BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of KCP&L Greater Missouri Operations Company's)
Submission of its 2013 RES Compliance Plan) File No.: EO-2013-0505

MOSEIA'S SUGGESTIONS IN OPPOSITION TO
KCP&L GMO'S MOTION TO APPROVE ITS TARIFF TO SUSPEND
PAYMENT OF SOLAR REBATES AND MOTION TO EXPEDITED TREATMENT

Pursuant to § 386.390, RSMo., 4 CSR 240-2.080, and 4 CSR 240-20.100, the Missouri Solar Energy Industries Association ("MOSEIA") hereby submits to the Missouri Public Service Commission ("Commission") its Suggestions in Opposition to KCP&L GMO's motion to approve its tariff to suspend payment of solar rebates. MOSEIA states as follows:

PARTIES AND JURISDICTION

1. MOSEIA has its principal place of business at P.O. Box 434040, St. Louis, MO 63143. MOSEIA is a not for profit corporation that represents solar industry stakeholders supporting policy issues focused on solar job creation and sustainable economic growth in Missouri. MOSEIA was formed in large part due to the passage of Proposition C, or the Missouri Renewable Energy Standard ("RES"). Proposition C mandated 15% of the electricity produced by Missouri investor owned utilities comes from renewable sources by 2021, 2% of which must come from solar photovoltaics. MOSEIA and its members have an interest in the full implementation and enforcement of the Missouri RES in that the organization's mission is to strengthen and expand the Missouri solar industry and establish a sustainable energy future for all Missourians. MOSEIA's interest is different than that of the general public.

2. The signature, telephone number, facsimile number and email address of MOSEIA are those of their legal representatives and can be found in the signature block at the end of this pleading.

3. Kansas City Power & Light Greater Missouri Operations Company ("GMO"), 1200 Main Street, Kansas City, MO 64105, is an electrical corporation and public utility as defined in Section 386.020, RSMo engaged in the business of manufacture, transmission, and distribution of electricity subject to the regulatory authority of the Commission pursuant to Chapters 386 and 393, RSMo.

4. MOSEIA has served a copy of this pleading to GMO.

5. MOSEIA, on behalf of itself and its members, are aggrieved by GMO's failure to comply with the Commission's rules because they have an organizational interest in the full enforcement of the RES rules as described in paragraphs 1-3 above.

BACKGROUND

6. In May 2008, the General Assembly passed SB 1181, an omnibus energy bill, which became effective on August 28, 2008. One provision in SB 1181 was § 393.1045, RSMo., which stated:

> Any renewable mandate required by law shall not raise the retail rates charged to the customers of electric retail suppliers by an average of more than one percent in any year, and all the costs associated with any such renewable mandate shall be recoverable in the retail rates charged by the electric supplier. Solar rebates shall be included in the one percent rate cap provided for in this section.

7. As of August 28, 2008, there were no other statutory provisions in effect in Missouri concerning or defining the terms "renewable mandate required by law" or "solar rebates."

8. In November 2008, Missouri voters adopted Proposition C, which enacted, *inter alia*, § 393.1030, RSMo. Section 393.1030.1 established a "renewable mandate" that requires all electric utilities to generate or purchase a portion of its electricity from renewable sources:

> 1. The commission shall, in consultation with the department, prescribe by rule a portfolio requirement for all electric utilities to generate or purchase electricity generated from renewable energy resources. Such portfolio requirement shall provide that electricity from renewable energy resources shall constitute the following portions of each electric utility's sales:
>
> (1) No less than two percent for calendar years 2011 through 2013;
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> (2) No less than five percent for calendar years 2014 through 2017;
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> (3) No less than ten percent for calendar years 2018 through 2020; and
>
> (4) No less than fifteen percent in each calendar year beginning in 2021.
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> At least two percent of each portfolio requirement shall be derived from solar energy. The portfolio requirements shall apply to all power sold to Missouri consumers whether such power is self-generated or purchased from another source in or outside of this state. A utility may comply with the standard in whole or in part by purchasing RECs. Each kilowatt-hour of eligible energy generated in Missouri shall count as 1.25 kilowatt-hours for purposes of compliance.

9. Proposition C also enacted § 393.1030.2(1), RSMo., which requires, *inter alia*, the Commission to adopt rules implementing the 1% retail rate cap:

> 2. … The commission, except where the department is specified, shall make whatever rules are necessary to enforce the renewable energy standard. Such rules shall include:

(1) A maximum average retail rate increase of one percent determined by estimating and comparing the electric utility's cost of compliance with least-cost renewable generation and the cost of continuing to generate or purchase electricity from entirely nonrenewable sources, taking into proper account future environmental regulatory risk including the risk of greenhouse gas regulation; . . .

