BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of a Proposed Rulemaking to Amend Commission Rule 4 CSR 240-20.065.	)))	Case No. EX-2008-0280

Written Comments of Rolla Municipal Utilities
Regarding Proposed Amendment to 4 CSR 240-20.065,
Net Metering, in the August 1, 2008, *Missouri Register*

Introduction and Summary:

Rolla Municipal Utilities (RMU) is an electric and water utility system owned by the City of Rolla, Missouri. These comments are being submitted because RMU is concerned about the harmful effect the proposed amendment regarding liability insurance requirements for certain net metering customers may have on RMU, other electrical service providers, and the general public. Net metering customers are those who choose to install generators on their premises powered by a renewable energy resource and sell such power back to their electric utility.

The existing Commission rule on net metering, adopted in August, 2003, contains a requirement in subsection (4)(A) that says "The customer-generator shall carry no less than one hundred thousand dollars ($100,000) of liability insurance that provides for coverage of all risk of liability for personal injuries (including death) and damage to property arising out of or caused by the operation of the net metering unit. Insurance may be in the form of an existing policy or an endorsement on an existing policy." So the existing rule requires at least $100,000 in insurance coverage be maintained by each customer-generator.

The proposed amendment ***eliminates*** that insurance requirement for customer-generator units of ten kilowatts (10 kW) or less, and makes the affirmative statement that those customers do not have to carry any liability insurance. The notice of proposed rulemaking for any proposed amendment is supposed to contain "an explanation of any proposed rule or any change in an existing rule, and the reasons therefor." See, section 536.021.2 RSMo. There is no indication in this proposed amendment why customer-generators of 10 kW or less should be allowed to operate with no liability insurance.

RMU believes it and others, including the general public, could be adversely affected by this proposed change. The purpose of these comments is to set out the basis for that concern and to request that the Commission keep the requirement for liability insurance in these circumstances. In fact, it should also evaluate whether $100,000 in liability insurance is enough given the potential for multi-million dollar jury verdicts in personal injury cases. As explained in these comments, this proposed action by the Commission could have the effect of allowing customer-generators in Missouri to expose the public to the potential for extreme injuries and even death without requiring those customer-generators to be financially responsible for the consequences.

The state of Missouri considers the operation of a motor vehicle to be dangerous enough to require all licensed operators to carry liability insurance or a prescribed substitute. The state also considers the operation of certain swimming pools to be dangerous enough to require that a minimum of $1,000,000 in liability insurance be obtained. Customer-generators can carry the same potential for injury and death as the operation of a motor vehicle or the ownership of a swimming pool. To allow the operation of one without any requirement for liability insurance is, in RMU's opinion, extremely unwise and would be a failure of the duty of the Commission to protect the interests of the public, especially since it appears there has been no public debate about the potential impact of this proposed change.

RMU believes that customers who choose to install a net metering service arrangement make that choice at least partially on the economic value they expect to receive from selling the output back to the utility. Since the installation is electrically connected to the normal electricity suppler such as RMU, and there is at least the potential for electricity to pass from the customer-generator to RMU's facilities due to mechanical failure or other circumstances, it is possible for RMU's facilities to become energized by the operation of these facilities. RMU believes it is inappropriate to expect the power supplier to which the customer-generator is connected to incur additional liability exposure and operating expenses for this. This would be at a cost to its entire customer base to protect against the possible consequences of these voluntary acts and choices of its customers that are motivated, at least to some extent, by financial profit. Clearly, any customer that is enjoying the economic benefit of a net metering service should be

required to acquire an adequate level of liability insurance to protect the rest of us from the additional risks related to its activities.

Factual Background:

The stated purpose of the proposed amendment appearing on page 1397 in the August 1, 2008, issue of the ***Missouri Register*** indicates it is to implement provisions of Section 386.890 RSMo, enacted by the General Assembly in 2007. That section is the "Net Metering and Easy Connection Act." That section applies to RMU because, as a municipal utility, RMU is a "retail electric supplier" or "supplier" as defined in 386.890.2(7). RMU is affected by section 386.890 RSMo and required by that law to accept net metering customers on a first-come, first served basis. RMU is also apparently constrained by subdivision (1) of subsection 6 of section 386.890 from unilaterally imposing certain requirements. That provision says, in part: "No supplier shall impose any fee, charge or other requirement not specifically authorized by this section or the rules promulgated under subsection 9 of this section [meaning rules enacted by the Commission] unless the fee, charge, or other requirement would apply to similarly situated customers who are not customer-generators, … ."

The Commission's proposed amendment would mandate that net metering customers of 10 kW or less would not be required to have any liability insurance. RMU cannot locate any provision in this new statute that clearly says such customers should not be required to carry any liability insurance.

