BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

R & S HOME BUILDERS, INC., AND CAROL AND ARVEL ALLMAN,	)	
COMPLAINANTS,	)	
v.	)	**Case No. EC-2014-____**
KCP&L-GREATER MISSOURI, OPERATIONS COMPANY	)	
RESPONDENT.	)	

COMPLAINT

COME NOW Complainants, by their attorneys, pursuant to Section 386.390, RSMo and 4 CSR 240-2.070 of the Commission's Rules of Practice and Procedure, and for their Complaint against Kansas City Power & Light-Greater Missouri Operations Company, respectfully state as follows:

PARTIES AND JURISDICTION

1. Complainants are electric customers of the Respondent Kansas City Power & Light-Greater Missouri Operations Company (KCP&L-GMO). The names and street addresses of each Complainant are listed below:

   a. R & S HOME BUILDERS, INC., 106 James St., Smithville, Missouri 64089

   b. CAROL AND ARVEL ALLMAN, 24108 E 92nd Terrace, Lee's Summit, Missouri 64064

2. The signature, telephone number, facsimile number and email address of Complainants are those of their legal representatives. All inquiries, correspondence, communications, pleadings, notices, orders, and decision relating to this matter should be directed to:

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3. Respondent Kansas City Power & Light Greater Missouri Operations Company ("GMO"), 1200 Main Street, Kansas City, MO 64105, is an electrical corporation and public utility as defined in Section 386.020, RSMo engaged in the business of manufacture, transmission, and distribution of electricity subject to the regulatory authority of the Commission pursuant to Chapters 386 and 393, RSMo

COMPLAINANTS' INJURIES / INTERESTS IN THIS CASE

4. The above-listed Complainants have an interest in this case because they are interested in receiving a rebate from Respondent for installing solar photovoltaic ("PV") systems on their residence or business, pursuant to Section 393.1030.3, RSMo. Each complainant has contacted Respondent in the form of a rebate application. Complainants are aggrieved in that Respondent has denied Complainants' rebate applications in violation of Section 393.1030.3, RSMo.

JURISDICTION

5. The Commission has general jurisdiction over KCP&L-GMO as an electrical

corporation pursuant to Sections 386.250 and 393.140, RSMo. The Commission has subject matter jurisdiction over this complaint because it involves a utility's violation of a law – Section 393.1030, RSMo – which delegates regulatory authority to the Commission. § 386.390.1, RSMo. The Commission also has primary jurisdiction, for purposes of judicial review, of the legal issues raised herein. *Evans v. Empire District Electric*, 346 S.W.3d 313, 318-319 (Mo. App. WD 2011).

BACKGROUND

6. In November 2008, Missouri voters approved Proposition C, otherwise known as Missouri's Renewable Energy Standard ("RES"), now codified as Sections 393.1020-1035, RSMo. Section 393.1030.1 requires "electrical corporations," as defined by Section 386.020(15), RSMo to achieve increasing percentages of their sales with electricity from renewable energy sources: two percent of sales in the years 2011-2013; five percent from 2014-2017; ten percent from 2018-2020; and fifteen percent in each calendar year beginning in 2021. That section also requires that at least two percent of each portfolio requirement be derived from solar energy.

7. As amended by House Bill 142 ("HB142") effective August 28, 2013, the RES now requires the following with respect to solar rebates (§ 393.1030.3, RSMO) (emphasis added):

> **[E]ach electric utility shall make available to its retail customers a solar rebate for new or expanded solar electric systems sited on customers' premises**, up to a maximum of twenty-five kilowatts per system, measured in direct current that were confirmed by the electric utility to have become operational in compliance with the provisions of section 386.890. The solar rebates shall be two dollars per watt for systems becoming operational on or before June 30, 2014; one dollar and fifty cents per watt for systems becoming operational between July 1, 2014, and June 30, 2015; one dollar per watt for systems becoming operational between July 1, 2015, and June 30, 2016; fifty cents per watt for systems becoming operational between July 1, 2016, and June 30, 2017; fifty cents per watt for systems becoming operational between July 1, 2017, and June 30, 2019; twenty-five cents per watt for systems becoming

operational between July 1, 2019, and June 30, 2020; and zero cents per watt for systems becoming operational after June 30, 2020.

