

**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.

Patricia Schuba and Dean Todd,)	
)	
Complainants,)	
)	
v.)	File No. EC-2014-0342
)	
Union Electric Company d/b/a Ameren Missouri,)	
)	
Respondent.)	

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

Issue Date: March 19, 2015

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 solar rebate applications (“applications”) received by Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri”). The complaint charges that Ameren Missouri unlawfully denied applications and ceased to pay solar rebates (“payment”) without any authorization lawfully issued. But Ameren Missouri has shown that it did not cease payment, and that it has complied with the tariff¹ governing applications and payment. Also, Commission orders are not subject to collateral attack. Therefore, the Commission is granting Ameren Missouri’s motion to

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.

dismiss the complaint and, in the alternative, entering summary determination in favor of Ameren Missouri.

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 Ameren Missouri is a public utility,³ specifically an electrical corporation.⁴ Therefore, the Commission has jurisdiction to determine whether Ameren Missouri committed a violation.

II. Docket

Patricia Schuba and Dean Todd (“Complainants”) filed the complaint.⁵ Ameren Missouri filed an answer,⁶ and the Commission’s staff (“Staff”) filed a recommendation.⁷ The Commission was under a writ of prohibition that from the Circuit Court prevented the Commission from taking any action in this proceeding for ten weeks.⁸ Meanwhile, Ameren Missouri filed a motion for summary determination (“motion”)⁹ with a supporting memorandum and affidavit. Complainants filed a response to the motion.¹⁰ Ameren

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 indicate the content of this file except as otherwise noted.

⁶ EFIS No. 8, June 16, 2014, *Answer*.

⁷ EFIS No. 9, June 30, 2014, *Staff Recommendation to Deny Complaint*.

⁸ 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).

⁹ EFIS No. 27, November 13, 2014, *Ameren Missouri’s Motion for Summary Disposition*. From June 23, 2014, through August 15, 2014, the Circuit Court of Cole County prohibited the Commission from doing anything in this action. Case No. 14AC-CC00316.

¹⁰ EFIS No. 30, December 12, 2014, *Response to Union Electric Company’s Motion for Summary Determination*.

Missouri filed a reply.¹¹ The motion includes arguments that the complaint is a collateral attack on a Commission decision, and those arguments constitute a motion to dismiss for failure to state a claim.¹² Accordingly, the Commission will treat that part of the motion as a motion to dismiss for failure to state a claim.

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.¹³ 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,¹⁴ but dismissal occurs despite factual disputes.¹⁵

The Commission has made its regulation on summary determination under the authority of Section 386.410, RSMo 2000,¹⁶ 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.

¹¹ EFIS No. 31, July 28, 2014, Reply Memorandum in Support of Ameren Missouri's Motion for Summary Disposition.

¹² 4 CSR 240-2.117(1).

¹³ 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).

¹⁴ 4 CSR 240-2.117(1)(E).

¹⁵ Romero v. Kansas City Station Corp., 98 S.W.3d 129, 134 -135 (Mo. App., W.D. 2003).

¹⁶ 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, though not identical, to summary judgment under Missouri Supreme Court Rule 74.04.

The affidavits, the Commission's official records,¹⁷ admissions in the pleadings, and establish the following facts without dispute.

IV. Findings of Fact

1. Ameren Missouri is engaged in the business of manufacturing, transmitting, and distributing electricity¹⁸ to customers including Complainants.¹⁹

2. On September 30, 2013, Ameren Missouri brought an action before the Commission,²⁰ in which Ameren Missouri filed a request to cease payments, with a proposed tariff.²¹ Ameren Missouri filed a revised tariff ("tariff"). The tariff required Ameren Missouri to pay \$91.9 million in rebates ("specified level")²² in the order that they qualified ("queue") for calendar year 2013.²³ The Commission approved the tariff by decision issued on December 12, 2013 ("earlier decision").²⁴

¹⁷ *Env'tl. Utilities, LLC v. Pub. Serv. Comm'n*, 219 S.W.3d 256, 265-66 (Mo. App., W.D. 2007).

¹⁸ EFIS No. 8, June 16, 2014, *Answer*, page 1, paragraph 3.

¹⁹ EFIS No. 8, June 16, 2014, *Answer*, page 1, paragraph 1.

²⁰ File No. ET-2014-0085, *In the Matter of Union Electric Company d/b/a Ameren Missouri's Application For Authorization To Suspend Payment of Solar Rebates*, EFIS No. 1, September 30, 2013, *Notice of Tariff Issue and Motion for Expedited Order*.

²¹ File No. ET-2014-0085, *In the Matter of Union Electric Company d/b/a Ameren Missouri's Application For Authorization To Suspend Payment of Solar Rebates*, EFIS No. 4, October 3, 2013, *Application for Authority to Suspend Payment of Solar Rebates*.

²² Ameren Missouri's tariff, *Mo. P.S.C. Schedule No. 6*, Sheet No. 88 (2nd Revised), *Availability*.

