

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

In the Matter of Ameren Missouri's Request)
for Variance from Portions of 4 CSR 240-20.065) **File No. ET-2013-0120**

STAFF RECOMMENDATION TO REJECT TARIFF FILING

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through the undersigned counsel, and for its *Staff Recommendation to Reject Tariff Filing* states to the Missouri Public Service Commission (Commission) as follows:

1. On September 28, 2012¹, Union Electric Company d/b/a Ameren Missouri (Ameren Missouri) filed tariff sheets to amend its net metering program to be in compliance with the Commission's revised net metering rule found at 4 CSR 240-20.065 and effective August 30. Ameren Missouri's filing also requested 18 different variances from the rule. The requested variances proposed changes to the standard contract within the net metering rule, the "Interconnection Application/Agreement For Net Metering Systems With Capacity Of One Hundred Kilowatts (100kW) Or Less".

2. On October 2, the Commission issued its *Order Directing Filing*, directing the Staff to file a recommendation no later than October 18.

3. Attached hereto is Staff's *Memorandum* recommending the Commission reject Ameren Missouri's tariff filing and order the Company to file new tariff sheets in compliance with the rule. The proposed changes run contrary to the statute and Commission's net metering rule, and also do not meet the "good cause" standard. Until the time the Commission approves a tariff, the Company remains in violation of the net metering rule.

4. The Net Metering and Easy Connection Act became effective on January 1, 2008. The statute directs the Commission to promulgate rules to include "...regulations ensuring that simple contracts will be used for interconnection and net metering. For systems of

¹ All dates herein refer to the calendar year 2012, unless otherwise noted.

ten kilowatts or less, the application process shall use an all-in-one document that includes a simple interconnection request, simple procedures, and a brief set of terms and conditions.” The Commission did so and the amended net metering rule became effective February 28, 2009.

5. On December 21, 2011, the Commission filed a *Notice Opening File* in File No. EX-2012-0193, to amend the Commission’s net metering rule. The proposed amendment stated: “PURPOSE: This amendment eliminates various inconsistencies between Rule 4 CSR 240-20.065 Net Metering and Rule 4 CSR 240-20.100 Electric Utility Renewable Energy Standard Requirements and defines the rate that at which the electric utilities must credit customer generators for the electric energy they generate which exceeds their needs.” The amendments to the net metering rule became effective August 30, 2012.

6. It is important to note that from the Commission’s *Notice Opening File* in File No. EX-2012-0193 on December 21, 2011, until the Commission’s *Final Order Of Rulemaking* on June 1, Ameren Missouri had several opportunities to present these proposed changes for consideration in the standard contract that is part of the rule, but did not. Further, on April 2, Ameren Missouri filed comments on the proposed amendment, but did not include the changes proposed in the variance request.

7. Staff asserts that Ameren Missouri’s variance request numbers one through three (1-3), five through fourteen (5-14), sixteen (16) and eighteen (18) are unnecessary, but do not go against the purpose of the statute or net metering rule. However, should the Commission approve these types of variance requests, different net metering contracts and tariff language will exist for each regulated electric utility in the state. This runs contrary to the Commission’s goal for the rule to provide a consistent and simple contract for all customers of investor-owned electric utilities in Missouri.

8. Further, Ameren Missouri's fourth (4), fifteenth (15) and seventeenth (17) requests are contrary to the intent of the statute and the Commission's net metering rule and would create confusion for the customer.

9. Ameren Missouri's fourth variance request proposes to extend the requirement to complete a meter installation within 15 days to 30 days. The statute and net metering rule are designed to make it easier for customers to attain net metering service, and Ameren Missouri's variance request does not allow for this. Ameren Missouri's current net metering language contains the 15-day requirement and allows Ameren Missouri and the customer/generator to schedule a different date for the interconnection, should one be necessary.

10. Ameren Missouri's fifteenth and seventeenth waiver requests would create confusion for the customer. Ameren Missouri's proposed language equates the contract itself to a tariff by proposing to remove the words "in accordance with the net metering rate schedule [Utility's Applicable Rate Schedules]" and "net metering rate identified in [Utility's Applicable Rate Schedules]" and replace them with "Avoided Fuel Cost Price specified in Section II.C of this tariff." The proposed language is confusing. First, a Section II.C is not included in the contract. Also, if Ameren Missouri supplied a copy of the tariff when the customers signed the contract, the customer may assume that it would always receive the same metering rate. This is not the case, as the net metering rate may change. Further, Section II.C of the net metering tariff sheet contains only the net metering rates, not the "Avoid Fuel Cost Price" as the language implies.

