

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

In the Matter of Kansas City Power & Light Company's Request for Variance of Portions of 4 CSR 240-20.065)	
)	<u>File No. ET-2014-0027</u>
)	Tracking No. JE-2014-0058

**STAFF RECOMMENDATION TO APPROVE CERTAIN OF
KANSAS CITY POWER & LIGHT'S TARIFF SHEETS AND RELATED REQUEST
FOR VARIANCES FROM COMMISSION NET METERING AND SOLAR REBATE
RULES AND TO SUSPEND TARIFF SHEETS 34F AND 34G**

COMES NOW Staff of the Missouri Public Service Commission ("Staff"), by and through counsel, and submits this Staff Recommendation to the Missouri Public Service Commission ("Commission"). In support of its Recommendation, Staff respectfully states the following:

Background

1. On August 5, 2013,¹ Kansas City Power & Light Company ("KCP&L") filed a *Request For Approval Of Tariff And For Variance* ("*Request*"), with proposed tariff sheets bearing proposed effective dates of September 4² the Commission assigned Tracking No. JE-2014-0058,. KCP&L's *Request* seeks a Commission Order granting variances and approving certain tariff sheets with changes to implement the terms of House Bill 142 ("HB 142"), which will become effective August 28. The *Request* also asks the Commission to grant KCP&L a variance from certain portions of the Commission's Net Metering rule, 4 CSR 240-20.065, and the Commission's Electric

¹ All dates herein refer to calendar year 2013, unless otherwise specified.

² KCP&L's tariff filing bears an effective date of September 4, 2013, 30 days after its August 5 filing. However, KCP&L did not ask for expedited treatment by the Commission in its Request. Because HB 142 becomes effective August 28, the Staff recommends the Commission order an effective date of August 28, 8 days earlier than the effective date requested by the Company in its filing so that the Company's tariffs implementing HB142 go into effect the same day HB 142 becomes effective.

Utility Renewable Energy Standard Requirements found in 4 CSR 240-20.100 which are not consistent with HB 142.

2. As discussed below, KCP&L has also included in this tariff filing (Tariff Sheets 34, 34B, 34C, 34D, and 34E) some non-substantive cosmetic tariff changes that reflect the capitalization of the term “Customer-Generators” that Staff does not oppose. However, KCP&L also included in this tariff customer filing requirements (Tariff Sheets 34F and 34G) that the Company wants to impose on the processing of applications for net-metering and solar rebates that are not required by HB 142. Staff opposes sheets 34F and 34G and recommends that the Commission suspend them.

3. On August 6, the Commission issued its *Order Directing Staff Recommendation and Establishing Time to Intervene or to Object to Tariff*, directing Staff to file a recommendation in this matter by no later than August 21. This filing complies with the Commission’s *Order*.

4. Staff notes that the following parties have applied to intervene in this matter: Brightergy, LLC, Missouri Solar Energy Industries Association (“MOSEIA”), and the Missouri Department of Natural Resources. On August 19, Brightergy, LLC filed its *Motion to Reject Modified Tariffs* and on August 20 it filed an *Amended Motion to Suspend Revised Tariffs*.

Discussion and Recommendation

5. On July 3, Governor Nixon approved HB 142, effective August 28, that will make certain changes to the Renewable Energy Standard (“RES”), Section 393.1030, RSMo. The solar rebate established in the RES statute remains at \$2.00 per watt for systems becoming operational on or before June 30, 2014, and then the rebate is

phased out over time by June 30, 2020. Also, to receive a rebate after August 28, the customer-generator must transfer “all rights, title, and interest in and to” the renewable energy credits associated with the electrical system that qualified the customer for the rebate for a period of ten (10) years from the date the system is installed and operational.

6. In Staff’s *Memorandum*, attached hereto as Appendix A and incorporated herein, Staff reports on its review of KCP&L’s Request. Staff recommends the Commission approve certain of the following tariff sheets that vary from the Commission’s current net-metering and RES rules but include language changes that are compliant with the terms set forth in HB 142. In addition, KCP&L has included in its filing a number of additional “cosmetic” non-substantive tariff language changes that are acceptable to Staff that are found in Tariff Sheet Nos. 34, 34B, 34C, 34D, and 34E. Based on its analysis of KCP&L’s Request as explained in its *Memorandum*, the Staff recommends that the Commission approve the following tariff sheets:

