

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 19th day of
March, 2015.

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

**ORDER DISMISSING COMPLAINT AND, IN THE ALTERNATIVE,
GRANTING SUMMARY DETERMINATION**

Issue Date: March 19, 2014

Effective Date: April 18, 2015

The Commission is denying all relief sought in the complaint. The complaint seeks payment to Complainants and other unnamed persons on their solar rebate applications (“applications”) received by KCP&L Greater Missouri Operations Company (“GMO”). The complaint charges that GMO unlawfully denied applications and ceased to pay solar rebates (“payment”) without any authorization lawfully issued. But GMO has shown that it ceased payment only in compliance with the tariff¹ governing applications and payment, which constitutes authorization to cease payment. Also, Commission orders are not subject to collateral attack. Therefore, the Commission is granting GMO’s motion to dismiss the complaint and, in the alternative, entering summary determination in favor of GMO.

¹ As used in Commission practice, a tariff is a schedule governing rates and other terms of service. It may mean the whole set of such documents, or the subset for one service territory, or a single page.

I. Jurisdiction and Authority

The Commission has authority to hear a complaint alleging a violation of a statute or a Commission regulation, order, or tariff (“violation”) by any public utility.² The findings of fact below show that GMO is a public utility,³ specifically an electrical corporation.⁴ Therefore, the Commission has jurisdiction to determine whether GMO committed a violation.

II. Docket

Carol and Arvell Allman and R & S Home Builders, Inc., (“Complainants”) filed the complaint.⁵ GMO filed an answer.⁶ The Commission was under a writ of prohibition from the Circuit Court that prevented the Commission from taking any action in this proceeding for ten weeks.⁷ Meanwhile, the Commission’s staff (“Staff”) filed a recommendation with a supporting affidavit,⁸ which it later updated.⁹ GMO also filed a motion to dismiss for failure to state a claim,¹⁰ and Staff’s recommendation joined in GMO’s arguments. Complainants

² Section 386.390.1, RSMo 2000

³ Finding 1, Section 386.020(43), RSMo 2000.

⁴ Finding 1, Section 386.020(15), RSMo 2000.

⁵ Electronic Filing and Information System (“EFIS”) No. 1, May 14, 2014, *Complaint*. References to EFIS refer to this file except as otherwise noted.

⁶ EFIS No. 9, June 16, 2014, *Answer*.

⁷ From June 23, 2014, through August 15, 2014. *Save Our Lawfully Authorized Rebates, LLC, v. Missouri Public Service Comm’n*, Case No. 14AC-CC00316 (Cir. Ct. Cole County).

⁸ EFIS No. 13, June 30, 2014, *Staff Recommendation to Deny Complaint*.

⁹ EFIS No. 14, July 16, 2014, *Staff Update to Report and Recommendation*.

¹⁰ EFIS No. 10, June 16, 2014, *KCP&L Greater Missouri Operations Company's Motion to Dismiss*.

filed a response to the motion to dismiss.¹¹ GMO filed a reply.¹² The Commission issued its order granting in part, and denying in part, the motion to dismiss.¹³

GMO filed a motion for reconsideration.¹⁴ Complainants also filed a motion for reconsideration, which included a response to GMO's motion for reconsideration.¹⁵ GMO also filed a response to the Complainants' motion for reconsideration.¹⁶ The Commission issued its order denying both motions for reconsideration.¹⁷

But GMO's motion for reconsideration included arguments addressing the merits of this action based on matters outside the pleadings. In substance, those arguments constitute a motion for summary determination.¹⁸ Accordingly, the Commission determined to treat that part of GMO's motion for reconsideration "as a motion for summary determination as to the entire complaint," notified the parties, and gave Complainants the opportunity to file a response.¹⁹ Complainants filed a response²⁰ and a substitute

¹¹ EFIS No. 15, July 16, 2014, *Response to KCP&L Greater Missouri Operations Company's Motion to Dismiss*.

