

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

In the Matter of Ameren Missouri's Request for)
Variance from Portions of 4 CSR 240-20.065) **File No. EE-2014-0024**
and 4 CSR 240-20.100) Tracking No. YE-2014-0045

**STAFF RECOMMENDATION TO APPROVE AMEREN MISSOURI'S
TARIFF SHEETS AND REQUEST FOR VARIANCE**

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

Background

1. On July 29, 2013,¹ Union Electric Company, d/b/a Ameren Missouri ("Ameren Missouri") filed a *Request For Approval Of Tariff And For Variance* ("*Request*"), with proposed tariff sheets bearing an effective date of August 28, which the Commission assigned Tracking No. YE-2014-0045. Ameren Missouri's *Request* seeks a Commission Order granting variances and approving the tariff sheets with changes to implement the terms of HB 142, which will become effective August 28. The *Request* also asks the Commission to grant Ameren Missouri a variance from certain portions of the Commission's Net Metering rule, 4 CSR 240-20.065, to allow "...additional or clarifying language in the Net Metering Application/Agreement to reduce customer confusion, expedite processing or to better reflect steps required to implement net metering." Finally, the *Request* states Ameren Missouri seeks to continue the variances the Commission granted in File No. ET-2013-0197.

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

2. On July 30, 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 no later than August 14. This filing is in compliance with the Commission's *Order*.

Discussion and Recommendation

3. On July 3, Governor Nixon approved House Bill 142 ("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 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.

4. In Staff's *Memorandum*, attached hereto and fully incorporated herein, Staff reports on its review of Ameren Missouri's request and recommends the Commission approve the tariff sheets that contain variances from the Commission's current net-metering and RES rules. Staff's *Memorandum* describes and analyzes each variance request. Ameren Missouri seeks twelve (12) variances from the Commission's current rules, mostly to implement the language of HB 142, although Ameren Missouri uses the filing as an opportunity to make other small changes related to the net metering Interconnection Application/Agreement to add clarity.

Authority

5. The Commission's net metering rule, Rule 4 CSR 240-20.065, does not include a waiver or variance request provision that would allow Ameren Missouri 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.

6. 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."

7. Although the term "good cause" is frequently used in the law,² 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.³

8. 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

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.

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.")

“...to a remedial purpose and is to be applied with discretion to prevent a manifest injustice or to avoid a threatened one.”⁶

9. 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

10. Staff Counsel recommends the Commission find Ameren Missouri has shown good cause for the variance requests because the changes either implement provisions of HB 142 that will take effect on August 28, or allow “...additional or clarifying language in the Net Metering Application/Agreement to reduce customer confusion, expedite processing or to better reflect steps required to implement net metering” as supported by Ameren Missouri.

11. Staff has verified Ameren Missouri has filed its calendar year 2012 Annual Report and paid its first quarterly installment of its fiscal year 2014 assessment.

WHEREFORE, Staff files this Recommendation for the Commission’s information and consideration and recommends the Commission approve the *Request For Approval Of Tariff And For Variance* (Tracking No. YE-2014-0045), effective August 28, 2013, with variances therein for good cause shown, and allow the continuation of the variances granted in File No. ET-2013-0197.

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).

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 electronically on this 14th 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/ Jennifer Hernandez

MEMORANDUM

TO: Missouri Public Service Commission Official Case File
Case No. EE-2014-0024 / File No. YE-2014-0045 – Union Electric Company d/b/a
Ameren Missouri

FROM: Thomas M. Imhoff, Tariffs/Rate Design - Energy

/s/ Thomas M. Imhoff 8/14/13
Project Coordinator / Date

/s/ Jennifer Hernandez 8/14/13
Staff Counsel's Office / Date

SUBJECT: Staff Recommendation to Approve the Application of Union Electric Company d/b/a Ameren Missouri's Request For Approval of Tariff 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

DATE: August 14, 2013

On July 29, 2013, Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri" or "Company"), filed its "REQUEST FOR APPROVAL OF TARIFF AND FOR VARIANCE" ("Application") in order to implement revisions to its solar rebate and renewable energy credits tariff sheets with the Missouri Public Service Commission ("Commission") due to House Bill 142 becoming law on August 28, 2013.

