

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

**EARTH ISLAND INSTITUTE d/b/a/
RENEW MISSOURI, et. al.**

COMPLAINANTS

v.

**KCP&L GREATER MISSOURI
OPERATIONS COMPANY**

RESPONDENT

Case No. EC-2013-_____

COMPLAINT

COME NOW COMPLAINANTS, by their attorneys, pursuant to Section 386.390, RSMo and 4 CSR 240-2.070 of the Commission’s Rules of Practice and Procedure, and for their Complaint against Kansas City Power & Light Greater Missouri Operations Company, respectfully state as follows:

PARTIES AND JURISDICTION

1. Complainant Earth Island Institute d/b/a Renew Missouri (“Renew Missouri”) has its principal place of business at 910 E Broadway, Ste. 205, Columbia, MO 65201. Renew Missouri is a project of Earth Island Institute, a not-for-profit corporation organized under the laws of California with its principal place of business at 2150 Allston Way, Ste. 460, Berkeley, CA 94704. Renew Missouri is a registered fictitious name of Earth Island Institute under Section 417.200, RSMo. Earth Island Institute has a Certificate of Authority for a Foreign Nonprofit granted by the Missouri Secretary of State.

2. Renew Missouri was instrumental in the passage of Proposition C, or the Missouri Renewable Energy Standard (“RES”). Renew Missouri also participated in the RES rulemaking

process. Renew Missouri has an interest in the full implementation and enforcement of the RES in that the organization's mission includes the advancement of renewable energy in Missouri.

3. The following Complainants are not-for-profit corporations whose missions involve protection of the environment through the furtherance of renewable technologies and the renewable industry in Missouri:

a. Missouri Coalition for the Environment ("MCE"), 6267 Delmar Blvd., Ste. 2E, St. Louis, MO 63130;

b. Missouri Solar Energy Industries Association ("MOSEIA"), P.O. Box 434040, St. Louis, MO 63143;

c. Wind on the Wires, P.O. Box 4072, Wheaton, IL 60189.

4. The following Complainants are for-profit corporations engaged in the business of renewable energy development or installation that have a business interest in the implementation of Missouri's RES and the full enforcement of the Commission's rules:

a. The Alternative Energy Company, LLC, 4131 E. White Oak Dr., Springfield, MO 65809;

b. StraightUp Solar, 9100 Midland Blvd., St. Louis, MO 63114;

c. Missouri Solar Applications LLC, P.O. Box 1727, Jefferson City, MO 65102.

5. The signature, telephone number, facsimile number and email address of Complainants are those of their legal representatives and can be found in the signature block at the end of this complaint.

6. Respondent Kansas City Power & Light Greater Missouri Operations Company ("GMO"), 1200 Main Street, Kansas City, MO 64105, is an electrical corporation and public

utility as defined in Section 386.020, RSMo engaged in the business of manufacture, transmission, and distribution of electricity subject to the regulatory authority of the Commission pursuant to Chapters 386 and 393, RSMo.

7. Complainants have sent a copy of this complaint to GMO.

8. The Commission has subject matter jurisdiction over this complaint because it involves a utility's violation of a law – rule 4 CSR 240-20.100(7)(B)1.F – which was promulgated by the Commission according to the authority delegated to them under Section 393.1030, RSMo. § 386.390.1, RSMo.

9. Complainants Renew Missouri, MCE, MOSEIA, and Wind on the Wires are aggrieved by GMO's failure to comply with the Commission's rules because they have an organizational interest in the full enforcement of the RES rules as described in paragraphs 2-3 above.

10. The business Complainants listed in paragraph 4 are aggrieved by Ameren Missouri's failure to comply with the Commission's rules because they have a professional interest in being able to plan and adjust their industry expectations according to how Ameren Missouri calculates the RES retail impact limitation in its annual RES compliance plans.

BACKGROUND

11. In November 2008, Missouri voters approved Proposition C, otherwise known as Missouri's Renewable Energy Standard (RES), now codified as Sections 393.1020-1035, RSMo. Proposition C requires "electrical corporations" as defined by Section 386.020(15), RSMo to achieve increasing percentages of their sales with electricity from renewable energy sources: two percent of sales in the years 2011-2013; five percent from 2014-2017; ten percent from 2018-2020; and fifteen percent in each calendar year beginning in 2021.

12. The RES law requires the rules to include provisions for 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...” § 393.1030.2(1), RSMo.

13. The RES law requires the rules to include a provision requiring “penalties of at least twice the average market value of renewable energy credits for the compliance period for failure to meet the targets...” § 393.1030.2(2), RSMo.

