

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

**PATRICIA SCHUBA AND DEANE
TODD,**

COMPLAINANTS,

v.

**UNION ELECTRIC COMPANY d/b/a
AMEREN MISSOURI,**

RESPONDENT.

Case No. EC-2014-_____

COMPLAINT

COME NOW Complainants, by their attorneys, pursuant to Section 386.390, RSMo and 4 CSR 240-2.070 of the Commission's Rules of Practice and Procedure, and for their Complaint against Union Electric Co. d/b/a Ameren Missouri, respectfully state as follows:

PARTIES AND JURISDICTION

1. Complainants are electric customers of the Respondent Union Electric Co. d/b/a Ameren Missouri. The names and street addresses of each Complainant are listed below:

- a. PATRICIA SCHUBA, 2322 Hwy 100, Labadie, Missouri 63055
- b. DEANE TODD, 28 Enloe Road, Eldon, Missouri 65026

2. The signature, telephone number, facsimile number and email address of Complainants are those of their legal representatives. All inquiries, correspondence, communications, pleadings, notices, orders, and decision relating to this matter should be directed to:

GHIO & DESILETS, LLP

Attorneys at Law
Matthew J. Ghio
3115 S. Grand Blvd., Suite 300
St. Louis, Missouri 63118
Phone: (314) 266-1873
Fax: (314) 732-1404
matt@ghioemploymentlaw.com

CAMPBELL LAW LLC

Attorneys at Law
Erich Vieth
1500 Washington Ave., Suite 100
St. Louis, Missouri 63103
Phone: (314) 588-8101
Fax: (314) 588-9188
erich@campbelllawllc.com

3. Respondent Union Electric Co. d/b/a Ameren Missouri (“Ameren Missouri 1901 Chouteau Ave., St. Louis, Missouri 63103, is an electrical corporation and public utility as defined in Section 386.020, RSMo engaged in the business of the manufacture, transmission, and distribution of electricity subject to the regulatory authority of the Commission pursuant to Chapters 386 and 393, RSMo.

COMPLAINANTS’ INJURIES / INTERESTS IN THIS CASE

4. The above-listed Complainants have an interest in this case because they are interested in receiving a rebate from Respondent for installing solar photovoltaic (“PV”) systems on their residences, pursuant to Section 393.1030.3, RSMo. Each complainants has contacted Respondent in the form of a rebate application. Complainants are aggrieved in that Respondent has denied Complainants’ rebate applications in violation of Section 393.1030.3, RSMo.

JURISDICTION

5. The Commission has general jurisdiction over Ameren Missouri as an electrical corporation pursuant to Sections 386.250 and 393.140, RSMo. The Commission has subject

matter jurisdiction over this complaint because it involves a utility's violation of a law – Section 393.1030, RSMo – which delegates regulatory authority to the Commission. § 386.390.1, RSMo. The Commission also has primary jurisdiction, for purposes of judicial review, of the legal issues raised herein. *Evans v. Empire District Electric*, 346 S.W.3d 313, 318-319 (Mo. App. WD 2011).

BACKGROUND

6. In November 2008, Missouri voters approved Proposition C, otherwise known as Missouri's Renewable Energy Standard ("RES"), now codified as Sections 393.1020-1035, RSMo. Section 393.1030.1 requires "electrical corporations," as defined by Section 386.020(15), RSMo to achieve increasing percentages of their sales with electricity from renewable energy sources: two percent of sales in the years 2011-2013; five percent from 2014-2017; ten percent from 2018-2020; and fifteen percent in each calendar year beginning in 2021. That section also requires that at least two percent of each portfolio requirement be derived from solar energy.

7. As amended by House Bill 142 ("HB142") effective August 28, 2013, the RES now requires the following with respect to solar rebates (§ 393.1030.3, RSMO) (emphasis added):

[E]ach electric utility shall make available to its retail customers a solar rebate for new or expanded solar electric systems sited on customers' premises, up to a maximum of twenty-five kilowatts per system, measured in direct current that were confirmed by the electric utility to have become operational in compliance with the provisions of section 386.890. The solar rebates shall be two dollars per watt for systems becoming operational on or before June 30, 2014; one dollar and fifty cents per watt for systems becoming operational between July 1, 2014, and June 30, 2015; one dollar per watt for systems becoming operational between July 1, 2015, and June 30, 2016; fifty cents per watt for systems becoming operational between July 1, 2016, and June 30, 2017; fifty cents per watt for systems becoming operational between July 1, 2017, and June 30, 2019; twenty-five cents per watt for systems becoming operational between July 1, 2019, and June 30, 2020; and zero cents per watt for systems becoming operational after June 30, 2020.

