

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

R & S HOME BUILDERS, INC., AND	)	
CAROL AND ARVEL ALLMAN,	)	
	)	
Complainants,	)	
	)	
v.	)	File No. EC-2014-0343
	)	
KCP&L GREATER MISSOURI OPERATIONS	)	
COMPANY,	)	
	)	
Respondent.	)	

**GMO’S VERIFIED REPLY TO COMPLAINANTS’ RESPONSE IN OPPOSITION TO  
RESPONDENT’S MOTION FOR SUMMARY DETERMINATION**

COMES NOW Respondent, KCP&L Greater Missouri Operations Company (“GMO”, “Company” or “Respondent”), pursuant to 4 CSR 240-2.117(1)(E), and in support of this verified reply to Complainants’ response in opposition to Respondent’s motion for summary determination respectfully states as follows:

**I. Introduction**

1. The Commission may grant a motion for summary determination if the pleadings, testimony, discovery, affidavits, and memoranda on file show that there is no genuine issue as to any material fact, that any party is entitled to relief as a matter of law as to all or any part of the case, and the Commission determines that it is in the public interest. 4 CSR 240-2.117(1)(E). Complainants posit three arguments against summary determination in GMO’s favor: 1) by disputing GMO’s claim that it did not stop paying solar rebates before receiving Commission authorization to do so in Case No. ET-2014-0277, Complainants claim that there is a genuine issue of material fact; 2) by alleging that GMO failed to prove how its denial of Complainants’ solar rebate applications met the requirements of Section 393.1030.3 RSMo., Complainants

claim that GMO is not entitled to judgment as a matter of law; and 3) by alleging that GMO has violated statutory requirements, Complainants claim that summary determination for GMO is not in the public interest. Each of Complainants' arguments against summary determination in GMO's favor is based on a misunderstanding or misstatement of the facts or the law or both, as GMO will demonstrate below. Consequently, Complainants have not stated a claim for which relief can be granted and the Commission should grant summary determination in GMO's favor.

## **II. GMO's April 15, 2014 Communication Did Not Constitute a Final and Conclusive Denial of Complainant Allman's Solar Rebate Application**

2. Complainants assert that a genuine issue of material fact exists because "GMO claims that it did not stop paying solar rebates before the Commission authorized them to do so" and "the Allmans and R&S Home Builders based the original *Complaint* in part on the assertion that GMO denied their applications for solar rebates before possessing authority from the Commission to do so."<sup>1</sup>

3. The evidence upon which Complainants rely in claiming that GMO denied their solar rebate applications before possessing Commission authority to do so is an e-mail dated April 15, 2014 regarding Complainant Allmans' Application (appended hereto as Exhibit 1) and the fact that the Commission approved GMO's tariff<sup>2</sup> for the cessation of solar rebate payments effective June 8, 2014. A close reading of that April 15, 2014 e-mail, however, demonstrates that it is unequivocally not a final and conclusive denial of Complainant Allmans' solar rebate

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<sup>1</sup> *Response in Opposition to Respondent's Motion for Summary Determination*, p. 2.

<sup>2</sup> Sheet No. R-62.19 of GMO's tariff provides that:

Company will pay solar rebates for all valid applications received by the Company by November 15, 2013 at 10 AM CST, which are preapproved by the Company and which result in the installation and operation of a Solar Electric System pursuant to the Company's rules and tariffs. Applications received after November 15, 2013 at 10 AM CST may receive a solar rebate payment if the total amount of solar rebates paid by the Company for those applications received on or before November 15, 2013 at 10 AM CST are less than \$50,000,000.

application. Specifically, GMO's April 15, 2014 e-mail regarding Complainant Allmans' solar rebate application does not state that the application is being denied; instead it states that:

[D]ue to the popularity of this program, at this point, KCP&L has committed rebate funds equal to the \$50 million limit in your service area. As a result, we will not be able to provide you with a solar rebate offer following your administrative review. However, if any solar rebate application submitted in your service area is rejected or approved applications not completed within the defined construction period, those funds will be made available to the next qualifying customer in the queue. (emphasis supplied)

Contrary to Complainants' claim, this e-mail from GMO did not finally and conclusively deny Complainant Allmans' solar rebate application, and advised that her application would remain in the queue in the event that funds became available. In fact, GMO has continued paying solar rebates since sending that e-mail on April 15, 2014. Highly Confidential Exhibit 2 appended hereto is a listing of Total GMO solar rebate payments beginning in September of 2012 and shows that GMO continued paying solar rebate payments from April through December of 2014.

