

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

The Staff of the Missouri Public Service Commission,)	
)	
)	
Complainant,)	
)	
vs.)	<u>Case No. EC-2016-0012</u>
)	
KCP&L Greater Missouri Operations Company,)	
)	
)	
Respondent)	

MOTION FOR SUMMARY DETERMINATION

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”), by and through counsel, and for its *Motion for Summary Determination* pursuant to Commission Rule 4 CSR 240-2.117(1), states as follows:

1. Staff filed its *Complaint* on July 13, 2015, asserting that Respondent KCP&L Greater Missouri Operations Company (“GMO”), 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 GMO 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 Non-Unanimous Stipulation and Agreement Resolving KCP&L Greater Missouri Operations Company’s*

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

MEEIA Filing in Case No. EO-2012-0009.² This *Order* directs GMO to comply with the provisions of the *2012 Stipulation*, which the Commission approved.³

2. The Commission has already heard Staff's complaint in EC-2015-0315, a complaint nearly identical to this matter against Union Electric Company d/b/a Ameren Missouri, and issued its order granting Staff's *Motion for Summary Determination* agreeing with Staff's interpretation of the rules. For relief, Staff prays that the Commission will provide statutory notice to Respondent and determine that GMO has also violated a statute and Commission rules and orders as alleged herein by Staff, and order GMO to provide its most recent avoided cost information needed for the calculation of the portion of the annual net shared benefits that are to be awarded to GMO as a performance incentive as a result of the energy efficiency savings the utility has achieved from its MEEIA demand-side programs for Program Year 2014.

3. 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

² Hereinafter, "the 2012 Order."

³ Hereinafter, "the 2012 Stipulation."

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.

* * *

(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: KCP&L Greater Missouri Operations Company ("GMO"); and Respondent GMO filed its *Answer* on August 12, 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. GMO 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. GMO admits in its *Answer* that it is a wholly-owned subsidiary of Great Plains Energy, Inc., a publicly-traded public utility holding company, and that its principal place of business is One Kansas City Place, 1200 Main, Kansas City, Missouri 64105. GMO's registered agent is CSC-Lawyers Incorporating Service Company, 221 Bolivar Street, Jefferson City, Missouri 65101.

8. GMO 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. GMO admits in its *Answer* that this Commission has jurisdiction over this matter because it involves GMO’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. GMO’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 *2012 Stipulation*. GMO admits that each of these directs GMO to comply with the provisions of the 2012 stipulation and agreement the Commission approved.

10. GMO 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. GMO 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. GMO 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. GMO denies in its *Answer* that it has failed and refused to provide the required avoided costs, being those used in GMO's most recently-adopted preferred resource plan, to its independent EM&V contractors so that the contractors could correctly calculate the PY 2014 annual net shared benefits for use in determination of GMO'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. GMO admits in its *Answer* that on April 30, 2015, GMO's contractors provided their draft PY2014 EM&V evaluation to GMO and the other parties to EO-2012-0009, as required by ¶¶ 5. b. ii. and 10 of the *2012 Stipulation*.

15. GMO admits in its *Answer* that Staff has reviewed the PY2014 EM&V final reports filed by the contractors and has confirmed with GMO that the PY2014 net shared benefits were calculated by the contractors using the avoided costs in GMO's previous adopted preferred resource plan and not the avoided costs in GMO's most recently-adopted preferred resource plan, adopted as a result of GMO's April 1, 2015, Chapter 22 triennial compliance filing in Case No. EO-2015-0252.

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

17. GMO 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. GMO 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: “On June 8, 2015, Staff requested that GMO provide to the contractors and to Staff the compliant avoided costs input files beginning with 2014 avoided costs and that the contractors recalculate all program and portfolio level benefits and net benefits using the compliant avoided costs and provide to all parties updated PY2014 EM&V draft reports by June 22, 2015.”

19. GMO states in its *Answer* as to its statements that it “admits these statements were made but denies any implication in paragraph 15 that GMO is required to comply with Staff’s request.” GMO has not complied with Staff’s request.

20. In its *Answer*, GMO admits in part and denies in part the allegations set out in ¶16 of the *Complaint*: “GMO admits that Staff counsel contacted GMO by email on June 24, 2015. GMO denies the remainder of paragraph 16.” So far as Staff is able to understand GMO’s *Answer*, GMO 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*, GMO 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, “GMO’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*.” 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. 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).

23. GMO asserts several purported affirmative defenses in ¶¶ 20 through 24 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 GMO has violated § 393.1075.3 and .4, RSMo., Commission Rule 4 CSR 240-20.093(1)(F), and the *2012 Order* and the *2012 Stipulation*; and (2) requiring GMO to provide to the contractors and to Staff the compliant avoided costs input files beginning with 2014 avoided costs for use in the DSMore® model for the contractors PY2014 EM&V final reports; and granting such other and further relief as the Commission deems just.

Respectfully submitted,

/s/ Whitney Payne

Whitney Payne

Legal Counsel

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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 5th day of February, 2016, 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/ Whitney Payne