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.	)	

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, respectfully move that the Missouri Public Service Commission grant summary determination in favor of Complainants. In support of their Motion, Complainants state as follows:

1. On January 30, 2013, Complainants filed formal complaints with the Missouri Public Service Commission ("the Commission") alleging violations of the Commission's rule 4 CSR 240-20.100 on the part of Missouri's investor-owned utilities ("IOUs"). The Commission consolidated the complaint case against Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri")(EC-2013-0381), Empire District Electric Company ("Empire")(EC-2013-0382), and KCP&L-Greater Missouri Operations Company ("GMO")(EC-2013-0380) into case no. EC-2013-0379 against Kansas City Power & Light Company ("KCP&L").

2. Specifically, the complaints ask that the Commission find the four IOUs 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 calculation, also referred to as the 1% cost comparison ("section (5) calculation"), in their 2012-2014 RES Compliance Plans. The complaints further ask that the Commission order the IOUs to re-file their 2012-2014 RES Compliance Plans to be consistent with the Commission's rules, and to comply with all such rules for all future RES Compliance Plans.

3. Under 4 CSR 240-2.117(1)(A), a motion for summary determination shall not be filed less than 60 days prior to hearing except by the Commission's leave. On April 19, 2013, the Commission issued its Order Adopting Procedural Schedule in this case, and in so doing ordered the parties to file dispositive motions by August 23, 2013. The Commission's April 19, 2013 Order constitutes leave for Complainants to file a motion for summary determination under 4 CSR 240-2.117(A).

4. Under 4 CSR 240-2.117(1)(B), "[m]otions for summary determination shall state with particularity in separately numbered paragraphs each material fact as to which the movant claims there is no genuine issue, with specific reference to the pleadings, testimony, discovery, or affidavits that demonstrate the lack of a genuine issue as to such facts." As demonstrated below, there exists no genuine issue as to any material fact in this case.

LACK OF GENUINE ISSUES AS TO MATERIAL FACTS

5. There is no genuine dispute that the Commission's rule 4 CSR 240-20.100(7) provides: "Each electric utility shall file an annual RES compliance plan with the commission. The plan shall be filed no later than April 15 of each year." Rule 4 CSR 240-20.100(7)(B)1 further provides: "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."

6. There is no genuine dispute as to the fact that the Commission's rule 4 CSR 240-20.100(5) provides:

> (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… The 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.

7. There is no genuine dispute that KCP&L's 2012-2014 RES Compliance Plan did not include a detailed explanation of the utility's section (5) calculation. Whether such omission constitutes a violation of rule 4 CSR 240-20.100(7)(B)1.F. is a question of law addressed in Complainants' accompanying Memorandum in Support.

a. While KCP&L's March 4, 2013 Answer in case no. EC-2013-0381 denies Complainants' allegation that the omission of a detailed explanation of the section (5) calculation constitutes a violation of rule 4 CSR 240-20.100(7)(B)1.F,[1] KCP&L does not dispute the fact that it omitted the detailed explanation in its 2012-2014 RES Compliance Plan.

[1] "Answer," filed by KCP&L in case no. EC-2013-0379 on March 4, 2013, p. 3, ¶21.

b. In his Rebuttal Testimony on behalf of KCP&L and GMO, Tim Rush concedes that KCP&L did not include a detailed explanation of its section (5) calculation in its 2012-2014 RES Compliance Plan. Mr. Rush's testimony claims that KCP&L was not required to perform or disclose the section (5) calculation, by virtue of the last sentence of rule 4 CSR 240-20.100(5)(B).[2] Burton Crawford's Rebuttal Testimony on behalf of KCP&L and GMO makes a similar concession when it states that the section (5) calculation was not required by virtue of rule 4 CSR 240-20.100(5)(B).[3]

c. On p. 16 of its 2012-2014 RES Compliance Plan, KCP&L states: "Since each Company Preferred Plan identified in the April 2012 IRP filing only contains renewable additions that improve each company's cost, no non-compliant plan is necessary to calculate rate impacts." By KCP&L's own admission, it did not include a detailed explanation of the section (5) calculation because it believed the full calculation was not necessary.