P.S.C. MO. No. 7

Fifth Revised Sheet No. 34, Cancelling Fourth Revised Sheet No. 34

Third Revised Sheet No. 34A, Cancelling Second Revised Sheet No. 34A

Fourth Revised Sheet No. 34B, Cancelling Third Revised Sheet No. 34B

Third Revised Sheet No. 34C, Cancelling Second Revised Sheet No. 34C

Third Revised Sheet No. 34D, Cancelling Second Revised Sheet No. 34D

Fourth Revised Sheet No. 34E, Cancelling Third Revised Sheet No. 34E

First Revised Sheet No. 34H, Cancelling Original Sheet No. 34H

First Revised Sheet No. 34I, Cancelling Original Sheet No. 34I

First Revised Sheet No. 34L, Cancelling Original Sheet No. 34L

First Revised Sheet No. 34N, Cancelling Original Sheet No. 34N

First Revised Sheet No. 34P, Cancelling Original Sheet No. 34P

First Revised Sheet No. 34Q, Cancelling Original Sheet No. 34Q

Original Sheet No. 34R

Original Sheet No. 34S

Third Revised Sheet No. 46A, Cancelling Second Revised Sheet No. 46A

Original 46B

7. As further explained in its *Memorandum*, Staff *opposes* Tariff Sheet Nos. 34F and 34G at this time, and recommends that the Commission suspend sheet nos. 34F and 34G because they do not include language changes required to implement HB 142. Tariff Sheet Nos. 34F and 34G add new application process requirements to obtaining a Net Metering Interconnection Agreement. Because these changes impose new demands on prospective applicants and because they are not related to the implementation of HB 142, Staff recommends that the Commission *suspend* the following tariff sheets for a period of 45 days to allow sufficient time for the parties to resolve their concerns:

P.S.C. MO. No. 7

Second Revised Sheet No. 34F, Cancelling First Revised Sheet No. 34F

First Revised Sheet No. 34G, Cancelling Original Sheet No. 34G

Authority

8. The Commission's net metering rule, Rule 4 CSR 240-20.065, does not include a waiver or variance request provision that would allow KCP&L to ask for the relief sought. However, the Commission applied the "good cause" standard when Ameren Missouri requested variances from this rule in File No. ET-2013-0197. In that case, the Commission decided to apply the "good cause" standard typically found in a waiver or variance provision.

9. The Commission's RES rule, 4 CSR 240-20.100, does contain a waiver or variance provision in section (10): "Waiver and Variances. Upon written application, and after notice and an opportunity for hearing, the commission may waive or grant a variance from a provision of this rule for good cause shown."

10. Although the term “good cause” is frequently used in the law,³ the rules allowing waivers or variances typically do not define it. Therefore, it is appropriate to resort to the dictionary to determine the term’s ordinary meaning.⁴

11. Good cause “...generally means a substantial reason amounting in law to a legal excuse for failing to perform an act required by law.”⁵ 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] duties.”⁶ 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 one.”⁷

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...”⁸ Moreover, some legitimate factual showing is required, not just the mere conclusion of a party or his attorney.⁹

13. Staff Counsel recommends the Commission find KCP&L has shown good cause for the variance requests because the changes implement provisions of HB 142 that will become law on August 28.

14. Staff has verified KCP&L has filed its calendar year 2012 Annual Report.

³ *State v. Davis*, 469 S.W.2d 1, 5 (Mo. 1971).

⁴ 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.

⁵ Black’s Law Dictionary, p. 692 (6th ed. 1990).

⁶ *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.”)

⁷ *Bennett v. Bennett*, 938 S.W.2d 952 (Mo. App. S.D. 1997).

⁸ *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).

⁹ See generally *Haynes v. Williams*, 522 S.W.2d 623, 627 (Mo. App. E.D. 1975).

WHEREFORE, Staff files this Recommendation for the Commission's information and consideration and for reasons more fully explained in Staff's *Memorandum* recommends the Commission 1) *approve* the following tariff sheets:

P.S.C. MO. No. 7

Fifth Revised Sheet No. 34, Cancelling Fourth Revised Sheet No. 34

Third Revised Sheet No. 34A, Cancelling Second Revised Sheet No. 34A

Fourth Revised Sheet No. 34B, Cancelling Third Revised Sheet No. 34B

Third Revised Sheet No. 34C, Cancelling Second Revised Sheet No. 34C

Third Revised Sheet No. 34D, Cancelling Second Revised Sheet No. 34D

Fourth Revised Sheet No. 34E, Cancelling Third Revised Sheet No. 34E

First Revised Sheet No. 34H, Cancelling Original Sheet No. 34H

First Revised Sheet No. 34I, Cancelling Original Sheet No. 34I

First Revised Sheet No. 34L, Cancelling Original Sheet No. 34L

First Revised Sheet No. 34N, Cancelling Original Sheet No. 34N

First Revised Sheet No. 34P, Cancelling Original Sheet No. 34P

First Revised Sheet No. 34Q, Cancelling Original Sheet No. 34Q

Original Sheet No. 34R

Original Sheet No. 34S

Third Revised Sheet No. 46A, Cancelling Second Revised Sheet No. 46A

Original 46B;

and, 2) *suspend* the following tariff sheets for a period of 45 days:

