BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

EARTH ISLAND INSTITUTE d/b/a/ RENEW MISSOURI, et. al.	)	
COMPLAINANTS	)	
v.	)	**Case No. EC-2013-0379, et al.**
KANSAS CITY POWER & LIGHT COMPANY	)	
RESPONDENTS.	)	

LEGAL MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY DETERMINATION

COME NOW Earth Island Institute d/b/a Renew Missouri, Missouri Coalition for the Environment, Missouri Solar Energy Industry Association, Wind on the Wires, The Alternative Energy Company, StraightUp Solar, and Missouri Solar Applications (collectively referred to herein as "Complainants"), and pursuant to 4 CSR 240-2.117(1)(B), state why summary determination should be granted on their Motion as to all issues raised in the four complaints underlying these consolidated cases.

STANDARD FOR SUMMARY DETERMINATION

Complainants assume the burden of establishing that there is no genuine issue as to any material fact. Complainants must also establish in this memorandum that they are entitled to relief as a matter of law. The Commission will not grant summary determination unless it determines that it is in the public interest. 4 CSR 240-2.117(1)(F).

DISCUSSION

I. Introduction

These complaints have to do with disclosure requirements in the Public Service Commission's ("the Commission's") rule implementing the Missouri Renewable Energy Standard ("RES"). Specifically, Complainants are concerned with utilities' failure to comply with provisions requiring them to disclose the details of their 1% retail rate impact calculation ("section (5) calculation")(rule 4 CSR 240-20.100(7)(B)1.F). Complainants are simply seeking an Order from the Commission requiring utilities to achieve literal and total compliance with 4 CSR 240-20.100(7)(B)1.F every year, along with any fines and additional remedies the Commission deems appropriate.

It deserves clarifying that this is the proper place to address these issues. Tim Rush claims in his Rebuttal Testimony that the Commission should dismiss the case because "the proper place to address the 1% cap calculation is in the 2013-2015 planning years filing made by the Companies in Case Nos. EO-2013-0504 and EO-2013-0505…none of these issues can be addressed in the complaint cases as they deal with past planning years by the Companies."[1] However, the Commission has repeatedly made it clear that it intends to take no further action on utilities' compliance plans; the Commission instead has invited parties to file complaints to achieve further resolution. Most recently, the Commission stated in its August 21, 2013 Notices Regarding Ameren Missouri's 2013-2015 Compliance Plan:[2] (emphasis added)

> The Commission's regulation does not specify what, if any, action the Commission is to take regarding Ameren Missouri's RES compliance report and plan and any alleged deficiencies in that report and plan, except to allow the Commission to "establish a procedural schedule if necessary". After considering the submitted

[1] "Rebuttal Testimony of Tim M. Rush," filed on behalf of KCP&L and GMO in case no. EC-2013-0379, et al. on August 9, 2013, p. 10, lines 18-23.
[2] "Notice Regarding Ameren Missouri's 2013-2015 Compliance Plan," filed by the Commission in case no. EO-2013-0503 on August 21, 2013, p. 2.

comments, the Commission concludes that no further order from the Commission is appropriate at this time.

If the organizations that submitted comments, or anyone else, want to further pursue their contention that Ameren Missouri has failed to comply with the requirements of the renewable energy statute or the Commission's implementing regulations, *they may do so by filing a complaint* pursuant to Section 4 CSR 240-20.100)(8)(A) and the statutes and regulations governing complaints before the Commission.

The Commission filed nearly identical Notices in Case Nos. EO-2013-0504 (KCP&L), EO-2013-0505 (GMO), and EO-2013-0458 (Empire). More importantly, the Commission issued nearly identical Notices on August 15, 2012 in utilities' 2012-2014 RES compliance cases (the planning period at issue in this case): EO-2012-0351 (Ameren Missouri); EO-2012-0348 (KCP&L); EO-2012-0349 (GMO); and EO-2012-0336 (Empire). Accordingly, these complaints are the proper place to address issues relating to utility violations of the Commission's rule for compliance year 2012.