8. There is no genuine dispute that GMO's 2012-2014 RES Compliance Plan did not include a detailed explanation of the utility's section (5) calculation. Whether such omission constitutes a violation of rule 4 CSR 240-20.100(7)(B)1.F. is a question of law addressed in Complainants' accompanying Memorandum in Support.

a. While GMO's March 4, 2013 Answer in case no. EC-2013-0380 denies Complainants' allegation that the omission of a detailed explanation of the section (5) calculation constitutes a violation of rule 4 CSR 240-20.100(7)(B)1.F,[4] GMO does not dispute the fact that it omitted the detailed explanation in its 2012-2014 RES Compliance Plan.

[2] "Rebuttal Testimony of Tim Rush," filed on behalf of KCP&L and GMO on August 9, 2013, p. 8, lines 1-2; p. 10, lines 5-6.
[3] "Rebuttal Testimony of Burton L. Crawford," filed on behalf of KCP&L and GMO on August 9, 2013, p. 3, lines 14-15.
[4] "Answer," filed by GMO in case no. EC-2013-0380 on March 4, 2013, p. 3, ¶21.

b. As mentioned above, the Rebuttal Testimony of both Tim Rush and Burton Crawford concede that the section (5) calculation was not performed and the detailed explanation was not included in the Plan.

c. On p. 16 of its 2012-2014 RES Compliance Plan, GMO states: "Since each Company Preferred Plan identified in the April 2012 IRP filing only contains renewable additions that improve each company's cost, no non-compliant plan is necessary to calculate rate impacts." By GMO's own admission, it did not include a detailed explanation of the section (5) calculation because it believed the full calculation was not necessary.

9. There is no genuine dispute that Ameren Missouri's 2012-2014 RES Compliance Plan did not include a detailed explanation of the utility's section (5) calculation. Whether such omission constitutes a violation of rule 4 CSR 240-20.100(7)(B)1.F. is a question of law addressed in Complainants' accompanying Memorandum in Support.

a. While Ameren Missouri's March 4, 2013 Answer in case no. EC-2013-0381 denies Complainants' allegation that the omission of a detailed explanation of the section 5 calculation constitutes a violation of rule 4 CSR 240-20.100(7)(B)1.F,[5] Ameren Missouri does not dispute the fact that it omitted the detailed explanation in its 2012-2014 RES Compliance Plan.

b. On pg. 6 of his Rebuttal Testimony on behalf of Ameren Missouri, Matt Michels concedes that Ameren Missouri didn't make use of its IRP model in order to include a detailed calculation of the 1% retail rate impact limitation in its 2012 RES compliance filing.[6][7]

[5] "Answer," filed by Ameren Missouri in case no. EC-2013-0381 on March 4, 2013, p. 3, ¶24.
[6] "Rebuttal Testimony of Matt Michels," filed on behalf of Ameren Missouri in case no. EC-2013-0379, et al. on August 9, 2013, p. 6, lines 1-11.
[7] Id. at p. 4, lines 3-10 (Mr. Michels explains that its 2011 IRP filing included an Excel spreadsheet model, developed to perform the section 5 calculation).

Mr. Michels explains that the section (5) calculation wasn't included because the Commission's rules were the subject of litigation at the time, and thus Ameren Missouri used an alternative method for calculating the 1% retail rate impact limitation.[8]

c. By Ameren Missouri's own admission, it is this alternative method that is explained on p. 16 of its 2012-2014 RES Compliance Plan:

> As established in Case No. ER 2011-0028, the total annual base rate revenue requirement for Ameren Missouri is $2.61 billion. The application of a 1% rate increase would equate to a rate impact of $26.1 million.
>
> As demonstrated in Table 3, the costs affecting the annual rate impact are well below$26.1 million.

