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.	)	

KCP&L GREATER MISSOURI OPERATIONS COMPANY'S
REPLY TO COMPLAINANTS' RESPONSE TO MOTION TO DISMISS

COMES NOW Respondent, KCP&L Greater Missouri Operations Company ("GMO" or "Respondent"), pursuant to 4 CSR 240-2.080, and hereby files its *Reply to Complainants' Response To KCP&L Greater Missouri Operations Company's Motion To Dismiss* ("Reply") filed by R & S Home Builders, Inc. and Carol and Arvel Allman ("Complainants") on July 16, 2014. In support of this Reply, Respondent states as follows:

1. On July 16, 2014, Complainants filed their *Response To KCP&L Greater Missouri Operations Company's Motion To Dismiss* ("Response") which asserted, *inter alia*, that "the Complaint does not constitute a collateral attack on any previous Commission Order." (Response, p. 1) For the reasons stated herein and in GMO's *Motion To Dismiss* filed on June 16, 2014, the Complainants' assertion should be rejected, and the Complaint should be dismissed with prejudice.

2. As Staff pointed out in its *Staff Recommendation To Deny Complaint* filed on June 30, 2014 ("Staff Recommendation"), the Missouri Public Service Commission ("Commission") found in File No. ET-2014-0277 that "…GMO will reach the maximum

average retail rate increase and that GMO had correctly calculated the maximum average retail rate increase." (Staff Recommendation, p. 2) Contrary to the arguments in Complainants' Response, the Complaint impermissibly collaterally attacks this Commission finding in File No. ET-2014-0277 and GMO's approved Tariff Sheet No. R-62.19 which authorizes GMO to cease paying solar rebates. Fundamentally, the Complaint is a direct attack and challenge to the Commission's *Order Approving Tariff* in File No. ET-2014-0277, GMO's approved Tariff Sheet No. R-62.19 as well as the *Order Approving Stipulation and Agreement* in File Nos. ET-2014-0059 and ET-2014-0071[1]. The orders are final, effective, and unappealable. GMO's Tariff Sheet No. R-62.19 also became effective on June 8, 2014. As a result, as previously explained in GMO's Motion To Dismiss filed on June 16, 2014, the Complaint should be dismissed as a violation of Section 386.550 since the Complaint collaterally attacks these Commission orders and Commission-approved tariff sheet.

3. Secondly, contrary to the assertions of the Complainants (Response, p. 6), the Complaint does not allege that GMO has violated any provision of law or any rule or order or decision of the Commission, as required by the Commission's rule, 4 CSR 240-2.070. As explained in GMO's Motion To Dismiss, the Complaint at its heart is a complaint against the Commission itself (and not against GMO) and the Commission's findings related to GMO's solar rebate payments. A careful review of the Complaint verifies that the Complainants' real issue is with how the Commission approved GMO's continuation and, later, cessation of solar rebate payments:

[1] Complainants argue that "Complainants are not seeking any relief regarding that Stipulation." (Response, p. 3) However, if the Commission granted the relief requested in the Complaint by ordering GMO "…to approve the solar rebate applications for Complainants and all other KCP&L-GMO customers who submitted rebate applications and were denied solar rebates in calendar year 2013…" (Complaint, p. 10), it would be negating the terms of the Stipulation, and reversing its own *Order Approving Stipulation And Agreement* issued on October 30, 2013 in File Nos. ET-2014-0059 and ET-2014-0071.

> 12. Respondent KCP&L-GMO's denial of Complainants' applications for solar rebates was unlawful, in that the Commission did not make the required determination that the one percent retail rate impact would be reached, and Respondent is required by law to continue paying rebates until the Commission makes such a determination. (Complaint, ¶12, p. 5)
>
> * * *
>
> 14. The Commission did not make a final determination of whether Respondent would meet or exceed the one percent cap within 60 days of KCP&L-GMO's August 28, 2013 application to suspend payment of rebates. Similarly, the Commission has not yet made a determination for whether Respondent will meet or exceed the one percent cap within 60 days of KCP&L-GMO's April 9, 2014 application to suspend payment of rebates. (Complaint, ¶14, p. 6)
>
> * * *
>
> 17. In the present case, the Commission has made no finding that a Missouri utility has reached or will reach the one percent retail rate impact limit. In Case No. ET-2014-0059, the Commission's approval of the Non-Unanimous Stipulation and Agreement contained no statement as to whether Respondent would reach the retail rate impact limit within 60 days of its filing. Similarly, in the pending Case No. ET-2014-0277, the Commission has not yet granted authority to suspend rebates or made the required determination that Respondent has reached or will reach the one percent retail rate impact limit within 60 days. (Complaint, ¶17, p. 7) (Emphasis added)

4. In the Staff Recommendation, Staff has correctly observed that GMO has not violated any provision of law or of any rule or order of the Commission:

> Based on the Commission's findings in Case No. ET-2014-0277 and GMO's currently effective tariff sheet suspending solar rebate payments past the aggregate $50 million limit, Staff recommends that the Commission find in this case that GMO has not violated any Commission statute, rule, order or Commission-approved tariff by denying Complainants' solar rebate applications. (Staff Recommendation, p. 3)

5. While the Response asserts that "Complainants have not disputed Respondents' ability to cease paying rebates after reaching the agreed upon 'stipulated amount' in the Stipulation" (Response, p. 3), in reality, the Complaint is challenging GMO's right to cease paying rebates after reaching the specified level because "the Stipulation does not relieve Respondent or the Commission from observing the procedural requirements for discontinuing

solar rebate payments." (Response, p. 3) Again, this argument by Complainants clearly demonstrates that their real intention is to collaterally attack the Commission's previous orders and GMO's tariffs implementing the Commission's decisions. They are not alleging a violation of law by GMO.