¹² EFIS No. 16, July 28, 2014, *KCP&L Greater Missouri Operations Company's Reply to Complainants' Response to Motion to Dismiss*.

¹³ EFIS No. 21, September 24, 2014, *Order Granting in Part Motion to Dismiss and Denying Motion to Amend*.

¹⁴ EFIS No. 23, September 26, 2014, *Verified Application for Rehearing and/or Motion for Reconsideration*.

¹⁵ EFIS No. 24, October 3, 2014, *Application for Rehearing*.

¹⁶ EFIS No. 25, October 13, 2014, *GMO's Response In Opposition To Complainants' Application for Rehearing*.

¹⁷ EFIS No. 29, December 29, 2014, *Order Denying Motions for Reconsideration and Rehearing*.

¹⁸ 4 CSR 240-2.117(1).

¹⁹ EFIS No. 29, December 29, 2014, *Order Denying Motions for Reconsideration and Rehearing*, page 6, last paragraph.

²⁰ EFIS No. 33, February 10, 2015, *Response in Opposition to Respondent's Motion for Reconsideration treated as a Motion for Summary Determination*.

response.²¹ GMO filed a reply that renewed the motion to dismiss.²² The Commission received no sur-reply.²³

III. Standards of Proof

Dismissal for failure to state a claim and summary determination before the Commission are analogous to procedures in Missouri Supreme Court Rules 55.27(a)(6) and 74.04, respectively.²⁴ Proof that establishes facts supporting summary determination also supports dismissal because the quantum of proof is higher for summary determination than for dismissal: summary determination requires undisputed facts,²⁵ but dismissal occurs despite factual disputes.²⁶

The Commission has made its regulation on summary determination under the authority of Section 386.410, RSMo 2000,²⁷ which provides:

1. All hearings before the commission or a commissioner shall be governed by rules to be adopted and prescribed by the commission. And in all investigations, inquiries or hearings the commission or commissioner shall not be bound by the technical rules of evidence.

2. No formality in any proceeding nor in the manner of taking testimony before the commission or any commissioner shall invalidate any order, decision, rule or regulation made, approved or confirmed by the commission.

²¹ EFIS No. 34, February 11, 2015, *Response in Opposition to Respondent's Motion for Reconsideration treated as a Motion for Summary Determination*.

²² EFIS No. 36, February 19, 2015, *GMO's Verified Reply to Complainants' Response in Opposition to Respondent's Motion for Summary Determination*.

²³ 4 CSR 240-2.080(13).

²⁴ Where a regulation is sufficiently similar to a rule, cases discussing the rule are helpful in explaining the regulation. *Johnson v. Mo. Bd. of Nursing Adm'rs*, 130 S.W.3d 619, 626 (Mo. App., W.D. 2004).

²⁵ 4 CSR 240-2.117(1)(E).

²⁶ *Romero v. Kansas City Station Corp.*, 98 S.W.3d 129, 134 -135 (Mo. App., W.D. 2003).

²⁷ *State ex rel. Laclede Gas Co. v. Public Service Comm'n*, 392 S.W.3d 24, 35 (Mo. App., W.D. 2012).

Under that authority, summary determination is similar to summary judgment under Missouri Supreme Court Rule 74.04, but is less formal and technical.

The court rule restricts evidentiary support for summary judgment to “pleadings, discovery, exhibits or affidavits” cited in the motion and responses.²⁸ The regulation allows the parties to establish or raise a genuine dispute as to any fact,²⁹ and allows the Commission to consider, all “the pleadings, testimony, discovery, affidavits, and memoranda on file [.]”³⁰ which includes verified filings.³¹ The record establishes the following facts without genuine dispute through the Commission’s official records,³² GMO’s verified application for rehearing,³³ GMO’s verified reply in support of summary determination,³⁴ and the admissions in the pleadings.