²³ Ameren Missouri's tariff, *Mo. P.S.C. Schedule No. 6*, Sheet No. 88.2 (1st Revised), *Reservation Queue*. The same provisions apply for 2014. *Mo. P.S.C. Schedule No. 6*, Sheet No. 88.2 (2nd Revised), *Reservation Queue*.

²⁴ File No. ET-2014-0085, EFIS No. 73, December 12, 2013, *Order Approving Tariff and Granting Variance*.

3. By mid-December 2013, Ameren Missouri had received applications for amounts totaling the specified level.²⁵ By November 13, 2014, what remained of the specified level covered only those applications received by December 20, 2013.²⁶ On December 23 and 26, 2013, Ameren Missouri received applications from Patricia Schuba²⁷ and Deane Todd²⁸ respectively. Ameren Missouri continued to process applications in the queue.²⁹

V. Conclusions of Law

The Commission must set forth its conclusions on the complaint.³⁰ The complaint alleges a violation of the Renewable Energy Standard's provisions on rebates for new or expanded solar electric systems.³¹ Those provisions require electric corporations to pay up to a statutorily-described limit ("the specified level") as authorized by the Commission.³²

The Commission issued that authorization upon a specified procedure.³³ Pending that procedure, electric corporations must continue to "process and pay" rebates.³⁴

²⁵ EFIS No. 27, November 13, 2014, *Affidavit of Matt Michels*, page 2, paragraph 4.

²⁶ EFIS No. 27, November 13, 2014, *Affidavit of Matt Michels*, page 2, paragraph 5.

²⁷ EFIS No. 27, November 13, 2014, *Affidavit of Matt Michels*, page 2, paragraph 6.

²⁸ EFIS No. 27, November 13, 2014, *Affidavit of Matt Michels*, page 2, paragraph 7.

²⁹ EFIS No. 27, November 13, 2014, *Affidavit of Matt Michels*, page 2, paragraph 5, 6, and 7.

³⁰ Section 386.420.2, RSMo Supp. 2013.

³¹ "As provided for in this section, [Ameren Missouri] 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.

³² The Renewable Energy Standard names the amount "specified level retail rate increase" and relates the amount to the cost of Ameren Missouri'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).

³³ "If [Ameren Missouri] determines the [specified level] will be reached in any calendar year, [Ameren Missouri] shall be entitled to cease paying rebates to the extent necessary to avoid exceeding the [specified level] if [Ameren Missouri] 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.

³⁴ "[Ameren Missouri] shall continue to process and pay applicable solar rebates until a final commission ruling [.]" Section 393.1030.3, RSMo Supp. 2013, ninth sentence.

Whether the Commission authorizes cessation of payments depends on whether the electric corporation shows that it will pay out the specified level.³⁵ If so, the Commission must authorize the electric corporation to suspend the rebate payment tariff (“authorization”).³⁶ If the Commission issues the authorization, the electric corporation must still process and pay rebates up to the specified level.³⁷

The Commission must distinguish between dismissal and summary determination because those two dispositions are not interchangeable.

A. Dismissal

Ameren Missouri has shown 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 55.27(a)(6), Ameren Missouri has the burden on its motion.³⁸ The Commission rules on the motion by disregarding the mere conclusions unsupported by allegations³⁹ assuming that the complaint’s allegations are true, and determining whether those allegations describe a claim.⁴⁰

As to the claim, the allegations are that Ameren Missouri denied applications and ceased payments unlawfully because the earlier decision was issued without separately

³⁵ “The filing with the commission to suspend [Ameren Missouri’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.

³⁶ “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.

³⁷ “[Ameren Missouri] 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.

³⁸ *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).

³⁹ *Ford Motor Credit Co. v. Updegraff*, 218 S.W.3d 617, 621 (Mo.App., W.D. 2007).

⁴⁰ *Gordon v. City of Kansas City*, 450 S.W.3d 793, 798 (Mo. App., W.D. 2014).

stated findings of fact. In response, Ameren Missouri 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 [.⁴¹]

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 rehearing⁴² and notice of appeal.⁴³ Those filings did not occur as to the earlier decision, so the decision is final, which makes it conclusive for any collateral action. A collateral action is an action that challenges an order by means other than the exclusive remedy.⁴⁴ That describes the complaints' prayer for relief from the decisions' effects. Each decision is final, 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 Ameren Missouri'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

⁴¹ Section 386.550, RSMo 2000.

⁴² Section 386.500, RSMo 2000.

⁴³ Section 386.510, RSMo Supp. 2013.

⁴⁴ State v. Kosovitz, 342 S.W.2d 828, 830, (Mo. 1961).

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].^{45]}

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 unlawful because Section 393.130.3, RSMo Supp. 2013, bars Ameren Missouri 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.

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.

⁴⁵ State ex rel. Licata, Inc. v. Pub. Serv. Comm'n of Mo, 829 S.W.2d 515, 518 (Mo. App., W.D. 1992).