P.S.C. MO. No. 7

Second Revised Sheet No. 34F, Cancelling First Revised Sheet No. 34F

First Revised Sheet No. 34G, Cancelling Original Sheet No. 34G

Respectfully submitted,

/s/ Robert S. Berlin

Robert S. Berlin

Senior Counsel

Missouri Bar No. 51709

Attorney for the Staff of the

Missouri Public Service Commission

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served electronically on this 21st day of August, 2013 to the parties of record as set out on the official Service List maintained by the Data Center of the Missouri Public Service Commission for this case.

/s/ Robert S. Berlin

MEMORANDUM

TO: Missouri Public Service Commission Official Case File
Case No. ET-2014-0027 / File No. JE-2014-0058 – Kansas City Power & Light
Company

FROM: Thomas M. Imhoff, Tariffs/Rate Design – Energy
Daniel I. Beck, Engineering - Energy

/s/ Thomas M. Imhoff 8/21/13
Project Coordinator / Date

/s/ Robert S. Berlin 8/21/13
Staff Counsel's Office / Date

SUBJECT: Staff Recommendation to Approve in Part and Suspend in Part the Application of Kansas City Power & Light's Request For Approval of Tariff Sheets and for Variance Relating to the Phase Out of the Solar Rebate and Ownership of Solar Renewable Energy Credits due to the Implementation of Terms in House Bill 142 Effective August 28, 2013, along with Additional Changes to the Application Agreement for Processing Solar Rebates and Net Metering Requests with some Cosmetic Changes to other Tariff Sheets.

DATE: August 21, 2013

On August 5, 2013, Kansas City Power & Light Company ("KCP&L" or "Company"), filed its "REQUEST FOR APPROVAL OF TARIFF AND FOR VARIANCE relating to the Net Metering Agreement and Solar Photovoltaic Rebate Program ("Application") to implement revisions to its solar rebate and renewable energy credits tariff sheets. KCP&L seeks Missouri Public Service Commission ("Commission") approval of its requested tariff revisions as a result of House Bill 142 ("HB 142") becoming law on August 28, 2013. The Company also seeks specific changes relating to the application process not specified in HB 142 along with other non-substantive cosmetic changes to tariff sheets not affected by HB 142.

HB 142 modifies the solar rebate requirement for electric utilities under the Renewable Energy Standard ("RES") Section 393.1030 RSMo., et seq. The solar rebate is \$2 per watt for a system operational on or before June 30, 2014, and then is phased out by June 30, 2020. After August 28, 2013, to receive a rebate, a customer must transfer to the utility for a period of 10 years from the date the system was installed and operational as confirmed by the electric utility all rights, title, and interest in and to the renewable energy credits associated with the electrical system that qualified the customer for the solar rebate. However, HB 142 does not change the energy portfolio requirements now in Section 393.1030.

KCP&L filed the tariff sheets in this case, Case No. ET-2014-0027, for compliance with HB 142 when it becomes law and included a number of variance requests for current Commission rules. KCP&L also filed for additional tariff language changes to reflect KCP&L's method it uses to process these requests along with some cosmetic changes to KCP&L's tariff. In this filing, KCP&L mostly implements the language of HB 142, although KCP&L uses this tariff filing as an opportunity to make other changes to its net metering interconnection agreement language to impose requirements other than those required by HB 142. KCP&L also made some small non-substantive cosmetic

changes to its Tariff Sheets 34, 34B, 34C, 34D and 34E. These cosmetic changes reflect the capitalization of the term “Customer-Generators.” Staff does not oppose these cosmetic changes or the proposed tariff language changes that comply with and implement HB 142.

