

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

In the Matter of the Joint Application of        )  
Atmos Energy Corporation and Liberty        )  
Energy (Midstates) Corp. for Authority to        )  
Sell Certain Missouri Assets To Liberty        ) Case No. GM-2011-\_\_\_\_  
Energy (Midstates) Corp. and, in        )  
Connection Therewith, Certain Other        )  
Related Transactions.                                )

**JOINT APPLICATION**  
**AND, IF NECESSARY, MOTION FOR WAIVER**

**COME NOW** Atmos Energy Corporation ("Atmos" or "Company"), and Liberty Energy (Midstates) Corp. ("Liberty Energy Midstates")(collectively "Joint Applicants") and for their Joint Application and, If Necessary, Motion for Waiver pursuant to Section 393.190.1, RSMo; Section 393.200, RSMo.; 4 CSR 240-3.210; 4 CSR 240-3.220; and 4 CSR 240-4.020(2), respectfully state to the Missouri Public Service Commission ("Commission") as follows:

**Background Information**

1. Atmos is a corporation duly organized, validly existing and in good standing in all respects under the laws of the State of Texas and Commonwealth of Virginia, with its principal office and place of business at 5430 LBJ Freeway, Dallas, Texas 75240. Atmos is authorized to conduct business in the State of Missouri and is engaged in the distribution and retail sale of natural gas in those areas of Missouri certificated to it by the Commission.

2. A certified copy of Atmos' certificate of authority to do business as a foreign corporation in Missouri was filed with the Commission in Case No. GR-2006-0387, and said

document is incorporated herein by reference in accordance with 4 CSR 240-2.060(1)(G) and made a part hereof for all purposes. Atmos is a “gas corporation” and a “public utility” as those terms are defined in Section 386.020 of the Revised Statutes of Missouri and as such is subject to the jurisdiction of the Commission as provided by law. Atmos has no pending actions against it in Missouri involving customer service or rates having occurred within three (3) years, nor does it have any annual reports or assessment fees that are overdue.

3. Liberty Energy Midstates is a Missouri corporation and was formed for the purpose of acquiring the assets of Atmos, as described herein. A Certificate of Good Standing from the Office of the Missouri Secretary of State is attached hereto as **Appendix A**. Liberty Energy Midstates is a wholly owned subsidiary of Liberty Energy Utilities Co. (“Liberty Energy”) which is a wholly owned subsidiary of Liberty Utilities Co. (“Liberty Utilities”)<sup>1</sup> and an indirect subsidiary of Algonquin Power & Utilities Corp. (“Algonquin”). Liberty Energy-Midstates has no pending actions against it involving customer service or rates having occurred within three (3) years, nor does it have any annual reports or assessment fees that are overdue.

4. Algonquin is a publicly traded corporation that is traded on the Toronto Stock Exchange and is incorporated under the laws of Canada, with a principal place of business in Oakville, Ontario. In 2009, Algonquin became the successor to Algonquin Power Income Fund following conversion from an income trust to a conventional common stock corporation.

5. Algonquin has two business units: (i) a power generation unit that includes forty-five renewable power generating facilities and twelve high-efficiency thermal generating facilities located in six U.S. states and Canada, and (ii) a utility services unit that owns and operates twenty regulated

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<sup>1</sup> Liberty Energy and Liberty Utilities are Delaware corporations.

utilities located in five states that provide retail water, sewer and electric utility service. Algonquin has been doing business in Missouri as Algonquin Water Resources of Missouri LLC d/b/a Liberty Water, providing water service to approximately 771 connections in Jefferson, Stone and Taney Counties, Missouri, and providing sewer service to approximately 267 connections in those same Missouri counties.<sup>2</sup>

6. Organized in 1987, Algonquin has been a successful developer and operator of independent, electric generating facilities and is one of the largest renewable power companies in Canada. Algonquin owns and operates an approximately \$1.1 billion (U.S.) portfolio of renewable power electric generation and utility operations across North America. Over fifty percent of Algonquin's revenues are generated through its U.S.-based operations.

7. Algonquin acquired its first regulated utility operations in 2001 and since then has acquired an additional nineteen different water, waste water and electric utilities serving a total of approximately 125,000 customers in the United States. During that time, Algonquin has not sold any of the regulated utilities it has purchased. Appendix B shows the organizational chart of the Algonquin corporate family of companies.

