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	)))	Case No. ER-2012-0024

OPPOSITION OF KCP&L GREATER MISSOURI OPERATIONS COMPANY TO MOTION TO SUSPEND OR, IN THE ALTERNATIVE, REJECT TARIFF

KCP&L Greater Missouri Operations Company ("GMO" or "Company"), pursuant to 4 CSR 240-2.080, states the following for its Opposition to the Motion to Suspend, Or In the Alternative, Reject Tariff ("Motion") of AG Processing Inc. a Cooperative ("AGP"):

1. In Paragraph 3 of its Motion, AGP states four arguments why the phase-in tariffs proposed by GMO and recommended by Staff should be suspended or rejected. The purpose of these tariffs is to carry out the mandate of the Commission in its Report and Order of March 7, 2012, which went into effect April 6. AGP filed no application for rehearing or motion for reconsideration of that order.

2. As discussed below, Arguments (a), (b), and (c) have been considered by the Commission in both this case and in GMO's underlying rate case, and rejected on several occasions. Argument (d), which attempts to equate this phase-in of rates approved in a general rate case with single-issue ratemaking, is both wrong and untimely.

I. Arguments (a) through (c) Have Already Been Determined by the Commission.

3. AGP attempts to revive three substantive issues that the Commission has already decided, and that AGP has already lost and failed to preserve through an application for rehearing or other motion for reconsideration.

A. Argument (a) Regarding the Phase-In Mechanism Should Be Denied.

4. Without citing any case law in support of its position, AGP first argues that GMO's tariffs were submitted pursuant to a purportedly erroneous interpretation of Section 393.155.1[1] when the Commission granted GMO's L&P division a rate increase only for that division (not GMO as a whole) in excess of the increase originally proposed by the Company.

5. The Commission addressed this issue in numerous orders in the underlying rate case, No. ER-2010-0356 ("2010 Rate Case"), as well as in its March 7, 2012 Report and Order in this matter. AGP has raised and lost this issue no fewer than four times prior to the filing of its present Motion. AGP's belated attempt to resuscitate this issue is not only an unwarranted *fifth* bite at the apple, but is an impermissible collateral attack on several Commission orders.

1. AGP's Four Prior Bites at the Apple.

6. On June 4, 2010, GMO filed its 2010 Rate Case, including tariffs that were designed to increase the total revenues of the Company by $97.9 Million with $22.1 Million to be recovered from the L&P division (an increase of approximately 13.78%).

7. In its Report and Order in the 2010 Rate Case, 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 was proposed by GMO. The Commission largely based these findings on Staff's recommendations. See Report and Order at 195–204 (May 4, 2011). In its findings of fact, the Commission specifically concluded:

> 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

[1] All statutory references are to the Missouri Revised Statutes (2000), as amended, unless otherwise noted.

> both the MPS and the L&P service areas rather than the overall revenue requirement impact of Iatan 2. [Report and Order at 196].

As a result of this rate design determination, a larger increase was adopted for the L&P division (approximately $29.3 million, or an increase of 21.0%) than originally proposed by GMO.

8. In its first bite at the apple, AGP filed an application for rehearing on May 13, 2011, stating the following as its sole issue for rehearing:

> The Commission's Report and Order is unlawful in that it grants GMO L&P a rate increase that is in excess of that initially requested by GMO and with regard to which GMO gave public notice. [Application for Rehearing at 1].

9. AGP filed its Objection to L&P Tariff on May 16, 2011, in which it again quarreled with the allocation to L&P of a rate increase in excess of the amount initially requested by GMO. See Objection to L&P Tariff at 2–4.

10. To "mitigate the impact of the increase on the L&P Division," AGP proposed in its Objection to L&P Tariff that the Commission phase-in the L&P rate increase, pursuant to Section 393.155.1. Id. at 3–4. AGP recommended that the Commission phase-in the 7.22% of the increase above the initially requested 13.78% ($22.1 million), to reach the ordered 21% ($29.3 million) increase to the L&P division. Id.