10. Proposition C also enacted In § 393.1030.3, RSMo., which requires each electric utility to offer its retail customers a $2/watt rebate offer for new solar electric systems located at the customer's property:

Each electric utility shall make available to its retail customers a standard rebate offer of at least two dollars per installed watt for new or expanded solar electric systems sited on customers' premises, up to a maximum of twenty-five kilowatts per system, that become operational after 2009.

11. Pursuant to the authority under § 393.1030.2, RSMo, the Commission promulgated 4 CSR 240-20.100, which became effective on September 30, 2010.

12. In 4 CSR 240-20.100(5), the Commission establishes the 1% retail impact cap and sets forth the methodology for its calculation (hereinafter referred to as "the rate cap calculation"):

(A) The retail rate impact … may not exceed one percent (1%) for prudent costs of renewable energy resources directly attributable to RES compliance....

(B) The RES retail rate impact shall be determined by subtracting the total retail revenue requirement incorporating an incremental non-renewable generation and purchased power portfolio from the total retail revenue

requirement including an incremental RES-compliant generation and purchased power portfolio.

13. In 4 CSR 240-20.100(7)(B)1, the Commission expressly requires an electric utility to include the rate cap calculation in its annual RES compliance plan:

> The RES compliance plan shall include, at a minimum …
>
> F. A detailed explanation of the calculation of the RES retail impact limit calculated in accordance with section (5) of this rule. This explanation should include the pertinent information for the planning interval which is included in the RES compliance plan.

14. On May 28, 2013, GMO submitted its 2013 Annual Renewable Energy Standard Compliance Plan, as required by 4 CSR 240-20.100(7).

15. On July 5, 2013, GMO submitted the subject motion to suspend rebate payments predicated on the alleged basis that payments of solar rebates has caused the 1% retail cap to be exceeded. *See* GMO motion to suspend rebates, ¶¶ 4, 5, 6 and 7.

I.

PAYMENTS MADE BY GMO UNDER § 393.1030.3, RSMO SHOULD NOT BE INCLUDED IN THE CALCULATION OF THE 1% RETAIL RATE CAP

In determining what costs should be included in the calculation of the 1% retail cost cap, it is necessary to interpret the meaning of the statutes that concern the 1% retail cap. In this regard,

> [t]he primary rule of statutory interpretation "is to ascertain the intent of the legislature from the language used, to give effect to that intent if possible, and to consider the words used in their plain and ordinary meaning." *State ex rel. Unnerstall v. Berkemeyer*, 298 S.W.3d 513, 519 (Mo. banc 2009) (citations and

internal quotation marks omitted). "The legislature is presumed to have intended what the statute says, and if the language used is clear, there is no room for construction beyond the plain meaning of the law." *State v. Sharp*, 341 S.W.3d 834, 839 (Mo. App. W.D. 2011) (*citing State v. Thesing*, 332 S.W.3d 895, 897–98 (Mo.App. S.D.2011)); *see also State v. Rowe*, 63 S.W.3d 647, 649 (Mo. banc 2002) ("When the words are clear, there is nothing to construe beyond applying the plain meaning of the law."). We will look beyond the plain meaning of the words of a statute "only when the language is ambiguous or would lead to an absurd or illogical result." *Akins v. Dir. of Revenue*, 303 S.W.3d 563, 565 (Mo. banc 2010).

State ex rel. KCP & L Greater Missouri Operations Co. v. Cook, 353 S.W.3d 14, 17-18 (Mo. App. W. D. 2011).

Section 393.1045, RSMo., established the 1% retail rate cap. In interpreting the meaning of § 393.1045, it is important to note that as of August 28, 2008, there were no other statutory provisions in effect defining the term "renewable mandate required by law." The first sentence in § 393.1045 states if a "renewable mandate required by law" is imposed on an electric utility, then the electric utility may recover "all the costs associated with any such renewable mandate" through its retail rates, provided that retail rates are not raised, on the average, by more than 1%. Thus, the universe of costs to be included in the calculation of the 1% retail rate cap is limited to costs related to a "renewable energy mandate required by law." This interpretation is reasonable and interprets this statutory provision using its plain and ordinary language.