8. Communications in regard to this Application should be addressed to:

Ian Robertson  
Chief Executive Officer  
Algonquin Power & Utilities Corp.  
2845 Bristol Circle  
Oakville, Ontario, Canada L6H 7H7

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<sup>2</sup> Liberty Water currently has two (2) acquisition cases pending before the Commission, Case No. WO-2011-0328 (Noel Water Co.) and Case No. WO-2011-0350 (KMB Utility Corporation).

David Pasioka  
President  
Liberty Energy (Midstates) Corp.  
c/o Algonquin Power & Utilities Corp.  
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### **The Transaction**

9. Atmos and Liberty Energy Midstates have entered into an Asset Purchase Agreement dated May 12, 2011 (“Agreement”), a copy is attached as **Appendix C** and incorporated herein by reference. Pursuant to the Agreement, Liberty Energy Midstates proposes to purchase substantially all of the assets of Atmos used to provide natural gas and transportation service in the States of Missouri, Illinois, and Iowa, as specifically described in the Agreement under the terms and provisions further described in the Agreement, including its certificates of convenience and necessity. As required by 4 CSR 240-3.210, a brief description of the property

involved in the transaction is contained in the Agreement and is incorporated herein by reference.

10. Because Atmos is a natural gas corporation doing business in the State of Missouri, it is subject to the provisions of Section 393.190.1, RSMo, which states, in pertinent part, that “no gas corporation . . . shall hereafter sell, assign, lease transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works, or system, necessary or useful in the performance of its duties to the public . . . without having first secured from the Commission an order authorizing it so to do.”

11. Pursuant to 4 CSR 240-3.210(C), a copy of the resolution of the board of directors of Atmos authorizing the sale and purchase of the subject assets and related transactions contemplated by the Agreement is attached as **Appendix D**. A certified copy of the Minutes of the Board of Directors of Algonquin authorizing the purchase of the subject assets and related transactions contemplated by the Agreement is presently unavailable and will be late-filed in accordance with Commission rule 4 CSR 240-3.210(3).

#### **Public Interest Considerations**

12. The proposed acquisition of the specified assets of Atmos and the related transactions are not detrimental to the public interest and, in fact, will be consistent with and will promote the public interest.

(a) The assets of Atmos would be acquired by Liberty Energy Midstates, a Missouri corporation, and remain subject to the jurisdiction of the Commission. Liberty Energy Midstates is fully qualified in all respects to own and operate the systems currently being operated by

Atmos and to otherwise provide safe, reliable and affordable service. Liberty Energy Midstates will adopt the rates, and terms and conditions contained in Atmos' existing tariffs in Missouri.

(b) Liberty Energy Midstates will continue to use the same operational personnel and structures that Atmos currently uses to provide safe, adequate, reliable, and efficient public utility service in Missouri. Liberty Energy Midstates believes that its focus on local operation and management will only improve the service to the public in these key areas. Liberty Utilities' strong track record of customer service and regulatory compliance underscores its continued ability to meet the requirements to provide safe and adequate service at just and reasonable rates. The Commission may also consider that Liberty Energy Midstates' philosophy of providing more services at a local level may simplify the analysis of these services.

(c) Liberty Energy Midstates will continue to have the ability to raise necessary capital on reasonable terms or to maintain a reasonable capital structure. As described herein, Liberty Energy Midstates plans to use a reasonable and prudent capital structure with a 45/55 debt/equity ratio. As for maintaining access to capital, Liberty Energy Midstates will be able to access the capital markets on its own or through its corporate structure—as a publicly listed corporation, Liberty Energy Midstates' parent Algonquin is readily able to access the capital markets on reasonable terms. Liberty Energy Midstates intends to maintain investment grade status to insure ready access to capital on reasonable terms. The fifty-five percent (55%) equity component of its initial capital structure indicates Algonquin's strong commitment to ensure ready access to the capital markets.