11. The Commission held an on-the-record question and answer session on May 26, 2011 to better understand AGP's and other requests for rehearing. At that session, Mr. Woodsmall, counsel for AGP repeatedly urged the Commission to phase in the amount of the increase to the L&P division above that amount originally requested by the Company:

> [Commissioner Davis]: ... Mr. Woodsmall, I mean, you've got people on both sides of this. What would be your recommended resolution on this issue? We've heard Mr. Mills.
>
> [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. 4982–84 (emphasis added)].

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[Mr. Woodsmall]: Right. I think the thing about the phase-in we find most attractive, and we pointed this out is, this case was filed almost a year ago. People have been making budgeting decisions based upon a $22.1 million increase. By doing the phase-in, you still allow them to, you know, keep those budgeting decisions real and you tell them more is coming, so you don't hit them with the entire amount all at once. [Tr. 4974].

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[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 based 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 (emphasis added)].

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[Mr. Woodsmall]: We have a solution to continue to recognize that customers have made budgeting decisions, and that is the phase-in. The phase-in does not require a huge second-phase increase. I think we've talked about what the magnitude of that is. And the other thing is, regarding a phase-in, right now it's not the '80s where we're facing double-digit interest rates. The carrying costs for

> this should be fairly low, so it is a good time, probably, to do a phase-in. [Tr. 5005–06 (emphasis added); see also Tr. 4989, 4992–93].

12. On May 27, 2011, the Commission issued its Order of Clarification and Modification, addressing the same issue AGP raises in its present Motion:

> 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].

13. This Commission determination is an exact adoption of counsel for AGP's recommendation at the May 26, 2011 on-the-record presentation. Nevertheless, AGP quickly reversed course and argued that the specific action it encouraged is unlawful. See Rosencrans v. Rosencrans, 87 S.W.3d 429, 432 (Mo. App. S.D. 2002); State ex rel. American Standard Ins. Co. v. Clark, 243 S.W.3d 526, 531–32 (Mo. App. W.D. 2008); Lindahl v. State of Missouri, 2011 WL 3273469, at *4–*7 (Mo. App. W.D. Aug. 2, 2011) (noting doctrine of judicial estoppel, as well); Gambrell v. Kansas City Chiefs Football Club, 621 S.W.2d 382, 386 (Mo. App. W.D. 1981) ("A party may not complain of alleged error which his own conduct creates.").

14. In its second bite at the apple, AGP filed a Concurrence in Public Counsel's Tariff Objection on June 2, 2011, stating that "while the Commission appears to have employed Section 393.155.1 to accomplish a phase-in of rates in excess of filed-for levels, that section does not authorize such action." See Concurrence in Public Counsel's Tariff Objection at 1.

15. That same day, AGP timely filed its Application for Rehearing of the Commission's Order of Clarification and Modification, in which it asserted the same argument that it reiterates in its pending Motion to Suspend:

> Section 393.155.1 RSMo does not provide the Commission with authority or power to direct a phase-in of any rate increase that in total exceeds the amount that was initially requested by GMO with respect to its L&P Division and with regard to which GMO gave public notice. [Application for Rehearing at 1 (June 2, 2011)].

16. In its June 15, 2011 order that approved the tariffs, the Commission found:

> Section 393.155.1 requires the Commission to make "a just and reasonable adjustment" for the deferral of revenue to future years. The Commission determined that a "just and reasonable adjustment" would be the carrying costs for the company. Now at issue are what the carrying costs should be. [Order Approving Tariff Sheets and Setting Procedural Conference at 2–3].

17. This June 15, 2011 order directly addressed GMO's objection "to the 'phase-in of rates in excess of filed-for levels.'" Id. at 2. Nevertheless, the Commission determined that it needed to take additional evidence on what a "reasonable adjustment" or "carrying cost" should be. Id. at 3. The Commission set a procedural conference in order to establish a schedule for hearing additional evidence on the phase-in portion of the tariffs. Id.

18. In its third bite at the apple, on June 24, 2011, AGP again sought rehearing on this very same issue, stating in its Application for Rehearing of the Commission's June 15, 2011 Order Approving Tariff Sheets and Setting Procedural Conference that:

> Section 393.155.1 RSMo does not provide the Commission with authority or power to direct a phase-in of any rate increase that in total exceeds the amount that was initially requested by GMO with respect to its L&P Division and with regard to which GMO gave public notice. [Application for Rehearing at 2].