In interpreting the second sentence in § 393.1045, it is important to note that neither SB 1181 nor any other statutory provision in effect on August 28, 2008 defined the term "solar

rebates." As a result, under the "last antecedent rule" of statutory construction, it is necessary to construe the meaning of the second sentence in the same context as the preceding sentence. *See Rothschild v. State Tax Commission of Missouri*, 762 S.W.2d 35, 37 (Mo. banc 1988) ("relative and qualifying words, phrases, or clauses are to be applied to the words or phrase immediately preceding and are not to be construed as extending to or including others more remote"); and *Spradling v. SSM Health Care St. Louis*, 313 S.W.3d 683, 688 (Mo. E.D. 2010) ("Under the last antecedent rule, relative and qualitative words are to be applied only to the words or phrases preceding them").

Thus, in order to interpret the meaning of the second sentence in § 393.1045, it is necessary to harmonize the second sentence with the first sentence in § 393.1045. Accordingly, the second sentence in § 393.1045 means if a "solar rebate" is a component of a "renewable mandate required by law," then costs incurred by an electric utility to comply with such "renewable mandate" are recoverable subject to the 1% retail rate cap established in the first sentence. This interpretation is reasonable, interprets this statutory provision using its plain and ordinary language, and is consistent with the "last antecedent rule."

Significantly, there was no "renewable mandate required by law" in Missouri until Proposition C went into effect. Proposition C enacted the "renewable mandate" which is set forth in § 393.1030.1 and which requires an electric utility to "generate or purchase electricity from renewable energy resources." As a result, the "renewable mandate" clearly relates to the generation or purchase of renewable energy. This interpretation is reasonable and interprets this statutory provision using its plain and ordinary language.

In § 393.1030.2(1), RSMo., the Commission is directed to adopt rules implementing the 1% retail rate cap:

2. … The commission, except where the department is specified, shall make whatever rules are necessary to enforce the renewable energy standard. Such rules shall include:

(1) A maximum average retail rate increase of one percent determined by estimating and comparing the electric utility's cost of compliance with least-cost renewable generation and the cost of continuing to generate or purchase electricity from entirely nonrenewable sources, taking into proper account future environmental regulatory risk including the risk of greenhouse gas regulation; . . .

In accordance with § 393.1030.2(1), the 1% retail rate cap is to be determined by comparing an electric utility's costs associated with "least-cost renewable generation" with the costs to "generate or purchase electricity from entirely nonrenewable sources (emphasis added)" In construing the second sentence in § 393.1045 in context with § 393.1030.1, it is evident that any costs incurred by an electric utility in connection with "solar rebates" that are necessary for the electric utility to comply with the "renewable mandate required by law" by generating or purchasing electricity from renewable sources, are subject to the 1% retail rate cap. This interpretation is reasonable and interprets this statutory provision using its plain and ordinary language.

In § 393.1030.3, RSMo., each electric utility is required to offer its retail customers a $2/watt rebate offer for new solar electric systems located at the customer's property. Significantly, § 393.1030.3 does not mandate that the electric utility purchase any of the solar energy generated by the retail customer's solar system. Moreover, § 393.1030.3 does not mandate that an electric utility consider or utilize any portion of the solar energy generated by the retail customer's solar system to help it comply with the "renewable mandate required by

law" as established by § 393.1045 or the specific goals set forth in § 393.1030.1. Further, § 393.1030.3 does not reference or incorporate any provision or aspect of § 393.1045. As a result, because costs incurred by an electric utility to comply with § 393.1030.3 do not relate to the electric utility's generation or purchase of electricity from a renewable source, such costs are not part of the "renewable mandate" established in § 393.1030.1, and, thus, are not subject to the 1% retail rate cap.

This conclusion that an electric utility's costs to comply with § 393.1030.3 are not subject to the 1% retail rate cap is reasonable and interprets this statutory provision using its plain and ordinary language. Further, this conclusion does not create a conflict between the second sentence in § 393.1045 and §§ 393.1030.2(1) and 393.1030.3. In this regard, under § 393.1045, any "solar rebates" that are a component of a "renewable mandate required by law" and that involve the electric utility's generation or purchase of electricity from renewable sources are subject to the 1% retail rate cap. However, because neither § 393.1030.1 nor § 393.1030.3 require the electric utility to generate or purchase any electricity from the retail customer, any costs to comply with § 393.1030.3 are not part of the "renewable mandate" established in § 393.1030.1.