8. HB 142 also states, in part, (§ 393.1030.3) (emphasis added:

> **If the electric utility determines the maximum average retail rate increase provided for in subdivision (1) of subsection 2 of this section will be reached in any calendar year, the electric utility shall be entitled to cease paying rebates to the extent necessary to avoid exceeding the maximum average retail rate increase** if the electrical corporation files with the commission to suspend its rebate tariff for the remainder of that calendar year at least sixty days prior to the change taking effect. The filing with the commission to suspend the electrical corporation's rebate tariff shall include the calculation reflecting that the maximum average retail rate increase will be reached and supporting documentation reflecting that the maximum average retail rate increase will be reached. The commission shall rule on the suspension filing within sixty days of the date it is filed. **If the commission determines that the maximum average retail rate increase will be reached, the commission shall approve the tariff suspension. 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.

9. On August 28, 2013, on the same day that HB142 went into effect, Respondent KCP&L-GMO filed an Application for Authority to Suspend Payment of Solar Rebates with the Missouri Public Service Commission in Case No. ET-2014-0059. This filing requested that the Commission grant KCP&L-GMO the authority to stop offering solar rebates to its customers because the Company believed it would reach or exceed its retail impact calculation within 60 days, as provided by Section 393.1030.2(1), RSMo. and 4 CSR 240-20.100(5). The Commission approved a Non-Unanimous Stipulation and Agreement on October 30, 2013, and refrained from determining whether Respondent KCP&L-GMO had reached or would reach the one percent retail rate impact. Complainants were not parties either to the Stipulation and Agreement or to Case No. ET-2014-0059.

10. On April 9, 2014, KCP&L-GMO again filed an Application for Authority to Suspend Payment of Solar Rebates in Case No. ET-2014-0277. In accompanying Direct Testimony, Tim Rush stated that KCP&L-GMO had not yet paid out the specified $50 million amount from the Non-Unanimous Stipulation and Agreement. Direct Testimony of Tim M. Rush, ET-2014-0277, pg. 5. The Commission has not yet granted authority to suspend rebates or determined whether Respondent KCP&L-GMO has reached or will reach the one percent retail rate impact.

COUNT I

RESPONDENT REQUIRED BY LAW TO CONTINUE PAYING REBATES UNTIL COMMISSION DETERMINES THAT MAXIMUM AVERAGE RETAIL RATE INCREASE WILL BE REACHED

11. Complainants incorporate paragraphs 1-11 herein by reference.

12. Respondent KCP&L-GMO's denial of Complainants' applications for solar rebates was unlawful, in that the Commission did not make the required determination that the one percent retail rate impact would be reached, and Respondent is required by law to continue paying rebates until the Commission makes such a determination.

13. Section 393.1030.3 requires that Respondent continue processing and paying solar rebates until the Commission determines that Respondent will meet or exceed its one percent retail rate impact within 60 days of Respondent filing for authority to suspend payment of rebates: "The commission shall rule on the suspension filing within sixty days of the date it is filed. If the commission determines that the maximum average retail rate increase will be reached, the commission shall approve the tariff suspension. *The electric utility shall continue to process and pay applicable solar rebates until a final commission ruling*…" (emphasis added).

14. The Commission did not make a final determination of whether Respondent would meet or exceed the one percent cap within 60 days of KCP&L-GMO's August 28, 2013 application to suspend payment of rebates. Similarly, the Commission has not yet made a determination for whether Respondent will meet or exceed the one percent cap within 60 days of KCP&L-GMO's April 9, 2014 application to suspend payment of rebates. As such, Respondent is required by law to continue processing and paying applicable solar rebates until the Commission makes such a ruling.