(d) Liberty Energy Midstates will remain subject to all applicable laws, regulations, rules, decisions and policies governing the regulation of Missouri public utilities. There is nothing contained in this transaction that would diminish or otherwise adversely affect the ability of the Commission and Missouri law to regulate the public utility operations in areas previously served by Atmos. Upon completion of the proposed transaction, Liberty Energy Midstates will be a public utility in Missouri and as such subject to all of the applicable rules and regulations of the Commission and the Public Service Commission Act.

13. Pursuant to 4 CSR 240-3.210(E), a balance sheet and income statement with adjustments showing the results of the acquisition of the property will be late-filed as **Appendix E** in accordance with Commission rule 4 CSR 240-3.210(3) . Pursuant to 4 CSR 240-3.210(F), the Joint Applicants state that the proposed transaction will have no expected impact on the tax revenues of the political subdivisions in which any of the structures, facilities and equipment involved are located.

#### **Conditions For Approval Of Application**

14. The Joint Applicants and/or Atmos and Liberty Energy Midstates are willing to agree to reasonable conditions suggested by the Commission Staff, Public Counsel or other interested parties in order to accomplish the purposes of the proposed transaction. In particular, reasonable conditions in the following areas, among others, would be contemplated by the Joint Applicants as a part of any Stipulation And Agreement in this case: Acquisition Adjustment, Gas Supply Services, Tariffs, Records, and Gas Safety.

### **Acquisition Premium**

15. Liberty Energy Midstates agrees that it will not seek to recover any of the acquisition costs and acquisition premium associated with this transaction in any future rate proceeding unless and until there is a change in Generally Accepted Accounting Principles (“GAAP”) that, unless otherwise ordered by the Commission, would require Liberty Energy Midstates to write-off any portion of the acquisition premium and such write-off would have a significant deleterious effect on Liberty Energy Midstates.

### **Gas Supply**

16. Atmos and Liberty Energy Midstates have entered into an agreement providing for and listing the gas supply transition service and their term that will be provided by Atmos. Atmos will develop its traditional hedging plan for the winter of 2011-2012 with the collaboration of Liberty Energy Midstates. Atmos will not delay normal gas supply planning and hedging related to the operations of these properties prior to the sale of these properties. Atmos will transfer for the benefit of Missouri customers all physical hedges still in place for their Missouri gas operations to Liberty Energy Midstates at closing. Liberty Energy Midstates agrees that it will reflect the same cost for natural gas that would have otherwise been attributable to the operations of these properties absent this sale and transfer of assets. Atmos agrees to transfer to Liberty Energy Midstates copies of all records and documents as required by law for the Commission to review gas purchases related to Missouri ACA cases.



### **Tariffs**

17. Liberty Energy Midstates agrees to file an Adoption Notice to be effective upon closing of the transaction adopting the rates, tariffs, rules and regulation for gas service in effect for Atmos' Missouri jurisdictional gas utility operations which are the subject of this proceeding, subject to any changes hereafter made in accordance with applicable law, and to continue all services currently provided by Atmos in Missouri, without interruption or change.

### **Records**

18. Atmos agrees to transfer to Liberty Energy Midstates, and Liberty Energy Midstates agrees to maintain, financial and operational data for a minimum of five calendar years (2007-2011) and 2012 through final closing and transfer, for Atmos' Missouri jurisdictional gas utility operations which are the subject of this proceeding. All vintage tax, property unit catalog records and plant mortality and salvage data, that currently exist, will be transferred from Atmos and maintained by Liberty Energy Midstates. Such data will be readily available to Staff and Public Counsel upon request and will be maintained in its current form or a form that is mutually acceptable to Liberty Energy Midstates, Staff and Public Counsel or as otherwise ordered by the Commission.

19. Liberty Energy Midstates agrees to maintain all records necessary to meet the requirements of the Uniform System of Accounts, gas utility depreciation studies and rate case filings. Data maintained and provided for gas utility depreciation studies will include cost of removal and salvage associated with plant retirements. This data will be provided to Staff in Staff's requested format or as ordered by the Commission.

20. Liberty Energy Midstates agrees to use the current approved depreciation rates for Missouri gas properties acquired from Atmos until the same may be changed from time to time as provided by law. Liberty Energy Midstates will also maintain plant by account that allows for the specific identification of the property acquired from Atmos.