Furthermore, to the extent there is any conflict between § 393.1045 and §§ 393.1030.2(1) and 393.1030.3, the latter enacted statutes, which do not provide that costs incurred to comply with § 393.1030.3 are subject to the 1% retail rate cap, serve to repeal any previously enacted and conflicting statute. *See Corvera Abatement Technologies, Inc. v. Air Conservation Commission,* 973 S.W.2d 851, 859 (Mo. banc 1998) ("When two statutes conflict, the later enacted statute, even when there is no specific repealing clause, repeals the first statute to the extent of any conflict with the second. *County of Jefferson v. Quiktrip Corp.*, 912 S.W.2d 487,

490 (Mo. banc 1995). If the two laws are irreconcilable, the latter repeals the former. *Bartley v. Special School Dist.*, 649 S.W.2d 864, 867 (Mo. banc 1983)").

Because costs incurred by an electric utility to comply with § 393.1030.3, RSMo., do not relate to the generation or purchase of electricity from renewable sources, such costs are not subject to the 1% retail rate cap established in §§ 393.1030.2(1) and 393.1045, RSMo. To the extent any rule adopted by the Commission purports to include costs incurred by an electric utility under § 393.1030.3 as part of the 1% retail rate cap, any such rule is void in that it exceeds the scope of the Commission's authority as delegated in § 393.1030. *See Pen-Yan Inv., Inc. v. Boyd Kansas City, Inc.*, 952 S.W.2d 299, 304 (Mo. App. W.D. 1997) ("Regulations may be promulgated by an agency only to the extent and within the delegated authority granted to it by statute").

Based on the foregoing, all amounts paid to retail customers by GMO in order to comply with § 393.1030.3, RSMo., should be excluded from all calculations to determine the 1% retail rate cap. Because GMO included such costs in its calculations, the calculations used to support is subject motion are wrong.

While costs incurred by an electric utility to comply with § 393.1030.3 are not included in the calculation of the 1% retail cap and are not otherwise recoverable pursuant § 393.1045, an electric utility may nonetheless seek to recover such costs through an Accounting Authority Order ("AAO"), which GMO has utilized in the past to recover other extraordinary costs not otherwise addressed in a tariff. As explained by the Court of Appeals,

> We begin with some brief (and necessarily general) background. A regulated utility's rates are established prospectively in periodic ratemaking proceedings, based on the utility's revenues and expenses during an earlier "test year." When a

utility incurs extraordinary expenses (such as the construction of major capital improvements) outside of a "test year," those extraordinary expenses will not be reflected in rates (because the rates were established to allow the utility to recoup its ordinary expenses, as reflected in the "test year"). An accounting authority order or "AAO" permits a utility to capture those extraordinary expenses for (potential) recovery in the forward- looking rates to be established at a future rate case (even though the extraordinary expenses may occur outside the "test year" utilized in that future rate case). As we explained in *Missouri Gas Energy v. Public Service Commission*, 978 S.W.2d 434 (Mo. App. W.D.1998), when a utility incurs extraordinary expenses associated with the acquisition or construction of a new, productive asset,

> [t]he temporary problem created is the accounting treatment of the new asset until a new rate, after a hearing and subsequent order by PSC, goes into effect. The Commission has the regulatory authority to grant a form of relief to the utility in the form of an accounting technique, an Accounting Authority Order, (hereinafter called an "AAO") which allows the utility to defer and capitalize certain expenses until the time it files its next rate case. The AAO technique protects the utility from earnings shortfalls and softens the blow which results from extraordinary construction programs. However, AAOs are not a guarantee of an ultimate recovery of a certain amount by the utility.

State ex rel. Aquila, Inc. v. Missouri Public Service Commission, 326 S.W.3d 20, 27-28 (Mo. App W. D. 2010).

Consequently, MOSEIA requests the Commission deny GMO's pending motion; order GMO to recalculate the 1% retail rate cap and to exclude all § 393.1030.3 compliance costs from such calculations; and for all such further relief the Commission deems appropriate.

II.

GMO UTILIZED AN INAPPROPRIATE ACCOUNTING METHODOLOGY IN ITS CALCULATION OF THE 1% RETAIL RATE CAP

GMO's 2013 Annual Renewable Energy Standard Compliance Plan fails to comply with 4 CSR 240-20.100(7) in that it fails to include "[a] detailed explanation of the calculation of the RES retail impact limit calculated in accordance with section (5) of this rule." 4 CSR 240-20.100(7)(B)1.F. Moreover, it appears that GMO has employed an improper accounting methodology to evaluate the costs incurred by GMO in connection with compliance with § 393.1030.3