19. The Commission again denied AGP rehearing on this issue when it denied all pending applications for rehearing, reconsideration, or clarification in its June 29, 2011

Order Denying Applications for Rehearing. See Order Denying Applications for Rehearing at 1–2.

20. To determine the carrying costs for the phase-in of GMO's related tariffs -- that is, to implement under Section 393.155.1 the phase-in ordered in its Order of Clarification and Modification in the 2010 Rate Case -- the Commission opened the present docket, No. ER-2012-0024 (originally docketed as File No. ET-2012-0017), on July 25, 2011.

21. All of AGP's objections to GMO's tariffs on the basis that Section 393.155.1 did not authorize the phase-in of rates in excess of filed-for levels were incorporated in this docket upon its creation. AGP reasserted this position in its December 27, 2011 Position Statement.

22. In its fourth bite at the apple, at the January 5, 2012 hearing, AGP again asserted its position that Section 393.155.1 did not give the Commission authority to phase-in rates in excess of original request for L&P rates. See Tr. at 30–32, 72–73. AGP fully briefed its argument on this point in its post-hearing argument. See AGP Post-Hearing Brief at 8–18 (Feb. 2, 2012).

23. On March 7, 2012 the Commission issued its Report and Order where it found that "counsel for AGP acknowledged that this Commission has the statutory authority to phase in the rate increases and repeatedly urged the Commission to do so . . . . Section 393.155 RSMo clearly allows the Commission to phase in rate increases." See Report and Order (Mar. 6, 2012) at 14. The Commission further found that "[t]he Commission's decision applies Section 393.155.1 RSMo to arrive at carrying costs; the Commission considered all relevant factors in GMO's prior rate case, which is File No. ER-2010-0356." Id. at 15.

24. The Commission should not permit AGP to re-litigate an issue that it has already considered and determined on numerous occasions in this and the underlying rate case dockets.

2. AGP Cannot Collaterally Attack the Commission's Determinations.

25. AGP's relentless re-litigation of this issue at the Commission, instead of at Missouri Court of Appeals where it has filed a notice of appeal,[2] constitutes not only an unwarranted fifth bite at the apple, but is an impermissible collateral attack on several Commission orders. AGP cannot continue to litigate what has already been fully and finally decided by the Commission.

26. Section 386.550, which Missouri appellate courts have long held to be "declaratory of the law's solicitude for the repose of final judgments," State ex rel. Harline v. PSC, 343 S.W.2d 177, 184 (Mo. App. W.D. 1960), provides that "in all collateral actions or proceedings the orders and decisions of the commission which have become final shall be conclusive." Harline, the lead case construing that statute, holds that Commission orders on matters properly within its jurisdiction are not subject to collateral attack. Id.

27. The Commission determined in its Report and Order in the 2010 Rate Case that a larger increase to the L&P division than originally proposed by GMO was just and reasonable. See Report and Order at 204 (May 4, 2011). The Commission determined in a subsequent order that a phase-in of the increase was just and reasonable. See Order of Clarification and Modification at 6–7 (May 27, 2011). The Commission determined that a just and reasonable adjustment for the deferral of revenue to future years would be carrying costs for the Company in its June 15, 2011 Order. See Order Approving Tariff Sheets and Setting Procedural Conference at 2–3 (June 15, 2011). Finally, the Commission denied all pending applications for rehearing, reconsideration, or clarification. See Order Denying Applications for Rehearing at 2 (June 29, 2011). No applications for rehearing currently are pending in either the 2010 Rate Case or the instant case.

[2] Notice of Appeal, Ag Processing v. Missouri Pub. Serv. Comm'n, No. WD75057 (filed March 26, 2012).

28. This docket was not opened to grant the parties a new opportunity in which to re-litigate issues fully addressed in the 2010 Rate Case. On the contrary, the parties are prohibited from doing just that under the doctrine of issue preclusion. The instant case, Case No. ER-2012-0024, was opened merely to determine the carrying costs for the phase-in and to approve phase-in tariffs. See Order Opening a New File and Adopting Procedural Schedule at 2 (July 22, 2011).