II. The public interest will be served by the Commission granting the relief requested.

The relief requested in the complaints will serve the general public interest by ensuring a reliable framework for open disclosure of utilities' future renewable energy expenses. In addition, the relief requested would serve the interests of hundreds of Missourians working in the solar industry today. As the Direct Testimony of Vaughn Prost illustrates, solar companies and other renewable businesses need the ability to accurately plan for future market conditions in order to run their businesses.[3] This requires, first and foremost, knowledge of exactly when

[3] "Direct Testimony of Vaughn Prost," filed on behalf of Complainants in case no. EC-2013-0379, et al. on June 22, 2013, at p. 3, lines 16-22.

utilities expect to reach their 1% retail rate impact limitation. However, this alone is not enough. Renewable businesses also require a high level of assurance that utilities are correctly calculating this 1% limitation in accordance with the RES statute and the Commission's rule. To this end, the Commission's rule requires not only that the section (5) calculation be performed, but that utilities include a "detailed explanation" of their section (5) calculation every year in their RES compliance plans.[4]

As alleged in the complaints, Missouri's four investor-owned utilities ("IOUs") did not achieve full compliance with 4 CSR 240-20.100(7)(B)1.F for calendar year 2012.[5] Staff agreed, but nevertheless recommended that the Commission grant variances from 4 CSR 240-20.100(7)(B)1.F.[6] Staff reasoned that, because utilities' costs were significantly below the 1% limit, performing the full section 5 calculation and requiring the disclosure of such "would literally serve no purpose."[7] As such, Staff didn't view utilities' failure to comply with section (7)(B)1.F as a deficiency.[8]

Complainants disagree with Staff's above reasoning. On p. 15 of its 2012-2014 RES Compliance Plan, GMO claimed that it would reach a 0.99% retail rate impact for 2012, and well over the 1% for both 2013 and 2014. Complainants would not characterize this as "significantly below the 1% limit." It was certainly not a situation where utilities should be allowed to slip by with less than full compliance. It was absolutely essential that GMO be required to perform the section 5 calculation in its entirety and disclose its methodology in its compliance plan. Had they done so, the Commission and other stakeholders would have had the opportunity to achieve

[4] 4 CSR 240-20.100(7)(B)1.F.
[5] See Complainants' accompanying "Motion for Summary Determination," ¶7-10.
[6] "Staff Report on Company's RES Compliance Plan," filed on May 31, 2012 in case nos.EO-2012-0336 (p. 2, ¶6-8), EO-2012-0348 (p. 2, ¶7-9), EO-2012-0349 (p. 2, ¶7-9), EO-2012-0351 (p. 2, ¶7-9).
[7] Id.
[8] Id.

certainty and finality to the issue of what section (5) requires. Instead, we find ourselves in the current situation in which GMO is threatening to discontinue payment of solar rebates,[9] even though not a single utility has correctly performed the section (5) calculation to date.

Rule 4 CSR 240-20.100(7)(B)1.F exists precisely to avoid such confusion. Had utilities completely followed sections (5) and (7)(B)1.F in 2012, it's likely that we would not find ourselves in this imminent crisis that threatens the existence of an entire industry. As such, Complainants ask that the Commission hold utilities responsible for failing to comply with rule 4 CSR 240-20.100(7)(B)1.F in 2012, and order utilities to comply every year in the future.

III. Ameren Missouri fails to provide justification for its violation of rule 4 CSR 240-20.100 (7)(B)1.F .

As identified in Complainants' Motion for Summary Determination (¶9), Ameren Missouri has acknowledged multiple times that it did not meet the requirements of rule 4 CSR 240-20.100(7)(B)1.F in its 2012-2014 RES Compliance Plan. Although the Company has requested a variance multiple times, the Commission has granted none of the requests. Ameren Missouri's attempts to justify its violation fail to provide reason for the Commission to grant the Company a pass.