11. Finally, the Commission's net metering rule does not include a waiver or variance request provision that would allow Ameren Missouri to ask for the relief sought. However, if the Commission decides to apply the "good cause" standard typically found in a waiver or variance provision, Ameren Missouri's request fails to meet the standard. Although the term

“good cause” is frequently used in the law², the rules allowing waivers or variances typically do not define it. Most often, the rule simply states something to the effect, “Variances. Upon request and for good cause shown, the commission may grant a variance from any provision of this rule.” Therefore, it is appropriate to resort to the dictionary to determine the terms ordinary meaning³. Good cause “...generally means a substantial reason amounting in law to a legal excuse for failing to perform an act required by law.”⁴ Similarly, “good cause” has also been judicially defined as a “...substantial reason or cause which would cause or justify the ordinary person to neglect one of his [legal] duties⁵.” Similarly, it can refer “...to a remedial purpose and is to be applied with discretion to prevent a manifest injustice or to avoid a threatened one⁶.”

12. Of course, not just any cause or excuse will do. To constitute good cause, the reason or legal excuse given “...must be real not imaginary, substantial not trifling, and reasonable not whimsical...”⁷ Moreover, some legitimate factual showing is required, not just the mere conclusion of a party or his attorney⁸.

13. Ameren Missouri’s preferences in wording of the universal contract do not amount to good cause for the Commission to consider in granting the variances. The proper time for the Company to have suggested these changes was during the rulemaking. Moreover, variance requests four (4), fifteen (15) and seventeen (17) go against the purpose of the statute and rule and would create confusion for the customer.

² *State v. Davis*, 469 S.W.2d 1, 5 (Mo. 1971).

³ See *State ex rel. Hall v. Wolf*, 710 S.W.2d 302, 303 (Mo. App. E.D. 1986) (in absence of legislative definition, court used dictionary to ascertain the ordinary meaning of the term “good cause” as used in a Missouri statute); *Davis*, 469 S.W.2d at 4-5.

⁴ *Black’s Law Dictionary*, p. 692 (6th ed. 1990).

⁵ *Graham v. State*, 134 N.W. 249, 250 (Neb. 1912). Missouri appellate courts have also recognized and applied an objective “ordinary person” standard. See *Central. Mo. Paving Co. v. Labor & Indus. Relations Comm’n*, 575 S.W.2d 889, 892 (Mo. App. W.D. 1978) (“...[T]he standard by which good cause is measured is one of reasonableness as applied to the average man or woman.”)

⁶ *Bennett v. Bennett*, 938 S.W.2d 952 (Mo. App. S.D. 1997).

⁷ *Belle State Bank v. Indus. Comm’n*, 547 S.W.2d 841, 846 (Mo. App. S.D. 1977). See also *Barclay White Co. v. Unemployment Compensation Bd.*, 50 A.2d 336, 339 (Pa. 1947) (to show good cause, reason given must be real, substantial, and reasonable).

⁸ See generally *Haynes v. Williams*, 522 S.W.2d 623, 627 (Mo. App. E.D. 1975)

WHEREFORE, Staff recommends that the Commission reject Ameren Missouri's tariff sheets and order Ameren Missouri to file new tariff sheets in compliance with the Commission's net metering rule.

Respectfully submitted,

/s/Jennifer Hernandez

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on this 18th day of October, 2012 by electronic mail to counsel for Union Electric Company d/b/a Ameren Missouri at AmerenMOService@ameren.com and counsel for the Office of the Public Counsel at opcservice@ded.mo.gov.

MEMORANDUM

TO: Missouri Public Service Commission Official Case File
Case No. ET-2013-0120 / File No. YE-2013-0161 – Union Electric Company d/b/a
Ameren Missouri

FROM: Thomas M. Imhoff, Tariffs/Rate Design - Energy

/s/ Thomas M. Imhoff 10/18/12
Project Coordinator / Date

/s/ Jennifer Hernandez 10/18/12
General Counsel's Office / Date

SUBJECT: Staff Recommendation to Reject Application of Union Electric Company d/b/a
Ameren Missouri's Request For Approval of Tariff and for Variance Relating to The
Net Metering Service

DATE: October 18, 2012

On September 28, 2012, Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri" or "Company"), filed its "REQUEST FOR APPROVAL OF TARIFF AND FOR VARIANCE" ("Application") in order to implement revisions to its net metering tariff with the Missouri Public Service Commission ("Commission").

The Commission's Rule 4 CSR 240-20.065 Net Metering (Rule) was implemented to coincide with State Statute 386.890 (Statute), known as the "Net Metering and Easy Connection Act". The Statute was enacted to make it easier for customers to obtain net metering service from their respective electric utility service provider such as Ameren Missouri. The Easy Connection Act is designed for systems of 100 kilowatts (kW) or less, and requires a simple application process that includes an all-in-one document with a simple interconnection request, simple procedures, and a brief set of terms and conditions for systems of ten (10) kW or less.¹ Ameren Missouri has proposed compliance tariff sheets relating to this Rule and Statute.

Ameren Missouri filed these tariff sheets to be in compliance with the Rule with a number of exceptions. In this proposed filing, Ameren Missouri seeks eighteen (18) variances from the Rule. Fifteen (15) of the eighteen (18) requests are unnecessary but do not change the purpose of the rule or statute. Staff would not oppose these requests summarized below because they do not change the purpose of the rule or statute. However, should the Commission approve these types of variance requests, different net metering contracts and tariff language will exist for each regulated electric utility in the state. This runs contrary to the Commission's goal for the rule to provide a consistent and simple contract for all customers of investor-owned electric utilities in Missouri.