10. There is no genuine dispute that Empire's 2012-2014 RES Compliance Plan did not include a detailed explanation of the utility's section (5) calculation. Whether such omission constitutes a violation of rule 4 CSR 240-20.100(7)(B)1.F. is a question of law addressed in Complainants accompanying Memorandum in Support.

a. While Empire's March 4, 2013 Answer in case no. EC-2013-0382 denies Complainants' allegation that the omission of a detailed explanation of the section (5) calculation constitutes a violation of rule 4 CSR 240-20.100(7)(B)1.F,[9] Empire does not dispute the fact that it omitted the detailed explanation in its 2012-2014 RES Compliance Plan.

b. On p. 6 of his Rebuttal Testimony on behalf of Empire, Timothy Wilson concedes that Empire omitted a detailed explanation of its section (5) calculation from its 2012-2014 RES Compliance Plan.[10] Mr. Wilson reasons that such explanation wasn't required because Empire was exempt by 4 CSR 240-20.100(5)(B) from making "a detailed retail rate impact

[8] Id. at p. 6, lines 12-19.
[9] "Answer," filed by Empire in case no. EC-2013-0382 on March 4, 2013, p. 3, ¶20.
[10] "Rebuttal Testimony of Timothy N. Wilson," filed on behalf of Empire on August 9, 2013, p. 6, lines 1-2.

calculation and from including that calculation as part of its RES Compliance Plan filing."[11] Furthermore, Mr. Wilson's testimony described Empire's short explanation in its 2012-2014 RES Compliance Plan (at p. 7) as a "somewhat rough estimate of the one percent retail rate cap."[12]

11. There is no genuine dispute that the Staff Reports, filed on May 31st, 2012, observed that all four utilities' compliance plans were "not at the level of detail contemplated by the rule" [13] with respect to the requirement in rule 4 CSR 240-20.100(7)(B)1.F. Staff observed: "the rule requires a calculation to net the least-cost of renewable generation for RES compliance with the cost to provide an equivalent amount of generation from nonrenewable resources."[14] Whether this lack of sufficient detail constitutes a violation of rule 4 CSR 240-20.100(7)(B)1.F is a legal issue, and thus is not addressed here.

12. There is no genuine dispute that the Staff Reports recommend that the Commission grant all four IOUs a variance from rule 4 CSR 240-20.100(7)(B)1.F, although no utility requested such a variance concurrent with its compliance plan.[15] Staff reasoned that: "[s]ince the Compan[ies'] costs for these compliance period are significantly below the one percent (1%) retail rate impact limit, performing the detailed netting calculation would literally serve no purpose."[16]

13. There is no dispute that the Commission has not granted any utility a variance from rule 4 CSR 240-20.100(7)(B)1. F, despite multiple requests.

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[11] Id.
[12] "Rebuttal Testimony of Timothy N. Wilson," filed on behalf of Empire on August 9, 2013, p. 6, lines 11-14.
[13] "Staff Report on Company's RES Compliance Plan," filed on May 31, 2012 in case nos.EO-2012-0336 (p. 2, ¶6), EO-2012-0348 (p. 2, ¶7), EO-2012-0349 (p. 2, ¶7), EO-2012-0351 (p. 2, ¶7).
[14] Id.
[15] "Staff Report on Company's RES Compliance Plan," filed on May 31, 2012 in case nos.EO-2012-0336 (p. 2, ¶8), EO-2012-0348 (p. 2, ¶9), EO-2012-0349 (p. 2, ¶9), EO-2012-0351 (p. 2, ¶9).
[16] Id.

14. There is no genuine dispute that the Commission has not determined that any utility has reached the 1% retail rate impact limit or performed the section (5) calculation correctly.

15. There is no dispute that Ameren Missouri, KCP&L and GMO are claiming that expenditures in the form of solar rebates are directly attributable to RES compliance. Furthermore, there is no dispute that utility expenditures in the form of solar rebates result in the development of renewable energy resources.

16. There is no dispute that GMO filed a Motion to Approve Tariff to Suspend Payment of Solar Rebates on July 5, 2013 in case no. EO-2013-0505. That filing has since been moved to case no. ET-2014-0026.

WHEREFORE, Complainants respectfully requests that the Commission issue an Order granting summary determination in favor of Complainants in the above-styled case.

Respectfully submitted,

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ATTORNEYS FOR COMPLAINANTS

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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