IV. Findings of Fact

1. GMO is engaged in the business of manufacturing, transmitting, and distributing electricity³⁵ to customers including Complainants.³⁶

2. On September 4, 2013, GMO brought an action before the Commission to cease payments (“earlier action”).³⁷ In the earlier action, the Commission required GMO to pay

²⁸ *Holzhausen v. Bi-State Dev. Agency*, 414 S.W.3d 488, 494 (Mo. App., E.D. 2013).

²⁹ 4 CSR 240-2.117(1)(C).

³⁰ 4 CSR 240-2.117(1)(B).

³¹ For example, 4 CSR 240-3.050(23), 4 CSR 240-3.140(1)(H), and 4 CSR 240-3.210(1)(C).

³² *Env'tl. Utilities, LLC v. Pub. Serv. Comm'n*, 219 S.W.3d 256, 265-66 (Mo. App., W.D. 2007).

³³ EFIS No. 23, September 26, 2014, *Verified Application for Rehearing and/or Motion for Reconsideration*.

³⁴ EFIS No. 36, February 19, 2015, *GMO's Verified Reply to Complainants' Response in Opposition to Respondent's Motion for Summary Determination*.

³⁵ EFIS No. 9, *Answer*, June 16, 2014, first page, paragraph 3.

³⁶ EFIS No. 9, *Answer*, June 16, 2014, first page, paragraph 1.

³⁷ File No. ET-2014-0059, *In the Matter of KCP&L Greater Missouri Operations Company's Application For Authorization To Suspend Payment of Certain Solar Rebates*, EFIS No. 1, September 4, 201, *Application for Authority to Suspend Payment of Solar Rebates*.

\$50 million in rebates (“specified level”).³⁸ That decision (“earlier decision”) issued on October 30, 2013,³⁹ and no application for rehearing or notice of appeal was filed.

3. On November 20, 2013, GMO received an application from R&S Lawn & Sprinkler.⁴⁰

4. By December 31, 2013, GMO had received applications totaling the specified level and 169 applications beyond that amount.⁴¹

5. On April 8, 2014, GMO received an application from Carol Allman⁴² and GMO acknowledged receipt with an email (“the email”).⁴³

6. On April 9, 2014, GMO brought another action before the Commission to cease payments (“later action”).⁴⁴ In the later action, the Commission approved a tariff (“the tariff”) that set a standard governing how GMO must process applications and pay solar rebates according to whether (a) GMO received the application by November 15, 2013, (“the deadline”) and (b) GMO’s payments reached the specified level.⁴⁵ That decision (“later

³⁸ File No. ET-2014-0059, October 30, 2013, EFIS No. 50, *Order Approving Stipulation and Agreement*, page 3, ordered paragraph 1; EFIS No. 42, October 3, 2013, *Non-Unanimous Stipulation and Agreement*, page 3, paragraph 7.

³⁹ File No. ET-2014-0059, October 30, 2013, EFIS No. 50, *Order Approving Stipulation and Agreement*.

⁴⁰ EFIS No. 23, September 26, 2014, *Verified Application for Rehearing and/or Motion for Reconsideration*, page 2, footnote 1, second sentence.

⁴¹ File No. EO-2014-0290, *In the Matter of KCP&L Greater Missouri Operations Company’s Submission of Its 2013 Renewable Energy Standard Compliance Report*, EFIS No. 1, April 15, 2014, *2013 Annual Renewable Energy Standard Compliance Report*, page 6, Section 2.11.

⁴² EFIS No. 23, September 26, 2014, *Verified Application for Rehearing and/or Motion for Reconsideration*, page 2, footnote 1, second sentence.

⁴³ EFIS No. 36, February 19, 2015, GMO’s *Verified Reply to Complainants’ Response in Opposition to Respondent’s Motion for Summary Determination*, Exhibit 1, first page, third paragraph, emphasis added.

