

**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.)	

**COMPLAINANTS' APPLICATION FOR REHEARING AND
RESPONSE TO KCPL-GMO'S APPLICATION FOR REHEARING**

COMES NOW Complainants R & S Home Builders, Inc. and Carol and Arvell Allman, pursuant to Section 386.410, RSMo and 4 CSR 240-2.160 and herein apply for rehearing on the Commission's *Order Granting in Part Motion to Dismiss and Denying Motion to Amend*, issued on September 24, 2014 in the above-styled case.

I. Grounds for Complainants' Application for Rehearing.

1. The Commission's September 24 Order states: "The Commission is dismissing the complaint as to calendar year 2013. The Commission is also denying the motion to amend the complaint. As to the allegation of unauthorized cessation of solar rebate payments, the Commission is denying dismissal."

2. Complainants now ask the Commission to rehear the case with respect to its dismissal of the complaint as to calendar year 2013. Complainants ask that the Commission rehear the case because the September 24 Order is unjust, unreasonable, and arbitrary and capricious in the following respects:

A. *An Application for Rehearing was not an "exclusive remedy" because Complainants lacked notice of the "2013 Authorization."*

3. In its Order, the Commission explained its reasoning for dismissing the complaint as to calendar year 2013, essentially agreeing with GMO's motion to dismiss. Because Complainants failed to exercise their "exclusive remedy" of an application for rehearing, the Commission concluded that Complainants were barred from arguing inadequate authorization for 2013 because bringing such a claim constituted a collateral attack: (See Order, pp. 3-4.)

Whether an order is final, and whether an action constitutes a collateral attack, both depend on the existence of an exclusive remedy. The exclusive remedy for an authorization is an application for rehearing and notice of appeal. Those filings did not occur as to the 2013 authorization, so that authorization is final, which makes it conclusive for any collateral action. A collateral action is an action attempted in lieu of the exclusive remedy. That describes the allegations of inadequate authorization for 2013. Therefore, the allegations of inadequate authorization constitute a collateral action as to which 2013 authorization is thus conclusive as to this action, so allegations of inadequacy cannot state a claim.

4. The Commission's above reasoning is unjust and unreasonable (pursuant to 4 CSR 240-2.160) because Complainants were not parties to the proceeding where the "2013 authorization" was granted. Complainants had no notice and no opportunity to file an application for rehearing, and thus could not avail themselves of the "exclusive remedy."

5. The "2013 authorization" refers to the Commission's October 30, 2013 *Order Approving Stipulation and Agreement*, issued in File No. ET-2014-0059. Complainants – a local business and individuals who were denied solar rebates – have no experience with the Public Service Commission or any of its proceedings. Complainants had no knowledge of the existence of File No. ET-2014-0059, let alone the full import of its subject matter. Complainants were not represented by counsel or aware of the Commission's October 30, 2013 Order until they had received their denials from GMO, well after the 10-day window for filing an application for rehearing.

6. In *State ex rel. Licata, Inc. v. Pub. Serv. Comm'n of State*, 829 SW.2d 515, 518

(Mo. Ct. App. 1992), the court stated: (emphasis added)

If a statutory review of an order of the Commission is not successful, the order becomes final and cannot be attacked in a collateral proceeding. Here, there is no question that *Licata* had notice of the proceeding in which Article 10 was considered and approved, and failed to participate in that hearing. Thus, Article 10 was approved with full notice to *Licata* and opportunity to be heard.

In the present case, unlike in *Licata*, Complainants received no notice of the Commission's October 30, 2013, Order, nor did they have any opportunity to be heard prior to the Commission's Order.

7. It would be unjust and unreasonable for the Commission to limit Complainants to an exclusive remedy when that remedy required Complainants to learn of the existence of the case in a forum with which they were completely unfamiliar, understand the implications of the Commission's Order, obtain counsel, and draft and submit an application for rehearing, all within 10 days of the Commission's Order.

8. Moreover, even if Complainants were aware of the Commission's October 30, 2013 Order, such Order did not include any language that would lead Complainants to believe GMO had been authorizing to stop paying rebates in 2013. In fact, the Stipulation and Agreement which the Commission's Order approved clearly stated that GMO would not suspend payment of solar rebates in 2013: "GMO will not suspend payment of solar rebates in 2013 and beyond unless the solar rebate payments reach an aggregate level of \$50 million incurred subsequent to August 21, 2012." (See *Stipulation and Agreement* in File No. ET-2014-0059, ¶ II7.a., pg. 3-4.) Were Complainants aware of the October 30, 2013 Order, they would have had nothing on which to seek rehearing.

B. The Complaint does not challenge or attack any Order of the Commission, and thus cannot constitute a "collateral attack."

