used put options.

23. Respondent denies the Aquila Steam Hedging Program was commenced in March, 2006, and terminated on or about November 21, 2007, and asserts that the Aquila Steam Hedging Program was commenced in February 16, 2006 and the placement of new hedges was suspended on or about November 1, 2007.

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

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

26. Respondent denies the allegations contained in Paragraph 26 of the Complaint.

27. Respondent denies the allegations contained in Paragraph 27 of the Complaint.

28. Respondent denies the allegations contained in Paragraph 28 of the Complaint.

29. Respondent denies the allegations contained in Paragraph 29 of the Complaint.

30. Respondent denies the allegations in Paragraph 30 of the Complaint that the gas hedging program commenced by Aquila on March 6, 2006, but admits that 1/3 of budgeted volumes were fixed by purchasing NYMEX futures contracts, 1/3 of budgeted volumes were protected by purchasing NYMEX call options, and the remaining 1/3 was not hedged and was intended to be purchased on the spot market.

31. Respondent admits the allegations in Paragraph 31 of the Complaint.

32. Respondent admits the allegations in Paragraph 32 of the Complaint.

33. Respondent admits the allegations in Paragraph 33 of the Complaint.

34. Respondent denies the allegations contained in Paragraph 34 of the Complaint, but admits that the Aquila Steam Hedging Program employed similar strategies as did other Aquila hedging programs.

35. Respondent denies the allegations contained in Paragraph 35 of the Complaint, but admits that the Aquila Steam Hedging Program employed similar assumptions as did other Aquila hedging programs.

36. Respondent denies the allegations contained in Paragraph 36 of the Complaint, but admits that the Aquila Steam Hedging Program employed similar methodologies as did other Aquila hedging programs.

37. Respondent denies that Aquila commenced its hedging program on March 6, 2006, but admits the remaining allegations contained in Paragraph 37 of the Complaint.

38. Respondent admits the allegations in Paragraph 38 of the Complaint, and affirmatively states that GMO has financially settled hedges placed under the Aquila Steam Hedging Program through November 2010.

39. Respondent admits the allegations in Paragraph 39 of the Complaint.

40. Respondent admits the allegations in Paragraph 40 of the Complaint, and affirmatively states that the L&P Division is an internal division of Aquila and is not a separate entity. The acquisition of Aquila by Great Plains Energy Incorporated on July 14, 2008 did not result in the transfer of the said business to KCP&L Greater Missouri Operations Company (the current name for Aquila), as Aquila was the corporate entity who owned and operated its steam business both before and after the July 14, 2008 acquisition. Aquila's corporate name was changed to KCP&L Greater Missouri Operations Company on October 17, 2008. The corporation does business under its corporate name of KCP&L Greater Missouri Operations Company, and also uses the trade name "KCP&L".

41. Subject to the qualifications stated in Paragraph 40 above, Respondent admits the allegations in Paragraph 41 of the Complaint.

42. Respondent admits the allegations in Paragraph 42 of the Complaint.

43. Subject to the qualifications stated in Paragraph 40 above, Respondent admits the allegations in Paragraph 43 of the Complaint.

44. Respondent admits the allegations in Paragraph 44 of the Complaint that Aquila Inc.'s corporate name was changed to KCP&L Greater Missouri Operations Company on October 17, 2008, and that it has continued to operate the regulated steam business in St. Joseph, Missouri.

45. Respondent admits the allegations in Paragraph 45 of the Complaint.

46. Respondent admits the allegations contained in Paragraph 46 of the Complaint, but affirmatively denies that Complainant has discussed specific allegations of imprudence with Respondent.

47. Respondent admits that the Commission has jurisdiction over this matter by reason of its general superintending jurisdiction over the operations and charges of Missouri utilities, but the denies the remaining allegations contained in Paragraph 47.

COUNT II – 2006 QCA PERIOD

48. GMO incorporates by reference as though fully set out herein its Answer to the allegations contained in paragraphs 1-47 inclusive of this Complaint.

49. Respondent admits the allegations in Paragraph 49 of the Complaint.

50. Respondent admits the allegations in Paragraph 50 of the Complaint, but affirmatively states that the costs sought to be recovered represented only eighty percent (80%) of its total fuel costs for the period.

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

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

53. Respondent admits the allegations contained in Paragraph 53 of the Complaint.

54. Respondent admits the allegations contained in Paragraph 54 of the Complaint, and affirmatively states that October 12, 2005 was before the Respondent's hedging program commenced.

55. Respondent admits the allegations contained in Paragraph 55 of the Complaint.

56. Respondent admits the allegations in Paragraph 56 of the Complaint.

57. Respondent admits the allegations contained in Paragraph 57, but affirmatively states that there were additional, more significant, causes for the delayed completion of construction of its facility.

58. Respondent admits the allegations in Paragraph 58 of the Complaint, and affirmatively states that the explosion occurred before the Respondent's hedging program commenced.

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

60. Respondent denies the allegations in Paragraph 60 of the Complaint.

61. Respondent denies the allegations in Paragraph 61 of the Complaint.

62. Respondent denies the allegations in Paragraph 62 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.

COUNT III – 2007 QCA PERIOD

69. GMO incorporates by reference as though fully set out herein its Answer to the allegations contained in paragraphs 1-68 inclusive of this Complaint.

