

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

In the Matter of the Establishment of a Working)
Case Regarding the Commission’s Rule Governing) File No. EW-2021-0077
Cogeneration)

RENEW MISSOURI’S COMMENTS

COMES NOW, Renew Missouri Advocates d/b/a Renew Missouri (“Renew Missouri”), and offers its Comments on the Staff’s questions in Attachment C:

General Questions

- *Please provide any comments or suggestions to the attached proposed amendment to 20 CSR 4240-20.060 Cogeneration and Small Power Production (Staff Version 1).*

Comment:

Renew Missouri appreciates the opportunity to comment on the Staff’s draft rule and the Commission’s willingness to consider changes to its cogeneration rules in a variety of recent working dockets and cases. In general, the Staff’s rule revisions answer the call from a prior executive order to streamline Commission regulations. However, these edits do not move forward with the provisions related to Standard Offer Contracts. The Commission’s proposed rule increases the standard offer contract size to include two categories 1) QFs under 100kW and 2) QFs over 100kW up to 1,000kW. These categories are an improvement, but the Commission should increase the range in the second category for standard offer rates, at a minimum, to include the level of 5 MW it ordered the utilities to study previously in its *Order Directing Utilities to Evaluate Impacts of Standard Offer Contracts* in EW-2018-0078. By increasing the sizes of standard offer contracts in its regulations, the Commission would significantly encourage the development of cogeneration

and small power producers. An additional improvement to the draft rule would be inclusion of a time period for the length of Standard Offer Contracts.

- *Please identify any issues or concerns from implementation of PURPA in other states that the Commission should consider when reviewing the current draft of the rule.*

Comment:

Previous PURPA rules in Missouri have proven not to be effective. In 2018, there were only nine PURPA eligible QFs in Missouri (compared to hundreds of QFs in other states). The Commission should adopt the staff's rule revisions that will lead to transparent avoided cost calculations filed by the electric utilities. In addition, the standard offer contracts filed by each utility should incorporate the size and contract length as previously suggested by Renew Missouri.

- *The proposed amendment, Staff Version 1, includes two tiers for establishment of Standard Rates for Purchase and Standard Contracts. For purchases from qualifying facilities (QF) with a design capacity of: (1) 100 kW or less, and (2) over 100 kW to 1,000 kW.*

- a. Should the second tier be modified to extend to 5,000 kW? Please explain your response.*

Comment:

Yes, the second tier should be increased to 5,000 kW for Standard offer contracts. The mandate of PURPA remains “to encourage cogeneration and small power production encourage cogeneration and small power production, and to encourage geothermal small power production facilities of not more than 80 megawatts capacity.” 16 USC Section 824a-3(a).

Currently, regulations provide a rebuttable presumption that QFs with a net capacity at or below 20 MW do not have nondiscriminatory access to those markets. However, this presumption is addressed in the FERC's recent Order No. 872. Within Order No. 872, the final rules (to be effective 120 days after publication in the Federal Register) update the threshold

for the rebuttable presumption for small power production facilities (but not cogeneration facilities¹). The draft final rule changes the rebuttable presumption from 20 MW to 5 MW. This dramatic reduction was compared to a 1 MW limit on the presumption in the initial proposed rule. The FERC explained its decision:

...we find it reasonable to update the presumption under these regulations as to what constitutes a small entity that has non-discriminatory access to RTO/ISO markets and markets of comparable competitive quality below 20 MW, and that 5 MW represents a reasonable new threshold that accounts for the change of circumstances indicating that 20 MW no longer is appropriate but also accommodates commenters' concerns that a 1 MW threshold would be too low. We acknowledge that "there is no unique and distinct megawatt size that uniquely determines if a generator is small." **We find that a 5 MW threshold accords with PURPA's mandate to encourage small power production facilities**, recognizes the progress made in wholesale markets as discussed above, and balances the competing claims of those seeking a lower threshold and those seeking a higher threshold. (emphasis added).²

Renew Missouri does not highlight this reduction from 20 MW to 5 MW for the presumptions related to market access as a good thing – to be clear, it is not a good thing. But this reduction illustrates the inadequacy of the Missouri regulations. FERC saw the *reduction* from 20 MW to 1 MW (the level in the NOPR) to be too drastic. Yet, the *improved* regulations for Missouri will only require Standard Offer Contracts to *increase* to 1 MW.