4. In light of the April 15, 2014 e-mail and the above evidence demonstrating GMO's continued payment of solar rebates after April 15, 2014, GMO submits that Complainants' assertion that "GMO denied their applications for solar rebates before possessing authority to do so" is unsupportable and, therefore, that such assertion does not give rise to a genuine issue of material fact.

### **III. GMO Has Met the Requirements of Section 393.1030.3 RSMo.**

5. Complainants assert that because "GMO has failed to sufficiently prove how it's [sic] denial of Complainants' solar rebate applications complied with the requirements of Section 393.1030.3 RSMo.", that GMO has not established that it is entitled to judgment as a matter of law. Complainants advance two alternative theories of proof for this assertion: 1) that GMO's April 15, 2014 e-mail constituted a denial of Complainant Allmans' solar rebate and GMO

stopped paying solar rebates before GMO possessed authorization to do so effective June 8, 2014; or 2) that, even if GMO was continuing to pay solar rebates on applications received by November 15, 2013, GMO's April 15, 2014 e-mail regarding Complainant Allmans' solar rebate violates section 393.1030.3 RSMo. because it shows that GMO stopped processing Complainant Allmans' solar rebate application prior to June 8, 2014 when GMO received Commission authorization to do so.

6. First, as shown in paragraph 3 above, Complainants' assertion that GMO denied Complainant Allmans' solar rebate application by its April 15, 2014 e-mail and otherwise stopped paying solar rebates prior to receiving Commission authorization to do so is unsupportable. As such, GMO has shown compliance with this aspect of Section 393.1030.3 RSMo.

7. Second, a close reading of GMO's April 15, 2014 e-mail demonstrates unequivocally that although the \$50 million limit in solar rebate payments had already been committed by GMO, GMO intended to continue processing Complainant Allmans' application. That e-mail reads in relevant part as follows:

Due to the popularity of this program, at this point, KCP&L has committed rebate funds equal to the \$50 million limit in your service area. As a result, we will not be able to provide you with a solar rebate offer following your administrative review. However, if any solar rebate application submitted in your service area is rejected or approved applications not completed within the defined construction period, those refunds will be made available to the next qualifying customer in the queue. \* \* \*

In terms of next steps, we will conduct an initial administrative review of your application to ensure all customer information is accurate and meets the application requirements. We will respond within 10 business days if there are any issues. Otherwise, we will hold your application in the queue and will notify you if rebate funds become available for you to receive a rebate.  
(emphasis supplied)

In fact, GMO continued processing these applications under the normal net metering tariff, conducting engineering review, notifying applicants of approval or denial based on application completeness and technical specifications and ultimately placing approved applications in the queue for rebate funds to the extent they became available. Contrary to Complainants' assertion, this e-mail demonstrates that GMO intended to continue processing Complainant Allmans' application, which is consistent with the requirements of Section 393.1030.3 RSMo.

8. Because Complainants' assertions that GMO's April 15, 2014 e-mail establishes that GMO both denied and stopped processing Complainant Allmans' rebate application in violation of Section 393.1030.3 RSMo. are unsupportable, Complainants have stated no claim on which relief can be granted and GMO is therefore entitled to relief as a matter of law.

#### **IV. Summary Determination in GMO's Favor is in the Public Interest**

9. To support the claim that summary determination in GMO's favor is not in the public interest, Complainants argue that they have established GMO's non-compliance with the requirements of Section 393.1030.3 RSMo. and that they are simply seeking to have the law enforced as written. Unfortunately for Complainants, however, their proof does not live up to their claims. As shown above, GMO has fully honored the requirements to pay and process solar rebates until receiving Commission authorization to cease doing so under Section 393.1030.3 RSMo.