In this regard, it cannot be disputed that a retail customer's installation or improvement of a solar system involves a capital asset that generates electricity. It is generally accepted throughout the electric utility regulatory community that costs incurred in connection with construction of a capital asset that generates electricity are not expensed entirely in the year such costs are incurred, but rather, such costs are amortized over the useful life of the capital asset. In fact, GMO generally amortizes costs incurred in connection with the construction of capital assets involved in the generation of electricity. *See State ex rel. Aquila, Inc. v. Missouri Public Service Commission, supra*, 326 S.W.3d at 28 ("Here, the Commission in fact issued AAOs permitting Aquila to capitalize certain of the expenses associated with the Sibley capital-improvement project. In rate cases subsequent to the incurrence of those costs, including the Report and Order at issue here, the Commission has permitted Aquila to recover the deferred expenses subject to the AAOs in its rates, using a twenty-year amortization schedule").

It appears that GMO, in its calculations of the 1% retail rate cap, is not amortizing the costs incurred for compliance with § 393.1030.3. Rather, it appears GMO is expensing all such costs entirely in the accounting year such costs are incurred. This accounting methodology is inconsistent with common industry practices and is inconsistent with GMO's own accounting practices, as discussed in *State ex rel. Aquila, Inc.* Clearly, because GMO's use of this inappropriate accounting methodology serves to overestimate the amount of "the electric utility's cost of compliance with least-cost renewable generation," this inappropriate accounting methodology causes the 1% retail rate cap to be reached much sooner that what otherwise would occur if GMO's § 393.1030.3 compliance costs were properly amortized over time. *See* § 393.1030.2(1). Furthermore, MOSEIA and its members are adversely affected and directly aggrieved by GMO's use of this inappropriate accounting methodology in that the amount of funds available for payments under § 393.1030.3 are directly reduced by the amount of the improper calculations.

Accordingly, MOSEIA requests the Commission deny GMO's pending motion; order GMO to recalculate the 1% retail rate cap using the appropriate accounting methodology by amortizing the § 393.1030.3 compliance costs; and for all such further relief the Commission considers appropriate.

III.

ANY EXCESSIVE AND IMPROPER PAYMENTS MADE BY GMO PURSUANT TO § 393.1030.3, RSMO., SHOULD NOT BE INCLUDED IN THE CALCULATIONS OF THE 1% RETAIL RATE CAP

On information and belief, it appears that GMO has paid payments pursuant to § 393.1030.3, RSMo., to US Solar, a company doing business in St. Joseph, Missouri. Further, on information and belief, it appears that US Solar installed a 8.46 Kw system for a retail customer

in St. Joseph, Missouri; that the retail customer signed an application form stating a 8.46 Kw system had been installed; that a 8.46 Kw system would qualify for a $16,920.00 payment; that KCP&L/GMO received an application submitted by US Solar stating that a 16.45 Kw system had been installed for the retail customer; that a 16.45 Kw system would qualify for a $32,900.00 payment; and that KCP&L/GMO paid $32,900.00 directly to US Solar, resulting in an improper and excessive and improper payment of $15,980.00. *See* Exhibits 1 and 2, attached hereto and incorporated herein by reference. Further, on information and belief, it appears that KCP&L/GMO may have made additional excessive and improper payments to US Solar.

MOSEIA and its members are adversely affected and aggrieved by such excessive and improper payments in that GMO includes such excessive and improper payments in its calculations of the 1% retail cost cap. In addition, MOSEIA and its members are adversely affected and directly aggrieved by such excessive and improper payments in that the amount of funds that would otherwise be available to the retail customers having contracts with MOSEIA's members is directly reduced by the amounts of the excessive and improper payments.

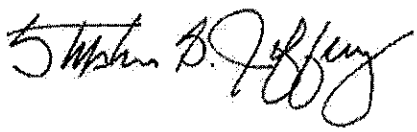
Consequently, MOSEIA requests the Commission deny GMO's pending motion; either order GMO to audit all projects involving US Solar or direct Commission staff to conduct such an audit; order GMO to exclude all excessive and improper payments to US Solar from all calculations of the 1% retail cost cap; and for all such further relief the Commission deems appropriate.

CONCLUSION

Wherefore, for the reasons set forth herein, MOSEIA respectfully requests the Commission deny GMO's pending motion, award the specific relief requested in each enumerated Count herein, and award all such further relief the Commission deems appropriate.

Respectfully submitted,

JEFFERY LAW GROUP, LLC



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ATTORNEYS FOR MOSEIA

Certificate of Service

I do hereby certify that a true and correct copy of the foregoing document has been hand delivered, emailed or mailed, postage prepaid, this 12th day of July, 2013, to all counsel of record in this proceeding:

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