We can look to other states Standard Offer Contract sizes as a comparison point to see that a 5 MW Standard offer contract size would be a reasonable scale for a state with a minimal rate of PURPA adoption. The State of Washington recently expanded the standard offer size limit from 2 MW (2,000 kW) to 5 MW (5,000 kW).³ Oregon has a 10 MW standard offer contract size.⁴ North Carolina on the other hand, recently lowered the state's standard offer size

¹ The rebuttal presumption for cogeneration facilities remains at 20 MW.

² FERC Order 872, pp. 351-53.

³ <https://www.dsireinsight.com/blog/2019/9/17/three-trends-in-state-purpa-implementation>

⁴ <https://apps.puc.state.or.us/orders/2005ords/05-584.pdf>

limit from 5 MW to 1 MW in 2017, upon seeing rapid growth in PURPA development.⁵ The low levels of PURPA development in Missouri would be encouraged through an increased standard offer contract size.

- *Describe your experience or perspective of the existing application and review process for qualifying facility (QF) interconnections.*

Comment:

The existing application and review process for QF interconnections is opaque and has not resulted in significant implementation of the PURPA directive to encourage cogeneration and small power production encourage cogeneration and small power production. Adopting the staff's reporting requirements and Renew Missouri's increased standard offer contract sizes would improve the interconnection process.

Questions on FERC revised rule implementing the Public Utility Regulatory Policies Act of 1978

- *Rates for purchase.*
 - o *Should the Commission require that energy rates in QF contracts vary with changes in the purchasing utility's avoided costs at the time the energy is delivered? If so, provide suggested rule language.*

Comment:

No, both the existing FERC PURPA regulations and the proposals coming from FERC order 872 provide the state Commissions with the ability to determine the avoided cost rates for the utilities and QFs. The factors identified in Section 5 (D) of the existing and proposed rule lay out a list of factors that should be considered when determining rates for purchase. Furthermore, the Staff's proposed language in Section (11) lists three methodologies and one open-ended option that the Commission can consider when establishing avoided costs rates, including proxy-unit, IRP

⁵ <https://www.dsireinsight.com/blog/2019/9/17/three-trends-in-state-purpa-implementation>

based avoided costs, market based pricing, and other methods proposed by the utility that can be demonstrated and reflect avoided costs. These provisions provide maximum authority to the Commission to set rates and policy to determine the avoided costs for a utility whenever a dispute arises.

o Should the Commission allow QFs to retain their rights to fixed energy rates, and to allow such rates to be based on projected energy prices during the term of a QF's contract? If so, provide suggested rule language.

Comment:

Yes. Under PURPA “[p]ublic utilities must encourage QF development in establishing avoided costs, in part by encouraging long-term contracts to “enhance the economic feasibility” of QFs.” 16 U.S.C. § 824a-3(a); FERC Order No. 69 at 12,226; § 69-3-604(2), MCA. “QFs are able to enter contractual commitments based on the estimates of future avoided costs to provide certainty regarding potential return on investments.” FERC Order No. 69 at 12,224. Under the staff’s proposed rule language, the Commission would be able to allow QFs to retain rights to elect fixed energy prices as determined by the Commission. This is found at Section 5(C) of the staff’s proposed rule and is in the existing rule at Section 4(D).

o Should the Commission set “as available” rates at the locational marginal price (LMP) when the utility is located in an organized wholesale market? If so, provide suggested rule language.

Comment:

The Commission should retain its authority to use this method of determining the “as available” purchase rates. By adopting the staff’s proposed rule, the Commission would be able to set such a rate from Section 11.3 on Market based pricing.

o Should the Commission set rates for energy rates or capacity rates based on competitive solicitations? If so, what transparent and non-discriminatory procedures are needed to be included in Commission rules?

Comment:

The Commission should retain its authority to use this method of determining energy or capacity rates based on competitive solicitations. By adopting the staff's proposed rule, the Commission would be able to set such a rate.

