BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Staff's Review of Commission Rules 4 CSR 240-20.060 (Cogeneration), 4 CSR 240-3.155 (Filing Requirements for Electric Utility Cogeneration Tariff Filing), and 4 CSR 240-20.065 (Net Metering)	)))))	File No. EW-2018-0078

CYPRESS CREEK RENEWABLES' RESPONSE
TO ADDITIONAL COMMENTS OF UTILITIES

COMES NOW Cypress Creek Renewables, LLC ("Cypress Creek" or "CCR"), through its undersigned attorney, and hereby submits these Comments responding to the Response to the *Additional Comments of Utilities* submitted in this case on July 26, 2018.

On July 26, 2018, Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri"), Kansas City Power & Light ("KCP&L"), KCP&L Greater Missouri Operations Company ("GMO"), and the Empire District Electric Company ("Empire") (collectively, the "Utilities"), submitted a filing entitled *Additional Comments of Utilities.* This filing responded to the recommendations for PURPA implementation contained within the June 15, 2018 comments of Cypress Creek Renewables and Renew Missouri.

1. CCR appreciates that the Utilities decided to file *Additional Comments* after reviewing our comments filed June 15. The Additional Comments took issue with some of the suggested changes to the Commission's rule implementing PURPA (4 CSR 240-20.060). Among other things, the Utilities opposed what they viewed as CCR's insistence on "an open call option on 20-year fixed pricing" which may force utilities into "long-term contracts and prices that are potentially substantially above market" and "may provide a producer a favorable economic position."[1]

[1] Ameren Missouri, Kansas City Power & Light, and Empire District Electric Company, "Additional Comments of Utilities," File No. EW-2018-0078, July 26, 2018, pg. 3.

2. These comments seek to clarify CCR's recommendations, and counter some of the Utilities' misstatements and mischaracterizations. CCR and similarly situated Independent Power Producers ("IPPs") seek nothing but non-discriminatory access to the market, transparent avoided cost data, and the ability to enter into fixed-term contracts with utilities, as Federal law requires. CCR asks that the Commission refrain from undue consideration or speculation about highly uncertain potential modifications to PURPA implementation by FERC, but instead simply apply the law as it is. If nothing else, the additional comments demonstrate the need for the Public Service Commission to open a formal rulemaking proceeding. CCR respects the history and tradition of the Utilities and is eager to work with all parties to design a PURPA regime that strikes a fair balance while delivering renewable energy at a low and predictable cost. Regardless of our disagreements with the Utilities, CCR stands firm in our conviction that electricity sourced from solar and solar plus storage projects built by specialized developers will be in the ratepayer's interest.

3. The Utilities' history of PURPA highlights that "customer generation was virtually non-existent" before 1978 but that leaves an important point left unsaid. PURPA was not just about creating market access for customer generation. Prior to the enactment of PURPA in 1978, customer generation AND Independent Power Producers (IPP's) were virtually non-existent because monopolistic regulated utilities would not cede any portion of the electricity generation market. PURPA has become synonymous with Renewable Energy today but PURPA was enacted to diversify both the type of generation sources and the ownership of generation. The Utilities' statement (¶ 2 of *Additional Comments*) that they have "added large number of renewable resources" is patently untrue, but also ignores PURPA's fundamental purpose of diversifying ownership of generation by providing market access for IPPs. According EIA Form

860, IPP's had cumulatively installed only 40.6MW nameplate capacity of utility scale solar (greater than 1MW) in Missouri by the end of 2017. That represents 0.16% of all nameplate capacity in Missouri. Missouri utilities have installed a combined 7.5MW of utility scale solar bringing the total nameplate capacity of solar energy to 48.6MW or 0.2% of nameplate capacity in Missouri.