In this filing, KCP&L seeks sixteen (16) variances from the Commission’s rules, mostly to implement the language of HB 142. Staff does not oppose these variance requests, which are summarized below, because they either implement or do not change the purpose of HB 142. A short description of each of the sixteen (16) variance requests follows:

1. The first variance request relates to Commission Rule 4 CSR 240-20.100(4) and is for the purpose of implementing language from HB 142 relating to the phase out schedule in that bill, which has the \$2.00 per watt solar rebate declining over time until it is phased out altogether on June 30, 2020.
2. The second variance request relates to Commission Rule 4 CSR 240-20.100(3), and asks that the tariff language reflect that the customer-generator will be transferring the Solar Renewable Energy Credits (“SRECs”) to KCP&L for a period of 10 years for systems for which solar rebates are paid on and after August 28, 2013. Under current Commission rules, the solar rebate application has been made a part of the net metering agreement where the customer-generator retains ownership of the SRECs. Under SB 142, the SRECs ownership is transferred to the utility when a solar rebate is paid.
3. The third variance request seeks the use of PVWatts software when providing an annual RES Compliance Report instead of “meter readings” associated with SRECs obtained from 10 kW or greater systems which is required by Commission Rule 4 CSR 240-20.100(7). This will eliminate the use of expensive metering mandated by the rule and is beneficial to the customer-generator and KCP&L by lowering costs.
4. The fourth variance request pertains to Commission Rule 4 CSR 240-20.065, and reflects tariff language to clarify that a customer requesting a solar rebate will be transferring the SRECs to KCP&L for a period of 10 years to reflect what is required by HB 142.
5. The fifth variance request requires a “Customer Attestation” be included in the list of documents required as part of the net-metering application to receive a solar rebate. This list is part of the interconnection application/agreement the customer-generator completes and is designed to avoid questions and disagreements.
6. The sixth variance request requires a “Customer Affidavit” be included in the list of documents required after installation of a net-metering system to receive a solar rebate. It is similar to KCP&L’s fifth variance request.
7. The seventh variance seeks relief from the current Commission rule 4 CSR 240-20.065 to replace the \$2.00 per watt rebate language with tariff language that refers to KCP&L’s Schedule SR – Solar Rebate section of KCP&L’s tariff. The proposed tariff language reflects language from HB 142.
8. The eighth variance seeks relief from the current Commission rule 4 CSR 240.065(3) to allow KCP&L to revise tariff language to reflect that the customer-generator will be transferring to the Company ownership of the SRECs generated for the next 10 years by a system for which KCP&L pays solar rebates on and after August 28, 2013.
9. The ninth variance is similar to KCP&L’s fifth and sixth variance requests and proposes to include a “Customer Affidavit” for “Interconnection Application/Agreement For Net Metering Systems With Capacity of 100 kW or Less” as part of the steps to be followed in

applying and completing the interconnection of a net metered system. This is a variance from 4 CSR 240-20.065.

10. The tenth variance is from 4 CSR 240-20.065 and relates to “Interconnection Application/Agreement For Net Metering Systems With Capacity of 100 kW or Less” with KCP&L changing the tariff language on the application to “Solar System Data” (For Solar Installations Only) from “Solar Rebate” (For Solar Installations Only). This removes confusion as it relates to the initial review of the application and the data associated with it.
11. The eleventh variance request is to add tariff language to reflect that a customer with a system of 100 kw or less must provide an affidavit for KCP&L’s use in complying with the Commission’s RES rule, Rule 4 CSR 240-20.100(7)(A)1.I.(II), and that it be included in the Required Documents list required to receive a solar rebate.
12. The twelfth variance request seeks to add to KCP&L’s tariff the following language. “I understand that the complete terms and conditions of the solar rebate program are included in the Company’s Schedule SR- Solar Photovoltaic Rebate Program tariff.” to clarify for the customer-generator that the solar rebate application does not contain all terms and conditions governing the solar rebate.
13. The thirteenth variance request pertains to Commission Rule 4 CSR 240-20.100(4)(B), and is a request to change the solar rebate application to place the same language from the rule relating to the solar electric system in the application, i.e., as follows. “As installed, the solar electric system shall be situated in a location where a minimum of eighty-five percent (85%) of the solar resource is available to the system as verified by the customer or the customer’s installer at the time of installation.”
14. The fourteenth variance request seeks a change from the current Commission rule 4 CSR 240-20.065 which requires \$2.00 per watt rebate language to allow tariff language that refers to KCP&L’s Schedule SR – Solar Rebate section of KCP&L’s tariff. The proposed tariff language reflects language from HB 142.
15. The fifteenth variance request seeks to change KCP&L’s tariff to reflect HB 142 language imposing the condition of transferring to the Company, ownership of SRECs generated by the solar electric system for which the customer receives a solar rebate for ten years. Commission Rule 4 CSR-240-20.100(7)(A)1.I.(II) also requires a Customer Affidavit for compliance reporting and KCP&L requests that also be a part of Tariff Sheet 34R.
16. The sixteenth variance request fits with several variance requests from KCP&L and is a request to add tariff language to reflect that a customer with a system of 10 kw or greater must provide an affidavit for KCP&L’s use in complying with the Commission’s RES rule, Rule 4 CSR 240-20.100(7)(A)1.I.(II).