⁴⁴ File No. ET-2014-0277, *In the Matter of KCP&L Greater Missouri Operations Company’s Application For Authorization To Suspend Payment of Certain Solar Rebates*, EFIS No. 1, April 9, 2014, *Application for Authority to Suspend Payment of Solar Rebates*.

⁴⁵ GMO’s tariff, *P.S.C. MO. No. 1*, Sheet No. R-62.19 (3rd Revised), Section 9.18.B.

decision”) issued on May 28, 2014,⁴⁶ and no application for rehearing or notice of appeal was filed.

7. GMO continued to process applications in the queue. If received by the deadline, GMO paid regardless of the specified level.⁴⁷ If received after the deadline, GMO paid up to the specified level.⁴⁸

8. By December 31, 2014, GMO’s payments reached the specified level, and Complainants’ applications were still in the queue, so GMO did not pay Complainants’ applications.⁴⁹

V. Conclusions of Law

The Commission must set forth its conclusions on the complaint.⁵⁰ The complaint alleges a violation of the Renewable Energy Standard’s provisions on rebates for new or expanded solar electric systems.⁵¹ Those provisions require electric corporations to pay up to a statutorily-described limit (“the specified level”) as authorized by the Commission.⁵²

⁴⁶ File No. ET-2014-0277, May 28, 2014, EFIS No. 10, *Order Approving Tariff*.

⁴⁷ EFIS No. 23, September 26, 2014, *Verified Application for Rehearing and/or Motion for Reconsideration*, page 2, the only full paragraph not indented, second sentence.

⁴⁸ EFIS No. 36, February 19, 2015, *GMO’s Verified Reply to Complainants’ Response in Opposition to Respondent’s Motion for Summary Determination*, Exhibits 1 and 2.

⁴⁹ EFIS No. 23, September 26, 2014, *Verified Application for Rehearing and/or Motion for Reconsideration*, page 2, footnote 1, third sentence.

⁵⁰ Section 386.420.2, RSMo Supp. 2013.

⁵¹ “As provided for in this section, [GMO] shall make available to its retail customers a solar rebate for new or expanded solar electric systems sited on customers’ premises [.]” Section 393.1030.3, RSMo Supp. 2013, first sentence. That subsection appears at full length in the Appendix.

⁵² The Renewable Energy Standard names the amount “specified level retail rate increase” and relates the amount to the cost of GMO’s compliance with the Renewable Energy Standard. Section 393.1030.2(1), RSMo Supp. 2013. The Commission’s regulations further describe the specified level at 4 CSR 240-20.100(5).

The Commission issues that authorization upon a specified procedure.⁵³ Pending that procedure, electric corporations must continue to “process and pay” rebates.⁵⁴ Whether the Commission authorizes cessation of payments depends on whether the electric corporation shows that it will pay out the specified level.⁵⁵ If so, the Commission must authorize the electric corporation to suspend the rebate payment tariff (“authorization”).⁵⁶ If the Commission issues the authorization, the electric corporation must still process and pay rebates up to the specified level.⁵⁷

The Renewable Energy Standard’s novelty and relatively recent enactment present special challenges for the parties. The parties have accordingly refined and adjusted their arguments over the course of this action, addressing both dismissal and summary determination. The Commission must distinguish between dismissal and summary determination because those two dispositions are not interchangeable.

A. Dismissal

GMO argues that the complaint states no claim for relief because the statutes bar both the claim and the relief. As in a motion to dismiss under Missouri Supreme Court Rule

⁵³ “If [GMO] determines the [specified level] will be reached in any calendar year, [GMO] shall be entitled to cease paying rebates to the extent necessary to avoid exceeding the [specified level] if [GMO] 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. [.]” Section 393.1030.3, RSMo Supp. 2013, fifth sentence.

⁵⁴ “[GMO] shall continue to process and pay applicable solar rebates until a final commission ruling [.]” Section 393.1030.3, RSMo Supp. 2013, ninth sentence.