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 Ameren Missouri's motion. Complainants have the burden of proof on their complaint.⁴⁶ Therefore, Ameren Missouri 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.⁴⁷ The regulation⁴⁸ also requires Ameren Missouri to show an element not found in the rule,⁴⁹ which is that granting the motion is in the public interest.⁵⁰

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,⁵¹ and the earlier action was not a contested case, so the decision need only set forth the Commission's conclusions,⁵² which it 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:

⁴⁶ AG Processing, Inc. v. KCP & L Greater Missouri Ops. Co., 385 S.W.3d 511, 516 (Mo. App., W.D. 2012).

⁴⁷ 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).

⁴⁸ 4 CSR 240-2.117(1)(B).

⁴⁹ Missouri Supreme Court Rule 74.04

⁵⁰ 4 CSR 240-2.117(1)(B).

⁵¹ Section 536.090, RSMo 2000.

⁵² Section 386.420.2, RSMo Supp. 2013.

As provided for in this section, [Ameren Missouri] **shall make available** to its retail customers a solar rebate [. Ameren Missouri] shall be entitled to cease paying rebates to the extent necessary to avoid exceeding the maximum . . . if [Ameren Missouri] files with the commission to suspend [Ameren Missouri]'s rebate tariff for the remainder of that calendar year [. Ameren Missouri] **shall continue to process and pay** applicable solar rebates until a final commission ruling [.⁵³]

But Ameren Missouri has shown compliance with the amount of payments and the order of payment set forth in the queue system prescribed by the tariff.⁵⁴ The tariff has the force and effect of a statute.⁵⁵

Complainants argue that Ameren Missouri 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, the Renewable Energy Standard expressly required Ameren Missouri, not just to pay, but to “continue to process [.]”⁵⁶

Processing applications required Ameren Missouri to verify that the applicant was a current customer, had an account not delinquent or in default, met customer-generator status as defined in Ameren Missouri’s qualified net metering units tariff, and many other requirements.⁵⁷ Paying without processing would have constituted a violation.

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

⁵³ Section 393.1030.3, RSMo Supp. 2013, ninth sentence.

⁵⁴ Finding of Fact 3.

⁵⁵ *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).

⁵⁶ Section 393.1030.3, RSMo Supp. 2013, ninth sentence.

⁵⁷ Ameren Missouri’s tariff, *MO. P.S.C. Schedule No. 6*, Sheet No. 88 (3rd Revised).

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 remainder of that calendar year at least sixty days prior to the change taking effect. [⁵⁸]

Those words entitle Ameren Missouri to a yearly authorization but do not require authorization in every calendar year. ⁵⁹

Therefore, Ameren Missouri established facts showing that it did not cease payment and that it complied with the law, which negates the element of unlawful conduct, legally entitling Ameren Missouri to a favorable decision on the merits of the complaint.

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 [.]”⁶⁰ The public interest favors resolving the complaint because the decisions brought resolution to Ameren Missouri’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

⁵⁸ Section 393.1030.3, RSMo Supp. 2013.

⁵⁹ Ameren Missouri’s later action for authorization to cease payments in 2014 thus represents an abundance of caution. File No. ET-2014-0350, *In the Matter of Ameren Missouri’s Application for Authorization to Suspend Payment of Solar Rebates*. The tariff approved in that action changed only the time of cessation from “2013 and beyond” to “2014 and beyond [.]” Ameren Missouri’s tariff, EFIS No. 7, *Order Regarding Tariff*, page 3, ordered paragraph 1; *MO. P.S.C. Schedule No. 6*, Sheet 88 (3rd Revised).

⁶⁰ Section 386.610, RSMo 2000.

irrelevant to the tariff governing Ameren Missouri.⁶¹ Complainants' personal participation in the tariff action is not necessary for the tariff to govern.⁶² Further, the Commission set the specified level in the decision:

Ameren Missouri 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, Ameren Missouri . . . will file with the 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. [⁶³]

That decision announced the specified level.⁶⁴ Moreover, Complainants, like all the public, had representation in both actions through the Office of the Public Counsel.⁶⁵ And Public Counsel agreed to the decision.⁶⁶

Therefore, the Commission will grant summary determination in Ameren Missouri'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 determination and enters its decision on the merits in favor of Union Electric Company d/b/a Ameren Missouri.
3. All relief sought in the complaint is denied.

⁶¹ *State ex rel. Harline v. Pub. Serv. Comm'n of Mo.*, 343 S.W.2d 177, 184 (Mo. App., K.C. 1960).

⁶² *State ex rel. Licata, Inc. v. Pub. Serv. Comm'n of Mo.*, 829 S.W.2d 515, 518 (Mo. App., W.D. 1992).

⁶³ File No. ET-2014-0085, EFIS No. 65, November 13, 2013, *Order Approving Stipulation and Agreement*, page 3, ordered paragraph 1; incorporating EFIS No. 63, November 8, 2013, *Non-Unanimous Stipulation and Agreement*, page 3, paragraph II.7.a.

⁶⁴ Finding of Fact 2.

⁶⁵ Section 386.710.1(2), RSMo 2000; 4 CSR 240-2.010(1).

⁶⁶ File No. ET-2014-0085, EFIS No. 63, November 8, 2013, *Non-Unanimous Stipulation and Agreement*, page 1 and 10.

4. 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