

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

In the Matter of the Application of)	
Thomas L. Chaney for a Change of Electric)	<u>File No. EO-2011-0391</u>
Supplier)	

UPDATE TO STAFF’S RECOMMENDATION TO DENY APPLICATION

COMES NOW the Staff of the Missouri Public Service Commission, by and through the undersigned counsel, and files this *Update To Staff’s Recommendation To Deny Application (Update)* with the Commission respectfully stating the following:

1. On June 10, 2011, Thomas L. Chaney (Applicant) filed an *Application For Change Of Electric Service Provider (Application)* requesting the Commission to approve changing his electric supplier from Cuivre River Electric Cooperative, Inc. (Cuivre River) to Union Electric Company d/b/a Ameren Missouri (Ameren Missouri).

2. On July 20, 2011, counsel for the Staff filed *Staff’s Recommendation To Deny Application (Recommendation)*. The *Recommendation* indicated two matters that the Staff believed at that time would affect the outcome of this case. The first matter related to the *Judgment* the Circuit Court of Cole County entered on June 29, 2011, in Case No. 10AC-CC00512. The second matter related to the tariff sheets filed by Ameren Missouri July 15, 2011, to suspend its Rider SR-Solar Rebate tariff.

3. The Court’s July 29, 2011 *Judgment* stated in part: “Section 393.1030.3’s solar rebate provision is declared illegal and unconstitutional. The Commission’s Order adopting the subject Regulations is reversed and remanded to the Commission for further action consistent with this Judgment.” However, the Court, on its own July 28, 2011 Motion, set aside its June 29, 2011 *Judgment* stating, “While Courts Judgment is set aside, affected electric utilities

that are currently obligated to pay solar rebates pursuant to a tariff approved by the MO PSC should continue to pay these rebates in accordance with their respective tariffs.” (Attachment A).

4. Counsel for the Staff has further reviewed the record of consolidated Case Nos. 10AC-CC00512, 10AC-CC00511, 10AC-CC00513, 10AC-CC00528 and 10AC-CC00536, and found a *Dismissal Without Prejudice* filed on behalf of Missouri Retailers Association (MRA), dismissing both counts of its August 5, 2010 *Petition For Writ Of Review And For Declaratory Judgment*. (Attachment B). Of all the consolidated Writs, the MRA’s was the only one that asserted the solar rebate provision of Section 393.1030.3 is unconstitutional. The remaining Writs ask the Court to review the lawfulness and reasonableness of the Commission’s orders and actions in the rulemaking Case No. EX-2010-0169 based on other grounds.

5. Also, for the Commission’s information and consideration, counsel for the Staff points to another filing in Case No. 10AC-CC00512, *Notice Of Dismissal Of Intervenors’ Motion To Intervene*. That filing indicates an e-mail communication dated August 17, 2011, from the Missouri Industrial Energy Consumers that stated in part: “no remaining party in the above case is challenging the solar rebate provisions of the regulation or statute nor in the case intends to do so in the future.” (Attachment C).

6. Regarding Ameren Missouri’s Rider SR-Solar Rebate tariff, the Company withdrew its proposed tariff sheets to suspend the Rider SR-Solar Rebate tariff on September 13, 2011. See (Attachment D).

7. On October 11, 2011, the Commission issued a *Notice Regarding Status Of Case (Notice)*, staying this matter until the Court resolved the constitutionality of the solar rebate

program. The *Notice* further stated that if the Court determined the program constitutional, the Commission would set this matter for a preliminary hearing.

8. This *Update* is to notify the Commission that the Staff believes it would now be appropriate for the Commission to set this matter for a preliminary hearing.

WHEREFORE, the Staff files this *Update To Staff's Recommendation To Deny Application* for the Commission's information and consideration, and suggests the Commission issue an order setting this matter for a preliminary hearing.

Respectfully submitted,

/s/Jennifer Hernandez

Jennifer Hernandez
Associate Staff Counsel
Missouri Bar No. 59814

Attorney for the Staff of the
Missouri Public Service Commission
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CERTIFICATE OF SERVICE

I hereby certify that true and accurate copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all parties of EFIS record this 19th day of October 2011.

/s/Jennifer Hernandez

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI
19TH JUDICIAL CIRCUIT
DIVISION NO. _____

MO Energy Dev.

