BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Eddie Shepherd,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. EC-2011-0373
	)	
KCP&L Greater Missouri Operations Company,	)	
	)	
Respondent.	)	

MEMORANDUM IN SUPPORT OF KCP&L GREATER MISSOURI OPERATIONS COMPANY'S MOTION FOR SUMMARY DISPOSITION

Pursuant to 4 CSR 240-2.117(2), KCP&L Greater Missouri Operations Company ("GMO" or "Company") respectfully moves the Missouri Public Service Commission ("Commission") to grant summary disposition in favor of GMO with respect to the Complaint filed by Complainant. In support thereof, GMO states as follows:

I. INTRODUCTION

Mr. Shepherd filed a complaint with the Commission on May 16, 2011 initiating the above-captioned proceeding. According to Mr. Shepherd's complaint, he believes the meter on the Property had been registering more electricity than his consumption following a lightning strike in July, 2010 and is requesting relief from high bills allegedly brought on by a faulty meter. Because adjustments to customer bills are addressed in a tariff approved by the Commission and the Company has followed the provisions of the tariff, the Commission should find that no adjustment to the Complainant's bills is required to be made by GMO. Accordingly, summary disposition must be granted in GMO's favor.

II. STATEMENT OF UNCONTROVERTED MATERIAL FACTS

1. Rule 5.04(A) and (C) (Sheets R-32 and R-33) of GMO's tariffs provides for refunds for meter errors if the error is greater than 3%. The tariff states:

5.04 Billing Adjustments

A. For all billing errors, Company will determine from all related and available information the probable period during which this condition existed and shall make billing adjustments for the estimated period involved as follows:

***

C. Where, upon test, a meter error is found to be three percent (3%) or less, no billing adjustment will be made.

See Exhibit 1.

The meter Complainant alleges was struck by lightning was tested March 10, 2011. The meter test demonstrated that the meter was 99.87% accurate. The replacement meter was tested July 19, 2011 and this test demonstrated that the meter was 100.107% accurate. These tests were performed pursuant to Commission standards and demonstrated that the meters were accurate. *See* Exhibit 2, Affidavit of Cap Fergen.

III. STANDARD OF REVIEW

A defendant establishes a right to summary disposition by (1) offering facts that negate one or more essential elements of the plaintiff's claim, or (2) showing that the plaintiff will be unable to produce sufficient evidence to establish one or more essential elements of the plaintiff's claim.[1]

The movant has the burden to prove summary disposition is proper.[2] When the movant introduces facts showing a right to judgment as matter of law, the burden then shifts to the non-

[1] *ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp.*, 854 S.W. 2d 371, 381 (Mobanc 1993). *See also Hoffman v. Union Elec. Co.*, 176 S.W.3d 706, 707 (Mo.banc 2005).
[2] *See ITT, id*., 854 S.W. 2d at 378.

movant, who must respond with countervailing evidence showing that there is genuine dispute as to one or more of the movant's material facts.[3]

Moreover, the public interest clearly favors the quick and efficient resolution of this matter by summary determination without an evidentiary hearing.[4] Since there is no genuine issue as to any material fact the time and cost to hold a hearing would be contrary to the public interest.

IV. ARGUMENT

The basis of Mr. Shepherd's complaint is that he believes the meter on the Property did register more electricity than his consumption following a lightning strike in July, 2010[5]. Disputes regarding a customer's usage amounts are governed by GMO's tariffs (Rule 5.04(C) (Sheet R-33)) which provide that unless the error is greater than 3% no billing adjustment will be made. Since the meters in question demonstrated a meter accuracy of 99.87% and 100.107% respectively a billing adjustment is not appropriate. There is no basis under the Company's tariffs for the Commission to grant the relief requested by Complainant.

[3] *Id*. at 381.
[4] *See, e.g*., Determination on the Pleadings, *The Staff of the Missouri Public Service Commission v. Taney County Utilities Corporation*, Case No. WC-2004-0342 (Oct. 19, 2004).
[5] *See* October 14, 2011 List of Issues filed in this case.

WHEREFORE, GMO respectfully requests that the Commission enter an Order granting summary disposition in its favor with respect to Complainant's complaint.

