

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

In the Matter of Union Electric Company d/b/a)
Ameren Missouri's Request for Variance from) File No. ET-2013-0197
Portions of 4 CSR 240-20.065)

**STAFF'S RECOMMENDATION OF NON-OPPOSITION TO TARIFF FILING
ON COMMISSION DETERMINATION OF GOOD CAUSE**

COMES NOW the Staff of the Missouri Public Service Commission ("Staff"), by and through the undersigned counsel, and for its filing states to the Missouri Public Service Commission ("Commission") as follows:

Summary

1. Attached hereto is Staff's *Memorandum* stating the Staff does not oppose Ameren Missouri's tariff sheets should the Commission find that the Company has shown good cause in its request. While all eleven (11) requests are unnecessary, Staff does not oppose the variance requests because they do not change the purpose of the net metering rule or statute. However, should the Commission approve these variance requests, different net metering contracts and tariff language will exist for Ameren Missouri than for the other regulated electric utilities 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.

Background

2. On October 29, 2012,¹ Union Electric Company d/b/a Ameren Missouri (Ameren Missouri) filed tariff sheets with an effective date of November 27 to amend its net metering program to comply with the Commission's revised net metering rule found at 4 CSR 240-20.065.

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

3. The proposed tariff sheets also request variances from 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”.

4. On October 31, the Commission issued its *Order Directing Filing*, directing the Staff to file a recommendation no later than November 15.

5. 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 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.

6. 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 to eliminate inconsistencies between the rule and the Renewable Energy Standard rule found at 4 CSR 240-20.100. The amendments to the net metering rule became effective August 30, 2012, and included the Interconnection Application/Agreement for use by Ameren Missouri and customers-generators.

7. 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 now proposed in the variance request.

Standard and Discussion

8. Staff asserts that Ameren Missouri's eleven (11) variance requests 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.

9. Rule 4 CSR 240-20.065 (9)(A) provides that "[e]ach customer-generator and electric utility shall enter into the interconnection agreement included herein." 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.

10. Although the term "good cause" is frequently used in the law,² 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 term's ordinary meaning.³

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.

11. 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] duties.”⁵ 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.”⁶

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 attorney.⁸

13. It is the undersigned’s position that 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. Staff asserts that the eleven (11) requests are unnecessary. The proper time for the Company to have suggested these changes was during the rulemaking.

14. Because Ameren Missouri may have good cause to support its requests that it did not raise in its initial pleading, Staff recommends the Commission allow Ameren Missouri an opportunity to file a supplemental pleading to provide a factual

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)

showing of the harm the Company has or will undergo if the Commission does not grant the variance requests.

WHEREFORE, Staff files its *Memorandum* and does not oppose Ameren Missouri's tariff sheets should the Commission find that the Company has shown good cause for the request, and recommends the Commission allow Ameren Missouri an opportunity to file a supplemental pleading to provide good cause for consideration of the requests.

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 15th day of November, 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.

/s/Jennifer Hernandez