4. The Utilities correctly highlight that the energy landscape has evolved over the past 40 years since PURPA's enactment. Indeed, prices for renewable energy and Natural Gas are at or near historic lows, which makes the next point more striking. Jonathan Adelman, Xcel Energy's Vice President of Strategic and Resource and Business Planning, was recently quoted saying, "In many areas, the incremental cost of renewable generation is currently less than the embedded cost of existing generation."[2] Even as the economics of generation have changed the adversarial disposition to PURPA has not. Bluntly put, PURPA is federal law that is violated and not enforced in more states than not. There is much academic debate about how avoided costs should be set but avoided costs are generally set based on an analysis of a NEW power plant or software simulation. We are already at the watershed moment where renewables sourced through IPP's can beat the price of partially and fully depreciated assets. At some point, the fundamentals should rule the day. Why would any state not let IPP's compete for a slice of power production if they can do so at a lower cost than the embedded cost of any generator in its stack?

5. The Utilities suggest (¶ 3 of *Additional Comments*) that FERC is considering changes to PURPA and imply that this may result in weakening of existing encouragement of QF development. While it is possible that FERC will initiate a PURPA rulemaking in the

[2] Xcel Resource Planning Executive: We Can Buy New Renewables Cheaper Than Existing Fossil Fuels: https://www.greentechmedia.com/articles/read/an-interview-with-xcels-avp-for-strategic-resource-business-planning-the-re#gs.WETxuxE

coming year, that is highly uncertain, with respect to both timing and content and there is little reason to believe that PURPA implementation will be altered in a way that would undermine the recommendations we have made in this proceeding.

6. Moreover, the Utilities' suggestion that there is some trend at the state level to weaken PURPA implementation is simply wrong. Michigan has recently significantly strengthened its implementation of PURPA, providing, among other things, for 20-year power purchase agreements ("PPAs). Both Washington and Colorado have proceedings underway in which significant pro-QF improvements to PURPA implementation are being proposed. Minnesota recently ordered a PURPA PPA of 20 years in length. In the last session of the South Carolina legislature, there was significant support (from conservative Republicans) for, and near passage of, a bill that would significantly strengthen PURPA implementation. Only in North Carolina – where thoughtful PURPA implementation has driven more than 3 GW of solar development and billions of dollars of investment in low-income counties – has there been meaningful PURPA "reform" in the past year. In that case the IPP community agreed to changes to PURPA implementation in exchange for grandfathering of over 1 GW of PURPA projects and a mandate for the competitive procurement of over 3 GW of additional solar (which provided IPPs a meaningful form of alternative market access). We therefore strongly disagree with the Utilities' generalizations regarding changes to PURPA at the state level.

7. Nor do we accept the insinuation that the themes of reducing avoided costs and shortening contract length should inform the PSC's thinking in this case. Decreases in avoided costs can be caused by numerous factors beyond sweeping changes to methodologies – most notably the forecasts of natural gas prices used to estimate the avoided cost of energy for a new natural gas plant. Finally, we're puzzled by the Utilities implication that there is no need for

energy purchases via PURPA today. It's public knowledge that the Utilities are transitioning away from an old and coal heavy fleet. If we assume that the ratepayers' interest is paramount, any utility that has a projected capacity need and/or proposal for generation expansion should want IPP competition in the generation market. This is especially important if the Utilities are considering building any renewable energy themselves. The intent of PURPA is to remove market barriers to competition in the electric generation.

8. The Utilities' claim (¶ 5 of *Additional Comments*) that IPPs with a capacity of 20 MW or less now have meaningful market access in Missouri is totally unfounded, as evidence by the low level of IPP development in the state. PURPA and FERC have a well-established process for determining when PURPA QFs do in fact have meaningful, nondiscriminatory market access, in which case utilities are relieved of their obligation to purchase the output of those facilities. FERC has not made such a determination with respect to solar QFs in Missouri with a nameplate capacity of 20 MW or less, and to our knowledge the Utilities have not requested such a determination or presented to FERC the rigorous evidence required to support it. In any case, that determination can only be made by FERC, not by this Commission. Moreover, the general ability of IPP's to provide ancillary services or to contract bi-laterally in wholesale markets is wholly irrelevant to this proceeding and does not mean "market access is no longer a viable argument" for enforcing PURPA. Wholesale markets were designed and implemented in the 1990s – 2000s and did not anticipate the rapid growth of renewable energy so it's no surprise there is a dearth of small power producers. FERC rules that provide for the interconnection of small generators is not market access.