10. Complainants also disparage the existence and legitimacy of "some stipulated amount"<sup>3</sup>, which GMO presumes to be a reference to the Stipulation and Agreement approved by the Commission in Case Nos. ET-2014-0059 and ET-2014-0071. In doing so, Complainants misapprehend the Commission's role as delegate of authority from the General Assembly and

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<sup>3</sup> *Response in Opposition to Respondent's Motion for Summary Determination*, p. 6.

that, once approved by the Commission, utility tariffs have the force and effect of law. *Midland Realty Co. v. Kansas City Power & Light Co.*, 300 U.S. 109, 114 (1937) aff'g 93 S.W.2d 954 (Mo. 1936). In this regard, the evidence before the Commission in Case No. ET-2014-0059 is relevant both to the reasonableness of GMO's tariff sheet R-62.19 (approved by the Commission in Case No. ET-2014-0277 effective June 8, 2014) and to the invalidity of Complainants' disparagement of the Stipulation and Agreement approved by the Commission in Case Nos. ET-2014-0059 and ET-2014-0071. Specifically:

- Commission Staff testified that, under the methodology it used to calculate the 1% average retail rate impact ("ARRI") cap provided in section 393.1030.3 RSMo., GMO could provide only \$4.2 million in solar rebates for 2013, and none in 2014 and 2015. (Rebuttal Testimony of Claire Eubanks, Case No. ET-2014-0059, p. 9, ll.13-14; and Rebuttal Testimony of Burton Crawford, Case No. ET-2014-0059, p. 2, l. 15). Because GMO had already paid solar rebates in excess of that amount, Commission adoption of Staff's methodology would have caused GMO to suspend solar rebates immediately. (Rebuttal Testimony of Claire Eubanks in Case No. ET-2014-0059, p. 2, ll. 11-17).
- GMO used a different 1% ARRI methodology than Staff, but the Company's methodology showed that solar rebate payments should be limited to slightly more than \$10 million for GMO. (Direct Testimony of Tim Rush in Case No. ET-2014-0059, p. 5, ll. 14-15). GMO solar payments of approximately \$11 million through July 2013 exceeded this cap. (Direct Testimony of Tim Rush in Case No. ET-2014-0059, p. 5, l. 14).
- Solar industry representatives participating in Case No. ET-2014-0059 included Earth Island Institute d/b/a Renew Missouri ("Renew Missouri"), Brightergy, LLC and MOSEIA (the Missouri Solar Energy Industries Association) and they disagreed with the methodology used by both Staff and the Companies. Brightergy expressed significant concern that Commission adoption of Staff's 1% ARRI methodology would put the solar industry out of business in Missouri. (Surrebuttal Testimony of Adam Blake in Case No. ET-2014-0059, p. 1, l. 14 through p. 2, l. 2, and p. 11, ll. 20-22, and p. 12, ll. 15-21).

- Ultimately, Case No. ET-2014-0059 was resolved on the basis of a comprehensive Stipulation and Agreement among the parties that was approved by order of the Commission. This Stipulation and Agreement represented a negotiated compromise of the claims and positions taken by the parties to the proceeding. As relevant here, the Commission-approved Stipulation and Agreement provided that:
  - GMO would not suspend payment of solar rebates in 2013 and beyond unless the solar rebate payments made after August 31, 2012, reached an aggregate level of \$50 million (the “specified level” for GMO). (Stipulation and Agreement in Case Nos. ET-2014-0059 and ET-2014-0071, p. 3).
  - If and when rebate payments are anticipated to reach the specified level, GMO would “. . . file with the Commission an application under the 60-day process as outlined in Section 393.1030.3 RSMo. to cease payments beyond the specified level in the year in which the specified level is reached and all future calendar years.” (Stipulation and Agreement in Case Nos. ET-2014-0059 and ET-2014-0071, pp. 3-4)

Following Commission approval of the Stipulation and Agreement in Case Nos. ET-2014-0059 on October 30, 2013, GMO continued making solar rebate payments in accordance with the Stipulation and Agreement.

