BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of KCP&L Greater Missouri Operations Company's Application For Authorization To Suspend Payment of Certain Solar Rebates	))))	File No. ET-2014-0277

KCP&L GREATER MISSOURI OPERATIONS COMPANY'S RESPONSE TO THE (1) STAFFF RECOMMENDATION TO APPROVE SUSPENSION OF SOLAR REBATE PAYMENTS; (2) MOSEIA COMMENTS; AND, (3) BRIGHTERGY COMMENTS

COMES NOW KCP&L Greater Missouri Operations Company ("GMO" or "Company"), pursuant to 4 CSR 240-2.080, and files its response to the: (1) *Staff Recommendation To Approve Suspension Of Solar Rebate Payments, Reject Tariff Sheet JE-2014-0403 And Order The Filing Of Tariff Sheets(s) In Compliance With Commission Order ("Staff Recommendation")* filed on May 9, 2014; (2) *MOSEIA's Comments Regarding KCP&L GMO's Suspension Of Certain Solar Rebates* ("*MOSEIA Comments*") filed on May 8, 2014; and, *(3) Brightergy LLC's Comments Regarding GMO's Application For Authority To Suspend Payments Of Solar Rebates ("Brightergy Comments")* filed on May 16, 2014, in the above-referenced file. In support of its response, GMO respectfully states as follows:

GMO RESPONSE TO STAFF RECOMMENDATION

1. On May 9, 2014, the Staff filed its *Staff Recommendation* which "recommends the Commission approve GMO's *Application* to suspend solar rebate payments once it has paid in the aggregate $50 million in solar rebates incurred subsequent to August 31, 2012; (2) reject GMO's proposed tariff sheet assigned Tracking No. JE-2014-0403; and (3) order GMO to file a tariff sheet(s) that includes language that it shall cease to pay solar rebates once it has paid solar rebates in the aggregate of $50 million incurred subsequent to August 31, 2012. Further Staff recommends the Commission also order GMO to file a notice in this case once it has paid the

aggregate $50 million limit, and file an updated tariff sheet requesting expedited treatment to reflect that solar rebates are no longer available pursuant to the *Stipulation*." (*Staff Recommendation*, pp. 1-2)

2. GMO agrees with Staff that the Commission should approve GMO's *Application* to suspend solar rebate payments. GMO agrees that it will file a notice when rebates are suspended under the conditions contained in GMO's proposed tariff and will file an updated tariff sheet requesting expedited treatment to reflect that notice. However, for the reasons stated herein, GMO respectfully disagrees with the remainder of Staff's recommendations related to the rejection of GMO's proposed tariff sheets and the filing of revised tariff sheets.

3. As explained in the Direct Testimony of Tim M. Rush, GMO had received, as of the date of the testimony approximately $60 million in solar rebate applications in total. Of that total, $37 million has already been paid to customers through April 2, 2014. On November 15, 2013 at 10 AM Central Standard Time (CST), the Company believed that it had received and made commitments to pay solar net metering applications that, if successfully completed, reached the aggregate rebate level of $50 million.[1] At that point, the Company began informing all applicants who submitted applications received after November 15, 2013 at 10 AM CST that the aggregate rebate level had been reached and that a rebate could only be paid to them if rebate dollars became available at a later date as a result of earlier projects not receiving rebates. All rebate commitments are to be paid to qualified customers as the solar systems become operational. As this is dependent on the action of the customer, GMO does not know definitively when it will conclude the completion of all of the commitments made through November 15, 2013. Also GMO does not know how many customers might fail to successfully install their

[1]Based on information learned subsequent to November 15, 2013, GMO now understands that the rebate amount associated with the commitments made as of that date likely totaled in excess of $50 million.

solar system to claim their rebate, making those rebate dollars available to others. (Rush Direct, pp. 8-9) Therefore, there needs to be flexibility in the tariff language that would allow the Company to make rebate payments to all customers who have received commitments as of November 15, 2013 and complete construction in a timely manner as to qualify for the solar rebate.