9. It is worth restating what Complainants filed in their Response to GMO's Motion

to Dismiss (at pg. 2-3, ¶6-8). Complainants do not dispute or attack ANY order of the Commission. The complaint filed in this case brings no challenge whatsoever to the Commission's October 30, 2013 Order in File No. ET-2014-0059. Accordingly, the complaint cannot – by definition – constitute a collateral attack of that order.

10. The Stipulation and Agreement stated that GMO would be allowed to cease payment of solar rebates at some point in the future, but it did not authorize GMO to stop paying rebates in 2013. Likewise, the Commission's October 30, 2013 Order did not authorize GMO to stop paying rebates in 2013. GMO itself admits that "the resolution of [ET-2014-0059]... did not authorize GMO to stop making solar rebate payments in 2013." (See GMO's *Verified Application for Rehearing and/or Motion for Reconsideration*, pg. 3.)

11. Despite the above, GMO denied 169 solar rebate applications in 2013, having never received proper authorization to do so. (See GMO's *2013 RES Compliance Report*, filed in EO-2014-0290, pg. 6.) It is these denials that the Complaint seeks to challenge, along with all other rebate application denials prior to when GMO finally received authorization to stop rebate payments (on July 1, 2014 in File No. ET-2014-0277). However, the Complaint at no point challenges any Order of the Commission.

12. Complainants hereby also incorporate by reference each of the points originally raised in their *Response to KCP&L Greater Missouri Operations Company's Motion to Dismiss*, submitted in this case on July 16, 2014, and ask the Commission to rehear this case on all issues raised therein.

II. Complainant's Response to Respondent's Application for Rehearing

13. On September 26, 2014, GMO filed its "Verified Application for Rehearing and/or Motion for Reconsideration." In its application, GMO makes several statements that may require clarification.

A. GMO stopped paying solar rebates prior to being granted authorization.

14. First, GMO states: “[t]o be clear, GMO did not stop paying solar rebates prior to receiving authorization from the Commission. The Commission authorized GMO to stop making solar rebate payments in Case No. ET-2014-0277 by its *Order Approving Tariff* issued in that Case on May 28, 2014 and effective on June 8, 2014.”

15. In fact, GMO did stop paying solar rebates prior to receiving authorization from the Commission, thus giving rise to the controversy at issue in this case. Complainant R & S Homebuilders, Inc. applied for its solar rebate on November 20, 2013, and received a denial from GMO on November 26, 2013. Complainants Carol and Arvell Allman applied for their solar rebate on April 8, 2014, and received a denial from GMO on April 15, 2014. GMO was first authorized to stop making solar rebate payments on May 28, 2014, and that Order became effective on June 8, 2014.

16. Prior to June 8, 2014, GMO lacked the authority to stop paying solar rebates. The law clearly states: “The electric utility shall continue to process and pay applicable solar rebates until a final commission ruling.” § 393.1030.3, RSMo. Complainants simply seek to have this provision of law enforced.

B. GMO makes contradictory statements with respect to denial of solar rebate applications in calendar year 2013.

17. The next subject in need of clarification involves GMO’s denial of solar rebate applications for the calendar year 2013. In its Application for Rehearing, GMO claims: (at pg. 3) (emphasis added)

While GMO did request authorization to stop making solar rebate payments in 2013 (through File No. ET-2014-0059), the resolution of that proceeding (by the Commission’s October 30, 2013 Order Approving Stipulation and Agreement) did not authorize GMO to stop making solar rebate payments in 2013. *In fact, GMO did not stop making solar rebate payments in 2013.*

18. In seeming contradiction to GMO's above statement, GMO's 2013 RES Compliance Report stated (at pg. 6) that GMO denied 169 solar rebate applications for the reason that "[f]unding commitments reached the \$50M specified level." (See below excerpt.) Given that the report covers the calendar year 2013, one can only assume this statement to reflect the number of solar rebate applications which GMO denied in 2013. Even if the number of denials is meant to cover the period leading up to the Report's filing (on April 15, 2014), GMO has still denied 169 solar rebate application prior to receiving authorization to do so on June 8, 2014.

2.11 RULE (7)(A) 1 K

The total number of customers that were denied a solar rebate and the reason(s) for denial;

	Total GMO
Denied	169
Reason	Funding commitments reached the \$50M specified level.

GMO 2013 RES Compliance Report

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WHEREFORE Complainants pray that the Commission rehear the case and amend or modify its order in accordance with this Application.

Respectfully Submitted,

/s/ Matthew J. Ghio, #44799

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ATTORNEYS FOR COMPLAINANTS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served by electronic mail to all parties of record on this 3rd day of October, 2014.

/s/ *Matthew J. Ghio* _____
Matthew J. Ghio