

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

Patricia Schuba and Deane Todd,	)	
Complainants,	)	
	)	
v.	)	File No. EC-2014-0342
	)	
UNION ELECTRIC COMPANY, d/b/a	)	
AMEREN MISSOURI,	)	
	)	
Respondent,	)	

**RESPONSE TO UNION ELECTRIC COMPANY’S  
MOTION FOR SUMMARY DETERMINATION**

COMES NOW Patricia Schuba and Deane Todd (“Complainants”), pursuant to rule 4 CSR 240-2.080(13), and offer this Response to the Motion for Summary Determination filed by Respondent Union Electric Company, d/b/a Ameren Missouri (“Ameren Missouri”) on November 13, 2014 in the above case, respectfully prays that Commission deny Respondent’s request for summary determination as prayed in Respondent’s Motion.

**INTRODUCTION**

1. Complainants filed a complaint on May 14, 2014, giving rise to File No. EC-2014-0342. The Complaint alleged that Respondent Ameren Missouri denied Complainants solar rebates before Respondent received authority to cease paying solar rebates pursuant to Section 393.1030, RSMo. Respondent then filed a Motion for Summary Determination on November 13, 2014.

2. Summary determination is only proper when there are (a) no genuine issues of material fact and (b) the movant is entitled to judgment as a matter of law. *ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371, 377 (Mo. banc 1993).<sup>1</sup> The moving party bears the burden

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As discussed in numerous Commission orders, including in the recent case styled *Unice Harris v. Southern Union Company d/b/a Missouri Gas Energy*, 2013 Mo. PSC LEXIS 257, [5] n.4 (effective Apr. 19, 2013) (adopted by the full

of establishing their entitlement to summary determination. (See *ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp.* at 378).

### ARGUMENT

A. *The Complaint does not constitute a collateral attack on any previous Commission Order.*

3. Respondent alleges in its Motion for Summary Determination that the Complaint is an unlawful collateral attack on the final orders in File No. ET-2014-0085 of the Commission.

4. Section 386.550, RSMo. states: “[i]n all collateral actions or proceedings the orders and decisions of the commission which have become final shall be conclusive.” 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 November 13, 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.

5. Complainants have not disputed Respondents’ ability to cease paying rebates after reaching the agreed upon “stipulated amount” in the Stipulation. However, the Stipulation does not relieve Respondent or the Commission from observing the procedural requirements for discontinuing solar rebate payments. Those procedural requirements – laid out in Section 393.1030.3, RSMo – include the requirement that the Commission making a determination that the utility’s one percent maximum average retail rate impact will be reached within the 60 days, among others.

6. In arguing that Complainants and similarly-situated solar rebate applicants should receive rebates, the Complaint alleges that Complainants were denied rebates even though Ameren Missouri had not been granted authority to cease paying rebates pursuant to Section 393.1030.3, RSMo. Despite the Stipulation, utilities must still file for authorization to cease payment of solar

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Commission at 2013 Mo. PSC LEXIS 305), the *ITT* case applied Mo. R. Civ. P. 74.04, which as the Commission has noted “is sufficiently similar to the Commission's regulation to make cases interpreting the rule helpful in understanding the regulation.” *Harris, supra.*

rebates 60 days before they will reach their one percent limit, and the Commission must then review the filing and make a determination. Thus when Ameren Missouri was authorized to stop providing solar rebate payments in case number ET-2014-0350, all customers who have applied for payments prior to such authorization are owed rebates.

7. On May 23, 2014, Ameren Missouri filed an application for authority to suspend payment of solar rebates. *ET-2014-0350 Application for Authority to Suspend Payment of Solar Rebates (YE-2014-0494)*. Even if the Commission authorized Ameren Missouri to cease making payments of solar rebates pursuant to this application, all customers (including Complainants) who applied for payments prior to such authorization are owed rebates. This is consistent with the holding from page five of the Order Granting In Part Motion To Dismiss issued on September 24, 2014 in File No. EC-2014-0343. In that Order, the Commission held that ceasing to pay rebates before authorization would constitute a violation of the Renewable Energy Standard, Section 393.1030.3, RSMo Supp. 2013.

8. Moreover, Respondent has implicitly agreed with the position of Complainants to the extent that it submitted an application for authority to cease paying rebates in May 2014, by asserting that it requests the authority to cease payments contingent upon reaching its one percent limit within 60 days (see File No. ET-2014-0350). By submitting this request in File No. ET-2014-0350, Ameren Missouri concedes that this step was necessary in order for Respondent to be authorized to cease paying rebates. It follows that Respondent did not have authority to cease paying rebates prior to that, during which time Complainants applied for and were denied rebates.

WHEREFORE, Complainants request that Commission deny Respondent's request for summary determination.

Respectfully Submitted,

**GHIO & DESILETS LLP**

/s/\_\_\_\_\_  
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ATTORNEYS FOR COMPLAINANTS

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was delivered via EFIS on this 12th day of December, 2014 to all counsel of record in this case.

/s/\_\_\_\_\_