4. As recognized by Staff, prudence arguments related to solar rebates will be considered in future general rate cases, RESRAM cases, or other proceedings in which recovery of these costs is considered by the Commission. (*Staff Recommendation*, pp. 2-3) The Commission should not accept Staff's recommendation to reject the Company's proposed tariff language[2] that allows for solar rebate payments on commitments made through November 15, 2013, and direct the filing of the tariff language suggested by Staff[3] that would eliminate the Company's ability to meet these commitments. The Commission instead should allow the proposed tariff to become effective, as requested by GMO. Any prudence arguments related to these payments should be considered by the Commission in a future general rate case, RESRAM case or other proceeding in which recovery of these costs will be considered by the Commission, as suggested by Staff. The Commission should not short-circuit this process by approving tariff

[2] The Company's tariff revision proposes a modification to the Availability of the Solar Photovoltaic Rebate Program, Sheet R-62.19. The revision adds the following paragraph:

> The Company will pay solar rebates for all valid applications received by the Company by November 15, 2013 at 10 AM CST, which are preapproved by the Company and which result in the installation and operation of a Solar Electric System pursuant to the Company's rules and tariffs. Applications received after November 15, 2013 at 10 AM CST may receive a solar rebate payment if the total amount of solar rebates paid by the Company for those applications received on or before November 15, 2013 at 10 AM CST are less than $50,000,000.

[3] The Staff has proposed the following tariff language that would retroactively eliminate any solar rebate payments above $50 million:

> Payments for solar rebates have been suspended. The Company has made payments totaling $50 million in solar rebates as required by the Stipulation and Agreement in Case No. ET-2014-0059. Additional payments will not be made under the terms of the Stipulation and Agreement.

language that would totally restrict payments above $50 million.

5. As of November 15, 2013, the Company believed it had provided commitments to applicants for solar rebates that, when paid, were expected to reach the $50 million level. (Rush Direct, p. 5) The Company's expected solar rebate payments are now less than $55 million. This is the dollar amount projected from the committed solar rebate applications as of November 15, 2013. While these are projected amounts if all customers timely complete the solar installations, it is not expected that all customer applications will be completed and this number may therefore decrease over time. These payments are necessary to meet GMO's commitments to solar customers whose facilities become operational under the solar agreements. Since payments are dependent upon the actions of the solar customers, GMO was not able to definitively predict exactly the number of solar applications that could be approved before exceeding $50 million.

6. In summary, the Commission should approve GMO's Application to suspend solar rebate payments, and allow GMO's proposed tariff to go into effect without suspension. To do otherwise will result in significant negative reaction by customers who have spent money on solar facilities in reliance on commitments made in good faith by the Company and discredit the Company's sincere efforts to honor the spirit of the solar incentive program.

GMO RESPONSE TO MOSEIA COMMENTS

7. On May 8, 2014, the Missouri Solar Energy Industries Association ("MOSEIA") filed *Comments* requesting that "the Commission enter an Order directing that any rebates to customers of systems installed directly by KCP&L GMO or KCP&L Solar not be counted against the aggregate rebate cap amount and therefore deny KCP&L GMO's Application to Suspend Solar Rebates." (*MOSEIA Comments*, p. 4) For the reasons stated herein, this request

should be denied.

8. In support of its request, MOSEIA cited the following Section 393.1030(2)(1) which states:

> (1) A maximum average retail rate increase of one percent determined by estimating and comparing the electric utility's cost of compliance with least-cost renewable generation and the cost of continuing to generate or purchase electricity from entirely nonrenewable sources, taking into proper account future environmental regulatory risk including the risk of greenhouse gas regulation. **Notwithstanding the foregoing, until June 30, 2020, if the maximum average retail rate increase would be less than or equal to one percent if an electric utility's investment in solar-related projects initiated, owned or operated by the electric utility is ignored for purposes of calculating the increase**, **then additional solar rebates shall be paid and included in rates in an amount up to the amount that would produce a retail rate increase equal to the difference between a one percent retail rate increase and the retail rate increase calculated when ignoring an electric utility's investment in solar-related projects initiated, owned, or operated by the electric utility**. Notwithstanding any provision to the contrary in this section, even if the payment of additional solar rebates will produce a maximum average retail rate increase of greater than one percent when an electric utility's investment in solar-related projects initiated, owned or operated by the electric utility are included in the calculation, the additional solar rebate costs shall be included in the prudently incurred costs to be recovered as contemplated by subdivision (4) of this subsection; (emphasis added)

9. Contrary to the argument of MOSEIA, Section 393.1030(2)(1) does not apply to KCP&L Solar's solar-related investments since KCP&L Solar is not a "public utility"[4] or an "electric corporation".[5] Missouri case law has imposed the requirement that the provision of electric service must be offered "for public use" for a company to be classified as a public

[4] Section 386.020(43) defines "public utility" as: ". . . every pipeline corporation, gas corporation, electrical corporation, telecommunications company, water corporation, heat or refrigerating corporation, and sewer corporation, as these terms are defined in this section, and each thereof is hereby declared to be a public utility and to be subject to the jurisdiction, control and regulation of the commission and to the provisions of this chapter;

[5] Section 386.020(15) defines "electrical corporation" as "every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, other than a railroad, light rail or street railroad corporation generating electricity solely for railroad, light rail or street railroad purposes or for the use of its tenants and not for sale to others, owning, operating, controlling or managing any electric plant except where electricity is generated or distributed by the producer solely on or through private property for railroad, light rail or street railroad purposes or for its own use or the use of its tenants and not for sale to others;"

utility.[6,7] Under these statutory and case law requirements, KCP&L Solar is not an electric utility subject to the jurisdiction of the Commission.