Respectfully submitted,

/s/ Roger W. Steiner

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Facsimile: (816) 556-2787
Email: Roger.Steiner@kcpl.com

Attorney for KCP&L Greater Missouri Operations Company

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all parties of record on this 4th day of November, 2011.

/s/ Roger W. Steiner

Attorney for KCP&L Greater Missouri Operations Company

5.01 Meter Installations (Continued)

D. Where demand meters are used for metering service to customers for billing purposes, the applicable rate schedule shall designate the demand interval to be used for normal service. However, where customers request demand meter contact signals and Company agrees to furnish such demand meter contact signals, Company shall charge the customer the entire investment cost of providing such contact signals plus any estimated monthly operating costs expected. Company shall be permitted to use a five (5) minute demand interval instead of that specified in the rate tariff. This will encourage customers to shift loads from peak periods to off-peak periods rather than shifting loads within the demand time interval. Company shall not be required to furnish demand meter contact signals where such service may impair the accuracy of the meter or for any other reason that such service is not in the best interest of Company and other customers served.

5.02 Multiple Metering

The normal practice shall be to bill each metering point as a separate customer. Under special conditions, consumption registered by two (2) or more meters may be numerically added and a single bill rendered for such service supplied to a customer, provided the customer's load is of such size and character and so located as to make it advisable, in the opinion of Company, to install more than one (1) service connection at a single location.

5.03 Meter Testing

Company's meters shall be tested for accuracy in accordance with the Commission's Rule included in 4 CSR 240-10.030 as now in effect and as the same may be amended from time to time. An approved statistical sampling basis of meter testing may be used to comply with the periodic testing requirements of this Rule.

5.04 Billing Adjustments

A. For all billing errors, Company will determine from all related and available information the probable period during which this condition existed and shall make billing adjustments for the estimated period involved as follows:

(1) Residential Customers.

(a) In the event of an overcharge, an adjustment shall be made for the entire period that the overcharge can be shown to have existed not to exceed sixty (60) consecutive billing periods, calculated from the date of discovery, inquiry, or actual notification of Company, whichever was first.

(b) In the event of an undercharge, an adjustment shall be made for the entire period that the undercharge can be shown to have existed not to exceed twelve (12) consecutive billing periods, calculated from the date of discovery, inquiry, or actual notification of Company, whichever was first.

5.04 Billing Adjustments (Continued)

(2) Customers Other Than Residential.

(a) In the event of an overcharge, an adjustment shall be made for the entire period that the overcharge can be shown to have existed not to exceed sixty (60) consecutive billing periods, calculated from the date of discovery, inquiry, or actual notification of Company, whichever was first.

(b) In the event of an undercharge, an adjustment shall be made for the entire period that the undercharge can be shown to have existed not to exceed sixty (60) consecutive billing periods, calculated from the date of discovery, inquiry or actual notification of Company, whichever was first.

B. No billing adjustment will be made where the full amount of the adjustment is less than one dollar ($1.00).

C. Where, upon test, a meter error is found to be three percent (3%) or less, no billing adjustment will be made.

D. When evidence of tampering is found, or there are misrepresentations of the use of service by the customer, Company will calculate the billing adjustment period in accordance with the applicable statute of limitations for the prosecution of such claim after determining the probable period during which such condition existed from all related and available information.

E. When the customer has been undercharged, except as provided in Section 5.04 (D) of this Rule, and a billing adjustment is made, the customer may elect to pay the amount of the adjustment in equal installments over a period not to exceed the period for which the billing adjustment was applicable.

F. The under- or over-collection of sales, use or franchise taxes is not considered a billing error for the purpose of this Section, and is subject to collection or refund per the statute of limitations.

BEFORE THE PUBLIC SERVICE COMMISSION STATE OF MISSOURI

EDDIE SHEPHERD	)	
	)	
Complainant,	)	
v.	)	
	)	Case No. EC-2011-0373
KANSAS CITY POWER & LIGHT COMPANY	)	
	)	
	)	
Respondent	)	

AFFIDAVIT

The undersigned __Cap Fergen_____ states under oath as follows:

1. I am employed by Kansas City Power & Light Company, as Manager of Meter Technology

2. I have reviewed the meter test performed on 3/10/2011 for meter SA40172754 and found the test to be complete and accurate.