1. The first waiver request asks to use the word "Company" instead of "Ameren Missouri" after the first time that the utility company name is used in the rule.
2. The second waiver request provides a more detailed definition of the word "plans" in the second paragraph of the contract.

¹ While the statute states a simple contract should be developed for systems of less than 10 kW, the Commission rule applies to all applications of 100 kW or less.

3. The third, eleventh and eighteenth waiver requests define the applicable local authority in approving local codes pertaining to net metering issues. The thirteenth waiver request removes language no longer needed if the third waiver is granted. The eighteenth request is language that Ameren Missouri proposes to be added if waiver three is approved.
4. The fifth variance request provides an additional sentence alerting customers a second time to a separate tariff rider pertaining to solar rebates.
5. The sixth waiver request removes the utility name in Section A of the contract but maintains the customer's name and electric account number.
6. The seventh waiver request asks for an additional line in the contract that would identify the electric account holder contact person.
7. The eighth waiver request switches the order of the listing of AC and DC from "AC or DC" to "DC or AC".
8. The ninth waiver request changes the order of the listing of possible system types.
9. The tenth waiver request requires, if the disconnect switch is not within 10 feet of the meter, the customer to provide an explanation of why the disconnect switch is more than 10 feet away from electric service.
10. The twelfth waiver request covers the possibility of a unique situation where the disconnect device is not located within the vicinity of the customer's meter.
11. The thirteenth waiver request adds a signature line for the installer to print their name on the contract.
12. The fourteenth waiver request adds language regarding Company liability that is already in the rule to the application form.
13. The sixteenth waiver request changing the term customer charge to minimum bill due to the possibility of a demand customer having net metering which would include a demand charge along with a customer charge.

However, Staff believes Ameren Missouri's fourth waiver request changes the intent of the statute. Staff believes the language in the rule was based on discussions with all parties during the workshop phase of the rule revisions for the Net Metering and Easy Connection Act (Section 386.890, RSMo (Supp. 2010), and was added in order to make it less confusing/complicated for customers to get net metering connected. Staff had numerous discussions with Ameren Missouri pertaining to the Rule during the discussion phase of the process, and believes this variance request to be contrary to the Rule and Statute. This Rule and Statute are designed to make it easier for customers to attain net metering service, and Ameren Missouri's variance request does not allow for this. Ameren Missouri's current net metering language already has the 15-day requirement and does allow Ameren Missouri and the customer/generator to schedule a date for the interconnection if necessary.

In addition, the fifteenth and seventeenth waiver requests would create confusion for the customers. In these requests, Ameren Missouri is proposing to remove the words "net metering rate identified in [Ameren Missouri's tariff filed at the Public Service Commission]" with "Avoided Fuel Cost Price specified in Section IIc of this tariff." This statement is confusing. First of all, the contract itself is not a tariff. If the customer assumed that "this tariff" meant "this contract", they could not find a Section IIc. The customer would not know where to look for the rate. If Ameren Missouri supplied a copy of the tariff in effect when the customers signed the contract, the customer may assume that it would always receive the amount in the tariff sheets that the Company provided, which would be incorrect.

These variance requests also tell the customer to look at a “Price” to find the rate the Company would pay the customer for net metering. Section B.II.c of the net metering tariff sheets is titled “Avoided Fuel Cost Price.” However, this section only includes the net metering rates. So not only is the language in the contract confusing, so is this section of the net metering tariff sheets. This section of the net metering tariff sheets should be titled “Net Metering Rates.”

Based upon this analysis, Staff recommends the Commission reject Ameren Missouri’s net metering filing and order Ameren Missouri to immediately file new net metering tariff sheets. Until the time the Commission approves a tariff, Ameren Missouri remains in violation of the net metering rule.

P.S.C. MO. No. 5

3rd Revised Sheet No. 8, CANCELLING 2nd Revised Sheet No. 8
4th Revised Sheet No. 9, CANCELLING 3rd Revised Sheet No. 9
3rd Revised Sheet No. 13, CANCELLING 2nd Revised Sheet No. 13
3rd Revised Sheet No. 14, CANCELLING 2nd Revised Sheet No. 14
4th Revised Sheet No. 15, CANCELLING 3rd Revised Sheet No. 15
3rd Revised Sheet No. 16, CANCELLING 2nd Revised Sheet No. 16
3rd Revised Sheet No. 17, CANCELLING 2nd Revised Sheet No. 17
3rd Revised Sheet No. 18, CANCELLING 2nd Revised Sheet No. 18
1st Revised Sheet No. 19, CANCELLING Original Sheet No. 19
Original Sheet No. 20

The Staff has verified that the Company has filed its annual report and is not delinquent on any assessment. The Staff is not aware of any other matter before the Commission that affects or is affected by this filing.

