STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 3rd day of October, 2013.

Earth Island Institute d/b/a Renew Missouri, et al. Complainants, v. Kansas City Power & Light Company Respondent.	)	**File No. EC-2013-0379, et al.**
Earth Island Institute d/b/a Renew Missouri, et al. Complainants, v. The Empire District Electric Company Respondent.	)	**File No. EC-2013-0382**

ORDER DENYING MOTIONS FOR SUMMARY DETERMINATION OF RENEW MISSOURI AND KCP&L/GMO, BUT GRANTING MOTION FOR SUMMARY DETERMINATION OF EMPIRE

Issue Date: October 3, 2013 Effective Date: October 13, 2013

This order concerns the consolidated complaints brought by Earth Island Institute d/b/a Renew Missouri and other complainants[1], against Union Electric Company d/b/a

[1] The other complainants are Missouri Coalition for the Environment, Missouri Solar Energy Industry Association, Wind on the Wires, The Alternative Energy Company, StraightUp Solar, and Missouri Solar Applications.

Ameren Missouri, Kansas City Power & Light Company (KCP&L), KCP&L Greater Missouri Operations Company (GMO), and The Empire District Electric Company concerning the utilities' compliance with the Commission's Renewable Energy Standard (RES) rule, 4 CSR 240-20.100. Those complaints allege the four investor-owned electric utilities have failed to comply with the requirements of the RES rule by failing to include a detailed explanation of the calculation of the RES retail impact limit in their 2012-2014 RES compliance plans. The complaints are currently set for an evidentiary hearing on October 22, 2013.

On August 23, KCP&L/GMO, Empire, and Renew Missouri filed competing motions for summary determination. The parties responded to each other's motions on September 6. Ameren Missouri did not file a motion for summary determination but did respond in opposition to Renew Missouri's motion for summary determination.

All three motions for summary determination concern the interpretation of two sections of the Commission's RES rule. The first rule provision in question, 4 CSR 240-20.100(7)(B)1.F, requires that each electric utility's annual compliance report contain "a detailed explanation of the calculation of the RES retail impact limit calculated in accordance with section (5) of this rule." Section (5) of the rule states:

> The retail rate impact, as calculated in subsection (5)(B), may not exceed one percent (1%) for prudent costs of renewable energy resources directly attributable to RES compliance. The retail rate impact shall be calculated on an incremental basis for each planning year that includes the addition of renewable generation directly attributable to RES compliance through procurement of development of renewable energy resources averaged over the succeeding ten (10)-year period, and shall exclude renewable energy resources owned or under contract prior to the effective date of this rule.[2]

Subsection (5)(B) gives a detailed explanation of how the retail rate impact is to be calculated, but at the end says:

[2] 4 CSR 240-20.100(5)(A).

> 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.

Renew Missouri's Motion for Summary Determination asserts that it is an undisputed fact that the electric utilities have failed to provide the detailed explanation of the calculation of the RES retail impact limit required by (7)(B)1.F and on that basis seeks summary determination in its favor. Empire and KCP&L/GMO counter that it is an undisputed fact that they did not propose to add incremental renewable energy resource generation directly attributable to RES compliance during the year in question, and thus (5)(B) does not require them to conduct the comparison of the rate impact for that year. On that basis, they seek summary determination in their favor.

Commission rule 4 CSR 240-2.117(1)(E) states the Commission may grant a motion for summary determination if (1), the pleadings, testimony, discovery, affidavits, and memoranda on file show that there is no genuine issue as to any material fact; (2) any party is entitled to relief as a matter of law as to all or any part of the case; and (3) the commission determines that it is in the public interest to grant summary determination. The standard established in the Commission's rule is the same standard applied to civil cases in Missouri courts, except for the requirement that a grant of summary determination be in the public interest.

Thus, the Missouri Supreme Court has stated:

> [t]he burden on a summary judgment movant is to show the right to judgment flowing from facts about which there is no genuine dispute. Summary judgment tests simply for the existence, not the extent, of these genuine disputes.[3]

[3] ITT Commercial Finance Corp. v. Mid-American Marine Supply Corp., 854 S.W.2d 371, 378 (Mo. 1993)

That means summary determination is not appropriate if there is any genuine dispute about any material fact. With that standard in mind, the Commission will review the motions for summary determination in turn.

Renew Missouri's Motion for Summary Determination

Against KCP&L and GMO:

Renew Missouri's motion for summary determination alleges that KCP&L's and GMO's 2012-2014 RES Compliance Plans did not contain a detailed explanation of the utilities' section (5) calculation. That motion further alleges that the question of whether that omission constitutes a violation of 4 CSR 240-20.100(7)(B)1.F is a question of law that can be resolved through an order granting summary determination.

