BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

R & S Home Builders, Inc., and Carol and Arvell Allman,	)	
Complainants,	)	
v.	)	File No. EC-2014-0343
KCP&L Greater Missouri Operations Company,	)	
Respondent.	)	

RESPONSE IN OPPOSITION TO RESPONDENT'S MOTION FOR SUMMARY DETERMINATION

COMES NOW Complainants R & S Home Builders, Inc. and Carol and Arvell Allman, pursuant to Section 386.410, RSMo and 4 CSR 240-2.117, and hereby submit this *Response in Opposition to Respondent's Motion for Summary Determination*.

INTRODUCTION

This case arose from Complainants' claim that Respondent KCP&L Greater Missouri Operations Company ("GMO") denied Complainants' solar rebate applications at a time when GMO did not possess the legal authorization to do so. Complainants filed their complaint on May 14, 2014. GMO responded with a *Motion to Dismiss* on June 16, 2014. The Commission denied GMO's motion to dismiss[1] in its September 24, 2014 Order, finding that GMO had failed to negate the allegations of unauthorized cessation of solar rebate payments.[2] GMO then filed its *Verified Application for Rehearing and/or Motion for Reconsideration* on September 26, 2014. It is that Application for Rehearing which the Commission chose to treat as a Motion for Summary

1The Commission's Sept. 24, 2014 Order granted Respondent's Motion to Dismiss with respect to claims of inadequately authorized cessation in 2013, but denied Respondent's Motion with respect to unauthorized cessation in 2014. This "Response in Opposition" deals only with the claim of unauthorized cessation in 2014.

2"Order Granting in Part Motion to Dismiss and Denying Motion to Amend," File No. EC-2014-0343, September 24, 2014, pg. 5.

Determination in its December 29, 2014 *Order Denying Motions for Reconsideration and Rehearing*, and to which Complainants now respond.

STANDARD OF REVIEW

Pursuant to rule 4 CSR 240-2.117(1)(E), 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.

DISCUSSION

I. THE QUESTION OF WHETHER GMO CEASED PROCESSING AND PAYING SOLAR REBATE PAYMENTS PRIOR TO RECEIVING COMMISSION AUTHORIZATION IS A GENUINE ISSUE OF MATERIAL FACT

In its September 26, 2014 *Verified Application for Rehearing and/or Motion for Reconsideration*, GMO claims that it did not stop paying solar rebates before the Commission authorized them to do so.[3] In contrast, 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.[4] These claims create a genuine issue of material fact as to whether or not GMO continued to process and pay solar rebates prior to receiving authorization from the Commission, and thus Summary Determination is not appropriate in this case.

3KCP&L Greater Missouri Operations Company, *Verified Application for Rehearing and/or Motion for Reconsideration*, File No. ET-2014-0343, September 26, 2014, pg. 1

4R&S Home Builders, Inc. and Carol & Arvel Allman, *Complaint*, File No. ET-2014-0343, May 14, 2014, pg. 9.

As Respondent observes in its September 26 *Verified Application for Rehearing*, GMO received the solar rebate application of Carol J. Allman on April 8, 2014.[5] The following day, GMO applied for authority to cease paying solar rebates, giving rise to File No. ET-2014-0277. The Allmans received a letter of denial from GMO on April 15, 2014, a mere six days after submitting their application. (See Exhibit No. 1 (attached)). Complainants then filed the original *Complaint* giving rise to this case on May 14, 2014. 14 days later, the Commission issued its May 28, 2014 *Order Approving Tariff* in File No. ET-2014-0277 with an effective date of June 8, 2014, and from which GMO claims its authorization to cease paying solar rebates.

The fact that GMO sent the Allmans a letter of denial approximately 43 days prior to the Commission's May 28 *Order* is in contradiction with GMO's contention that it did not stop paying solar rebates prior to receiving Commission authorization. At the very least, Respondent has failed to establish as fact that it had not stopped processing and paying rebates on April 14, 2014 when it denied the Allman's application. Accordingly, Complainants ask that the Commission deny Respondent summary determination and proceed with the scheduled April 30, 2015 evidentiary hearing.

II. RESPONDENT FAILS TO ESTABLISH WHY IT IS ENTITLED TO JUDGMENT AS A MATTER OF LAW

Respondent GMO has failed to sufficiently prove how it's denial of Complainants' solar rebate applications complied with the requirements of Section 393.1030.3, RSMo. Accordingly, granting GMO summary determination in this case is inappropriate.

Clear statutory procedures exist for a utility to receive authorization for rebate cessation;[6] such procedures have been exhaustively repeated in this case. Section 393.1030.3, RSMo also

5*Verified Application for Rehearing and/or Motion for Reconsideration*, pg. 2, footnote 1.

6§ 393.1030.3, RSMo.

states that, when an electric utility has filed for authorization to cease paying solar rebates, "an electric utility shall continue to process and pay applicable solar rebates until a final commission ruling…" GMO denied the Allman's application for solar rebates on April 15, 2014, well before it received authorization from the Commission in the May 28, 2014 *Order*. Unless GMO can offer evidence or explanation for how they were authorized to deny Complainants solar rebates, GMO cannot be granted summary determination. In this case, GMO has failed to provide justification for any argument that could possibly explain why their denial of the Allman's application was authorized.

First, GMO could claim that it was already authorized to cease payments by the Commission's October 30, 2013 *Order Approving Stipulation & Agreement* in File No. ET-2014-0059. In fact, GMO makes this argument in its *Application for Rehearing* by making reference to the stipulated $50 million amount:[7]

> GMO is also concerned that the Commission's September 24, 2014 *Order* may be based on the mistaken belief that there is a yearly maximum solar rebate cap that changes for GMO from year to year. This is not the case because in File No. ET-2014-0059 the Commission approved an aggregate solar rebate cap for GMO.