⁵⁵ “The filing with the commission to suspend [GMO’s] rebate tariff shall include the calculation reflecting that the [specified level] will be reached and supporting documentation reflecting that the [specified level] will be reached.” Section 393.1030.3, RSMo Supp. 2013, sixth sentence.

⁵⁶ “If the commission determines that the [specified level] will be reached, the commission shall approve the tariff suspension.” Section 393.1030.3, RSMo Supp. 2013, eighth sentence.

⁵⁷ “[GMO] shall be entitled to cease paying rebates to the extent necessary to avoid exceeding the [specified level.]” Section 393.1030.3, RSMo Supp. 2013, fifth sentence.

55.27(a)(6), GMO has the burden on its motion.⁵⁸ The Commission rules on the motion by disregarding the mere conclusions unsupported by allegations⁵⁹ assuming that the complaint's allegations are true, and determining whether those allegations describe a claim.⁶⁰

As to the claim, the allegations are that GMO denied applications and ceased payments unlawfully under the earlier decision because the earlier decision was issued without separately stated findings of fact. In response, GMO cites Section 386.550, RSMo 2000, which bars any collateral attack on any Commission decision.

Section 386.550, RSMo 2000 provides:

In all collateral actions or proceedings the orders and decisions of the commission which have become final shall be conclusive [. ⁶¹]

Whether a decision is final, and whether an action constitutes a collateral attack on that decision, depends on the existence of an exclusive remedy.

The exclusive remedy for a Commission decision is an application for rehearing⁶² and notice of appeal. ⁶³ Those filings did not occur as to either decision, so the decisions are final, which makes them conclusive for any collateral action. A collateral action is an action that challenges an order by means other than the exclusive remedy.⁶⁴ That describes the complaints' prayer for relief from the decisions' effects. Each decision is final,

⁵⁸ *Saidawi v. Giovanni's Little Place, Inc.*, 987 S.W.2d 501, 504 (Mo. App., E. D. 1999), discussing Rule 55.27(a)(6), the analog of Commission regulation 4 CSR 240-2.070(7).

⁵⁹ *Ford Motor Credit Co. v. Updegraff*, 218 S.W.3d 617, 621 (Mo.App., W.D. 2007).

⁶⁰ *Gordon v. City of Kansas City*, 450 S.W.3d 793, 798 (Mo. App., W.D. 2014).

⁶¹ Section 386.550, RSMo 2000.

⁶² Section 386.500, RSMo 2000.

⁶³ Section 386.510, RSMo Supp. 2013.

⁶⁴ *State v. Kosovitz*, 342 S.W.2d 828, 830, (Mo. 1961).

and was the subject of no application for rehearing. Therefore, the complaint constitutes a collateral action, in that it questions a final decision, so it seeks a claim for which relief cannot be granted.

Complainants argue that the complaint does not challenge any order of the Commission, only GMO's practices, but the courts have addressed that argument.

[Complainant] contends that it is not attacking the order which the Commission made in 1985, but is simply attacking a [tariff] approved by the Commission. [Complainant] contends that the [tariff] is not the order of the Commission but is simply a [tariff]. However, [Complainant] fails to note that the only purpose of the order of the Commission in 1985 was the approval of [the tariff]. Thus, it is impossible to separate [the tariff] from the order of the Commission. When [Complainant] attacks [the tariff], it must necessarily attack the order which enabled [the utility] to adopt and enforce [the tariff]. By § 386.550, [Complainant] cannot collaterally attack the order of the Commission by which [the tariff] was adopted. For that reason [Complainant] may not in this proceeding attack [the tariff] but is bound by the requirements of [the tariff].⁶⁵

When Complainants challenge the practice, Complainants challenge the decision and tariff requiring that practice.

Also, the relief sought is unlawful. The complaint seeks payment on all pending applications without regard to the tariff. That relief is unavailable, GMO argues, because Section 393.130.3, RSMo Supp. 2013, bars GMO from granting any special rebate, and any undue or unreasonable preference or advantage.