- In accordance with the Stipulation and Agreement approved by the Commission in Case No. ET-2014-0059, GMO filed an application under the 60-day process as outlined in section 393.1030.3 RSMo. on April 9, 2014 (File No. ET-2014-0277) to cease making solar rebate payments. The Commission granted GMO’s request and approved a tariff sheet, effective June 8, 2014, which provides that:

Company will pay solar rebates for all valid applications received by the Company by November 15, 2013 at 10 AM CST, which are preapproved by the Company and which result in the installation and operation of a Solar Electric System pursuant to the Company’s rules and tariffs. Applications received after November 15, 2013 at 10 AM CST may receive a solar rebate payment if the total amount of solar rebates paid by the Company for those applications received on or before November 15, 2013 at 10 AM CST are less than \$50,000,000.

- The evidence adduced in Case Nos. ET-2014-0059 regarding the 1% ARRI presented significant disagreement among the parties, including Staff, GMO and representatives of the solar industry. It was not at all clear how the Commission would resolve those disagreements, and this placed each party in a position of significant uncertainty and unique risk. Ultimately, the parties were able to strike an agreement that was approved by the Commission to avoid requiring the Commission to rule upon those disagreements. Upon approval by the Commission, the Stipulation and Agreement provided certainty regarding the

overall resolution of the proceeding to the benefit of all involved, including Staff, GMO and the solar industry.

- GMO honored the commitments the Company made as a part of the Commission-approved Stipulation and Agreement resolving Case No. ET-2014-0059 by continuing to pay solar rebate until reaching the “specified level”. Absent the agreement among the parties to Case Nos. ET-2014-0059 and Commission approval thereof, it is quite possible, perhaps even likely, that the Commission would have decided that litigated proceeding by finding that the 1% ARRI cap had been reached and requiring GMO to cease making solar rebate payments. This was a risk the solar industry representatives sought to avoid by entering into the Stipulation and Agreement. Now that the solar industry and customers with solar installations receiving solar rebates have reaped the benefits of the Stipulation and Agreement through GMO’s continued payment of solar rebates, that Stipulation and Agreement cannot now be disavowed.

11. On the basis of the foregoing, therefore, GMO submits that the public interest in this matter is best served by granting summary determination in GMO’s favor as a means of upholding a Commission-approved Stipulation and Agreement negotiated by adverse parties to resolve disputed and contentious issues and upon which GMO relied in continuing to make solar rebate payments.

## **V. Conclusion**

12. For all of the foregoing reasons, GMO submits that: 1) this *Complaint* presents no genuine issue of material fact, 2) Complainants have failed to state a claim on which relief can be granted and, therefore, GMO is entitled to relief in the form of dismissal of the *Complaint* as a matter of law, and 3) granting summary determination in GMO’s favor serves the public interest.



**WHEREFORE**, GMO respectfully requests that the Commission issue its order granting summary determination in favor of GMO by dismissing the *Complaint* regarding GMO's alleged conduct in 2014.

Respectfully submitted,

*/s/ Robert J. Hack*

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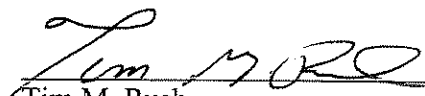
Facsimile: (573) 636-0383

**ATTORNEYS FOR KCP&L GREATER MISSOURI  
OPERATIONS COMPANY**

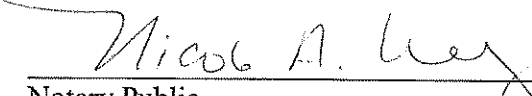
**VERIFICATION**

STATE OF MISSOURI       )  
                                      )  
COUNTY OF JACKSON    )     SS.

I, Tim M. Rush, having been duly sworn upon my oath, state that I am Director of Regulatory Affairs for Kansas City Power & Light Company (KCP&L), that I am authorized to make this verification on behalf of KCP&L Greater Missouri Operations Company, and that the matters stated in the foregoing reply to Complainant's response in opposition to Respondent's motion for summary determination are true and correct to the best of my information, knowledge and belief.

