BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Earth Island Institute d/b/a Renew Missouri, et al.,	)	
Complainants,	)	
v.	)	Case No. EC-2013-0379
	)	[consolidated with EC-2013-0380]
Kansas City Power & Light Company,	)	
Respondent.	)	

RESPONSE OF KANSAS CITY POWER & LIGHT COMPANY AND KCP&L GREATER MISSOURI OPERATIONS COMPANY IN OPPOSITION TO COMPLAINANTS' MOTION FOR SUMMARY DETERMINATION

COME NOW Kansas City Power & Light Company ("KCP&L") and KCP&L Greater Missouri Operations Company ("GMO") (collectively "Companies"), pursuant to the Commission's *Order Adopting Procedural Schedule* issued on April 9, 2013, and 4 CSR 240-2.117, respectfully file their Response to the *Motion for Summary Determination* filed by Earth Island Institute d/b/a Renew Missouri, Missouri Coalition for the Environment, Straight Solar and Missouri Solar Applications (collectively referred as "Complainants"). In support of their Response, the Companies state as follows:

1. On August 23, 2013, the Complainants filed their *Motion For Summary Determination* ("*Motion*") and a legal memorandum in support thereof. For the reasons stated herein, the Complainants' *Motion* should be denied and their Complaints against KCP&L and GMO should be dismissed with prejudice.

2. Under 4 CSR 240-2.117(E), the standard for approval of the Complainants' *Motion* requires a showing that (1) there is no genuine issue as to any material fact, (2) that the

moving party is entitled to relief as a matter of law as to all or any part of the case, and (3) the Commission determines granting summary relief is in the public interest.[1]

3. As will be shown herein, the Complainants' *Motion* does not meet each of these elements and, consequently, the Commission should deny summary determination in favor of the Complainants. In particular, the Complainants have not demonstrated (1) that there are no material facts in dispute, (2) that they are entitled to relief as a matter of law as to any part of the case, or (3) that the granting of summary relief would be in the public interest. Instead, the Commission should dismiss the Complaints against the Companies with prejudice, as requested by the Companies in their *Motion For Summary Disposition* filed on August 23, 2013.

4. First, the Complainants allege that "There is no genuine dispute that KCP&L's 2012-2014 RES Compliance Plan did not include a detailed explanation of the utility's section (5) calculation." (*Motion*, p. 3) KCP&L and GMO disagree that they did not provide a detailed explanation of the calculation of the RES retail impact limit calculated in accordance with section (5) of the RES rule. Both the KCP&L and GMO 2012 Annual Renewable Energy Standard Compliance Plan (p. 10 (KCP&L), and pp. 8-9 (GMO), respectively) includes a Section 2.6 which provides this explanation and states in part:

> The retail rate impact, as calculated per subsection (5) (B), may not exceed one percent (1%) for prudent costs of renewable energy resources directly attributable to RES compliance. The retail impact shall be calculated on an incremental basis for each planning year that includes the addition of renewable generation directly attributable to RES compliance through procurement or development of renewable energy resources.
>
> For each Company, KCP& and GMO, the direct costs of compliance for the three-year planning period (2012-2014) were compared to the expected retail revenue forecast from the latest Corporate Budget. Since each Company Preferred Plan identified in the April 2012 IRP filings only contains renewable additions that improve each Company's costs, no non-compliant plan is necessary to calculate rate impacts.

[1] *See*, Commission rule 4 CSR 240-2.117(E).

> The summary of these calculations (average increase in annual revenue requirements for [KCP&L and GMO] is provided below:
>
> 3-Year Average 0.92% [for KCP&L] and
> 1.18% [for GMO].

See KCP&L and GMO 2012 Annual Renewable Energy Standard Compliance Plan, Case Nos. EO-2012-0348 and EO-2012-0349. As a result, there is a genuine issue of fact related to the Companies' explanation of their calculation of the RES retail impact limit calculated in accordance with Section (5) of the RES rule.

5. Second, the Complainants allege that Sections 5 and 7(B)(1) of 4 CSR 240-20.100 were not followed by the Companies. (*Motion*, pp. 1-2) As explained in the Companies' *Motion For Summary Disposition* filed on August 23, 2013, 4 CSR 240-20.100(5) is the provision that requires the 1% calculation of the retail rate impact and reads as follows:

> (5) Retail Rate Impact.
>
> (A) The retail rate impact, as calculated in subsection (5)(B), may not exceed one percent (1%) for prudent costs of renewable energy resources directly attributable to RES compliance. ***The retail rate impact shall be calculated on an incremental basis for each planning year that includes the addition of renewable generation directly attributable to RES compliance through procurement or development of renewable energy resources***, averaged over the succeeding ten (10)-year period, and shall exclude renewable energy resources owned or under contract prior to the effective date of this rule.
>
> (B) . . . The comparison of the rate impact of renewable and non-renewable energy resources shall be conducted ***only when the electric utility proposes to add incremental renewable energy resource generation directly attributable to RES compliance through the procurement or development of renewable energy resources.*** (*emphasis added*)

6. 4 CSR 240-20.100(7)(B)(1)(F) requires that an explanation of the calculation of the RES retail impact limit be provided by the utility and states as follows:

> RES Compliance Plan
>
> 1. The plan shall cover the current year and the immediately following two (2) calendar years. The RES compliance plan shall include, at a minimum—