2. No . . . electrical corporation . . . shall directly or indirectly by any special . . . rebate . . . receive from any person . . . a greater or less compensation for . . . electricity . . . than it . . . receives from any other person . . . for doing a like and contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions.

⁶⁵ State ex rel. Licata, Inc. v. Pub. Serv. Comm'n of Mo, 829 S.W.2d 515, 518 (Mo. App., W.D. 1992).

3. No . . . electrical corporation . . . shall make or grant any undue or unreasonable preference or advantage to any person . . . or subject any particular person . . . to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Relief contrary to the tariff would constitute a special rebate, and an undue or unreasonable preference or advantage.

The complaint does not state a claim for which relief may be granted, and the relief sought is unlawful, so Commission will grant the motion to dismiss as to the entire complaint.

B. Summary Determination

The regulation on summary determination provides the same burden of proof as the rule on summary judgment, so the burdens of any party— moving or non-moving, on a claim or defense, with or without the burden of proof—are the same and cases interpreting the rule are helpful as to GMO's motion. Complainants have the burden of proof on their complaint.⁶⁶ Therefore, GMO prevails on the motion if the facts it has established beyond genuine dispute negate, or show that Complainants cannot establish, an element of the complaint.⁶⁷ The regulation⁶⁸ also requires GMO to show an element not found in the rule,⁶⁹ which is that granting the motion is in the public interest.⁷⁰

⁶⁶ *AG Processing, Inc. v. KCP & L Greater Missouri Ops. Co.*, 385 S.W.3d 511, 516 (Mo. App., W.D. 2012).

⁶⁷ 4 CSR 240-2.117(1)(E); *ITT Comm. Fin. Corp. v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371, 380-82 (Mo. banc 1993).

⁶⁸ 4 CSR 240-2.117(1)(B).

⁶⁹ Missouri Supreme Court Rule 74.04

⁷⁰ 4 CSR 240-2.117(1)(B).

1. Complainants Cannot Prove Elements of Their Claim

Complainants cannot prove the procedural errors they allege because the procedures cited did not apply. Separately stated findings of fact are necessary only in a contested case,⁷¹ and neither action was a contested case,⁷² so each decision need only set forth the Commission's conclusions,⁷³ which they did. Therefore, even if the complaint stated a claim, Complainants could not prove that claim.

2. The Record Negates Elements of the Complaint

The complaint alleges violation of the Renewable Energy Standard procedure for cessation of payment:

As provided for in this section, [GMO] **shall make available** to its retail customers a solar rebate [. GMO] shall be entitled to cease paying rebates to the extent necessary to avoid exceeding the maximum . . . if [GMO] files with the commission to suspend [GMO]'s rebate tariff for the remainder of that calendar year [. GMO] **shall continue to process and pay** applicable solar rebates until a final commission ruling [. ⁷⁴]

But GMO has shown a final commission ruling—the tariff's implementing provisions that authorize GMO to cease payment—and compliance with those provisions:

[GMO] will pay solar rebates for all valid applications received by [GMO] by [the deadline], which are preapproved by [GMO] and which result in the installation and operation of a Solar Electric System pursuant to [GMO]'s rules and tariffs. Applications received after [the deadline] may receive a solar rebate payment if the total amount of solar rebates paid by

⁷¹ Section 536.090, RSMo 2000.

⁷² File No. ET-2014-0059, EFIS No. 50, *Order Approving Stipulation and Agreement*, issued on October 30, 2013, page 2, third paragraph. File No. ET-2014-0277, EFIS No. 10, *Order Approving Tariff*, issued on May 10, 2014, page 3-4.

⁷³ Section 386.420.2, RSMo Supp. 2013.

⁷⁴ Section 393.1030.3, RSMo Supp. 2013, ninth sentence.