PSC

vs.

10AC-CC00 S12
No. _____

Date of Proceeding: _____
Nature of Proceeding: _____

APPEARANCES:

ATTORNEY FOR:

☐ DOCKET SHEET ENTRY ☐ ORDER ☐ JUDGMENT ☐ STIPULATION ☐ OTHER

☐ AS FOLLOWS ☐ ATTACHED HERETO

☐ AGREED TO BY:

ORDER

On our Motion, Judgment of June 29, 2011 set aside. While Court's Judgment is set aside, affected electric utilities that are currently obligated to pay solar rebates pursuant to a tariff approved by the MO PSC should continue to pay these rebates in accordance with their respective tariffs.

☐ SUBMITTED BY:

ATTORNEY FOR:

SO ORDERED this

28 day of July 20 11

JUDGE

Attachment A

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI
19TH JUDICIAL CIRCUIT
DIVISION NO. _____

vs.

No. _____

Date of Proceeding: _____

Nature of Proceeding: _____

APPEARANCES:

ATTORNEY FOR:

☐ DOCKET SHEET ENTRY ☐ ORDER ☐ JUDGMENT ☐ STIPULATION ☐ OTHER

☐ AS FOLLOWS ☐ ATTACHED HERETO

☐ AGREED TO BY:

Responses to Motion to Intervene
due by 8/12/11.

☐ SUBMITTED BY:

ATTORNEY FOR:

SO ORDERED this _____ day of _____, 20____

#2

JUDGE

FILED

AUG - 8 2011

BRENDA A. UMSTATTO
CLERK CIRCUIT COURT
COLE COUNTY, MISSOURI

IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

STATE OF MISSOURI, ex rel.)
MISSOURI RETAILERS ASSOCIATION,)

Relator,)

vs.)

PUBLIC SERVICE COMMISSION OF)
THE STATE OF MISSOURI,)

Respondent.)

Case No. 10AC-CC00528

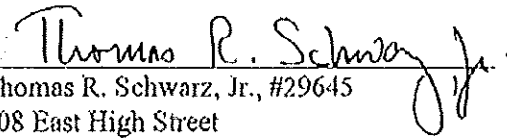
DISMISSAL WITHOUT PREJUDICE

COMES NOW the Missouri Retailers Association, pursuant to Supreme Court Rule 67.02,
and dismisses without prejudice both counts of the above-captioned Petition.

Respectfully submitted,

BLITZ, BARDGETT & DEUTSCH, L.C.

By:


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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above Dismissal Without Prejudice was sent facsimile transmission to the following parties of record this 8th day of August, 2011:

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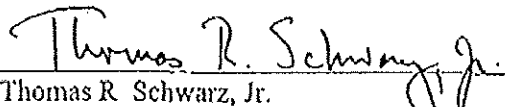
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Thomas R. Schwarz, Jr.

IN THE CIRCUIT COURT
COLE COUNTY, MISSOURI

STATE ex rel. MISSOURI ENERGY)	
DEVELOPMENT ASSOCIATION, et al.)	
)	
PETITIONERS,)	
)	
v.)	Case No. 10AC-CC00512
)	
)	(consolidated with
PUBLIC SERVICE COMMISSION,)	Case No. 10AC-CC00511;
)	Case No. 10AC-CC00513;
RESPONDENT,)	Case No. 10AC-CC00528;
)	Case No. 10AC-CC00536)
)	
MISSOURI SOLAR ENERGY INDUSTRIES)	
)	
ASSOCIATION, INC., BRIGHTERGY, LLC., and)	
)	
STRAIGHTUP SOLAR, LLC.,)	
)	
INTERVENORS)	

NOTICE OF DISMISSAL OF
INTERVENORS' MOTION TO INTERVENE

COME NOW Missouri Solar Energy Industries Association, Inc., Brightergy, LLC, and
StraightUp Solar, LLC (collectively "Intervenors"), by and through the undersigned counsel, and
voluntary dismiss their Motion to Intervene filed on July 21, 2011. As the basis for the

~~Voluntary Dismissal, Intervenors state:~~

1. In Count II of its "Petition for Writ of Review and Declaratory Judgment," filed
on August 5, 2010, Petitioner-Missouri Retailers Association ("MRA") asserted that the solar
rebate provisions in § 393.1030.3, RSMo., are unconstitutional in violation of Article I, §§ 10
and 28 of the Missouri Constitution.

