

The Staff of the Missouri Public Service Commission,

Complainant,

vs.

Union Electric Company d/b/a
Ameren Missouri,

Respondent

MOTION FOR SUMMARY DETERMINATION

1. Staff filed its *Complaint* on June 1, 2015, asserting that Respondent Union Electric Company, doing business as Ameren Missouri (“AmMo”), failed to provide its independent evaluation, measurement and verification (“EM&V”) contractors with the most recent avoided cost information needed for the calculation of the portion of the annual net shared benefits that are to be awarded to AmMo as a performance incentive as a result of the energy efficiency savings the Company has achieved from its Missouri Energy Efficiency Investment Act (“MEEIA”) demand-side programs for Program Year (“PY”) 2014, in violation of § 393.1075.3 and .4, RSMo.,¹ Commission Rule 4 CSR 240-20.093(1)(F), and the Commission’s *Order Approving Unanimous Stipulation and Agreement Resolving Ameren Missouri’s MEEIA Filing and Approving*

¹ All statutory references, unless otherwise indicated, are to the Revised Statutes of Missouri (“RSMo.”), revision of 2000, as amended.

Stipulation and Agreement Between Ameren Missouri and Laclede Gas Company (hereinafter "*the 2012 Order*")² and the Commission's *Order Approving Second Stipulation and Agreement Settling the Program Year 2013 Change Requests* (hereinafter "*the 2013 Order*").³ For relief, Staff prays that the Commission will provide statutory notice to Respondent, convene a hearing on Staff's *Complaint*, and, after hearing, determine that AmMo has violated a statute and Commission rules and orders as alleged herein by Staff, and will then authorize its General Counsel to seek appropriate penalties for those violations in Circuit Court.

2. Commission Rule 4 CSR 240-2.117(1) provides as follows:

(A) Except in a case seeking a rate increase or which is subject to an operation of law date, any party may by motion, with or without supporting affidavits, seek disposition of all or any part of a case by summary determination at any time after the filing of a responsive pleading, if there is a respondent, or at any time after the close of the intervention period. However, a motion for summary determination shall not be filed less than sixty (60) days prior to the hearing except by leave of the commission.

(B) Motions for summary determination shall state with particularity in separately numbered paragraphs each material fact as to which the movant claims there is no genuine issue, with specific references to the pleadings, testimony, discovery, or affidavits that demonstrate the lack of a genuine issue as to such facts. Each motion for summary determination shall have attached thereto a separate legal memorandum explaining why summary determination should be granted and testimony, discovery or affidavits not previously filed that are relied on in the motion. The movant shall serve the motion for summary determination upon all other parties not later than the date upon which the motion is filed with the commission.

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² Issued on August 1, 2012, in Case No. EO-2012-0142. The stipulation and agreement it approved is referred to herein as the "*2012 Stipulation*."

³ Issued on February 25, 2015, in Case No. EO-2012-0142. The stipulation and agreement it approved is referred to herein as the "*2013 Stipulation*."

(E) The commission may grant the 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. An order granting summary determination shall include findings of fact and conclusions of law.

* * *

3. There is a Respondent in this case, to-wit: Union Electric Company, doing business as Ameren Missouri ("AmMo"); and Respondent AmMo filed its *Answer* on July 2, 2015; this motion therefore, is filed after Respondent has filed its responsive pleading as required by Rule 4 CSR 240-2.117(1)(A).

4. No hearing has been set in this case and therefore, this motion is filed more than sixty days prior to the hearing as required by Rule 4 CSR 240-2.117(1)(A).

5. There is no genuine issue as to the material facts set out in Paragraphs 6 through 12, below.

6. AmMo admits in its *Answer* that Complainant is the Staff of the Missouri Public Service Commission ("Commission") acting through the Chief Staff Counsel as authorized by Commission Rule 4 CSR 240-2.070(1).

7. AmMo admits in its *Answer* that it is a wholly-owned subsidiary of Ameren Corporation, a publicly-traded utility holding company, and that its principal place of business is One Ameren Plaza, 1901 Chouteau, St. Louis, Missouri 63103. AmMo's registered agent is Steven R. Brophy, 500 East Independence Drive, Union, Missouri 63084.