10. While KCP&L Solar is an affiliate of the regulated electric utilities, GMO and Kansas City Power & Light Company, KCP&L Solar is not a public utility itself. Therefore, Section 393.1030(2)(1) does not require that the solar facilities installed by KCP&L Solar be "ignored" for purposes of calculating the 1% rate cap, as suggested by MOSEIA.

11. GMO does not initiate, own or operate solar-related projects. The solar customer itself initiates, owns and/or operates the solar-related projects.

GMO RESPONSE TO BRIGHTERGY

12. In their *Comments*, Brightergy stated that it "does not oppose GMO's request to suspend solar rebate payments if the Company has indeed reached the $50 million rebate cap established in Case No. ET-2014-0059. (*Brightergy Comments*, p. 1) However, Brightergy argued that solar projects initiated, owner, or operated by KCP&L Solar must be excluded from the $50 million cap calculation. (*Id*. at 2-3) For the reasons stated herein in response to MOSEIA's Comments, Brightergy's position on this point should be rejected.

13. Secondly, Brightergy correctly asserts that Staff's Recommendation that GMO not pay solar rebates in excess of $50 million is unnecessary and will cost Missouri solar

[6] See Missouri ex rel. Danciger & Co. v Missouri Pub. Service Commission, 205 S.W. 36 (Mo.1918). Relying on Danciger, the federal court in City of St. Louis v Mississippi River Fuel Corp., 97 F.2d 726 (8th Cir. 1938), stated that the public use of a service is the deciding factor in determining whether an operation is a "public utility" under Missouri law. It concluded that "under Missouri law the term 'for public use' ... means the sale ... to the public generally and indiscriminately, and not to particular persons upon special contract." (*Id*. at 730.) The *City of St. Louis* court cited with favor the following definition: "To constitute a public use all persons must have an equal right to the use, and it must be in common, upon the same terms, however few the number who avail themselves of it." (*Id*.)

[7] See Missouri ex rel. and to Use of Cirese v Missouri Pub. Service Commission, 178 S.W.2d 788 (Mo. App. 1944), where the Cirese Power & Light Co. manufactured electricity for its own buildings and sold the excess capacity to outside customers. The court found the company to be a public utility insofar as it held itself out "... as willing to sell to all comers who desired service in the immediate vicinity of their plant ... and that they did sell to all such customers." *Id*. at 791. The court cited Missouri ex rel. Lohman & Farmers Mut. Teleph. Co. v Brown, 19 S.W.2d 1048, 1049 (Mo. 1929), when it held the company was not a public utility insofar as its facilities and activities were confined to the manufacture, distribution, and sale of electricity to itself, its buildings, and its tenants.

customers approximately $5 million. (*Id*. at 3-6) GMO agrees with Brightergy that the Commission should issue an order "permitting GMO to fulfill all outstanding solar rebate commitments, and reserve any determination regarding the prudence of such payments" until a future proceeding. (*Id*. at 6) As explained above, the Commission may accomplish this result by allowing GMO's filed tariffs to go into effect by operation of law.

THE COMMISSION SHOULD SCHEDULE A QUESTION-AND-ANSWER SESSION SHOULD IT CONTINUE TO HAVE QUESTIONS

14. GMO has requested a June 9, 2014 effective date for its proposed tariff sheets pursuant to the 60 day tariff approval process under Section 393.1090. The Company appreciates the challenges posed by the abbreviated nature of the Commission's inquiry and suggests that a question-and-answer session may be helpful to answer any remaining Commission questions.

WHEREFORE, KCP&L Greater Missouri Operations Company respectfully files its response to the: (1) *Staff Recommendation* filed on May 9, 2014; (2) *MOSEIA Comments* filed on May 8, 2014; and, (3) *Brightergy Comments* filed on May 16, 2014, and renews its request that the Commission approve its Application and related tariff to be effective on June 9, 2014.

Respectfully submitted,

/s/ Roger W. Steiner

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ATTORNEYS FOR KCP&L GREATER MISSOURI OPERATIONS COMPANY

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand delivered, emailed or mailed, postage prepaid, to the certified service list in File No. ET-2014-0277, this 19th day of May, 2014.

/s/ Roger W. Steiner
Roger W. Steiner