8. HB 142 also states, in part, (§ 393.1030.3) (emphasis added):

If the electric utility determines the maximum average retail rate increase provided for in subdivision (1) of subsection 2 of this section will be reached in any calendar year, the electric utility shall be entitled to cease paying rebates to the extent necessary to avoid exceeding the maximum average retail rate increase if the electrical corporation files with the commission to suspend its rebate tariff for the remainder of that calendar year at least sixty days prior to the change taking effect. The filing with the commission to suspend the electrical corporation's rebate tariff shall include the calculation reflecting that the maximum average retail rate increase will be reached and supporting documentation reflecting that the maximum average retail rate increase will be reached. The commission shall rule on the suspension filing within sixty days of the date it is filed. **If the commission determines that the maximum average retail rate increase will be reached, the commission shall approve the tariff suspension. The electric utility shall continue to process and pay applicable solar rebates until a final commission ruling,** however, if the continued payment causes the electric utility to pay rebates that cause it to exceed the maximum average retail rate increase, the expenditures shall be considered prudently incurred costs as contemplated by subdivision (4) of subsection 2 of this section and shall be recoverable as such by the electric utility.

9. On October 11, 2013, Respondent Ameren Missouri filed an Application for Authority to Suspend Payment of Solar Rebates with the Missouri Public Service Commission in Case No. ET-2014-0085. This filing requested that the Commission grant Ameren Missouri the authority to stop offering solar rebates to its customers because the Company believed it would reach or exceed its retail impact calculation, as provided by Section 393.1030.2(1), RSMo. and 4 CSR 240-20.100(5). The Commission approved a Non-Unanimous Stipulation and Agreement on November 13, 2013 in Case No. ET-2014-0085. Complainants were not parties either to the Stipulation and Agreement or to Case No. ET-2014-0085.

COUNT I

COMMISSION MADE NO DETERMINATION THAT MAXIMUM AVERAGE RETAIL RATE INCREASE WOULD BE REACHED

10. Complainants incorporate paragraphs 1-10 herein by reference.
11. Respondent Ameren Missouri'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.

12. Section 393.1030.3 requires that Respondent continue processing and paying solar rebates until the Commission determines that Respondent will meet or exceed its one percent retail rate impact within 60 days of Respondent filing for authority to suspend payment of rebates: “The commission shall rule on the suspension filing within sixty days of the date it is filed. If the commission determines that the maximum average retail rate increase will be reached, the commission shall approve the tariff suspension. *The electric utility shall continue to process and pay applicable solar rebates until a final commission ruling...*” (emphasis added).

13. The Commission did not make a final determination of whether Respondent would meet or exceed the one percent cap within 60 days of Ameren Missouri’s October 11, 2013 filing to suspend payment of rebates. As such, Respondent was required by law to continue processing and paying applicable solar rebates until the Commission made such a ruling.

14. The above-quoted language of Section 393.1030.3 is directive in nature, and prescribes a specific finding of fact for the Commission to make before granting a utility authority to suspend paying rebates. The word “shall” is used multiple times to clarify: that the Commission is *required* to rule within 60 days of a utility’s application; that the Commission is *required* to approve the tariff suspension only after determining that the one percent retail rate impact will be reached; and that the utility is *required* to continue processing and paying rebates until the Commission’s final ruling. The determination that a utility will reach the one percent retail rate impact limit is an essential factual issue on which it is required for the Commission to rule before granting a utility authority to suspend rebate payments.

15. Missouri courts have weighed in on the standard for determining the adequacy of required findings of fact: “Findings of fact on disputed issues are a legal requirement for the Commission to reach its ultimate determination.” *State ex rel. Midwest Gas User's Ass'n v. Public Service Com'n of State of Mo.*, 996 S.W.2d 608 (Mo. App.W.D., 1999) (quoting *Century State Bank v. State Banking Board of Mo.*, 523 S.W.2d 856, 859 (Mo.App.1975). “The most reasonable and practical standard is to require that findings of fact be sufficiently definite and certain or specific under the circumstances of the particular case to enable the court to review the decision intelligently and ascertain if the facts afford a reasonable basis for the order without resorting to the evidence.” *State ex rel. Intern. Telecharge, Inc. v. Missouri Public Service Com'n*, 806 S.W.2d 680, 684 (Mo. Ct. App. 1991) (quoting *Glasnapp v. State Banking Bd.*, 545 S.W.2d 382, 387 (Mo. Ct. App. 1976) and 2 Am.Jur.2d Administrative Law § 455, p. 268). “Additionally, findings of fact are adequate when they do not ‘leave the reviewing court to speculate as to what part of the evidence the [Commission] believed and found to be true and what part it rejected.’” *Intern Telecharge, Inc*, 806 S.W.2d at 684 (quoting *State ex rel. American Tel. & Tel. Co. v. Public Serv. Comm'n*, 701 S.W.2d 745, 754 (Mo.App.1985).

16. 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-2014-0085, 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. Without any statement or acknowledgement from the Commission of the issue of the retail rate impact limit, there exist no “sufficiently definite and certain or specific” findings of fact upon which a court could review the Commission’s Order. A reviewing court would be forced to

speculate as to whether the Commission believed Respondent was close to reached the retail rate impact limit.