8. AmMo admits in its *Answer* that it is in the business of generating, transmitting and distributing electricity to customers for light, heat and power, and that it is thus an "electric corporation" and a "public utility" as defined in § 386.020, (15)

and (43), subject to the regulatory jurisdiction of this Commission under chapters 386 and 393.

9. AmMo admits in its *Answer* that this Commission has jurisdiction over this matter because it involves AmMo's obligations under a statute administered by the Commission, the *Missouri Energy Efficiency Investment Act* ("MEEIA") at § 393.1075, under Commission rules, and under Commission orders as described below. AmMo's obligations to administer its MEEIA programs for PY 2013 – PY 2015 are set forth by the Commission's aforesaid rules and are imposed by the *2012 Order* and the *2013 Order*. AmMo admits that each of these Orders directs AmMo to comply with the provisions of the stipulation and agreement the Commission approved.

10. AmMo states in its *Answer* that the statute authorizing this Commission to hear and determine complaints against public utilities pursuant to § 386.390.1, which provides that "[c]omplaint may be made ... in writing, setting forth any act or thing done or omitted to be done by any corporation ... in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the Commission ..." speaks for itself and requires no answer.

11. AmMo states in its *Answer* that Rule 4 CSR 240-2.070(1), which authorizes the Staff Counsel to bring complaints on the behalf of the Staff, speaks for itself and requires no answer.

12. AmMo states in its *Answer* that §§ 386.570 and 386.590, pertaining to the imposition and calculation of penalties, speaks for itself and requires no answer.

13. AmMo denies in its *Answer* that it has failed and refused to provide the required avoided costs, being those used in AmMo's most recently-adopted preferred resource plan, to its independent EM&V contractors (hereinafter "Evaluators") so that the Evaluators could correctly calculate the PY 2014 annual net shared benefits for use in determination of AmMo's performance incentive award for PY 2013 through PY2015, but that is an ultimate issue and a conclusion of law, the truth of which is apparent from the facts set out herein as argued by Staff in its attached memorandum of law.

14. AmMo admits in its *Answer* that on May 15, 2015, AmMo's Evaluators filed their PY2014 EM&V final reports as required by ¶¶ 5. b. ii. and 11 of the *2012 Stipulation* and ¶¶ 12 and 13 of the *2013 Stipulation*.

15. AmMo admits in its *Answer* that Staff has reviewed the PY2014 EM&V final reports filed by the Evaluators and has confirmed with AmMo that the PY2014 net shared benefits were calculated by the Evaluators using the avoided costs in AmMo's previous adopted preferred resource plan and not the avoided costs in AmMo's most recently-adopted preferred resource plan, adopted as a result of AmMo's October 1, 2014, Chapter 22 triennial compliance filing in Case No. EO-2015-0084.

16. AmMo admits in its *Answer* that the Evaluators used the avoided costs supplied to them by AmMo to calculate the PY2014 annual net shared benefits.

17. AmMo states in its *Answer* that ¶13 of the *Complaint* states only a conclusion of law and that, consequently, no response is required, but to the extent a response is required, the Company denies the allegations of ¶13. In fact, ¶13 of the *Complaint* sets out the text of Rule 4 CSR 240-20.093(1)(F), which Staff need not prove.

18. AmMo states in its *Answer* that it “denies the characterization of the description of events in paragraph 14 as constituting a “deficiency” but admits that the paragraph is otherwise factually correct”; to-wit: “Staff first identified this deficiency during an April 8, 2015, meeting of the Evaluators with AmMo and stakeholders to review comments concerning the Evaluators’ PY2014 EM&V draft reports.”

19. AmMo states in its *Answer* that it “admits the first sentence of paragraph 15 but denies the second sentence to the extent that the phrase ‘has not complied’ implies that Ameren Missouri is required to comply with this Staff request”; to-wit: “On April 13, 2015, Staff requested that AmMo provide to the Evaluators and to Staff the compliant avoided costs input files beginning with 2014 avoided costs for use in the DSMore® model for the Evaluators’ PY2014 EM&V final reports. AmMo has not complied.” AmMo’s attempted avoidance of this allegation is not a denial.