The Rebuttal Testimony of Matt Michels states that Ameren Missouri had essentially performed the section (5) calculation and included it within its 2011 IRP filing.[10] He states that the calculation already existed, yet even still the Company refused to include it in its 2012-2014 RES Compliance Plan. There seems to be no reason for the Company to withhold such information, other than an unwillingness to share information with stakeholders and the public.

[9] See case no. ET-2014-0026

[10] "Rebuttal Testimony of Matt Michels," filed on behalf of Ameren Missouri in case no. EC-2013-0379, et al. on August 9, 2013, p. 4, lines 3-10.

In response to why the Company did not include their full calculation in their 2012-2014 compliance plan as required, Mr. Michels replies:[11]

> At the time Ameren Missouri made its 2012 RES compliance filing, the RES rules were the subject of litigation. One of the issues in that litigation involved what the statutory requirements were with respect to how the 1% retail rate impact limitation was to be calculated. At that time, there were a range of possible outcomes in terms of how the court might determine the calculation had to be done. As the outcome of the this litigation was unknown it was important to ensure that Ameren Missouri's RES compliance rate impact was within the 1% limitation regardless of the manner in which the court determined it must be calculated.

Mr. Michels' explanation fails to absolve Ameren Missouri of its responsibility to comply with Commission rules. With respect to the litigation referred to, no court had issued a stay or found the Commission's rule invalid. At no time was Ameren Missouri relieved of its obligation to comply with every part of rule 4 CSR 240-20.100. Moreover, such explanation in no way explains why Ameren Missouri would also need a variance in all future years, as the Company requested in its June 15, 2012 filing (discussed below).

Ameren Missouri acknowledged that it had not met the rule's requirements when it explained (in a June 15, 2012 request for a variance) why it performed this alternative calculation (emphasis added):[12]

> As was true in the Company's filing last year, Ameren Missouri's cost to comply with the RES for this year and the next two calendar years is significantly less than 1% of its current revenue requirement. *Accordingly, the extra calculations are not*

[11] Id. at p. 6, lines 4-11.
[12] "Response to Comments," filed by Ameren Missouri in case no. EO-2012.0351 on June 15, 2012, p. 1-2.

necessary to ensure Ameren Missouri's compliance plan is obtainable within the statutory expenditure cap for [2012, 2013, and 2014] … The company also requests that this variance be a continuing variance until such time as the cost of compliance is more than 1% of its current revenue requirement.

Ostensibly, here Ameren admits to a violation of rule 4 CSR 240-20.100(7)(B)1.F., and attempts to justify such violation by deciding that the required calculation is "not necessary" due to a completely unrelated calculation the Company performed. Even more egregious, Ameren Missouri would have the Commission give it a variance every year until it hits what the Company erroneously considers to be its 1% retail rate impact limit. Such reasoning is devoid of logic, since it would allow Ameren Missouri to avoid showing how it calculated its 1% limit until the Company internally decides it has reached the limit, leaving no oversight role for the Commission whatsoever. As we've seen in the current GMO solar rebate crisis,[13] it is essential that a utilities' section (5) calculation is reviewed and settled well before the utility approaches the 1% limit. Any other approach creates confusion and crisis without sufficient time to resolve either.

Ameren Missouri has acknowledged not fulfilling the requirements of Commission rule 4 CSR 240-20.100(7)(B)1.F. The Commission has not granted Ameren Missouri a variance. The Commission should refrain from establishing the precedent that some of its rules may be considered voluntary, especially when it has the potential to result in mass confusion and threaten the survival of an entire industry. The Commission should find Ameren Missouri in violation of rule 4 CSR 240-20.100(7)(B)1.F for RES compliance year 2012.