- *“One-mile rule.” Is it sufficient to reference 292.204 Criteria for qualifying small power production facilities in the Commission’s rule to incorporate FERC’s changes to the “one-mile rule”?*

Comment:

Renew Missouri does not oppose incorporating the changes by reference.

- *Termination of the obligation to Purchase. What modifications, if any, are needed to address the rebuttable presumption that small power producers located within an RTO/ISO with a net capacity of 5 MW (previously 20 MW) or less do not have nondiscriminatory access to those markets?*

Comment:

The rebuttable presumption should remain in place.

- *Legally Enforceable Obligation (LEO). What objective and reasonable criteria should be used to determine a QF’s commercial viability and financial commitment to construction for establishment of a LEO?*

Comment:

Renew Missouri proposes amending the rule to address this point in a new Section under the heading “Legally Enforceable Obligations.”:

(X) Legally Enforceable Obligations. A qualifying facility may establish a legally enforceable obligation by one of the following methods:

1. A qualifying facility may tender an executed copy of a commission-approved standard offer contract or form power purchase agreement pursuant to a commission-approved standard rate for purchase, after which the electric utility shall countersign within 30 days to establish a legally enforceable obligation.

2. A qualifying facility may tender a modified form power purchase agreement pursuant to a commission-approved standard rate for purchase, after which the electric utility shall respond to the qualifying facility within 30 days. If after 60 days the parties have failed to execute a power purchase agreement, the qualifying facility may submit a claim to the commission for resolution.

Alternatively, this section could be included as a definition under Section 1 of the rules.

- *Self-Certification. Are any modifications needed to the Commission rule to address FERC changes regarding QF self-certification or protests of self-certification?*

Comment:

Renew Missouri is not proposing any changes regarding self-certification.

Questions related to Costs and/or Benefits of the Rule

These questions are intended to gain a full understanding of the potential costs and benefits of the existing rule and proposed amendments to ratepayers, utilities, and impacted industries. Therefore, some responses may not be applicable to the Fiscal Note analysis. For purposes of calculating costs and/or benefits, Staff is using a 5-year timeframe.

For each individual cost and/or benefit please provide assumptions supporting the estimate. For example, the \$/hr rate used and the number of hours estimated.

- *Costs and Benefits to Industry (Cogeneration/Small Power Producers)*
 - o *Provide an estimate of new cogeneration and/or small power producers (in MW) expected by this rule change over the next 5 years. Would you expect to see an increase in that projection if the standard rate for purchase was offered up to 5 MW? If so, please provide.*

Comment:

The success of the rule will be contingent on the ultimate avoided cost rates and contract lengths approved by the Commission. Longer contract terms at higher avoided costs rates coupled with standard offer contracts of up-to 5 MW could result in the kind of development that North Carolina experienced where private companies have invested more than \$7.75 billion in solar and employ over 6,500 people before the state legislature took steps to reduce the SOC capacity size.⁶

- o *Provide an estimate of the average interconnection costs (at distribution and at transmission) for new cogeneration and/or small power producers (\$/MW).*

⁶ <https://www.seia.org/state-solar-policy/north-carolina-solar>, <https://www.seia.org/state-solar-policy/missouri-solar>

Comment:

This will vary based on the project and its location. Under the existing rules and the staff's proposed draft, the QF developer would be obligated to pay for interconnection costs.

o Provide an estimate of the economic investment and projected job-creation expected from this rule amendment over the next 5 years.

Comment:

If Missouri replicates the speed and scope of North Carolina's implementation, it could result in similar growth of \$7.75 billion in solar and employing over 6,500 people.

- *Cost and Benefits to ratepayers*
 - o Provide an estimate of the costs and benefits to Missouri ratepayers of the proposed rule.*

Comment:

As with prior comments, this will vary based on the avoided cost rates determined by the Commission as any length of contracts. The longer term a contract is for the QF, the fixed energy price may be lower but still encourage development as required under PURPA. In such a case, the customers may see a financial benefit of the utility purchasing power from Independent Power Producers.