14. Pursuant to their authority under Section 393.1030.2, RSMo, the Commission promulgated 4 CSR 240-20.100, which became effective on September 30, 2010.

15. Section 5 of the rules establishes the 1% retail impact limitation and lays out how it is to be calculated: “(A) The retail rate impact...may not exceed one percent (1%) for prudent costs of renewable energy resources directly attributable to RES compliance.... (B) The RES retail rate impact shall be determined by subtracting the total retail revenue requirement incorporating an incremental non-renewable generation and purchased power portfolio from the total retail revenue requirement including an incremental RES-compliant generation and purchased power portfolio.” 4 CSR 240-20.100(5).

16. In addition, the rules explicitly require utilities to include the Section 5 calculation in their RES compliance plans: “The RES compliance plan shall include, at a minimum... F. A detailed explanation of the calculation of the RES retail impact limit calculated in accordance with section (5) of this rule. This explanation should include the pertinent information for the planning interval which is included in the RES compliance plan.” 4 CSR 240-20.100(7)(B)1.

17. On November 20, 2012, The Court of Appeals for the Western District of Missouri unanimously upheld the Commission’s rules, including rule 4 CSR 240-20.100(5)

establishing how the 1% retail impact limitation is to be calculated. *Union Electric Co., et. al. v. Public Service Commission*, WD74896 p. 13 (Mo. Ct. App. 2012). In its opinion, the Western District stated: “4 CSR 240-20.100(5) is consistent with the intent of section 393.1030.2(1), which is to limit the retail rate impact of the RES so that rates at any time would not exceed one percent of what they would otherwise be if there were no renewable resources included in the utility’s generation portfolio.” *Id.* at 10.

18. In April of 2012, GMO submitted its 2011 RES Compliance Report and 2012-2014 RES Compliance Plan in Case No. EO-2012-0349, as required by 4 CSR 240-20.100(7).

COUNT I: CALCULATION OF THE RES RETAIL IMPACT

19. Complainants incorporate paragraphs 1-18 herein by reference.

20. GMO is out of compliance with rule 4 CSR 240-20.100(7)(B)1.F in that their 2012-2014 RES Compliance Plan fails to include a detailed explanation of the RES retail impact limitation, or 1% cost comparison.

21. As stated above on line 12, the Commission’s rules explicitly require RES compliance plans to include “[a] detailed explanation of the calculation of the RES retail impact limit calculated in accordance with section (5) of this rule.” 4 CSR 240-20.100(7)(B)1.F.

22. GMO’s 2012-2014 Compliance Plan does not contain a calculation of the non-compliant plan, despite the clear requirements in Section 5 of the Commission’s rules.

23. In an attempt to address the 4 CSR 240-20.100(7)(B)1.F requirement, GMO’s plan states: “The Non-Compliant Plans for each company were not necessary to perform the rate impact calculation, as all non-solar renewable additions caused revenue requirements to decrease. Therefore, all non-solar resources are justified without the requirement of Missouri

Prop C or Rule 240-20.100 (2). And only solar-based expenses are used to calculate rate impact.”
GMO Plan at 14.

24. In its review of GMO’s 2012-2014 Compliance Plan, PSC Staff recognized that GMO did not comply with provision 4 CSR 240-20.100(7)(B)1.F. Staff Report on Company’s RES Compliance Plan at 3-4. Staff’s report recommended that the Commission grant a waiver from rule (7)(B)1.F. The Commission has not granted such a waiver.

25. The rules do not leave to utilities’ discretion whether to include the calculation; it is simply required. Moreover, the Commission has granted no utility a waiver from rule 4 CSR 240-20.100(7)(B)1.F.

26. Thus, GMO is out of compliance for failing to comply with rule 4 CSR 240-20.100(7)(B)1.F in its 2012-2014 RES Compliance Plan.

RELIEF REQUESTED

WHEREFORE, Complainants pray that the Commission:

1. Find Kansas City Power & Light Greater Missouri Operations Company in non-compliance with rule 4 CSR 240-20.100(7)(B)1.F for their failure to include a detailed explanation of the RES retail impact limitation in their 2012-2014 RES Compliance Plan.
2. Order Kansas City Power & Light Greater Missouri Operations Company to re-file its 2012-2014 RES Compliance Plan to be consistent with the Commission’s existing rules, and to comply with such rules for all future RES Compliance Plans.
3. Order such other relief as the Commission shall deem just and appropriate.

Respectfully Submitted By:



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was delivered via electronic mail on the 30th day of January, 2013 to Respondent Kansas City Power & Light Greater Missouri Operations Company.



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