3. I reviewed the meter test performed on 7/19/11 for meter LG78224124 and found the test to be complete and accurate.

4. The above meter tests were performed according to the Missouri Public Service Commission rules.

FURTHER AFFIANT SAITH NOT.

NAME

STATE OF)
) ss
COUNTY OF)

Subscribed and sworn before me, a Notary Public, on this 1st day of August, 2011.

DEBBIE LOWE
Notary Public-Notary Seal
State of Missouri, Jackson County
Commission # 09522334
My Commission Expires Dec 28, 2013

2875592.1

EXHIBIT 2

S/S ☐ E/M ☒ **CERTIFICATE OF INSPECTION AND TEST** KCP&L

Repairs: Before ☐ After ☐ In-Test ☐ Out-Test ☐

ACCOUNT# BILLING ID #

CUSTOMER EDDIE MACK SHEPHERD ADDRESS 8675 CO. RD. 392

METER # SA 40M2754 LOCATION OUTSIDE NORTH ON POLE READING 57770 DEMAND PK.

DIAL CONST. (Kr) 1 TEST CONST. (Kh) REG.RATIO CT. RATIO P.T. RATIO

PRIMARY AMPS - A. B. C. R/I RATIO PULSE VALUE

1: PHASE ANGLE-A-ABN B-BN C-CBN A-CBN A-ACN C-AB

2: PHASE ANGLE-A-ABN B-BN C-CBN A-CBN A-ACN C-AB

DISK C (P/Kh) X SHAFT RATIO X REG. RATIO ÷DIAL C =10KW

METER REV. X 3600 X Kh ÷SEC. ÷1000= KWD

Kh ÷P/R =K Wh ACTUAL TEST DEMAND PEAK= KWD

PULSES X Int. In hr. X K ÷1,000 = KWD

% LOAD	MTR REVS	% CORR	WATTS AS FOUND STD REVS	WATTS AS FOUND ACC	VARS / COMP AS LEFT STD REVS	VARS / COMP AS LEFT ACC
100	10			99.893		
10	2			99.998		
50	5			100.206		
AVERAGE ACCURACY						

AVG 99.96 / 99.9

INSTANTANEOUS WATTS:

INSTANTANEOUS VARS:

CT LOCATION:

IN☐ OUT☐ CT CUSTOMER LOAD L1 WATTS

A0I X ABCN X COS =

B0I X ABCN X COS =

C0I X ABCN X COS =

IN☐ OUT☐ CT CUSTOMER LOAD L2 WATTS/VARS

A0I X ABCN X COS SIN =

B0I X ABCN X COS SIN =

C0I X ABCN X COS SIN =

CHECKED BY: 7182 DATE 3-10-11

LOCKING DEVICE: YES☒ NO☐ LAN ID:

FUSED POTENTIAL CUST.PULSES 2W☐

YES☐ NO☒ YES☐ NO☒ 3W☐

ROT.FWD☐ REV☐ Ke VALUE

TIME OFF: TIME ON:

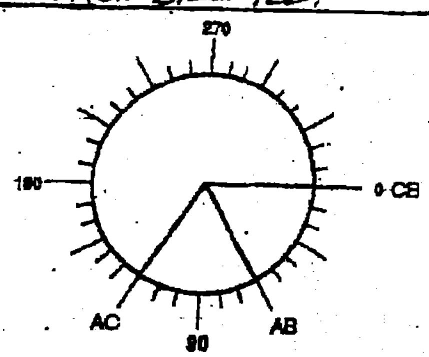
KW LOAD: TOTAL X DIAL C (TR) = ÷1000= KW

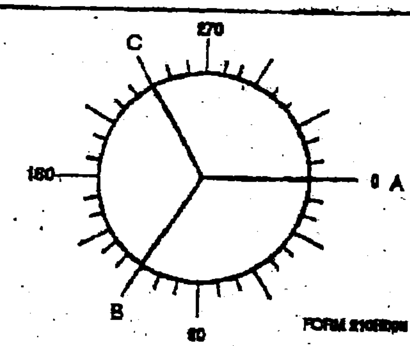
METER REV. X 3600 X DISK C ÷SEC. ÷1000= KW

VARS LOAD: TOTAL X DIAL C = ÷1000= KVAR

METER REV. X 3600 X DISK C ÷SEC. ÷1000= KVAR

REMARKS HIGH BILL TEST





FORM 2105 (Rev.)