17. Respondent denied Complainants' solar rebate applications without a final determination from the Commission that Respondent was going to reach the maximum average retail rate increase limit. Accordingly Respondent's denials of Complainants' rebate applications were unlawful, and Respondent is required to continue processing and paying solar rebates under Section 393.1030.3, RSMo, until the Commission makes the required determination.

COUNT II

RESPONDENT'S DENIAL OF COMPLAINANTS' APPLICATIONS EXCEEDED ITS AUTHORITY TO SUSPEND PAYMENT OF SOLAR REBEATES

18. Complainants incorporate paragraphs 1-18 herein by reference.

19. Respondent Ameren Missouri's denial of Complainants' applications for solar rebates was unlawful, in that such denials exceeded Respondent's authority to cease payment payments because: the denials were not necessary to avoid exceeding the law's one percent retail impact limit, and; any authority to cease payments extends only for the calendar year in which such authority is granted.

20. Section 393.1030.3 allows a utility to cease paying rebates after it files, and the Commission rules on, an application to suspend payment of rebates for the remainder of that calendar year. However, once such suspension application is granted, the utility may cease paying rebates only "*to the extent necessary to avoid exceeding the maximum average retail rate increase.*" (§ 393.1030.3, RSMo) (emphasis added).

21. If the Commission were to have granted Respondent the authority to cease paying rebates, such authority would extend only so far as is necessary to avoid exceeding the retail rate

impact limit. Ameren Missouri has not and cannot show that denying Complainants' solar rebate applications was necessary to avoid exceeding the one percent retail impact limit.

22. Moreover, if the Commission were to have granted Respondent the authority to cease paying rebates, the law only allows the Commission to grant such authority for a single calendar year: "the electric utility shall be entitled to cease paying rebates to the extent necessary to avoid exceeding the maximum average retail rate increase if the electrical corporation files with the commission to suspend its rebate tariff *for the remainder of that calendar year* at least sixty days prior to the change taking effect." (emphasis added).

23. Respondent has not been granted authority to suspend payment of rebates in calendar year 2014, nor has Respondent filed an application for such authority.

24. To date, the Commission has made no finding that Respondent Ameren Missouri has reached or will reach the RES' one percent retail impact limit, either for the year 2013 or for any future year. Ameren Missouri did not allege that it had reached the retail impact limit in its 2013 RES Compliance Report, nor did the Company state in its 2014-2016 RES Compliance Plan that it expected to meet or exceed the one percent limit in the next three years.

25. Respondent denied Complainants' applications for solar rebates without demonstrating that such denials were necessary to avoid exceeding the retail rate impact limit. Moreover, Respondent denied Complainant's applications in 2014 without filing for or being granted authority to suspend rebate payments for calendar year 2014. Accordingly, Respondents' denials of Complainants' applications was unlawful.

RELIEF REQUESTED

Wherefore, Complainants pray that the Commission:

1. Find that Respondent Ameren Missouri's denial of Complainants' solar rebate applications was unlawful, in that: the Commission had not made the required determination that Respondent would meet or exceed the maximum average retail rate increase within 60 days of Respondent filing an application to suspend payment of solar rebates.
2. Find that Respondent Ameren Missouri's denial of Complainants' solar rebate applications was unlawful, in that such denials were not necessary to avoid exceeding the maximum average retail rate increase.
3. Find that Respondent Ameren Missouri did not possess the authority to suspend rebate payments for calendar year 2014 because the Commission did not grant such authority and Respondent did not file an application for such authority in 2014.
4. Order Respondent Ameren Missouri to approve solar rebate applications for Complainants and all other Ameren Missouri customers denied solar rebates for the reason that the stipulated amount from Case No. ET-2014-0085 had been reached.
5. Order Respondent Ameren Missouri process and pay solar rebates to customers who are otherwise applicable, and order Respondent to refrain from representing to its customers that solar rebates are unavailable until such time that Ameren Missouri files and the Commission approves an application to suspend paying rebates that demonstrates that such suspend is necessary to avoid exceeding the one percent retail rate impact limit calculated in accordance with 4 CSR 240-20.100(5)(B).
6. Order such other relief as the Commission shall deem just and appropriate.

Respectfully Submitted,

GHIO & DESILETS LLP



By: _____
Matthew J. Ghio #44799
3115 S. Grand., Suite 300
St. Louis, Missouri 63118
Tel: 314-266-1873
Fax: 314-732-1404
Email: matt@ghioemploymentlaw.com

CAMPBELL LAW LLC

By: _____/s/_____
Erich Vieth
1500 Washington Ave., Suite 100
St. Louis, Missouri 63103
Phone: (314)588-8101
Fax: (314)588-9188
erich@campbelllawllc.com

ATTORNEY FOR COMPLAINANTS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was delivered via electronic mail on this 14th day of May, 2014 to Respondent Union Electric Co. d/b/a Ameren Missouri.