15. The above-quoted language of Section 393.1030.3 is directive in nature, and prescribes a specific finding of fact for the Commission to make before granting a utility authority to suspend paying rebates. The word "shall" is used multiple times to clarify: that the Commission is *required* to rule within 60 days of a utility's application; that the Commission is *required* to approve the tariff suspension only after determining that the one percent retail rate impact will be reached; and that the utility is *required* to continue processing and paying rebates until the Commission's final ruling. The determination that a utility will reach the one percent retail rate impact limit is an essential factual issue on which it is required for the Commission to rule before granting a utility authority to suspend rebate payments.

16. Missouri courts have weighed in on the standard for determining the adequacy of required findings of fact: "Findings of fact on disputed issues are a legal requirement for the Commission to reach its ultimate determination." *State ex rel. Midwest Gas User's Ass'n v. Public Service Com'n of State of Mo*., 996 S.W.2d 608 (Mo. App.W.D., 1999) (quoting *Century State Bank v. State Banking Board of Mo.*, 523 S.W.2d 856, 859 (Mo.App.1975). "The most reasonable and practical standard is to require that findings of fact be sufficiently definite and certain or specific under the circumstances of the particular case to enable the court to review the

decision intelligently and ascertain if the facts afford a reasonable basis for the order without resorting to the evidence." *State ex rel. Intern. Telecharge, Inc. v. Missouri Public Service Com'n*, 806 S.W.2d 680, 684 (Mo. Ct. App. 1991) (quoting *Glasnapp v. State Banking Bd*., 545 S.W.2d 382, 387 (Mo. Ct. App. 1976) and 2 Am.Jur.2d Administrative Law § 455, p. 268). "Additionally, findings of fact are adequate when they do not 'leave the reviewing court to speculate as to what part of the evidence the [Commission] believed and found to be true and what part it rejected.'" *Intern Telecharge, Inc*, 806 S.W.2d at 684 (quoting *State ex rel. American Tel. & Tel. Co. v. Public Serv. Comm'n*, 701 S.W.2d 745, 754 (Mo.App.1985).

17. In the present case, the Commission has made no finding that a Missouri utility has reached or will reach the one percent retail rate impact limit. In Case No. ET-2014-0059, the Commission's approval of the Non-Unanimous Stipulation and Agreement contained no statement as to whether Respondent would reach the retail rate impact limit within 60 days of its filing. Similarly, in the pending Case No. ET-2014-0277, the Commission has not yet granted authority to suspend rebates or made the required determination that Respondent has reached or will reach the one percent retail rate impact limit within 60 days. Without any statement or acknowledgement from the Commission on the issue of the retail rate impact limit, there exist no "sufficiently definite and certain or specific" findings of fact upon which a court could review the Commission's Order. A reviewing court would be forced to speculate as to whether the Respondent was close to reached the retail rate impact limit and thus whether the Commission even had the authority to authorize suspension of rebate payments.

18. Respondent has denied Complainants' solar rebate applications without a final determination from the Commission that Respondent was going to reach the maximum average retail rate increase limit. Accordingly Respondent's denials of Complainants' rebate applications

were unlawful, and Respondent is required to continue processing and paying solar rebates under Section 393.1030.3, RSMo, unless the Commission makes the required determination.

COUNT II

RESPONDENT'S DENIAL OF COMPLAINANTS' APPLICATIONS WAS NOT NECESSARY TO AVOID EXCEEDING MAXIMUM AVERAGE RETAIL RATE INCREASE

19. Complainants incorporate paragraphs 1-19 herein by reference.

20. Respondent KCP&L-GMO's denial of Complainants' applications for solar rebates was unlawful, in that such denials exceeded Respondent's authority to cease payment payments because: the denials were not necessary to avoid exceeding the law's one percent retail impact limit, and; any authority to cease payments extends only for the calendar year in which such authority is granted.