[GMO] for those applications received on or before [the deadline] are less than [the specified level].^{75]}

GMO has shown compliance with the amount of payments and order of payment set forth in the queue system prescribed by statute.⁷⁶ The tariff has the force and effect of a statute.⁷⁷

Complainants' premise is that GMO must pay every application received before authorization issued. That premise is contrary to the plain language of the statute and the tariff, which recognize the practicalities of managing the rebate program. Pending authorization to cease payment, the Renewable Energy Standard expressly required GMO, not just to pay, but to "continue to process [.]"⁷⁸

Processing applications required GMO to verify that the applicant was a current customer, had an account not delinquent or in default, and met customer-generator status as defined in GMO's net metering rider electric tariff.⁷⁹ Paying without processing would have constituted a violation.

Complainants also argue that authorization to cease payment must occur each year under the following language:

If the electric utility determines the [specified level] 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 [specified level] if the electrical corporation files with the commission to suspend its rebate tariff for the

⁷⁵ GMO's tariff, *P.S.C. MO. No. 1*, Sheet No. R-62.19 (3rd Revised), Section 9.18(B).

⁷⁶ Finding of Fact 7.

⁷⁷ *State ex rel. Missouri Pipeline Co. v. Missouri Pub. Serv. Comm'n*, 307 S.W.3d 162, 178 (Mo. App., W.D. 2009), as modified (Feb. 2, 2010).

⁷⁸ Section 393.1030.3, RSMo Supp. 2013, ninth sentence.

⁷⁹ GMO's tariff, *P.S.C. MO. No. 1*, Sheet No. R-62.19 (3rd Revised), Section 9.18(B).

remainder of that calendar year at least sixty days prior to the change taking effect. [⁸⁰]

Those words entitle GMO to a yearly authorization but do not require authorization in every calendar year.

Therefore, GMO established facts showing that it did not cease payment except in compliance with the authorization issued according to law, which negates the element of unlawful conduct, legally entitling GMO to a favorable decision on the merits of the complaint.

a. The Compliance Report

Complainants attempt to raise a genuine issue as to when GMO ceased payment. Complainants cite GMO's compliance report for 2013.⁸¹

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.

The words "denied" and "denial" appeared in that recitation.

But that is only because the Commission's regulation phrased the inquiry that way:

(7) Annual RES Compliance Report and RES Compliance Plan. Each electric utility shall file an RES compliance report no later than April 15 to report on the status of the utility's compliance with the renewable energy standard and the electric utility's compliance plan as described in this section for the most recently completed calendar year. . . . The plan shall be filed no later than April 15 of each year.

⁸⁰ Section 393.1030.3, RSMo Supp. 2013.

⁸¹ File No. EO-2014-0290, EFIS No. 1, April 15, 2014, *2013 Annual Renewable Energy Standard Compliance Report*, page 6, Section 2.11.

(A) Annual RES Compliance Report.

1. The annual RES compliance report shall provide the following information for the most recently completed calendar year for the electric utility:

* * *

K. The total number of customers that were **denied** a solar rebate and the reason(s) for **denial** [⁸²]

Thus, in context, the 2013 *[RES] Compliance Report* does not raise a genuine issue as to whether GMO “ma[d]e available and “continue[d] to process and pay applicable solar rebates” in compliance with the statute and tariff.

And when GMO used its own words, GMO described the status of those claims differently, as shown in the email.

b. The Email

Complainants cite the email as evidence that GMO denied Carol Allman’s application without authority, but a closer look at the email shows that it did not deny the application at all. It describes the queue:

In terms of next steps, we will conduct an initial administrative review of your application to ensure all customer information is accurate and meets the application requirements. We will respond within 10 business days if there are any issues. Otherwise, we will **hold** your application **in the queue** and will notify you **if rebate funds become available** for you to receive a rebate. [⁸³]

GMO further iterated that it was processing applications and paying rebates in the order received:

⁸² 4 CSR 240-20.100(7)(A)K, emphasis added.