A. A specific description of the electric utility's planned actions to comply with the RES;

B. A list of executed contracts to purchase RECs (whether or not bundled with energy), including type of renewable energy resource, expected amount of energy to be delivered, and contract duration and terms;

C. The projected total retail electric sales for each year;

D. Any differences, as a result of RES compliance, from the utility's preferred resource plan as described in the most recent electric utility resource plan filed with the commission in accordance with 4 CSR 240-22, Electric Utility Resource Planning;

E. A detailed analysis providing information necessary to verify that the RES compliance plan is the least cost, prudent methodology to achieve compliance with the RES;

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; and

G. Verification that the utility has met the requirements for not causing undue adverse air, water, or land use impacts pursuant to section 393.1030.4 RSMo, and the regulations of the Department of Natural Resources. (emphasis added)

7. As set out in Section (5)(A) of the rule, the rule requires the calculation of the 1% rate cap for each planning year that includes the addition of renewable generation directly attributable to RES compliance. If there is no retail rate impact calculation, then there is no explanation required in Section 7(B). In addition, Section (5)(B) states that the comparison of the rate impact of renewable and non-renewable energy resources **shall be conducted only when the electric utility proposes to add incremental renewable energy resource generation directly attributable to RES compliance through the procurement or development of renewable energy resources**.

8. The planning years for the 2012 Compliance Plans are the three consecutive years 2012, 2013 and 2014 for the report filed on April 16, 2012. As verified in the Affidavit of Burton Crawford which was attached to the Companies' *Motion For Summary Disposition* filed on August 23, 2013, no new renewable generation attributable to RES compliance was planned for

any of those years.

9. Notwithstanding the fact that the Companies did not plan to add new renewable generation attributable to the RES compliance in the years covered by the Plan, the Complainants assert that KCP&L and GMO "fail to prove that section (5)(B) exempted them from performing the section (5) calculation and providing a detailed explanation in the 2012-2014 RES compliance plans." (*Motion*, p. 8) In an effort to support this assertion, the Complainants argue that the Companies anticipate spending millions of dollars for solar rebates and unbundled S-RECs during these years." (*Id*.) While their assertion that the Companies are paying solar rebates and buying S-RECs in the 2012-2014 planning years is true, this assertion does not demonstrate that the Companies "proposes to add incremental renewable energy resource generation directly attributable to RES compliance through the procurement or development of renewable energy resources" 4 CSR 240-20.100(5)(A), and are not exempt under section (5)(B).

10. Contrary to the position of the Complainants, solar rebate payments[2] and S-RECs[3] are not "renewable energy resources." 4 CSR 240-20.100(K) defines "renewable energy resources" as follows:

> (K) Renewable energy resource(s) means electric energy produced from the following:
> 1. Wind;
> 2. Solar, including solar thermal sources utilized to generate electricity, photovoltaic cells, or photovoltaic panels;
> 3. Dedicated crops grown for energy production;
> 4. Cellulosic agricultural residues;
> 5. Plant residues;
> 6. Methane from landfills or wastewater treatment;

[2] *See* Sections 393.1020(1) and 1030(3).

[3] S-RECs are defined by 4 CSR 240-20.100(Q) as follows:

> (Q) Solar renewable energy credit or SREC means an REC created by generation of electric energy from solar thermal sources, photovoltaic cells, and photovoltaic panels;

> 7. Clean and untreated wood, such as pallets;
> 8. Hydropower (not including pumped storage) that does not require a new diversion or impoundment of water and that has generator nameplate ratings of ten (10) megawatts or less;
> 9. Fuel cells using hydrogen produced by any of the renewable energy technologies in paragraphs 1. through 8. of this subsection; and
> 10. Other sources of energy not including nuclear that become available after November 4, 2008, and are certified as renewable by rule by the department;

Solar rebate payments and S-RECs are not included in the definition of "renewable energy resources." *See also* Section 393.1025(5).

11. Since no new "renewable energy resources generation directly attributable to RES compliance" was planned for any of those period years, no calculation or explanation of the calculation of the 1% retail rate cap was required by the rule, even though the Companies provided an explanation of their RES retail rate impact calculation in their Compliance Plans. Therefore, Complainants have failed to demonstrate that they are entitled to relief as a matter of law.

12. Based upon the foregoing, the Commission should find that (1) there is a genuine issue of material facts concerning the Complainants' allegations, (2) Complainants are not entitled to relief as a matter of law, and (3) granting Complainants' motion for summary relief is not in the public interest.

WHEREFORE, for the reason stated above, Respondents Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company respectfully request that the Commission deny the Complainants' *Motion For Summary Determination.* Instead, the Commission should enter an order granting summary disposition in favor of the Companies, and dismiss with prejudice the Complaints filed by the Complainants in this proceeding.

Respectfully submitted,

/s/ James M. Fischer

James M. Fischer, MBN 27543
Fischer & Dority, P.C.
101 Madison Street—Suite 400
Jefferson City, Missouri 65109
Telephone: (573) 636-6758
Facsimile: (573) 636-0383
E-mail:jfischerpc@aol.com

And

Roger W. Steiner, MBN 39586
Corporate Counsel
Kansas City Power & Light Company
1200 Main – 16th Floor
Kansas City, Missouri 64105
Telephone: (816) 556-2314
Facsimile: (816) 556-2787
E-mail: Roger.Steiner@kcpl.com

Attorneys for
Kansas City Power &Light Company
And KCP&L Greater Missouri Operations Company

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record on this 6th day of September, 2013.

/s/ James M. Fischer

James M. Fischer