2. On June 29, 2011, in the “Findings of Fact, Conclusions of Law, and Judgment” entered in these consolidated cases, the Court found, in part, that the solar rebate provisions in § 393.1030.3, RSMo., are unconstitutional in violation of Article I, §§10 and 28 of the Missouri Constitution.

3. On July 21, 2011, Intervenor filed their Motion to Intervene and Motion for Reconsideration, Rehearing and New Trial asserting that § 393.1030.3, RSMo., did not violate Article I, §§ 10 and 28 of the Missouri Constitution.

4. In a hearing on July 28, 2011, the Court, on its own motion, vacated the June 29, 2011 Judgment in its entirety.

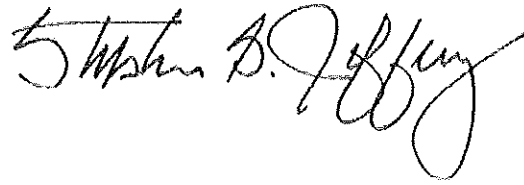
5. On August 8, 2011, Petitioner-MRA voluntarily dismissed its entire “Petition for Writ of Review and Declaratory Judgment,” which included Count II concerning the constitutional challenge to § 393.1030.3, RSMo.

6. In an e-mail communication dated August 17, 2011, counsel for Petitioner-Missouri Industrial Energy Consumers stated, in part, “no remaining party in the above case is challenging the solar rebate provisions of the regulation or statute nor in the case intends to do so in the future.” A copy of the August 17, 2011 e-mail communication is attached hereto as Intervenor’s Exhibit A and is expressly incorporated herein.

7. Based on the foregoing, Intervenor hereby voluntarily dismiss their Motion to Intervene in the above captioned cases.

Respectfully submitted,

JEFFERY LAW GROUP

A handwritten signature in black ink, appearing to read "Stephen G. Jeffery". The signature is fluid and cursive, with the first name "Stephen" and last name "Jeffery" clearly distinguishable.

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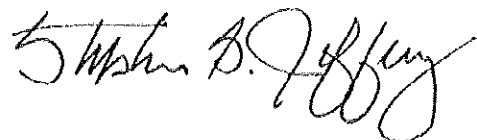
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ATTORNEYS FOR INTERVENORS

CERTIFICATE OF SERVICE

I certify that a true copy of the Notice of Dismissal of Intervenor's Motion to Intervene and Motion for Reconsideration was served, via .PDF attachment to electronic mail sent to the following counsel on this 18th day of August 2011:

Case No.	Counsel	E-Mail Address
10AC-CC00511	Edward F. Downey	efdowney@bryancave.com
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From: EFIS Messenger
Sent: Tuesday, September 13, 2011 4:57 PM
To: amerenmoservice@ameren.com; Beck, Dan; Steck, Deborah; Dodson, Jan; Finnell, Kay; Happy, Kim*; McDuffey, Mack; Anderson, Melissa*; mhoyt@ameren.com; Taylor, Michael; Woodruff, Morris; Williams, Nathan; Gregory, Sheryl; wcooper@ameren.com; Senn, Nikki; Koenigsfeld, Christine; Beck, Dan; McDuffey, Mack; Taylor, Michael; Williams, Nathan; Dottheim, Steve
Subject: Notification for Tracking No.: YE-2012-0020; Case No.: ET-2012-0016
Follow Up Flag: Follow up
Flag Status: Completed

***** Please do not reply to EFIS Messenger. Replies to this computer generated e-mail are routed to an unmonitored mailbox. *****

Type of Submission: Withdraw Tariff Sheets
Utility Company: Union Electric Company-Investor(Electric)
PSC MO No: 5
Effective Date: 12/12/2011
Purpose of Filing: The Circuit Court Order which lead to this filing has been vacated.
Details: Complete pending tariff has been withdrawn. 1st revised sheet No. 122.14 replacing the original and 1st revised sheet No. 122.15 replacing the original

This task has been deleted from the tasklist.

Date: 9/13/2011 **Time:** 4:56:53 PM

Please be advised that the Commission reserves the right to refuse or reject filings that contain deficiencies.