

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

Patricia Schuba and Deane Todd,	)	
Complainants,	)	
	)	File No. EC-2014-0342
v.	)	
	)	
Union Electric Company, d/b/a	)	
Ameren Missouri,	)	
Respondent.	)	

**AMEREN MISSOURI'S MOTION FOR SUMMARY DISPOSITION**

**COMES NOW** Union Electric Company, d/b/a Ameren Missouri (“Ameren Missouri” or “Company”) and, pursuant to 4 CSR 240-2.117, hereby moves for summary disposition of this case in favor of Ameren Missouri. There is no genuine issue of material fact, and Ameren Missouri is entitled to relief as a matter of law because the Complaint is a collateral attack on final orders of this Commission and is therefore barred by Section 386.550.<sup>1</sup> In support of its motion, Ameren Missouri states as follows:

**Statement of Material Facts**

1. In 2008, Missouri voters approved a ballot initiative then known as “Proposition C” which was codified at Sections 393.1025-.1030, RSMo. (Cum. Supp. 2013). Proposition C is known as the Renewable Energy Standard (“RES”). Section 393.1025, RSMo (Cum. Supp. 2013). Under the RES, investor-owned utilities (“IOUs”) are required to obtain a portion of their energy portfolio requirements from renewable resources. *See Complaint*, ¶ 6; Sections 393.1025-.1030, RSMo. (Cum. Supp. 2013).

2. Section 393.1030 (Cum. Supp. 2013) required the Missouri Public Service Commission (“Commission”) to promulgate rules to implement the RES requirements. The Commission adopted regulations implementing the RES, which were codified at 4 CSR 240-

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<sup>1</sup> Statutory references are to the Revised Statutes of Missouri (2000), unless otherwise noted.

20.100(5). Those rules became effective on September 30, 2010, and were upheld on review by *State ex rel. Missouri Energy Development Ass'n et al. v. Pub. Serv. Comm'n.*, 386 S.W.3d 165 (Mo. App. W.D. 2012).<sup>2</sup>

3. The original RES required Missouri IOUs to pay rebates to customers who installed qualifying solar facilities on their premises. Section 393.1030.3 (Cum. Supp. 2013) (prior to the adoption of H.B. 142 in 2013). The RES also limits compliance costs for the RES to a 1% retail rate impact (“RRI”). Section 393.1030.2(1), RSMo. (Cum. Supp. 2013). In 2013, the Missouri legislature amended the rebate portion of the law so that the rebate is gradually reduced and eventually phased out. *See* A.L. 2013 H.B. 142; Section 393.1030.3, RSMo. (Cum. Supp. 2013); Complaint, ¶ 7. Additionally, a 60-day minimum timeframe was added before utilities could cease paying solar rebates in order to avoid exceeding the 1% retail rate impact. *Id.* The Commission has not amended its RES regulations since their initial adoption. *See* 4 CSR 240-20.100.

4. In the fall of 2013, Ameren Missouri made the determination that it would reach the 1% RRI limitation and filed with the Commission for authority to cease paying rebates. *See* File No. ET-2014-0085; Complaint, ¶ 9. The parties to that case reached a Non-Unanimous Stipulation and Agreement (“Stipulation”), which was approved by Commission Order dated November 13, 2013. *Id.* No party (or non-party) sought rehearing of the Commission’s Order. File No. ET-2014-0085.

5. In accordance with the terms of the Stipulation and the Commission’s approval Order, Ameren Missouri created a rebate pool amount of \$91.9 million for rebates paid subsequent to July 31, 2012 (the “Rebate Pool”). Affidavit of Matt Michels, ¶ 2. Ameren

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<sup>2</sup> The Commission is entitled to take official notice of its own records in prior proceedings, as well as the laws of the State of Missouri. Section 536.070(6), RSMo.; *State v. Hall*, 751 S.W.2d 403, 404 (Mo. App. E.D. 1988).

Missouri filed a tariff to implement the Stipulation and the Commission's approval order, which provides as follows:

The Company will not suspend payment of solar rebates in 2013 and beyond unless the solar rebate payments reach an aggregate level of \$91.9 million (the "specified level") incurred subsequent to July 31, 2012 as defined in the Non-Uniform Stipulation and Agreement approved by the Missouri Public Service Commission ("Commission") in File Number ET-2014-0085 ("Stipulation"). If and when the solar rebate payments are anticipated to reach the \$91.9 million level, the Company will file with the Commission an application under the 60-day process as outlined in §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, in accordance with the approved Stipulation. Details concerning the current payment levels are posted on the Company's website at [www.ameren.com](http://www.ameren.com).

File No. Et-2014-0085; Affidavit of Matt Michels, ¶ 3.

The Commission approved this tariff by order dated December 12, 2013. *Id.* No party (or non-party) sought rehearing of the Commission's December 12, 2013 order.

File No. ET-2014-0085.

6. By mid-December 2013, Ameren Missouri had received a level of rebate applications which, presuming all solar facilities in those applications are actually installed within the required timeframe, will result in the Company paying out the entire Rebate Pool. These applications may or may not eventually be paid from the Rebate Pool, depending on whether prior applications are installed. Affidavit of Matt Michels, ¶ 4.

7. Currently, Ameren Missouri has Rebate Pool money reserved for applications received on or before December 20, 2013. Rebate applications received after December 20, 2013, have no Rebate Pool dollars reserved for their solar projects. Affidavit of Matt Michels, ¶

5.

7. Ameren Missouri customer Patricia Schuba submitted a rebate application on December 23, 2013, which means the Company cannot guarantee that a rebate payment will be available for her project at this time. Affidavit of Matt Michels, ¶ 6.

8. Ameren Missouri customer Deane Todd submitted a rebate application on December 26, 2013, which means the Company cannot guarantee that a rebate payment will be available for his project at this time. Affidavit of Matt Michels, ¶ 7.

9. On May 14, 2014, Patricia Schuba and Deane Todd (“Complainants”) initiated this action by filing with the Commission a Complaint against Ameren Missouri, alleging that they were aggrieved in that Ameren Missouri had denied their applications for solar rebates in violation of Section 393.1030.3 (Cum. Supp. 2013). Specifically, the Complaint alleges that the Commission’s findings and determinations in its orders issued in File No. ET-2014-0085 were insufficient to allow Ameren Missouri to cease paying rebates under Section 393.1030.3 (Cum. Supp. 2013). *See Complaint*, ¶¶ 11, 13, 16, 24.

### **Motion for Summary Disposition**

Under 4 CSR 240-2.117(1)(E), summary disposition should be granted where “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.” Summary disposition is appropriate in this case because the Complaint is nothing more than a thinly-disguised collateral attack on the Commission’s final orders in File No. ET-2014-0085. Such attacks are barred by Section 386.550, RSMo. (2000), which provides that “[i]n all collateral actions or proceedings the orders and decisions of the commission which have become final shall be conclusive.” Because there are no genuine issues of material fact and the Complaint is barred

as a matter of law, Ameren Missouri is entitled to summary disposition in its favor. As required by 4 CSR 240-2.117(1)(B), Ameren Missouri files contemporaneously with this Motion a legal memorandum explaining why summary disposition should be granted and incorporates said memorandum herein.

**WHEREFORE**, Ameren Missouri moves for summary disposition of this case in its favor.

**SMITH LEWIS, LLP**

/s/ James B. Lowery

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have this 13<sup>th</sup> day of November, 2014, served the foregoing document and its attachment either by electronic means, or by U. S. Mail, postage prepaid addressed to all parties of record.

/s/ James B. Lowery  
James B. Lowery