[13] ET-2014-0026

IV. KCP&L and GMO fail to establish how they are exempt by the last sentence of rule 4 CSR 240-20.100(5)(B).

The last sentence of 4 CSR 240-100(5)(B) states: "[t]he comparison of the rate impact of renewable and non-renewable energy resources shall be conducted only when the electric utility proposes to add incremental renewable energy resource generation directly attributable to RES compliance through the procurement or development of renewable energy resources." In their Rebuttal Testimony, both Tim Rush and Burton Crawford claim that KCP&L and GMO did not proposed to add renewable energy resource generation in their 2012-2014 RES Compliance Plans.[14] [15] In so claiming, they conclude that the last sentence of Section (5)(B) exempts the companies from both performing the section (5) calculation and including a detailed explanation of the calculation in their compliance plans as required by section (7)(B)1.F.[16]

KCP&L and GMO fail to prove that section (5)(B) exempted them from performing the section (5) calculation and providing a detailed explanation in their 2012-2014 RES compliance plans. Both companies anticipate tens of millions of dollars in solar rebate costs over the 2012-2014 timeframe.[17] In addition, both companies anticipate purchasing unbundled SRECs.[18] KCP&L and GMO fail to establish why these expenditures do not defeat their section (5)(B) exemption claim.

Staff considers KC&L and GMO both to have proposed to add renewable energy resource generation for the 2012-2014 RES compliance period. In her Rebuttal Testimony,

[14] "Rebuttal Testimony of Tim Rush," filed on behalf of KCP&L and GMO in case no. EC-2013-0379, et al. on August 9, 2013, p. 8, lines 1-2.
[15] "Rebuttal Testimony of Burton L. Crawford," filed on behalf of KCP&L and GMO in case no. EC-2013-0379, et al. on August 9, 2013, p. 3, lines 9-15.
[16] Id.
[17] "2012 Annual Renewable Energy Standard Compliance Plan," filed by GMO in case no. EO-2012-0348 on April 15, 2012, p. 13.
[18] Id.

Claire Eubanks states: "Ameren Missouri, KCPL, and GMO proposed to add renewable energy resource generation in their 2012-2014 RES Compliance Plans."[19] Additionally, the Staff Reports filed on May 31, 2012 make no reference to the Section (5)(B) exemption; instead the Staff Reports acknowledge that utilities did not achieve full compliance with Section (7)(B)1.F.[20]

Complainants agree with Staff's position that KCP&L and GMO proposed to add renewable energy resource generation in their 2012-2014 RES Compliance Plans. There is sufficient evidence to indicate that utility expenditures in the form of solar rebates qualify as "incremental renewable energy resource generation directly attributable to RES compliance through the procurement or development of renewable energy resources." Payment of solar rebates is certainly attributable to RES compliance. Moreover, payment of solar rebates directly results in the *development* of renewable energy resources.

By their own logic, KCP&L and GMO's expenditures on unbundled SRECs qualify as "incremental renewable energy resource generation directly attributable to RES compliance through the procurement or development of renewable energy resources." The RES statute states that "the portfolio requirements shall apply to all *power* sold to Missouri consumers *whether such power is self-generated or purchased from another source in or outside of this state*."[21] (emphasis added). In other words, regardless of whether the power is utility-generated or purchased from outside the state, the portfolio requirements still apply to *power* (i.e. renewable energy resource generation). KCP&L and GMO cannot claim simultaneously that: a) they can

[19] "Rebuttal Testimony of Claire Eubanks," filed on behalf of Staff in case no. EC-2013-0379, et al. on August 9, 2013, p. 6, lines 1-2.
[20] "Staff Report on Company's RES Compliance Plan," filed on May 31, 2012 in case nos. EO-2012-0336 (p. 2, ¶6-8), EO-2012-0348 (p. 2, ¶7-9), EO-2012-0349 (p. 2, ¶7-9), EO-2012-0351 (p. 2, ¶7-9).
[21] §393.1030.1, RSMo.

meet the portfolio requirement with unbundled SRECs, and b) those unbundled SRECs don't result in renewable energy resource generation. Those claims are inconsistent with one another.