However, there is at least one unresolved question of fact that precludes the granting of summary determination in favor of Renew Missouri. KCP&L and GMO contend that they did, in fact, provide a detailed explanation of the calculation of the RES retail impact limit as required by the regulation. The question of whether that explanation is sufficient to satisfy the requirement of the regulation is a question of fact that the Commission can resolve only after the facts are developed by means of an evidentiary hearing. For that reason, summary determination is not appropriate.

Against The Empire District Electric Company:

Renew Missouri's motion for summary determination alleges that Empire's 2012-2014 RES Compliance Plan did not contain a detailed explanation of the utility's section (5) calculation. That motion further alleges that the question of whether that omission constitutes a violation of 4 CSR 240-20.100(7)(B)1.F is a question of law that can be resolved through an order granting summary determination.

However, there is at least one unresolved question of fact that precludes the granting of summary determination in favor of Renew Missouri. Empire contends that it provided a detailed explanation of the calculation of the RES retail impact limit as required by the regulation and indeed, Empire's answer to Renew Missouri's complaint specifically denies Renew Missouri's allegation to the contrary. Renew Missouri's reference to a portion of the rebuttal testimony of Empire's witness in which that witness testifies to his belief that the Commission's regulation exempts Empire from including a detailed retail rate impact calculation as part of its RES Compliance Plan filing does not establish that Empire in fact did not comply with the regulation. The question of whether Empire's filing complies with the Commission regulation is a fact question that the Commission can resolve only after the facts are developed by means of an evidentiary hearing. For that reason, summary determination is not appropriate.

Against Ameren Missouri:

Renew Missouri's motion for summary determination alleges that Ameren Missouri's 2012-2014 RES Compliance Plan did not contain a detailed explanation of the utility's section (5) calculation. That motion further alleges that the question of whether that omission constitutes a violation of 4 CSR 240-20.100(7)(B)1.F is a question of law that can be resolved through an order granting summary determination.

However, there is at least one unresolved question of fact that precludes the granting of summary determination in favor of Renew Missouri. Ameren Missouri contends that it provided a detailed explanation of the calculation of the RES retail impact limit as required by the regulation and indeed, Ameren Missouri's answer to Renew Missouri's complaint specifically denies Renew Missouri's allegation to the contrary. Renew

Missouri's reference to a portion of the rebuttal testimony of Ameren Missouri's witness in which that witness testifies to the details of how Ameren Missouri calculated that retail impact does not establish that Ameren Missouri did not comply with the regulation. The question of whether Ameren Missouri's filing complies with the Commission regulation is a fact question that the Commission can resolve only after the facts are developed by means of an evidentiary hearing. For that reason, summary determination is not appropriate.

KCP&L and GMO's Motion for Summary Determination Against Renew Missouri

KCP&L and GMO's motion for summary determination against Renew Missouri is based on their reading of the Commission's regulation. They assert that their obligation to provide a detailed explanation of the calculation of the RES retail impact limit is eliminated by 4 CSR 240-20.100(5)(B). They claim that rule requires a particularly detailed study and explanation only for years in which 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. KCP&L and GMO contend they are not adding such generation in the years in question so the detailed calculation is not required by the rule. Renew Missouri counters that KCP&L and GMO are planning to pay solar rebates and purchase S-RECs during the planning period and thus the terms of the rule do not exempt them from having to provide the detailed study required by the rule.

While the question of whether payment of solar rebates and purchase of S-RECs constitutes the addition of incremental renewable energy resource generation directly attributable to RES compliance is in part a legal question requiring an evaluation of the language of the applicable regulations, that question also implicates factual matters

involving those rebates and S-RECs. For that reason, summary determination is not appropriate.

Empire's Motion for Summary Determination Against Renew Missouri

Empire's motion for summary determination against Renew Missouri is based on its reading of the Commission's regulation. Empire asserts that its obligation to provide a detailed explanation of the calculation of the RES retail impact limit is reduced or eliminated by 4 CSR 240-20.100(5)(B). Empire claims that rule requires a particularly detailed study and explanation only for years in which 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. Empire contends it is not adding such generation in the years in question so the detailed calculation is not required by the rule.