⁸³ EFIS No. 36, February 19, 2015, *GMO’s Verified Reply to Complainants’ Response in Opposition to Respondent’s Motion for Summary Determination*, Exhibit 1, first page, fourth paragraph, emphasis added.

[D]ue to the popularity of this program, at this point, KCP&L has committed rebate funds equal to the [specified level] in your service area. As a result, we will not be able to provide you with a solar rebate offer following your administrative review. However, if any solar rebate application submitted in your service area is rejected or approved applications not completed within the defined construction period, those **funds will be made available** to the next qualifying customer **in the queue** [⁸⁴]

That language shows that processing and payment were continuing when GMO received Carol Allman's application.

3. Summary Determination is in the Public Interest

The public interest includes factors related to "public welfare, efficient facilities and substantial justice between patrons and public utilities [.]"⁸⁵ The public interest favors resolving the complaint because the decisions brought resolution to GMO's solar rebate practice, the complaint cannot disturb that resolution, and no party shows any reason for protracting this procedure given the undisputed material facts.

Complainants argue that it is unfair to apply a tariff approved in an action to which they were not parties and of which they had no notice. Personal notice to Complainants is irrelevant to the tariff governing GMO.⁸⁶ Complainants' personal participation in the tariff action is not necessary for the tariff to govern.⁸⁷ Further, the Commission set the specified level in the earlier action:

GMO will not suspend payment of solar rebates in 2013 and beyond unless the solar rebate payments reach [the specified level.] If and when the solar rebate payments are anticipated to reach the specified level, GMO . . . will file with the

⁸⁴ EFIS No. 36, February 19, 2015, *GMO's Verified Reply to Complainants' Response in Opposition to Respondent's Motion for Summary Determination*, Exhibit 1, first page, third paragraph, emphasis added.

⁸⁵ Section 386.610, RSMo 2000.

⁸⁶ *State ex rel. Harline v. Pub. Serv. Comm'n of Mo.*, 343 S.W.2d 177, 184 (Mo. App., K.C. 1960).

⁸⁷ *State ex rel. Licata, Inc. v. Pub. Serv. Comm'n of Mo.*, 829 S.W.2d 515, 518 (Mo. App., W.D. 1992).

Commission an application under the 60-day process as outlined in section 393.1030.3 RSMo to cease payments beyond the specified level in the year in which the specified level is reached and all future calendar years. [⁸⁸]

That decision announced the specified level 14 months before payments reached the specified level.⁸⁹ Moreover, Complainants, like all the public, had representation in both actions through the Office of the Public Counsel.⁹⁰ And Public Counsel agreed to the earlier decision setting the specified level.⁹¹

Therefore, the Commission will grant summary determination in GMO's favor.

THE COMMISSION ORDERS THAT:

1. The motion to dismiss is granted and the complaint is dismissed.
2. In the alternative, the Commission grants summary judgment and enters its decision on the merits in favor of KCP&L Greater Missouri Operations Company.
3. All relief sought in the complaint is denied.
4. The evidentiary hearing is cancelled.

⁸⁸ File No. ET-2014-0059, EFIS No. 50, October 30, 2013, *Order Approving Stipulation and Agreement*, page 3, ordered paragraph 1; incorporating EFIS No. 42, October 3, 2013, *Non-Unanimous Stipulation and Agreement*, page 3, paragraph II.7.a.

⁸⁹ Finding of Fact 2.

⁹⁰ Section 386.710.1(2), RSMo 2000; 4 CSR 240-2.010(1).

⁹¹ File No. ET-2014-0059, EFIS No. 42, October 3, 2013, *Non-Unanimous Stipulation and Agreement*, page 1 and 10.

5. This order shall become effective on April 18, 2015.



BY THE COMMISSION

Morris L. Woodruff

Morris L. Woodruff
Secretary

R. Kenney, Chm., Stoll, W. Kenney,
Hall, and Rupp, CC., concur.

Jordan, Senior Regulatory Law Judge