21. Section 393.1030.3 allows a utility to cease paying rebates after it files, and the Commission rules on, an application to suspend payment of rebates for the remainder of that calendar year. However, once such suspension application is granted, the utility may cease paying rebates only *"to the extent necessary to avoid exceeding the maximum average retail rate increase*." (§ 393.1030.3, RSMo) (emphasis added).

22. If the Commission were to have granted Respondent the authority to cease paying rebates, such authority would extend only so far as is necessary to avoid exceeding the retail rate impact limit. KCP&L-GMO has not and cannot show that denying Complainants' solar rebate applications was necessary to avoid exceeding the one percent retail impact limit. In fact, on pg. 7 of its 2013 RES Compliance Report, KCP&L-GMO states that "compliance for 2013 was

under the 1% cap…" Furthermore, in its 2014-2016 RES Compliance Plan, KCP&L-GMO states that its retail impact limit for 2014, 2015, and 2016 will be 0.238%, 0.011%, and 0.002% respectively. By its own admission, KCP&L-GMO did not reach the retail rate impact limit in 2013, and yet it turned down 169 solar rebate applicants in 2013. On their face, such denials cannot be necessary to avoid exceeding the retail rate impact limit.

23. Moreover, if the Commission were to have granted Respondent the authority to cease paying rebates, the law only allows the Commission to grant such authority for a single calendar year: "the electric utility shall be entitled to cease paying rebates to the extent necessary to avoid exceeding the maximum average retail rate increase if the electrical corporation files with the commission to suspend its rebate tariff *for the remainder of that calendar year* at least sixty days prior to the change taking effect." (emphasis added).

24. Respondent has not been granted authority to suspend payment of rebates, either in calendar years 2013 or 2014. Regardless of the effect of the Commission's October 30, 2013 ruling in Case No. ET-2014-0059, the Commission has made no ruling at all on Respondent's application in Case No. ET-2014-0277. Accordingly, Respondent must continue processing and paying rebates in calendar year 2014, until the procedure for suspending rebate payments in Section 393.1030.3, RSMo is followed.

25. Respondent denied Complainants' applications for solar rebates without demonstrating that such denials were necessary to avoid exceeding the retail rate impact limit. Moreover, Respondent denied Complainant's applications in 2013 and 2014 without being granted authority to suspend rebate payments for calendar years 2013 and 2014. Accordingly, Respondents' denials of Complainants' applications was unlawful.

RELIEF REQUESTED

Wherefore, Complainants pray that the Commission:

1. Find that Respondent KCP&L-GMO's denial of Complainants' solar rebate applications was unlawful, in that the Commission had not made a final determination that Respondent would meet or exceed the maximum average retail rate increase within 60 days of Respondent's August 28, 2013 application to suspend payment of solar rebates.

2. Find that Respondent KCP&L-GMO's denial of Complainants' solar rebate applications was unlawful, in that such denials were not necessary to avoid exceeding the maximum average retail rate increase.

3. Find that Respondent KCP&L-GMO did not possess the authority to suspend rebate payments for the separate calendar years of 2013 and 2014 because the Commission did not grant such authority for either year.

4. Order Respondent KCP&L-GMO to approve the solar rebate applications for Complainants and all other KCP&L-GMO customers who submitted rebate applications and were denied solar rebates in calendar year 2013 for the reason that Respondent did not have available funds.

5. Order Respondent KCP&L-GMO to process and pay solar rebates to customers who are otherwise applicable, and order Respondent to refrain from representing to its customers that solar rebates are unavailable unless the Commission approves an application to suspend that demonstrates that such suspension is necessary to avoid exceeding the one percent retail rate impact limit calculated in accordance with 4 CSR 240-20.100(5)(B).

6. Order such other relief as the Commission shall deem just and appropriate.

Respectfully Submitted,

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ATTORNEY 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 14th day of May, 2014 to Respondent Kansas City Power and Light-Greater Missouri Operations Company.

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