6. Complainants also argued that:

> Respondent has implicitly agreed with the position of Complainants to the extent that it recently applied for authority to cease paying rebates, asserting it would reach its one percent limit within 60 days (see File No. ET-2014-0277). If one concedes that this step was necessary in order for Respondent to be authorized to cease paying rebates, then it follows that Respondent did not have authority to cease paying rebates prior to that. (Response, p. 3)

GMO agrees that under the Stipulation, it needed to file a request to cease payments of solar rebates when it anticipated it would reach the specified level of solar rebate payments. In fact, GMO did file its request to cease solar rebate payments, and the Commission approved that request. (*See Order Approving Tariff*, File No. EO-2014-0277 (issued May 28, 2014)) The Complainants' argument on this point makes it appear as if Complainants' rebate application would not receive any further consideration for payment by GMO after the Complainants initially filed their solar rebate applications. In fact, as GMO explained in its Motion To Dismiss, GMO had stated in writing to both Complainants that

> . . . KCP&L has committed rebate funds equal to the $50 million in your service area. As a result, we will not be able to provide you with a solar rebate offer following your administrative review. <u>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</u>. (Emphasis added)

7. This same fallacy appears when Complainants argue that "Complainants would still be entitled to rebates because they applied for and were denied rebates before Respondent was granted authority to cease paying rebates." (Response, p. 5) Contrary to the implication of this argument, Complainants were still under consideration for solar rebate payments "if any solar

rebate application submitted in your service area is rejected or approved applications not completed within the defined construction period. . . " It was only after the Commission approved the cessation of solar rebate payments after GMO reached the specified level that Complainants were no longer under consideration for a solar rebate payment.

8. Complainants also argue that the Complaint is not a collateral attack upon Tariff Sheet No. R-62.19 and its related *Order Approving Tariff Sheet* in File No. ET-2014-0277 "because this Order was entered after the filing of the Complaint." (Response, p. 4) While it is true that the Tariff Sheet and the Order became effective after the filing of the Complaint, it is equally true that the Commission would have to enter an order that would be totally contrary to and inconsistent with the terms of the Tariff and the Order if it granted the relief requested in the Complaint. In essence, the Commission would have to reverse its approval of the tariff in order to grant the relief requested by the Complaint.

9. Complainants also deny that there would be a violation of Section 393.130(2) and (3) if the Commission granted the relief requested in the Complaint. Apparently, the Complainants are requesting that solar rebates be opened-up for all customers, even though the Commission has determined that "GMO will reach the maximum average retail rate increase and that GMO had correctly calculated the maximum average retail rate increase" in File No. EO-2014-0277.

10. For the reasons discussed in GMO's Motion To Dismiss and this Reply, the Complaint should be dismissed with prejudice because it fails to state a claim upon which relief can be granted. More specifically, the Complaint (a) constitutes an impermissible collateral attack on two previous Commission Orders in File Nos. ET-2014-0059/ET-2014-0071 and EO-2014-0277, and GMO's Commission-approved tariffs; (b) granting the relief that would violate GMO's

approved tariffs, and is therefore relief that the Commission may not lawfully grant; (c) sustaining the Complaint would require the Commission to exercise authority it does not have–sanctioning an undue or unreasonable preference or advantage to Complainants in violation of Section 393.130(3); (d) sustaining the Complaint would constitute unlawful, undue or unjust discrimination which the Commission lacks authority to do; and (e) the Complaint fails to allege a "violation of any provision of law, or of any rule or order or decision of the commission" by GMO in violation of Sections 386.390.

WHEREFORE, for the reasons stated herein, KCP&L Greater Missouri Operations Company prays the Commission dismiss with prejudice the Complaint filed on May 14, 2014.

Respectfully submitted,

/s/ Roger W. Steiner

Robert J. Hack, MBN 36496
Lead Regulatory Counsel
Phone: (816) 556-2791
E-mail: rob.hack@kcpl.com
Roger W. Steiner, MBN 39586
Corporate Counsel
Phone: (816) 556-2314
E-mail: roger.steiner@kcpl.com
Kansas City Power & Light Company
1200 Main – 16th Floor
Kansas City, Missouri 64105
Fax: (816) 556-2787

James M. Fischer, MBN 27543
E-mail: jfischerpc@aol.com
Fischer & Dority, P.C.
101 Madison Street, Suite 400
Jefferson City, MO 65101
Telephone: (573) 636-6758
Facsimile: (573) 636-0383

ATTORNEYS FOR
KCP&L GREATER MISSOURI OPERATIONS COMPANY

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 28th day of July, 2014, to the following:

Kevin Thompson
Chief Staff Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102
kevin.thompson@psc.mo.gov

Office of the Public Counsel
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102
opcservice@ded.mo.gov

Matthew J. Ghio
3115 S. Grand., Suite 300
St. Louis, Missouri 63118
matt@ghioemploymentlaw.com

Erich Vieth
1500 Washington Ave., Suite 100
St. Louis, Missouri 63103
erich@campbelllawllc.com

/s/ Roger W. Steiner
Roger W. Steiner