The Commission has already determined that utilities must request authorization to cease paying rebates *each calendar year*. The Commission's reading of Section 393.1030.3 RSMo is clear: "Each calendar year, GMO may file to suspend its tariff governing solar rebate payment ("application"). While the application is pending, GMO must continue to pay rebates."[8]

7*Verified Application for Rehearing and/or Motion for Reconsideration*, pg. 3.

8Missouri Public Service Commission, *Order Granting in Part Motion to Dismiss and Denying Motion to Amend,* File No. EC-2014-0343, pg. 2.

Furthermore, when GMO applied for authorization to cease payments on April 8, 2014, the Commission did not respond by saying that the utility already possessed the authority; rather, the Commission gave the request a file number and proceeded to administer the case. GMO itself acted as if it did not yet possess cessation authority when it filed its April application. For GMO to now claim that it was already authorized to deny rebates would be logically inconsistent and defy the Commission's interpretation of Section 393.1030, RSMo.

Alternatively, GMO could claim that it had not actually ceased processing and paying solar rebates prior to the May 28, 2014 *Order*, because it was still in the process of paying out rebates applied for prior to November 15, 2013.[9] In fact, GMO makes this argument in its September 26 *Application for Rehearing*: "[t]herefore, GMO has not yet entirely ceased paying solar rebates to the extent a valid application was received by November 15, 2013 at 10 AM CST."[10] Such an argument requires GMO to provide support for a very particular and far-fetched interpretation of the statutory phrase: "shall continue to *process and pay* solar rebates…"[11]

Under a plain reading of this language, utilities are obligated to not only *pay* rebates for existing applications, but also to *process* incoming rebate applications until the day it receives authorization to stop. GMO's interpretation of the above language would give no effect to the word "process," and would leave the utility free to deny rebate applications if it believed it would receive cessation authority sometime in the near future. GMO denied both Complainants' rebate applications a mere six days after receiving them.[12] GMO's quick denial of the Complainants' applications and those of many other customers reveals that GMO failed continue

9The November 15, 2013 date is in reference to the tariff language in File No. ET-2014-0059, to which Complainants were not a party and had no notice.

10*Verified Application for Rehearing and Motion for Reconsideration,* pg. 2.

11§ 393.1030.3, RSMo.

12R&S Home Builders submitted their application on November 20, 2014 and received a denial from GMO on November 26. The Allmans submitted their application on April 8, 2014 and received a denial on April 14.

to *process* new applications prior to May 28, 2014. This constitutes a violation of GMO's obligation under Section 393.1030.3, RSMo. to continue processing and paying rebates until receiving authorization to cease.

Because GMO has made no coherent argument for how its denial of Complainants' applications was in compliance with Section 393.1030.3, RSMo, the Commission should refrain from granting summary determination for Respondent and proceed with the scheduled April 30, 2015 evidentiary hearing.

III. GRANTING RESPONDENT SUMMARY DETERMINATION WOULD NOT BE IN THE PUBLIC INTEREST

What is at stake in this case is the ability of utility customers to have the law enforced as written when they apply to take advantage of a legal right. Customers of GMO applied for solar rebates at a time when the utility was under a clear statutory obligation to "continue to process and pay solar rebates." When Complainants submitted their applications, GMO had not yet even requested – much less been granted – the authority to cease paying rebates. Despite its clear obligation under the law, GMO denied many customers' solar rebate applications in mere days, without ever being granted authority from the Commission to do so.

That GMO may have exceeded either some stipulated amount or its annual limit if it granted Complainants' applications is immaterial. The law makes it the responsibility of the utility to apply for authority to cease payments 60 days prior to reaching its annual limit. Customers should not be punished when the utility fails to apply for cessation authority in sufficient time. In fact, the law anticipates overpayment by the utility and protects the utility in such an event:[13] (emphasis added)

13§393.1030.3, RSMo.

> 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*.

This provision of law exists for this precise reason: to allow the utility to overpay beyond its maximum annual limit and still recover its costs. It is not any concern over cost, but rather GMO's distaste for solar that is at issue in this case. It is the responsibility of the utility and the Commission to enforce the law as it is written, not to make policy decisions about where customers choose to get their electricity. In order to protect the public interest, the Commission should give full effect to the letter of the law as it existed when Complainants submitted their applications for solar rebates.

CONCLUSION

Respondent KCP&L Greater Missouri Operations Company has failed to meet the standard required for the Commission to grant summary determination in this case. There exists a factual question of whether GMO did or did not continue to process and pay rebates up until May 28, 2014. Additionally, GMO has not demonstrated that it met the procedures of Section 393.1030.3, RSMo. and was authorized to cease processing and paying rebates when it denied Complainants' applications, and thus it cannot establish that it is entitled to judgment as a matter of law. Finally, the public interest requires that customers be afforded the opportunity to have the law enforced as it existed when they applied for solar rebates.

WHEREFORE, Complainants respectfully pray that the Commission refrain from granting Respondent summary determination and instead allow the parties to present their arguments to the Commission at the scheduled April 30, 2015 evidentiary hearing.

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

ATTORNEYS 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 10th day of January, 2015 to the below persons in File/Case No. EC-2014-0343:

Missouri Public Service Commission
Akayla Jones

200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
Akayla.Jones@psc.mo.gov

Missouri Public Service Commission
Office General Counsel
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
staffcounselservice@psc.mo.gov

KCP&L Greater Missouri Operations Company
Roger W Steiner
1200 Main Street, 16th Floor
P.O. Box 418679
Kansas City, MO 64105-9679
roger.steiner@kcpl.com

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

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