21. Beginning with the first month after the closing of the transaction, Liberty Energy Midstates agrees to provide monthly gas financial surveillance reports similar to those previously provided by Atmos, which shall be considered Highly Confidential, to the manager of the Commission's Auditing Department.

22. Liberty Energy Midstates will develop a cost allocation manual, and Liberty Utilities will revise its existing cost allocation manual to reflect the acquisition of the Atmos assets within six months following the final closing of the transaction. The manuals shall be considered Highly Confidential.

#### **Gas Safety**

23. Liberty Energy Midstates agrees to retain all the Atmos maintenance/operations records for the facilities which are the subject of this transaction and maintain the records necessary to demonstrate compliance with specific requirements of the pipeline safety regulations and agrees to keep these records available for inspection.

(a) Within 90 days after closing of the transaction, Liberty Energy Midstates agrees to file for a variance from the Commission's 10-year meter testing requirements in order to continue testing meters using a statistical sampling program instead of testing each meter every 120 months.

(b) During the period that Atmos is providing transition services to Liberty Energy Midstates, operations may be conducted under Atmos's plans, programs and manuals. Within 90 days after the closing of the transaction, Liberty Energy Midstates agrees to submit to the Staff the following plans, programs and manuals:

(i) An Operations and Maintenance (O&M) manual. This manual must contain all procedures used to comply with sections 9 through 14 of the PSC pipeline safety regulations. *See 4 CSR 240-40.030(12) (C).*

(ii) A written program for Qualification of Pipeline Personnel. The program must be completed for all individuals performing covered tasks. Be advised that under the current Missouri regulations, employees can only perform functions for which they have had appropriate training and testing. *See 4 CSR 240-40.030(12) (D).*

(iii) An Emergency Manual. This manual must contain procedures to deal with emergencies as specified in section (12)(J) of the PSC pipeline safety regulations. *See 4 CSR 240-40.030(12) (J).*

(iv) An Anti-Drug Plan and Alcohol Misuse Plan. *See 4 CSR 240-40.080 [49 CFR Parts 40 & 199].*

(v) A Damage Prevention Program and membership in Missouri One Call System, Inc. This program will address the notification of the public and potential excavators in the vicinity of the pipeline about how to learn the location of the buried pipeline before excavation. *See 4 CSR 240-40.030(12) (I).*

(vi) A Public Education Program. This program will provide continuing education to the public in the vicinity of the pipeline, as well as government officials, excavators, and the customer about how to recognize a gas pipeline emergency for the purpose of reporting it to the operator. *See 4 CSR 240-40.030(1 2) (K).*

#### **Financing Authority Requested**

24. The closing of the transaction is not subject to a condition that Liberty Energy Midstates obtain adequate financing. Through its subsidiaries, Algonquin will provide a reasonable capital structure for Liberty Energy Midstates. Liberty Energy Midstates' initial capitalization target debt/equity ratio will be approximately 45/55. Liberty Energy Midstates estimates based on the purchase price of approximately \$124 million that it would issue a minimum of \$68 million of its common stock to its parent, Liberty Energy, in respect of its initial equity capitalization. Based on the purchase price, Liberty Energy Midstates estimates that it would borrow a minimum of approximately \$56 million in long term debt in respect of its initial debt capitalization. This debt will be in the form of privately placed secured notes. In addition, Liberty Energy Midstates would likely maintain a revolving short-term credit facility for working capital requirements as part of its operations.

25. The applicants expect that the initial capitalization amounts set forth in paragraph 25 are minimums and will likely increase based on the purchase price adjustments set forth in the Purchase Agreement. While the amount of equity and debt issued would increase, Liberty Energy Midstates would not expect to materially change from its proposed initial capitalization debt to equity *ratio* of 45/55. The strong equity component demonstrates Algonquin's

commitment to ensuring Liberty Energy Midstates' ready access to the capital markets and underscores its substantial investment in the service areas previously served by Atmos in Missouri, Illinois and Iowa.

26. The terms of the secured long term notes will also vary depending on market conditions in effect at the time of issuance. It is likely that Liberty Energy Midstates will issue multiple series of notes with different maturity dates and interest rates ranging from fifteen to thirty years. The notes may be secured by a pledge of all of Liberty Energy Midstates' assets. Liberty Energy Midstates will keep the Commission informed regarding the amount of its expected equity capitalization and the amount and terms of its expected debt issuance.