Subdivision (2) of subsection 6 of section 386.890 RSMo Supp. 2007 in fact says "For systems of ten kilowatts or less, a customer-generator whose system meets the standards and rules under subdivision (1) of this subsection shall not be required to install additional controls, perform or pay for additional tests or distribution equipment, or purchase ***additional liability insurance*** beyond what is required under subdivision (1) of this subsection and subsection 4 of this section;" (emphasis supplied). RMU is unable to locate any mention of a minimum amount of liability insurance for customer-generators in the referenced subdivision (1) of subsection 6 of 386.890, or in subsection 4 of section 386.890, even though the statute refers to "additional liability insurance beyond what is required" in those provisions. RMU believes this is due to a legislative drafting error. The

phrase “additional liability insurance beyond what is required” certainly indicates a legislative intent for there to be ***some*** liability insurance required, though.

Why Should Customer-Generators Have Liability Insurance?

It should be common knowledge, especially to the Commission and its close to a century of regulating electrical corporations, that electricity can cause anything from a mild shock to horribly disfiguring and disabling injuries, to death. It should also be common knowledge that net metering installations, by definition, generate electricity. While under normal circumstances, net metering installations can operate safely, there can be situations when it can present hazards. For example, if something occurs to allow the electricity produced by the customer-generator to flow back into the utility’s system at a time when it is not supposed to do that, that presents a danger. One possible scenario would involve a downed power line. Under the right circumstances, the utility and the public could believe the downed line to be de-energized. If there is a customer-generator attached to the line, and no breakers have been thrown to electrically isolate the customer-generator, or a malfunction occurs that allows the electricity to flow, the downed line could be energized by the customer generator’s equipment. This could present a hazardous situation not only to utility service workers but also the general public. If someone were injured as a result of a contact with this energized line, it is not difficult to imagine that lawsuits would be filed. It is also possible to imagine other scenarios where a customer’s personal electric generating equipment could pose a hazard.

RMU attempted, as a part of the preparation of these comments, to ascertain what other states require for liability insurance in these circumstances. There is a website that purports to summarize net metering requirements for more than 30 states. It is a 76-page document called the Database of State Incentives for Renewables & Efficiency and appears at http://www.dsireusa.org/library under the heading “Net Metering for Renewable Energy.” RMU made a cursory examination of this site and did not attempt to independently verify the contents. It merely offers quotations from what it found there.

RMU’s impression from its review of the material on this website is that each state is different and the requirements, while sharing some features, can and do vary widely. For example, it appears that Colorado requires a minimum level of liability insurance. 4 CCR 723-3, Rule 3665 (e) XI Insurance: states:

(A) For systems of ten kW or less, **the customer, at its own expense, shall secure and maintain in effect during the term of the agreement liability insurance with a combined single limit for bodily injury and property damage of not less than $300,000 for each occurrence. For systems above ten kW and up to two (2) MW, customer, at its own expense, shall secure and maintain in effect during the term of the agreement liability insurance with a combined single limit for bodily injury and property damage of not less than $2,000,000 for each occurrence.** (Emphasis supplied). Insurance coverage for systems greater than two MW shall be determined on a case-by case basis by the utility and shall reflect the size of the installation and the potential for system damage.
(B) Except for those solar systems installed on a residential premise which have a design capacity of ten kW or less, the utility shall be named as an additional insured by endorsement to the insurance policy and the policy shall provide that written notice be given to the utility at least 30 days prior to any cancellation or reduction of any coverage. Such liability insurance shall provide, by endorsement to the policy, that the utility shall not by reason of its inclusion as an additional insured incur liability to the insurance carrier for the payment of premium of such insurance. For all solar systems, the liability insurance shall not exclude coverage for any incident related to the subject generator or its operation.
(C) Certificates of Insurance evidencing the requisite coverage and provision(s) shall be furnished to utility prior to the date of interconnection of the generation system. Utilities shall be permitted to periodically obtain proof of current insurance overage form the generating customer in order to verify proper liability insurance coverage. Customer will not be allowed to commence or continue interconnected operations unless evidence is provided that satisfactory insurance coverage is in effect at all times.

According to this website, in March 2008, the Florida Public Service Commission adopted rules for net metering and interconnection for renewable-energy systems up to two MW in capacity. The rules apply only to Florida's investor-owned utilities; the rules do not apply to electric cooperatives or municipal utilities, although some of them are utilizing net metering. The City of Tallahassee Utilities has developed an interconnection agreement for photovoltaic (PV) systems up to 100 kW. All interconnected PV systems and inverters must comply with relevant UL and IEEE standards, and a manual external disconnect switch is required**. Customers must have at least $100,000 in general liability insurance for personal and property damage.** (Emphasis supplied).