Time 10:31 Am Read meter AT 11:30 AM use 1 KWH 3-10-11

EXHIBIT 2

S/S ☐ E/M ☒ **CERTIFICATE OF INSPECTION AND TEST** Repairs: Before ☐ After ☐ In-Test ☐ Out-Test ☐ KCP&L

ACCOUNT# BILLING ID #

CUSTOMER EDDIE MACK SHEPHERD ADDRESS 8675 CoRd 392 St JOSEPH MO

METER # LG78224124 LOCATION Pole READING 04304 DEMAND PK.

DIAL CONST. (Kr) TEST CONST. (Kh) 7.2 REG.RATIO ELECTRONIC CT. RATIO P.T. RATIO

PRIMARY AMPS - A. B. C. RM RATIO PULSE VALUE

1: PHASE ANGLE-A-ABN B-BN C-CBN A-CBN A-ACN C-AB

2: PHASE ANGLE-A-ABN B-BN C-CBN A-CBN A-ACN C-AB

DISK C (PKh) X SHAFT RATIO X REG. RATIO ÷DIAL C =10KW

METER REV. X 3600 X Kh ÷SEC. ÷1000= KWD

Kh ÷P/R =K Wh ACTUAL TEST DEMAND PEAK= KWD

PULSES X Int. in hr. X K ÷1,000 = KWD

% LOAD	MTR REVS	% CORR	WATTS AS FOUND STD REVS	WATTS AS FOUND ACC	VARS / COMP AS LEFT STD REVS	VARS / COMP AS LEFT ACC
100	10			100.09		100.09
10	2			100.14		100.14
50	5			100.17		100.17
AVERAGE ACCURACY				100.107		100.107

INSTANTANEOUS WATTS:

INSTANTANEOUS VARS:

CT LOCATION:

IN☐ OUT☐ CT CUSTOMER LOAD L1 WATTS

AØI X ABCN X COS =

BØI X ABCN X COS =

CØI X ABCN X COS =

IN☐ OUT☐ CT CUSTOMER LOAD L2 WATTS/VARS

AØI X ABCN X COS SIN =

BØI X ABCN X COS SIN =

CØI X ABCN X COS SIN =

CHECKED BY: 6691 DATE: 7/19/11

LOCKING DEVICE: YES☒ NO☐ LAN ID:

FUSED POTENTIAL YES☐ NO☐ CUST.PULSES YES☐ NO☐ 2W☐ 3W☐

ROT.FWD☐ REV☐ Ke VALUE

TIME OFF: TIME ON:

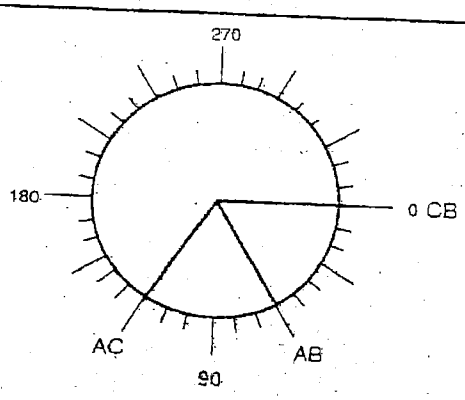
KW LOAD: TOTAL X DIAL C. (TF) = ÷1000= KW

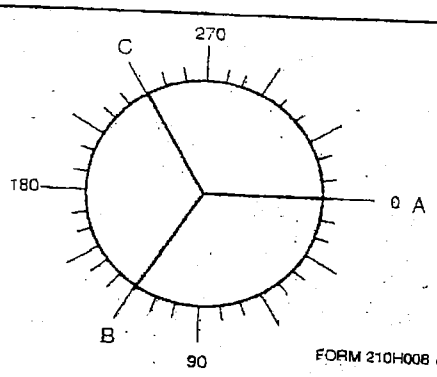
METER REV. X 3600 X DISK C ÷SEC. ÷1000= KW

VARS LOAD: TOTAL X DIAL C. = ÷1000= KVAR

METER REV. X 3600 X DISK C ÷SEC. ÷1000= KVAR

REMARKS





FORM 210H008 (Rev. 05/06)

EXHIBIT 2