27. As discussed herein, Liberty Energy Midstates requests approval of these equity and debt issuances pursuant to Sections 393.190 and 393.200 RSMo. It will pay applicable fees for the debt issuances under Section 386.300.2 RSMo. At this time, pursuant to 4 CSR 240-3.220(1)(F), Liberty Energy Midstates states that it believes that all of its proposed debt issuance that is approved by the Commission will be subject to the fees contained in Section 386.300.2.

28. Liberty Energy Midstates believes that allowing it flexibility to adapt its borrowings to market conditions in place nearer in time to the closing will improve its ability to obtain the most reasonable terms for the debt. Therefore Liberty Energy Midstates respectfully requests that the Commission allow Liberty Energy Midstates the authority to issue the debt in amounts up to those to be requested in later filings or testimony on terms consistent with those indicated to the Commission herein and in later filings or testimony. Of course, Liberty Energy

Midstates would ensure that the debt comply with any conditions set forth by the Commission in such an approval.

29. Pursuant to 4 CSR 240-3.220(1)(B), Liberty Energy Midstates states that the purpose for which the securities are to be issued is for the purpose of acquiring the assets identified herein and related transactions discussed in the Agreement.

30. Pursuant to 4 CSR 240-3.220(1)(C), Liberty Energy Midstates states that the instruments have not been executed at the time of filing, and the general terms and conditions to be contained in the debt instruments will be late-filed as **Appendix F** pursuant to Commission rule 4 CSR 240-3.220(2).

31. In accordance with 4 CSR 240-3.220(1)(D), a certified copy of the Minutes of the Board of Directors authorizing the issuance of the securities is presently unavailable and will be late-filed as **Appendix G** pursuant to Commission rule 4 CSR 240-3.220(2).

32. Pursuant to 4 CSR 240-3.220(1)(E), a balance sheet and income statement with adjustments showing the effects of the issuance of the proposed securities is presently unavailable and will be late-filed as **Appendix H** pursuant to Commission rule 4 CSR 240-3.220(2).

33. Pursuant to 4 CSR 240-3.220(1)(G), a five (5) year capitalization expenditure schedule as required by Section 393.200 is contained in **Appendix I** which is attached hereto and incorporated herein by reference.

### **Other Approvals**

34. Atmos holds numerous Certificates issued pursuant to Section 393.170 RSMo. Upon closing of the Transaction, Atmos will no longer provide public utility service in Missouri. Liberty Energy Midstates will continue all of the natural gas distribution service in the area presently served by Atmos, without interruption. Liberty Energy Midstates has the managerial, technical, and financial qualifications to provide reliable and efficient natural gas service in Atmos' existing service area. Subject to Commission approval, Atmos plans to transfer all of the Certificates of Public Convenience and Necessity ("*Certificates*") it holds in Missouri to Liberty Energy Midstates pursuant to Section 393.170. The Joint Applicants also requests that Commission, upon finding that the conditions exist for approval of the Transaction pursuant to Section 393.190, also authorize the transfer to Liberty Energy Midstates of all of the Certificates granted to Atmos or its predecessors pursuant to Section 393.170, or in the alternative, grant Liberty Energy Midstates new Certificates to serve the same areas now served by Atmos.

35. Liberty Energy Midstates is also requesting approval under 4 CSR 240-10.010 to maintain its books and records outside of Missouri. Digital copies of all books and records will be available in Missouri and at the Commission's request hard copies will be made available in Missouri as well. However, certain original source paper documents may be more efficiently maintained in other locations. To the extent the Commission requires these original source documents that will be kept outside Missouri, Liberty Energy Midstates acknowledges that it will be liable for, and upon proper invoice from the Commission will promptly reimburse for reasonable costs and expenses associated with the audit or inspection of any books, accounts,

papers, records and memoranda kept outside of the State, all as required by 4 CSR 240-10.010(3)(F).