The Commission will deny KCP&L and GMO's motion for summary determination against Renew Missouri that asserts the same argument. However, Empire's position is different in that it does not plan to pay solar rebates or purchase S-RECs during the planning period. Instead, Empire, alone among Missouri's investor-owned electric utilities, is exempt from the obligation to pay solar rebates or to comply with solar renewable energy standards pursuant to Section 393.1050, RSMo (Supp. 2012). Thus, the factual issue of whether payment of solar rebates and purchase of S-RECs constitutes the addition of incremental renewable energy resource generation directly attributable to RES compliance does not exist for Empire and does not preclude summary determination regarding Renew Missouri's complaint against Empire. Therefore, the Commission makes the following findings of fact and conclusions of law regarding that complaint.

Findings of Fact:

Each of these material facts is alleged in Empire's Motion for Summary Determination and is not disputed by Renew Missouri in its response to that motion.

1. Empire is an electrical corporation and public utility within the meaning of Section 386.020, RSMo (Supp. 2012) and is engaged in the business of the manufacture, transmission and distribution of electricity subject to the regulatory jurisdiction of the Commission as provided by law.

2. Pursuant to its authority under Section 393.1030.2 RSMo (Supp. 2012), the Commission promulgated 4 CSR 240-20.100.

3. Empire filed its 2012 Annual Renewable Energy Standard Compliance Plan with the Commission on or about April 11, 2012.

4. The Commission docketed the filing of Empire's Plan as File No. EO-2012-0336.

5. The planning interval covered by Empire's Plan includes the years 2012-2013, and 2014.

6. Empire's Plan does not include a comparison of the rate impact of renewable and non-renewable energy resources.

7. Empire's Plan states that Empire "will fully meet the RES Compliance requirements for 2012, 2013, and 2014 with its current purchased power contracts and hydroelectric facility."

8. Empire does not propose to add incremental renewable energy resource generation attributable to RES compliance through the procurement or development of renewable energy resources during the planning interval covered by the Plan.

Conclusions of Law:

A. Commission Rule 4 CSR 240-20.100(7)(B)1.F requires that an electric utility's annual RES compliance report include "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."

B. Section (5) of 4 CSR 240-20.100 states:

> The retail rate impact, as calculated in subsection (5)(B), may not exceed one percent (1%) for prudent costs of renewable energy resources directly attributable to RES compliance. The retail rate impact shall be calculated on an incremental basis for each planning year that includes the addition of renewable generation directly attributable to RES compliance through procurement of development of renewable energy resources averaged over the succeeding ten (10)-year period, and shall exclude renewable energy resources owned or under contract prior to the effective date of this rule.[4]

Subsection (5)(B) gives a detailed explanation of how the retail rate impact is to be calculated, but at the end says:

> 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.

Decision:

Commission Rule 4 CSR 240-20.100(7)(B)1.F requires an electric utility to include a detailed explanation of the calculation of the RES retail impact limit calculated in accordance with section (5) of the rule. However, section (5)(B) of the rule requires such a detailed calculation only when the electric utility proposes to add "incremental renewable energy resource generation directly attributable to RES compliance through the

[4] 4 CSR 240-20.100(5)(A).

procurement or development of renewable energy resources." It is an undisputed fact that Empire did not propose to add incremental renewable energy resource generation attributable to RES compliance through the procurement or development of renewable energy resources during the planning interval covered by the Plan. Thus, taken together, the two provisions of the rule exempt Empire from the obligation to provide a detailed explanation of the calculation of the RES retail impact limit for its 2012 Plan.

Renew Missouri's argument that 4 CSR 240-20.100(7)(B)1.F requires Empire to provide a detailed explanation of the RES retail limit calculation each year, even if 4 CSR 240-20.100(5)(B) specifically provides that it is not required to perform that calculation in some years, would render the exemption provision of subsection (5)(B) meaningless. For that reason, the Commission rejects the interpretation offered by Renew Missouri.

This order finally resolves Renew Missouri's complaint against Empire, but does not finally resolve Renew Missouri's complaints against Ameren Missouri, KCP&L, or GMO. The Commission will unconsolidate the complaint against Empire, File No. EC-2013-0382, so that any request for rehearing regarding this order may proceed independently in that case.

THE COMMISSION ORDERS THAT:

1. The Motion for Summary Determination of 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 is denied.

2. The Motion for Summary Disposition of Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company is denied.

3. The Empire District Electric Company's Motion for Summary Determination is granted and the complaint of 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 against The Empire District Electric Company is dismissed.

4. File No. EC-2013-0382 is unconsolidated and shall proceed independently henceforth.

5. This order shall become effective on October 13, 2013.

BY THE COMMISSION

Morris L. Woodruff
Secretary

R. Kenney, Chm., Stoll,
and W. Kenney, CC., concur.
Hall, C., abstains.

Woodruff, Chief Regulatory Law Judge