BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

R & S HOME BUILDERS, INC., AND CAROL AND ARVEL ALLMAN,	)	
Complainants,	)	
v.	)	File No. EC-2014-0343
KCP&L GREATER MISSOURI OPERATIONS COMPANY,	)	
Respondent.	)	

GMO'S RESPONSE IN OPPOSITION TO
COMPLAINANTS' APPLICATION FOR REHEARING

COMES NOW Respondent, KCP&L Greater Missouri Operations Company ("GMO", "Company" or "Respondent"), and in support of this response in opposition to complainants' application for rehearing respectfully states the following:

1. On September 24, 2014, the Commission issued its *Order Granting in Part Motion to Dismiss and Denying Motion to Amend* ("*Order*"), effective on the date of issuance, in which it 1) dismissed the *Complaint* as to allegations regarding GMO's alleged conduct in 2013 but 2) denied GMO's *Motion to Dismiss* regarding GMO's alleged conduct in 2014. On October 3, 2014 Complainant filed their *Application for Rehearing and Response to KCPL-GMO's Application for Rehearing (Complainants' Rehearing Application).* For the reasons set forth below, the Commission should deny *Complainants' Rehearing* Application.

2. Complainants first argue, in paragraphs 3 – 8, that they had no notice of and were not parties to the proceedings in File No. ET-2014-0059 (in which the Commission approved a Stipulation and Agreement establishing $50 million as the "specified level" of solar rebates to be paid by GMO, after payment of which GMO would be authorized to cease making solar rebate

payments) and, therefore, that to limit Complainants to the exclusive remedy of seeking rehearing of the Commission's *Order Approving Stipulation and Agreement* issued in File No. ET-2014-0059 on October 30, 2013 would be unjust and unreasonable. The problem with this argument by Complainants, of course, is that having actual notice of and/or being a party to a Commission proceeding is not required by the provisions of the Public Service Commission Law for a party to be bound by a Commission order. *See*, sections 386.510 and 386.550 RSMo. This is because the Commission is exercising legislative authority delegated to it by the General Assembly and, as such, the vast majority of Commission decisions have prospective effect similar to laws passed by the General Assembly. To require actual notice under such circumstances to make a Commission order binding would render the Commission's authority a nullity.

3. In paragraph 6, Complainants quote dicta from *State ex rel. Licata, Inc. v. Pub. Serv. Comm'n*, 829 SW2d 515 (Mo. Ct. App. 1992) to buttress their argument that in the absence of notice they are not bound by the Commission's decisions. *Licata* does not stand for that proposition. The *Licata* court's reference to notice is surplusage and dicta that supports but is not necessary to the court's holding that "[I]f a statutory review of an order of the Commission is not successful, the order becomes final and cannot be attacked in a collateral proceeding." *Id*., at 518.

4. In the balance of their *Rehearing* Application, i.e., paragraphs 9 – 18, Complainants continue making their erroneous claim that GMO stopped paying solar rebates in 2013 and 2014, prior to receiving Commission authorization to do so in Commission Case No. ET-2014-0277 effective June 8, 2014. Complainants' only apparent basis for this erroneous claim is GMO's RES Compliance Report (covering calendar year 2013 and filed on April 15,

2014 in Case No. EO-2014-0290) which listed 169 solar rebates as being "denied" in 2013 because "[F]unding commitments reached the $50M specified level."

5. As GMO stated in paragraph 22 of its Answer filed herein on or about June 16, 2014, for solar rebate applications received by GMO after 10 AM CST on November 15, 2013 (which would include Complainants herein), GMO advised the applicants (or agents on their behalf) that:

> . . . KCP&L has committed rebate funds equal to the $50 million 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.

This communication to solar rebate applicants is entirely consistent with a) GMO's RES Compliance Report filed in Case No. EO-2014-0290; b) GMO's insistence that it did not stop paying solar rebates prior to receiving Commission authorization to do so in Case No. ET-2014-0277 effective June 8, 2014; and c) GMO's statement that it has not yet completely stopped paying solar rebates.

6. What Complainants fail to grasp is that solar rebates have been administered according to a queue system whereby applications are processed in the order received by GMO. An application for a solar rebate cannot be properly paid unless all of the necessary preconditions, including but not limited to: 1) provision of detailed receipts/invoices; provision of detailed specifications on each component of the installation; provision of proof of warranty with a 10-year minimum; provision of photos of completed system; provision of taxpayer information form; provision of customer affidavit; completion of field inspection; and exchange of net meter) have been met. Pursuant to the provisions of section 386.890 RSMo., the application for interconnection may take up to one year after receipt of notice of the approval for

interconnection. How much time elapses between submittal of an application and meter exchange depends on how complete the customer's initial application is and the customer's adherence to the requirements of the process.

a. Given this queuing process, it was reasonable for GMO to begin advising solar rebate applicants whose applications were received after 10 AM CST on November 15, 2013 of the true status of their applications. To not do so could have led such applicants to proceed with the expense of installing solar facilities when the likelihood of receiving a solar rebate from GMO was uncertain. Moreover, it was not unreasonable or inaccurate for GMO to list applicants in this situation as having had their applications "denied", even though as a technical matter such application continued to be under consideration in the event funds became available if applicants lower in the queue failed to meet all of the necessary preconditions within the time permitted.

b. It should also be clear that in advising such applicants that their applications had been received after GMO had already made commitments up to the $50 million "specified level" does not constitute GMO having stopped making solar rebate payments. Those applicants (which would include Complainants herein) had not yet established that all of the preconditions necessary to qualify for a solar rebate payment had been met.

c. And finally, because the time has not yet fully run on solar rebate applications received by GMO before 10 AM CST on November 15, 2013, GMO continues to pay solar rebates on such applications as those applicants establish that all necessary preconditions have been met.

That GMO has observed the queuing process put in place to effectuate orderly administration of solar rebates is no basis for Complainants' arguments that GMO stopped paying solar rebates prior to receiving Commission authorization to do so.

WHEREFORE, GMO respectfully requests that the Commission issue its order granting denying *Complainants' Application for Rehearing*.

Respectfully submitted,

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ATTORNEYS FOR
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was delivered by first class mail, electronic mail or hand delivery, on this 13th day of October 2014, to the following:

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