29. Thus, AGP is precluded from re-litigating what has already been determined by the Commission. State ex rel. Missouri Gas Energy v. PSC, 224 S.W.3d 20, 26 (Mo. App. W.D. 2007). This is particularly true of the Commission's May 4, 2011 Report and Order where it decided that that a larger rate increase for GMO's L&P division was just and reasonable. See Report and Order at 204 (May 4, 2011). That May 4, 2011 Report and Order was not incorporated into the present docket. See Order Opening a New File and Adopting Procedural Schedule at 2 (July 22, 2011). The issue AGP presents here is identical to that presented in the 2010 Rate Case which AGP had a full and fair opportunity to litigate the issue, and which it is pursuing at the Court of Appeals. Argument (a) of AGP's Motion should therefore be denied.

B. Arguments (b) and (c) of AGP's Motion Should Be Denied.

30. AGP next argues that GMO's tariffs are unlawful because they implement the phase-in over a multi-year period. Again, this is not a new issue, as the parties to the 2010 Rate Case and the instant case have been contemplating a multi-year phase-in for almost a year now.

31. A multi-year phase-in option was argued in depth during the May 26, 2011 on-the-record session, including by counsel for AGP:

> [Chairman Gunn]: So explain to me, practically, how you propose a phase-in to work.

[Mr. Mills]: You could order the increase to St. Joe up to the amount that the notice is and the original tarrifs [sic] contemplated and order -- you can order -- I believe, under the phase-in statute you can order tarrifs [sic] to be filed with an effective date a year from now that phase in the rest of it.

[Mr. Woodsmall]: We would concur in the execution as described. [Tr. 4973 (emphasis added)].

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[Commissioner Davis]: And, I guess, Mr. Woodsmall, I mean, from -- 22.1 million equated to roughly 14 percent rate increase, so I'm going to say that 7 million would equate to roughly a 4 1/2 or 5 percent rate increase, say. That's just my rough math. I understand coming -- well, total increase would be -- I'm just trying to figure out -- I mean, I don't think we would need the five-year phase-in that Callaway required.

[Mr. Woodsmall]: I think you're right.

[Commissioner Davis]: And so, I mean, I guess it would be my impression that this could be accomplished in a year or two, I mean. Does that -- do you think that's fair?

[Mr. Woodsmall]: I think that's fair. [Tr. 4993 (emphasis added)]

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[Mr. Woodsmall]: 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.

[Commissioner Davis]: Mr. Gunn, do you want --

[Chairman Gunn]: I think I get what you're saying. We keep everything the same. We keep the allocation. We're saying, you're going to get the long-term benefit of this, but we're going to ease some of the short-term pain by taking that difference over what that notice was or what you thought you were going to get, and we're going to phase it in over time. I mean, it's a fairly simple -- and Mr. Mills, you would be okay with that?

[Mr. Mills]: Yeah. I think in this case the Commission should determine what the appropriate allocation of the plants is, and then to the extent that that would increase St. Joe rates over what the notices said, then that's the part that you phase

in over what the statute says, over a reasonable number of years. [Tr. 4982–84 (emphasis added). See Tr. at 4956–57].

32. Furthermore, a multi-year phase-in has been discussed numerous times in Commission orders and pleadings filed in the instant docket. In its May 27, 2011 order, the Commission ordered that the increase to the L&P division above the amount originally proposed by GMO be "phased-in in equal parts over a two year period." See Order of Clarification and Modification at 7. The Commission noted in its June 15, 2011 order that [b]ecause the phase-in tariffs will not become effective until 2012, 2013, and 2014, the Commission need not take action on those tariffs in this order." See Order Approving Tariff Sheets and Setting Procedural Conference at 3. On September 2, 2011, GMO and Staff filed a Non-Unanimous Stipulation and Agreement ("the Stipulation"), which attached proposed tariff schedules for the second, third, and fourth year of the phase-in plan. The Commission recognized this multi-year phase-in plan in its Report and Order in the instant case, and ordered a three-year phase-in of rates. See Report and Order at 5–7 (March 7, 2012).