36. The Joint Applicants also requests that the Commission authorize Atmos to abandon the provision of natural gas distribution in Missouri. If the Commission approves the transaction, Liberty Energy Midstates will be providing service to all of Atmos' former customers and service areas. There will be no need or necessity for Atmos to do so. Therefore, Atmos should be authorized to abandon the provision of natural gas distribution service in all areas served by Atmos, effective as of the date of closing of the transaction.

#### **Completion Date of Transaction**

37. The Joint Applicants desire to finalize this transaction during the first quarter of 2012 and respectfully request that the Commission act as soon as possible. The Joint Applicants are providing additional supporting information in conjunction with the filing of this Application, including the testimony of Ian E. Robertson, David Pasieka, Peter Eichler, and Mark A. Martin.

#### **Contingent Request for Waiver**

38. This case is not likely to be a contested case within the meaning of Commission rule 4 CSR 240-4.020(2) because this Commission has held that an application regarding a transfer of assets pursuant to Section 393.190, RSMo is not a contested case.

Moreover, this is not a contested case pursuant to 536.010(2) because it does not involve a proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be **determined after hearing**. (Emphasis added). Neither Section 393.190, nor Section 393.106, nor any other provision of law requires a hearing be held for these determinations. *In the*



*Matter of the Application of The Empire District Electric Company for Authority to Sell and Transfer Part of its Works or System to the City of Monett, Missouri, Case No. EO-2009-0159, Order Approving The Transfer Of Assets, Footnote 4, February 11, 2009.*

See also, *In the Matter of the Application of Atmos Energy Corporation for Authority to Sell Part of its Works or System Located at the Hannibal, Missouri Propane Air Plant*, File No. GO-2011-0281, Order Authorizing Sale of Propane Air Plant Facility Located in Hannibal, Missouri (“Order”), April 19, 2011:

The company also requests a waiver of Commission rule 4 CSR 240-4.020(2), which requires a 60-day notice prior to filing what will be a contested case. A contested case “means a proceeding before an agency . . . required by law to be determined after hearing.” Section 393.190.1 does not require the Commission to hold a hearing prior to ruling on this application. This is therefore not a contested case. The Commission’s rule regarding contested cases is inapplicable and a waiver of the rule is unnecessary. (Order, p. 4).

39. Accordingly, the Joint Applicants were not required to file a 60-day Notice of Filing pursuant to 4 CSR 240-4.020(2). However, to the extent that a 60-day Notice of Filing could otherwise be required under 4 CSR 240-4.020(2), the Joint Applicants respectfully request that such notice requirement be waived for good cause given the Commission precedent cited above. 4 CSR 240-4.020(2)(B).

**WHEREFORE**, for the reasons stated above, Atmos Energy Corporation and Liberty Energy (Midstates) Corp. respectfully requests that the Commission issue an order in this case:

(1) finding that the transaction described in the Agreement is not detrimental to the public interest;

(2) authorizing Atmos to sell and Liberty Energy Midstates to acquire the assets identified herein of Atmos, to include the certificates of convenience and necessity held by Atmos, or, in the alternative, grant a new certificate of convenience and necessity to Liberty Energy Midstates in the areas now served by Atmos;

(3) authorizing the Joint Applicants to enter into, execute and perform in accordance with the terms described in the Agreement attached to this Joint Application and to take any and all other actions which may be reasonably necessary and incidental to the performance of the acquisition;

(4) authorizing Liberty Energy Midstates to maintain its books and records outside of Missouri, pursuant to 4 CSR 240-10.010;

(5) authorizing Atmos to abandon the provision of natural gas distribution in Missouri upon the closing of the transaction;

(6) if necessary, granting the Joint Applicants' Motion for Waiver of Commission Rule 4 CSR 240-4.020(2), to the extent it may be otherwise required;

(7) granting such other relief as is appropriate under the circumstances to accomplish the purposes of the Agreement and the Joint Application and to consummate related transactions in accordance with the Agreement.

Respectfully submitted,

/s/ James M. Fischer

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Attorneys for Joint Applicants

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been emailed, mailed or hand-delivered this 1<sup>st</sup> day of August, 2011, to:

General Counsel  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102

Public Counsel  
Office of the Public Counsel  
P.O. Box 2230  
Jefferson City, MO 65102

/s/ James M. Fischer

James M. Fischer