The plain meaning of the last sentence of section (5)(B) is that any utility expenditures directly attributable to RES compliance that result in the development of renewable energy resources triggers a requirement that the utility perform the section (5) calculation. Nothing in the RES statute or the Commission's rule specifies whether "incremental renewable energy resource generation" must mean resources owned and operated by the utility. Solar rebate payments and the purchase of unbundled SRECs are both occurring as a result of RES compliance, according to KCP&L and GMO. Because KCP&L and GMO propose these expenditures in their 2012-2014 RES Compliance Plans, they are precluded from claiming an exemption from rule 4 CSR 240-20.100(7)(B)1.F for 2012.

V. Section (5)(B) does not exempt any utility from the requirements of (7)(B)1.F.

As identified in Complainants' accompanying Motion for Summary Determination, Empire has acknowledged that it did not meet the requirements of rule 4 CSR 240-20.100(7)(B)1.F in its 2012-2014 RES Compliance Plan. Although the Company has requested a variance multiple times, the Commission has granted none of the requests.

Empire claims it has not violated rule 4 CSR 240-20.100(7)(B)1.F because it is exempt by the last sentence of rule (5)(B).[22] Unlike Ameren Missouri, KCP&L and GMO, Empire did not propose to make any expenditures involving solar rebates or unbundled SRECs.[23] Instead,

[22] "Rebuttal Testimony of Timothy N. Wilson," filed on behalf of Empire in case no. EC-2013-0382 On August 9, 2013, p. 5, lines 25-28.

[23] Empire is making no effort to comply with the solar requirements of the RES because they claim an exemption by virtue of Section 393.1050, RSMo. This issue is addressed extensively in case no. EC-2012-0377, et al.

Empire is relying upon wind farm RECs "derived from purchase power agreements that pre-date the 2012-2014 compliance period…"[24]

Complainants disagree with Empire's interpretation of 4 CSR 240-20.100(5)(B) and (7)(B)1.F. Even if KCPL, GMO and Empire did not propose to add any "incremental renewable energy resource generation" in their 2012-2014 compliance plans, section (7)(B)1.F. requires utilities to provide a detailed explanation of the calculation regardless of the provisions of section (5)(B). The last sentence of section (5)(B) has nothing to do with the actual section (5) "calculation," except with respect to the timing of when the calculation must be performed. When section (7)(B)1.F refers to the "RES retail impact limit calculated in accordance with section (5) of this rule," it is referencing the provision of section (5) that concern the calculation itself (i.e. section (5)(A) and the substantive provisions of section (5)(B)). Section (7)(B)1 lays out the minimum requirements for annual RES compliance plans; the seven items enumerated therein are not optional or voluntary depending on whether the utility feels they are necessary. If a utility fails to include a single item, their compliance plan is incomplete and inconsistent with the Commission's rule.

Accordingly, rule 4 CSR 240-20.100(7)(B)1.F. requires Empire to include a detailed explanation of its 1% retail rate impact limitation calculation, or section (5) calculation, notwithstanding the last sentence of rule 4 CSR 240-20.100(5)(B). Empire's 2012-2014 RES Compliance Plan failed include such a detailed explanation, and the Commission should find the Company in violation of rule 4 CSR 240-20.100(7)(B)1.F.

[24] Id. at 10, lines 17-20.

CONCLUSION

For the above reasons, in granting Complainants' Motion for Summary Determination, the Commission should find Union Electric Company d/b/a Ameren Missouri, Kansas City Power & Light Company, KCP&L Greater Missouri Operations Company, and Empire District Electric Company in violation of Commission rule 4 CSR 240-20.100(7)(B)1.F for their failure to include a detailed explanation of their 1% retail rate impact limit calculations in their 2012-2014 RES Compliance Plans, and order the utilities to comply with all Commission rules in the future.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing, together with all referenced Exhibits, have been electronically mailed to all parties of record on this 23rd day of August, 2013.

/s/ Andrew J. Linhares
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