Florida Keys Electric Cooperative (FKEC) allows net metering for residential customers with PV systems up to 10 kilowatts (kW) in capacity. Net metering is accomplished using a single, bidirectional meter, or by a second meter supplied by the electric cooperative. Customers must sign an interconnection agreement with FKEC in order to net meter. Systems must comply with relevant IEEE and UL standards, and **customers must provide proof of general liability insurance of no less than $100,000**. (Emphasis supplied.) An external disconnect switch is required. Net-metered

customers must indemnify, defend and hold harmless FKEC from all losses resulting from the operation of the system.

Lakeland Electric, one of the largest municipal utilities in Florida, offers net metering to residential customers who install PV systems up to 10 kilowatts (kW) in capacity and to commercial customers who install PV systems up to 500 kW in capacity. There is no limit on the total net-metered capacity allowed in Lakeland's service territory. **Customers are required to have a general liability insurance policy for personal and property damage in the amount of at least $100,000.** (Emphasis supplied). (A standard homeowner's policy typically meets this requirement.) PV systems and inverters must meet relevant UL and IEEE standards. Systems must be installed in compliance with relevant IEEE standards and the National Electric Code. Lakeland Electric requires an external disconnect switch for interconnected PV systems.

The Indiana Utility Regulatory Commission (IURC) adopted net-metering rules in September 2004, requiring the state's investor-owned utilities to offer net metering to residential customers and K-12 schools. The rules, which apply to solar, wind and hydroelectric projects with a maximum capacity of 10 kilowatts (kW), include the following provisions: Net metering customers must maintain homeowners, commercial, or other insurance providing **coverage of at least $100,000 against loss** (emphasis supplied) arising out of the use of a net metered facility. Utilities may not require additional liability insurance in excess of this limit.

Is There a Basis for Liability?

One possible explanation for the wide range of insurance requirements, or lack thereof, may be the enabling legislation in each state and what immunity, if any, it gives the utility supplier from liability. For example, it Georgia, it appears that the requirement to provide net metering carried with it complete immunity for that state's electric suppliers: **Official Code of Georgia, § 46-3-56. Requirement to purchase energy from customer generator; safety standards and regulations.** (f) No electric service provider or electric supplier shall be liable to any person, directly or indirectly, for loss of property, injury, or death resulting from the interconnection of a cogenerator or distributed generation facility to its electrical system.

In contrast, the analogous Missouri provision in subsection 11 of section 386.890 RSMo Supp. 2007 says: For any cause of action relating to any damages to property or person caused by the generation unit of a customer-generator or the interconnection thereof, the retail

electric supplier shall have no liability absent clear and convincing evidence of fault on the part of the supplier.

Thus, it appears to RMU that while the Georgia legislature has provided complete immunity for the utility supplier, Missouri has not. This could have the practical effect of making Missouri suppliers *de facto* liable in some situations. While Georgia suppliers may be able to prevail on a motion for summary judgment, citing to their immunity if they are sued, Missouri suppliers do not appear to have that option since there would have to be an examination of whether there is "clear and convincing evidence" that they had no fault in the matter. This likely means the Missouri supplier will be embroiled in the lawsuit and face the pressure of attorneys fees and economic reasons for making settlement offers, while the Georgia supplier will not. If the Missouri electric supplier has some form of insurance coverage, and the customer-generator does not, the electric supplier will be looked upon as the only "deep pocket" available, even if it is without fault. On the other hand, if the customer-generator is required to carry a reasonable level of liability insurance commensurate with the danger that the customer generator is creating by the presence of its equipment, there will at least be more money available to deal with an injured member of the public.

Public Interest Reasons for Insurance Requirement

This brings up the fundamental question of whether it is really in the public interest for a customer-generator to be allowed by the state of Missouri to expose the people in Missouri to a potentially dangerous situation and not be required to carry any liability insurance at all. Missouri doesn't allow people to lawfully operate a motor vehicle without liability insurance or a substitute. See, Chapter 303 RSMo. Missouri also recently enacted a law that requires certain operators of private, for-profit swimming pools to carry at least $1,000,000 in liability insurance. See section 316.250 RSMo Supp. 2008. Why should Missouri allow someone to generate electricity and potentially expose the public to it without having to be financially responsible for the possible consequences?

The discussion above regarding insurance requirements in other states contained a comment that "a standard homeowner's policy typically meets this requirement" for $100,000 worth of liability insurance. RMU has not attempted to verify whether a "standard" homeowners insurance policy in Missouri would automatically contain liability

coverage for a customer-owned electric generator. RMU has serious doubts about that, given the policy exclusions that exist for things as common as mold. Furthermore, RMU is not aware of any state law that a homeowner in Missouri must buy a “standard homeowner’s policy,” much less one that would provide $100,000 worth of coverage.