Staff opposes tariff sheets 34F and 34G at this time, and recommends that the Commission suspend these two tariff sheets because, they are not required by HB 142, and they are substantive. Most of the proposed application standards contained in tariff sheets 34F and 34G reflect the current requirements of KCP&L in its processing of applications for net-metering and solar rebates. KCP&L has recently implemented a requirement of having customers establish permanent electric service prior to submitting an application for net-metering. This requirement is not currently reflected in the Company’s tariff and is not specifically identified as a requirement of HB 142. In addition, KCP&L is proposing a new requirement for pre-approval before construction of a net-metering system begins. This proposed requirement is also not a requirement of HB 142.

Based on its analysis of KCP&L's tariff filing and discussions that Staff has had with the Company, Staff recommends that the Commission approve the following tariff sheets as filed on July 29, 2013, to become effective on August 28, 2013, the date HB 142 becomes law.

P.S.C. MO. No. 7

Fifth Revised Sheet No. 34, Cancelling Fourth Revised Sheet No. 34
Third Revised Sheet No. 34A, Cancelling Second Revised Sheet No. 34A
Fourth Revised Sheet No. 34B, Cancelling Third Revised Sheet No. 34B
Third Revised Sheet No. 34C, Cancelling Second Revised Sheet No. 34C
Third Revised Sheet No. 34D, Cancelling Second Revised Sheet No. 34D
Fourth Revised Sheet No. 34E, Cancelling Third Revised Sheet No. 34E
First Revised Sheet No. 34H, Cancelling Original Sheet No. 34H
First Revised Sheet No. 34I, Cancelling Original Sheet No. 34I
First Revised Sheet No. 34L, Cancelling Original Sheet No. 34L
First Revised Sheet No. 34N, Cancelling Original Sheet No. 34N
First Revised Sheet No. 34P, Cancelling Original Sheet No. 34P
First Revised Sheet No. 34Q, Cancelling Original Sheet No. 34Q
Original Sheet No. 34R
Original Sheet No. 34S
Third Revised Sheet No. 46A, Cancelling Second Revised Sheet No. 46A
Original 46B

Staff also recommends that the Commission suspend the following tariff sheets for the reasons previously stated for a period of 45 days to allow the parties sufficient time to resolve their concerns.

P.S.C. MO. No. 7

Second Revised Sheet No. 34F, Cancelling First Revised Sheet No. 34F
First Revised Sheet No. 34G, Cancelling Original Sheet No. 34G

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.

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

In the Matter of Kansas City Power & Light)
Company's Request for Variance from)
Portions of 4 CSR 240-20.065)

File No. ET-2014-0027

AFFIDAVIT OF DANIEL I. BECK

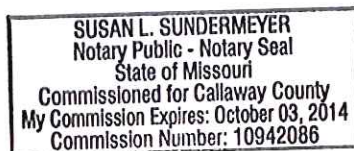
STATE OF MISSOURI)
) ss
COUNTY OF COLE)

Daniel I. Beck, of lawful age, on oath states: that he participated in the preparation of the foregoing Staff Recommendation in memorandum form, to be presented in the above case; that the information in the Staff Recommendation was provided to him; that he has knowledge of the matters set forth in such Staff Recommendation; and that such matters are true to the best of his knowledge and belief.

Daniel I. Beck

Daniel I. Beck

Subscribed and sworn to before me this 21st day of August, 2013.



Susan L. Sundermeyer

Notary Public

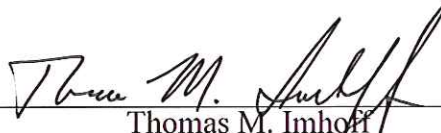
**BEFORE THE PUBLIC SERVICE COMMISSION
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In the Matter of Kansas City Power & Light)
Company's Request for Variance from) File No. ET-2014-0027
Portions of 4 CSR 240-20.065)

AFFIDAVIT OF THOMAS M. IMHOFF

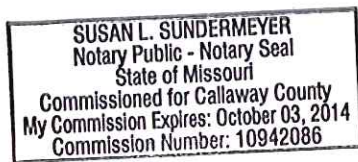
STATE OF MISSOURI)
) ss
COUNTY OF COLE)

Thomas M. Imhoff, of lawful age, on oath states: that he participated in the preparation of the foregoing Staff Recommendation in memorandum form, to be presented in the above case; that the information in the Staff Recommendation was provided to him; that he has knowledge of the matters set forth in such Staff Recommendation; and that such matters are true to the best of his knowledge and belief.



Thomas M. Imhoff

Subscribed and sworn to before me this 21st day of August, 2013.





Notary Public