33. Finally, the Commission has express statutory authority under Section 393.155.1 to direct a utility to file tariffs reflecting a multi-year 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 (emphasis added)].

34. The Commission has acted upon this statutory authority in previous rate cases. See Report and Order, In re Determination of In-Service Criteria for the Union Electric Co.'s Callaway Nuclear Plant and Callaway Rate Base, Case Nos. EO-85-17, ER-85-160, 27 Mo. P.S.C. (N.S.) 183, at *318 (Mar. 29, 1985); Report and Order, In re Kansas City Power & Light Co. for Authority to file Tariffs Increasing Rates for Electric Service and the Determination of In-Service Criteria for Wolf Creek Generating Station, Case No. ER-85-128, 28 Mo. P.S.C. (N.S.) 228, at *424 (Apr. 23, 1986).

35. Other states have similar phase-in statutes. See, e.g., Kansas Stat. Ann. § 66-128b (2011) (allowing the commission to phase-in increases "over any period of time."); Ohio Revised Code Ann. § 4928.144 (2011); Conn. Gen. Stat. § 16-19x (2011).

36. Section 393.140 requires the Commission to determine the "just and reasonable" rates for public utilities under its jurisdiction. Section 393.140 contains no limitation on the Commission's exercise of this ratemaking authority that would prohibit the Commission from directing a utility to file tariffs reflecting a multi-year phase-in of rates.

37. Clearly, the parties have discussed and the Commission has considered all relevant factors concerning a multi-year phase-in. Arguments (b) and (c) of AGP's Motion should be denied.

II. Contrary to AGP's Argument (d), GMO's 2012 Rate Case Tariffs Have no Effect on its Compliance Tariffs Filed in this Docket.

38. AGP's final point in its Motion is that the suspended tariffs GMO filed in its current rate case, No. ER-2012-0175 ("2012 Rate Case"), somehow supersede the phase-in tariffs filed in this docket. However, the phase-in proceeding is simply an implementation of GMO's 2010 rate case where the Commission thoroughly reviewed and considered all relevant factors.

39. The phase-in tariffs are compliance tariffs that implement the Commission's determinations in GMO's 2010 rate case, as further specified in this docket. No hearing is required for the Commission to approve GMO's compliance tariffs in this case. See In re Application of Kansas City Power & Light Co. for Approval to Make Certain Changes in Its Charges for Electric Service to Implement Its Regulatory Plan, Order Approving Tariffs in Compliance with Commission Report and Order at 3, Case No. ER-2007-0291 (Dec. 21, 2007). Proceedings on compliance tariffs are not a contested case. Id., Order Denying Motions for Rehearing Concerning Compliance Tariffs at 12 (Jan. 31, 2008).

40. Furthermore, the tariffs in the 2012 Rate Case have been suspended pursuant to Section 393.150, so have no effect. See Order Suspending Tariff, Setting Pre-Hearing Conference, and Directing Filings, Case No. ER-2012-0175 (Feb. 28, 2012).

41. AGP cites two cases in support of its proposition that GMO's phase-in tariffs have been superseded. Neither of these cases is on-point.

42. The first case AGP cites is In re Laclede Gas Co., Case No. GO-2005-0119, where Laclede sought to change its Infrastructure System Replacement Surcharge ("ISRS"). Laclede filed its request on October 28, 2004, along with a proposed tariff sheet that would implement the ISRS change consistent with the application. The Commission suspended the proposed tariff on November 9, 2004. On December 21, 2004, Staff and Laclede filed a stipulation and agreement that authorized Laclede to change its ISRS and requested that the Commission approve a new tariff sheet implementing its ISRS in accordance with the terms of the stipulation and agreement. The Commission approved the tariff filed with the stipulation, and rejected the tariff filed at the beginning of the case because that tariff had been superseded by the tariff approved in the order accepting the stipulation.