9. In paragraph 6 of their *Additional Comments*, the Utilities allege that long-term fixed price contracts present undue risks for ratepayers, while conveniently ignoring the fact

that they themselves routinely seek approval of long-term guaranteed cost recovery on investments that present greater risks to ratepayers than IPP PPAs. Like IPPs, utilities must have certainty as to cost recovery in order to raise capital and make major investment decisions. Whenever a utility seeks, and this Commission approves, a utility investment, the cost of which will typically be recovered from ratepayers over several decades, both the utility and the Commission exercise their best judgment, based on forecasts of future energy and capacity pricing, as to the prudent course of action in the moment. But forecasts are by definition imperfect and, across the country, these judgments frequently prove to have been wrong in hindsight. If this potential for inaccuracy was used as a basis for denying developers (including utilities) certainty about long-term cost recovery, no energy infrastructure would ever get built.

10. Development of energy resources through PPAs with IPPs, in addition to typically being cheaper than utility self-build, actually presents lesser risks to ratepayers than utility investments. In addition to the fact that the cost recovery involved is typically for shorter periods of time and for lower amounts, the IPPs, not the ratepayers, bear all the risks of construction delays, cost overruns, and system outages.

11. We also don't understand why the Utilities assume that they would be forced into contracts at prices "substantially above market" before this proceeding is complete. Like natural gas prices, PURPA avoided costs in many states are at very low levels, such that locking in these low rates now for a long term, with no inflation or fuel volatility risk and with ratepayers not bearing the risks described above, strikes us as an excellent deal for Missouri ratepayers.

12. CCR acknowledges the rigors and administrative cost of setting avoided cost rates, which is why we advocate for standard methodologies. We would like to learn more about each utility's preferred method of calculation. However, we continue to believe that the

methodology should remain constant unless changed by PSC order in a formal proceeding.

13. CCR did not discern any useful information in the Utilities' filing on increasing the standard offer to 1, 2.5, or 5 MW. It's important to highlight that PURPA standard offers are required precisely to relieve QFs of the challenge of negotiating with, and potentially litigating against, a counterparty that has vastly greater resources and bargaining power. The absence of a viable standard offer program in Missouri explains why the state has only 44.6 MW of solar capacity built by IPP's despite a generous solar resource (compared to the more than 3,000 MW of installed solar in North Carolina).

14. CCR attempted to propose a reasonable test for the formation of Legally Enforceable Obligation (LEO) that complies with FERC precedent. We continue to think our test is appropriate and balanced are not aware of the Utilities' specific objections or of what test they think would be more appropriate. We continue to firmly reject the notion that project readiness milestones have anything to do with a QF's commitment to sell its output or should have any role in a lawful LEO test.

15. At paragraph 11 of their Additional Comments, the Utilities suggest that competitive bidding for *utility-owned* assets is in the best interest of ratepayers. While we agree that all utility-developed resources should be competitively bid, we don't understand why the Utilities seek to deny ratepayers the cost and risk-transfer benefits of requiring them to bid against IPP-owned resources.

16. CCR agrees with the Utilities statement that QF development should not occur at the expense of ratepayers. The Utilities frame our suggestions as outliers, but we contend our suggestions would bring Missouri in-line with other PURPA compliant states and utilities. PURPA was created to remove market barriers to competition in electric generation because it

is widely accepted economic theory that increased competition leads to decreased prices. We believe that Missouri can design and execute a PURPA regime that will increase market access for small, non-utility generators, which in turn will put downward pressure on prices, particularly with respect to solar generators. Developers need predictable pricing and the ability to sign a long-term contract to secure the financing that makes our competition in the generation market a reality. Today's energy costs, the forward cost curves, and recent IRP analyses in states such as Colorado and Indiana tell the same story; renewables sourced from IPP's are the lowest cost generators. CCR hopes that the Missouri PSC will commence a formal rulemaking so that Missouri can reap the benefits of solar, and solar plus storage generation in Missouri.

Respectfully Submitted,

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