20. In its *Answer*, AmMo admits in part and denies in part the allegations set out in ¶16 of the *Complaint*: “Ameren Missouri admits that Staff counsel contacted Ameren Missouri counsel by email on May 4, 2015, and that the topic of discussion was Staff’s allegation that avoided costs must be updated. Ameren Missouri denies the remainder of paragraph 16.” So far as Staff is able to understand AmMo’s *Answer*, AmMo denies that Staff warned it that it might file a complaint and that it has not complied, despite this warning. This allegation is not an essential element of Staff’s claim and need not be proven.

21. In its *Answer*, AmMo states, “Paragraph 17 of the Complaint fails to allege any fact, but rather states only a conclusion of law. Consequently, no response is required, but to the extent a response is required, the Company denies the allegations

of paragraph 17.” Paragraph 17 of the *Complaint* states, “AmMo’s conduct described in Paragraphs 9 through 16, above, constitutes a violation of § 393.1075.3 and .4, RSMo., Commission Rule 4 CSR 240-20.093(1)(F), and the *2012 Order* and the *2013 Order*.” Staff states that the allegations of ¶17 of the *Complaint* set out an ultimate issue and a conclusion of law, the truth of which is apparent from the facts set out herein as argued by Staff in its attached memorandum of law.

22. In its *Answer*, AmMo states, “Ameren Missouri admits, as alleged in paragraph 18, that Staff counsel telephoned Ameren Missouri counsel on May 11, 2015, regarding Staff’s interpretation of the avoided cost issue. Ameren Missouri admits it relied, in part, on 4 CFR 240-20.092(2)(J) in its discussion with Staff on that date.”

23. AmMo states in its Answer that Rule 4 CSR 240-20.093(2)(J) speaks for itself and requires no answer.

24. AmMo states in its Answer that Rule 4 CSR 240-20.093(1)(EE) speaks for itself and requires no answer.

25. AmMo denies ¶21 of the *Complaint*, however, that allegation is merely a restatement of Staff’s theory of the case and is not an essential element of its claim. Therefore, it need not be proven.

26. Attached hereto is Staff’s *Suggestions* as its separate legal memorandum explaining why summary determination should be granted, in that it is in the public interest and Staff is entitled to relief as a matter of law, and testimony, discovery and affidavits not previously filed that are relied on in the motion, all as required by Rule 4 CSR 240-2.117(1)(B).

27. AmMo asserts several purported affirmative defenses in ¶¶ 24 through 28 of its *Answer*, none of which constitute a sufficient defense or avoidance of Staff's *Complaint* as fully explained in Staff's *Suggestions* filed herein.

WHEREFORE, Staff prays that the Commission will grant summary determination of its *Complaint* filed herein and enter its order (1) finding that AmMo has violated § 393.1075.3 and .4, RSMo., Commission Rule 4 CSR 240-20.093(1)(F), and the *2012 Order* and the *2013 Order*; (2) authorizing its General Counsel to seek appropriate penalties for these violations in Circuit Court pursuant to § 393.140(5); and (3) requiring AmMo to provide to the Evaluators and to Staff the compliant avoided costs input files beginning with 2014 avoided costs for use in the DSMore® model for the Evaluators' PY2014 EM&V final reports; and granting such other and further relief as the Commission deems just.

Respectfully submitted,

/s/ Kevin A. Thompson

Kevin A. Thompson
Missouri Bar No. 36288
Chief Staff Counsel

Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102
573-751-6514 (telephone)
573-526-6969 (facsimile)
kevin.thompson@psc.mo.gov

Attorney for the Staff of the
Missouri Public Service Commission

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on this 28th day of August, 2015, on the parties of record as set out on the official Service List maintained by the Data Center of the Missouri Public Service Commission for this case, which date is not later than the date on which this pleading is filed with the Commission as required by Rule 4 CSR 240-2.117(1)(B), relating to Summary Determination.

/s/ Kevin A. Thompson