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

71. Respondent admits the allegations in Paragraph 71 of the Complaint, but affirmatively states that the costs sought to be recovered represented only eighty percent (80%) of its total fuel costs for the period.

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

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

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

75. Respondent admits the allegations contained in Paragraph 75 of the Complaint.

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

77. Respondent denies the allegations in Paragraph 77 of the Complaint.

78. Respondent denies the allegations in Paragraph 78 of the Complaint.

79. Respondent denies the allegations in Paragraph 79 of the Complaint.

80. Respondent denies the allegations in Paragraph 80 of the Complaint.

81. Respondent denies the allegations in Paragraph 81 of the Complaint.

82. Respondent denies the allegations in Paragraph 82 of the Complaint.

83. Respondent denies the allegations in Paragraph 83 of the Complaint.

AFFIRMATIVE DEFENSES

1. Respondent incorporates by reference the statements, legal arguments, and allegations contained in its Motion to Dismiss, *supra*. AGP fails to state a claim upon which relief can be granted since AGP fails to set forth in its Complaint any provision of law or any rule or order or decision of the Commission which GMO has allegedly violated.

2. AGP's claims are barred by the fact that AGP did not complete its prudence review within 225 days of the end of the QCA period, as required by the terms of GMO's steam tariff, Original Sheet No. 6.4, Paragraph 7.

3. AGP's claims are barred by the doctrine of laches. The doctrine of laches acts as a bar to claims filed so late that its delay works to the disadvantage or injury of other parties. *See Re Union Electric Company*, Case No. EM-96-149, 2001 WL 1448572 (July 22, 2001); *Re Southwestern Bell Telephone Company*, Case No. TR-95-342, 1996 WL 527186 (March 6, 1996). The Missouri courts have also recognized the doctrine of laches. Laches is the delay for an unreasonable and unexplained length of time under circumstances permitting diligence to do what, in law, should have been done. *See Lake Development Enterprises v. Kojetinski*, 410 S.W.2d 261, 367 (Mo.App. 1966).

In this instance, AGP waited for 1,123 days after the end of the 2006 QCA period and 758 days after the end of the 2007 QCA period to file its Complaint. As a result, the legal doctrine of laches bars AGP's claims after such a long delay after the end of the 2006 and 2007 QCA periods.

4. AGP's claims are barred by state law since the Commission has no authority to award money to AGP. *See Report & Order, GS Technology Operating*

Company d/b/ GST Steel v. Kansas City Power & Light Company, 9 Mo.P.S.C.3d 185, 198 (July 13, 2000); *American Petroleum Exchange v. Public Service Commission*, 172 S.W.2d 952, 955 (Mo.1943).

5. AGP's claims are barred by state law since the Commission has no authority to recalculate the charges to AGP for steam service already rendered, as though GMO had not incurred hedging costs as a part of its cost of service. *See Report & Order*, *GS Technology Operating Company d/b/ GST Steel v. Kansas City Power & Light Company*, 9 Mo.P.S.C.3d 185, 199 (July 13, 2000). Such relief would constitute a species of equitable relief and this Commission cannot do equity. The Commission lacks the authority to enforce any principle of law or equity. *Wilshire Constr. Co. v. Union Elec. Co.*, 463 S.W.2d 903, 905 (Mo. 1971); *Kansas City Power & Light Co. v. Buzard*, 168 S.W.2d 1044, 1046 (Mo. 1943); *May Dep't Stores Co. v. Union Elec. Light & Power Co.*, 107 S.W.2d 41, 48 (Mo. 1937); *DeMaranville v. Fee Fee Trunk Sewer, Inc*., 573 S.W.2d 674, 676 (Mo.App. 1978); *Hoffman v. Public Serv. Comm'n*, 530 S.W.2d 434, 438 (Mo.App. 1975); *Katz Drug Co. v. Kansas City Power & Light Co.*, 303 S.W.2d 672, 679 (Mo.App. 1957)..

6. AGP's Complaint fails to comply with the requirements of 4 CSR 240-2.070(3) because it fails to include the following information: a) signature of complainant; b) telephone number of complainant; c) facsimile number of complainant; and d) electronic mail address of complainant. Pursuant to 4 CSR 240-2.070(6), the AGP Complaint should therefore be dismissed.

7. AGP's Complaint fails to comply with the requirements of 4 CSR 240-2.070(5)(c) because it fails to state the nature of the complaint and the complainants'

interest in the complaint, in a clear and concise manner. Pursuant to 4 CSR 240-2.070(6), the AGP Complaint should therefore be dismissed.

WHEREFORE, having answered the Complaint, the Respondent respectfully requests that the Commission dismiss the Complaint with prejudice, and requests that the Commission grant whatever additional relief that the Commission finds to be reasonable and appropriate.

Respectfully submitted,

FISCHER & DORITY, P.C.

/s/ James M. Fischer

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ATTORNEYS FOR KCP&L GREATER MISSOURI OPERATIONS COMPANY

CERTIFICATE OF SERVICE

I hereby certify that the undersigned has caused a complete copy of the attached document to be electronically filed and served by email, hand-delivered or mailed on all parties of record in this matter on this 15th day of March, 2010.

/s/ James M. Fischer

James M. Fischer