43. Such is not the situation here. The phase-in tariffs proposed in Case No. ER-2012-0024 simply implement GMO's 2010 rate case. While the suspended tariffs filed in the 2012 Rate Case assume approval of GMO's proposed phase-in compliance tariffs bearing an effective date of June 25, 2012, which are designed to implement what the Commission described in its Report and Order in the instant docket as the second year of the phase-in plan, those suspended tariffs have no bearing on GMO's phase-in compliance tariffs.

44. The second case AGP cites, In re UtiliCorp United Inc.'s Tariff to Update the Rules and Regulations for Electric and to Increase the Interest Rate Paid on Deposits, Case No. ET-2001-482, involved tariffs UtiliCorp filed to make changes to the interest paid on customer deposits, late payment charges, reconnection fees, and charges from returned checks. UtiliCorp filed these tariffs outside of a general rate case. The Office of the Public Counsel and Staff objected to these tariffs, contending that because they were filed outside of a general rate case, approval of such rate changes would constitute improper single-issue ratemaking. The Commission agreed, stating:

> To consider some costs in isolation might cause the Commission to allow a company to raise rates to cover increased costs in one area without recognizing counterbalancing savings in another area. Such a practice is justly considered to be single-issue ratemaking. . . . UtiliCorp requests that these changes to its rates be approved outside a general rate case. In other words, UtiliCorp asks the Commission to approve these charges without considering all relevant factors. [2001 Mo. PSC LEXIS 966, at *5–8 (Apr. 3, 2001)].

45. In citing to this case, AGP confuses single-issue ratemaking with the implementation of the Commission's findings in a fully litigated general rate case. Here the phase-in tariffs AGP disputes simply carry out the Commission's findings in GMO's 2010 rate case. The instant proceeding has only determined the appropriate carrying costs of the phase-in of rates of the L&P division. See Order Approving Tariff Sheets and Setting Procedural

Conference, Case No. ER-2010-0356 (June 25, 2011). With the exception of the revenue costs that may be specifically considered and recovered pursuant to Section 393.155, the Commission did not consider any of GMO's costs outside of a general rate case.

46. Because the tariffs in the 2012 Rate Case have been suspended and have no effect on GMO's phase-in tariffs, which are compliance tariffs that implement the Commission's determinations in this docket and the underlying rate case, AGP's point 3(d) should be denied.

III. AGP's Motion is Untimely and Improper.

47. On March 7, 2012 the Commission issued its Report and Order in the present case, in which it found that "counsel for AGP acknowledged that this Commission has the statutory authority to phase in the rate increases and repeatedly urged the Commission to do so." See Report and Order at 14. It noted that Section 393.155 clearly allows the Commission to phase in rate increases. Id. It concluded that in applying Section 393.155.1 to arrive at the appropriate carrying costs, the Commission considered all relevant factors from GMO's prior rate case. Id. at 15.

48. On March 19, 2012 AGP stated in its Ordered Response to Proposed Tariff that it "intends to submit a timely application for rehearing" and urged the Commission not to approve GMO's proposed tariffs before the April 6, 2012 effective date of its Report and Order.

49. For whatever reason, AGP failed to file a rehearing application or motion for reconsideration. Consequently, AGP did not preserve any right to attack the Report and Order in this proceeding or any other on appeal.

50. AGP filed its Motion after the time within which it could file an application for rehearing or motion for reconsideration had passed. See Section 386.500.1; 4 CSR 240-2.160. By not following the correct procedures for challenging the Commission's decision which went into effect on April 6, AGP waived any objection to GMO's phase-in tariffs. See State ex rel.

Mid-Missouri Tel. Co. v. PSC, 867 S.W.2d 561, 565 (Mo. App. 1993). AGP cannot skirt its failure to timely file an application for rehearing or motion for reconsideration by filing its instant Motion. The Commission should deny AGP's Motion.

WHEREFORE, for the reasons stated above, KCP&L Greater Missouri Operations Company respectfully requests that the Commission deny the AGP's Motion to Suspend or, in the Alternative, Reject Tariff.

Respectfully submitted,

/s/ Karl Zobrist

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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 19th day of April, 2012.

Lisa A. Gilbreath_____
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