RMU is aware of a recent discussion with State Farm Mutual Insurance Company on this topic. State Farm is one of the largest insurers in the state of Missouri. After about 75 minutes of discussions over two days, with six different people at State Farm, it appears that the State Farm Farm/Ranch policy (and "probably" the Standard Homeowner's policy) has the ability to have an endorsement added that would cover net metering liability issues. The endorsement falls under the "Incidental Business Activities" category. The minimum liability insurance amount that can be purchased is $100,000 per incident and RMU understands that will add about $21 per year to the premium. The maximum you can purchase through this type of endorsement is $1,000,000 per incident and the added premium is about $27 per year. The actual amount you can purchase through the endorsement apparently must be the same as the liability limit in the primary policy. Levels higher than $1,000,000 would require some type of "excess liability" policy in addition to the homeowner's policy (this policy is commonly known as a PLUP - Personal Liability Umbrella Policy).

It should be noted that these quoted premiums do not cover property damage to the generating facilities themselves. Based on its experience, RMU believes that this topic is not widely known in the insurance industry, as evidenced by the fact that several people at State Farm had to be consulted before someone was found in another state who demonstrated a knowledge of these type facilities, what specific type of policy endorsement is required, and how much it would cost. RMU offers its understanding on this point simply as an example since it may not be representative of other insurers in Missouri. It does lead RMU to conclude that insuring a net metering facility is possible and the premiums, at less than two dollars a month, appear to be very modest compared to the coverage afforded.

Application of the Commission’s Rule to Other Providers

RMU is aware the proposed amendment would make an ostensibly significant change in its scope. The proposal in section (2) narrows applicability from all retail electric

power suppliers to only those regulated by the Commission, thus eliminating applicability to rural electric cooperatives and municipal utilities. This appears to RMU to coincide with a statutory change that shifts responsibility away from the Commission for supervision of all electric service providers on this topic and transfers it to the "governing bodies" of rural electric cooperatives and municipal utilities. See section 386.890.10 RSMo Supp. 2007.

While the new rule of the Commission may not, on its face, apply to rural electric cooperatives and municipal utilities, the problem is there is language in the statute that could be construed as allowing the rule to limit actions taken by their governing bodies. RMU believes it would be a strained and erroneous interpretation of a poorly drafted statute, but the statute still says: "No supplier shall impose any fee, charge or other requirement not specifically authorized by this section ***or the rules promulgated under subsection 9*** of this section [meaning rules enacted by the Commission] unless the fee, charge, or other requirement would apply to similarly situated customers who are not customer-generators, … ." (Emphasis supplied). So there is at least the possibility this could be read to allow the rule to impose limits on what can be required by rural electric cooperatives and municipal utilities.

RMU believes that, on a stand-alone basis, there are compelling public policy reasons to not allow any net metering customers to escape the requirement for liability insurance, so the Commission should reconsider its proposed amendment in that regard. The Commission should also consider the possibility that its decision could impact retail electric suppliers that, on its face, are not even subject to the Commission's rule.

Summary

There are other states that require minimum levels of liability insurance for net metering customers. Current net metering customers in Missouri are required to have at least $100,000 in coverage. Coverage is apparently not automatically applicable to these installations but is available by policy endorsement and is very modestly priced.

RMU has found nothing in the "Net Metering and Easy Connection Act" clearly stating a legislative intent to remove liability insurance requirements. RMU sees nothing in the proposed amendment that justifies or even explains the reasons for doing that. RMU is concerned the Commission may believe its proposed action will have little or no consequence. It will only take one incident where someone is injured to prove that wrong.

The safety of the public demands more than a cursory discussion about the impact of this proposed change.

For the foregoing reasons, RMU respectfully suggests that the Commission should not change the existing minimum liability insurance requirements in the rule applicable to all net metering customers. It should give serious consideration to increasing the requirement, at least for customers with installations greater than 10 kW, to one million dollars. Accordingly, RMU believes that section (4) should read as follows:

(4) Customer-Generator Liability Insurance Obligations

(A) The customer-generator shall carry no less than one hundred thousand dollars ($100,000) of liability insurance that provides for coverage of all risk of liability for personal injuries (including death) and damages to property arising out of or caused by the operation of the net metering unit. Insurance may be in the form of an existing policy or an endorsement on an existing policy.

(B) Customer-generator systems greater than ten kilowatts shall carry no less than one million dollars ($1,000,000) of liability insurance.

Respectfully submitted,

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