House Bill 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 all rights, title, and interest in and to the renewable energy credits associated with the electrical system that qualified the customer for a period of 10 years from the date the system was installed and operational as confirmed by the electric utility. However, HB 142 does not change the energy portfolio requirements now in Section 393.1030.

Ameren Missouri filed the tariff sheets in this case, Case No. EE-2014-0024, for compliance with HB 142 when it becomes law and included a number of variance requests for current Commission rules, mostly those that are inconsistent with HB 142. In this filing, Ameren Missouri seeks twelve (12) variances from the Commission's rules mostly to implement the language of HB 142, although Ameren Missouri uses this as an opportunity to make other small changes related to the Commission net metering rule to add clarity. Staff does not oppose these requests, which are summarized below, because they either implement or do not change the purpose of HB 142. A short description of the twelve (12) 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 (4), and asks that the tariff language reflect that the customer-generator will be transferring the Solar Renewable Energy Credits (“SRECs”) to Ameren Missouri for a period of 10 years for solar rebates 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 modification of the net metering tariff sheet to reflect that the amount of the solar rebate and additional requirements and details are reflected in Ameren Missouri’s SR Rider. This requested variance is to language part of the net metering interconnection application/agreement required by Commission Rule 4 CSR 240-20.065, that the customer-generator completes, and will comply with HB 142.
4. The fourth variance request pertains to Commission Rule 4 CSR 240-20.065, and reflects tariff language clarifying that a customer requesting a solar rebate will be transferring the SRECs to Ameren Missouri for a period of 10 years to reflect what is required by HB 142.
5. Part (ii) of the Commission’s RES Rule, 4 CSR 240-20.100(7)(A)1.I., requires Ameren Missouri to provide affidavits from the owner of a renewable energy facility to certify the energy and energy attributes. The fifth variance request requires a “Customer Affidavit” be included in the list of “Required documents to receive a solar rebate.” This list is part of the interconnection application/agreement the customer-generator completes.
6. The sixth variance request seeks to add to Ameren Missouri’s tariff language stating “I understand that the complete terms and conditions of the solar rebate program are included in Company’s Rider SR-Solar Rebate tariff” to clarify for the customer-generator that the solar rebate application does not contain all terms and conditions related to the solar rebate.
7. The seventh variance pertains to Commission Rule 4 CSR 240-20.100 (4) (B), and requests a change in the solar rebate application relating to the solar electric system to place the same language from the rule in the application stating, i.e. the following language: “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.”
8. The eighth variance request seeks a change 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 Ameren Missouri’s Rider SR – Solar Rebate section of Ameren Missouri’s tariff. The proposed tariff language reflects language from HB 142.
9. The ninth variance request seeks to change Ameren Missouri’s tariff to provide that any customer with a solar rebate of \$600 or more will receive a 1099 tax statement, as opposed to the current Commission Rule 4 CSR-240-20.065 interconnection/agreement application language that implies that only business customers will receive a 1099 for a solar rebate of \$600 or more.
10. The tenth variance request fits with Ameren Missouri’s fifth variance request 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 Ameren Missouri’s use in complying with the Commission’s RES rule, Rule 4 CSR 240-20.100(7)(A)1.I.(II).
11. The eleventh variance request is made to add tariff language to reflect that a customer requesting a solar rebate cannot sell those SRECs to any party or take credit for those SRECs for any “green” program for a period of 10 years from the date Ameren Missouri confirms the system was installed and operational. This requested variance complies with HB 142.

12. The twelfth and final variance request asks the Commission to maintain the current variances in effect from Case No. ET-2013-0197.

Based upon its analysis, Staff recommends 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. 6

1st Revised Sheet No. 88, CANCELLING Original Sheet No. 88
1st Revised Sheet No. 88.1, CANCELLING Original Sheet No. 88.1
Original Sheet No. 88.2
Original Sheet No. 88.3
1st Revised Sheet No. 171.6, CANCELLING Original Sheet No. 171.6
1st Revised Sheet No. 171.9, CANCELLING Original Sheet No. 171.9
1st Revised Sheet No. 171.10, CANCELLING Original Sheet No. 171.10
1st Revised Sheet No. 171.11, CANCELLING Original Sheet No. 171.11
1st Revised Sheet No. 171.12, CANCELLING Original Sheet No. 171.12
1st Revised Sheet No. 171.14, CANCELLING Original Sheet No. 171.14
Original Sheet No. 171.15

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.