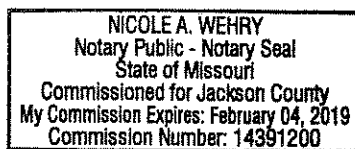
  
\_\_\_\_\_  
Tim M. Rush  
Director-Regulatory Affairs  
Kansas City Power & Light Company

SUBSCRIBED AND SWORN TO before me on this 19<sup>th</sup> day of February, 2015.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:

Feb. 4, 2019



### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document was delivered by first class mail, electronic mail or hand delivery, on this 19th day of February 2015, to the following:

Kevin Thompson  
Chief Staff Counsel  
Missouri Public Service Commission  
P.O. Box 360  
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[erich@campbelllawllc.com](mailto:erich@campbelllawllc.com)

*/s/ Robert J. Hack*

Robert J. Hack

## Permits

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**From:** Hill Elena <Elena.Hill@kcpl.com> on behalf of Net Metering Applications  
<NetMeteringApp@kcpl.com>  
**Sent:** Tuesday, April 15, 2014 10:40 AM  
**To:** 'Permits'  
**Subject:** RE: Net Metering App - Carol Allman - Acct# 1895798041

Thank you for your interest in the KCP&L Solar Rebate Program.

Your application for net metering and solar rebate has been received and logged into our request queue. Your application number is [40820141129].

Due to the popularity of this program, at this point, KCP&L has committed rebate funds equal to the \$50 million limit in your service area. As a result, we will not be able to provide you with a solar rebate offer following your administrative review. However, if any solar rebate application submitted in your service area is rejected or approved applications not completed within the defined construction period, those funds will be made available to the next qualifying customer in the queue. We have sent a letter explaining this situation to your solar vendor and have requested that they refund any money you have put down as a deposit or first payment.

In terms of next steps, we will conduct an initial administrative review of your application to ensure all customer information is accurate and meets the application requirements. We will respond within 10 business days if there are any issues. Otherwise, we will hold your application in the queue and will notify you if rebate funds become available for you to receive a rebate.

To check the weekly status of available funds, please visit [www.kcpl.com/solar](http://www.kcpl.com/solar).

If you have any questions, please contact our solar team at (816) 242-5971.

Solar Rebate Team

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**From:** Permits [mailto:permits@sunsmartusa.com]  
**Sent:** Tuesday, April 08, 2014 11:29 AM  
**To:** Net Metering Applications  
**Cc:** 'Ted Lesiecki'  
**Subject:** RE: Net Metering App - Carol Allman - Acct# 1895798041

KCPL,

Please disregard the previous submission as we noticed an error. Attached is the correct application for Carol Allman (Account # 1895798041) that we would like to have reviewed. Please confirm that you have received this.

Thank you,

Harmony Souders  
Project Manager

Exhibit No. 1

SunSmart Technologies  
701 NE 76<sup>th</sup> Street  
Gladstone, MO 64118  
PH: 816-298-7619  
FAX: 816-214-8838  
EM: [HarmonyS@SunSmartUSA.com](mailto:HarmonyS@SunSmartUSA.com)

**From:** Permits [<mailto:permits@sunsmartusa.com>]  
**Sent:** Tuesday, April 8, 2014 9:57 AM  
**To:** 'Net Metering Applications'  
**Cc:** 'Ted Lesiecki'  
**Subject:** Net Metering App - Carol Allman - Acct# 1895798041

Hello KCP&L,

Attached is the net metering application for Carol Allman, Acct#: 1895798041. Please confirm once you have received this.

Thank you,

Brianna Wood  
Project Coordinator  
Sunsmart Technologies  
701 NE 76<sup>th</sup> Street  
Gladstone, MO 64118  
PH:816-298-7619  
FAX:816-214-8838  
EM:[BriannaW@SunsmartUSA.com](mailto:BriannaW@SunsmartUSA.com)

## **EXHIBIT 2**

**THIS DOCUMENT CONTAINS  
HIGHLY CONFIDENTIAL  
INFORMATION NOT AVAILABLE  
TO THE PUBLIC**