

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

In the Matter of Ameren Missouri's
Solar Rebate Offer.

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File No. EE-2014-0313
Tariff No. JE-2014-0429

STAFF RECOMMENDATION TO DENY APPLICATION

COMES NOW, Staff of the Missouri Public Service Commission, by and through the undersigned counsel, and, for its recommendation that the Missouri Public Service Commission deny Union Electric Company's, d/b/a Ameren Missouri, application, states:

Background

1. On April 25, 2014,¹ Ameren Missouri filed its *Application For Variance* based on extending from June 30 to July 31 by when the Authority Having Jurisdiction ("AHJ") where an Ameren Missouri customer installs a new or expanded solar electric system must complete its safety inspection of the system for the customer to qualify for a rebate of \$2.00 per Watt installed, together with two tariff sheets (assigned Tracking No. JE-2014-0429) to implement the proposed extension of time for the AHJ to complete its safety inspection.

2. On April 29, the Commission issued an order directing Staff to file its recommendation on the application by no later than May 13. On May 13, Staff requested an extension of time to file its recommendation until May 15, which the Commission granted that same date.

¹ All dates herein refer to calendar year 2014 unless otherwise specified.

Recommendation

3. Staff recommends the Commission deny the application and reject Ameren Missouri's proposed tariff sheets assigned Tracking No. JE-2014-0429, to wit:

P.S.C. Mo. SCHEDULE NO. 6

3rd Revised SHEET NO. 88.1 Cancelling 2nd Revised SHEET NO. 88.1
2nd Revised SHEET NO. 88.2 Cancelling 1st Revised SHEET NO. 88.2

4. June 30 is an impending crucial date since, by statute, only if a customer's new or expanded solar electric system "becom[es] operational on or before June 30, 2014" will that customer, who otherwise qualifies, receive a \$2 per Watt solar rebate. § 393.1030.3, RSMo Supp. 2013.² After that date, until June 30, 2015, the rebate drops to \$1.50 per Watt. *Id.*

5. Staff understands the variance request is being made to address the situation where, due to delay in when the local inspection or approval occurs, the date when the solar system becomes operational extends beyond June 30, 2014.

6. While Staff is sympathetic, Staff is of the opinion that by incorporating compliance with the provisions of § 386.890 into § 393.1030.3, effective August 28, 2013 (HB 142), the Legislature most likely intended that to "becom[e] operational" the solar electric system, among other things, must be "interconnected and operate[] in parallel phase and synchronization with a retail electric supplier and ha[ve] been approved by said retail electric supplier." § 386.890.2(3(d)). In other words, the date the meter interconnecting the customer's solar electric system with the electric

² All statutory cites are to RSMo Supp. 2013, unless otherwise noted.

utility is “set” is the date that determines the per Watt amount of the solar rebate.³ For that reason, Staff’s primary recommendation to the Commission is for it to reject Ameren Missouri’s application for a variance and its associated tariff sheets assigned Tracking No. JE-2014-0429.

7. However, Staff is aware that the foregoing statutory language is susceptible to interpretation, since the meanings of “operates” and “operational” as used in §§ 386.890 and § 393.1030 are not defined by the Legislature. Should the Commission disagree with Staff’s opinion regarding statutory intent, and find that it can allow a customer to receive a \$2 per Watt solar rebate where the local inspection or approval occurs after June 30, 2014, then Staff recommends the Commission deny Ameren Missouri’s application and proposed tariff sheets assigned Tracking No. JE-2014-0429, but, as allowed by rule 4 CSR 240-20.100(10) when good cause is shown, grant Ameren Missouri a variance from 4 CSR 240-20.100(4)(K) to allow it to file tariff provisions that allow qualification for the \$2 per Watt solar rebate, if the inspector for the AHJ (authority having jurisdiction) verifies to Ameren Missouri by July 31, 2014, that the system was operational on or before June 30, 2014.

³ As Ameren Missouri and other parties point out, in Case No. ET-2014-0085, on December 12, 2013, Staff filed a recommendation to grant a variance from rule 4 CSR 240-20.100(4)(K) and approve tariff sheets (Tracking No. YE-2014-0235) to allow Ameren Missouri to implement a reservation queue system for solar rebates that included treating customer solar electric systems as being operational on or before June 30th if Ameren Missouri was unable to complete all the steps needed to establish an “operational date” on or before that June 30th, unless it is subsequently determined the customer had not completed all of the customer’s completion requirements for that system on or before the same June 30th. If the Commission adopts Staff’s primary recommendation, it may want to revisit whether Ameren Missouri’s tariff should continue to permit this.

8. When good cause is shown rule 4 CSR 240-20.100 (10) allows the Commission to grant variances from 4 CSR 240-20.100 upon a written application, and after notice and the opportunity for hearing.

9. Although the term “good cause” is frequently used in the law,⁴ 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.⁵

10. Good cause “...generally means a substantial reason amounting in law to a legal excuse for failing to perform an act required by law.”⁶ 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.”⁷ 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.”⁸

11. 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,

⁴ *State v. Davis*, 469 S.W.2d 1, 5 (Mo. 1971).

⁵ 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.

⁶ Black’s Law Dictionary, p. 692 (6th ed. 1990).

⁷ *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.”)

⁸ *Bennett v. Bennett*, 938 S.W.2d 952 (Mo. App. S.D. 1997).

and reasonable not whimsical...”⁹ Moreover, some legitimate factual showing is required, not just the mere conclusion of a party or his attorney.¹⁰

12. Further, Staff has reviewed the tariff sheets submitted by Ameren Missouri and assigned tracking number JE-2014-0429, and, for other reasons, recommends the Commission reject them. They include relief for all calendar years until the phase-out of the rebate in 2020. Staff recommends that such relief not be granted beyond the upcoming June 30, 2014. The tariff sheets do not require a showing that the system would have passed inspection on or before June 30. Staff recommends Ameren Missouri work with the parties in this case to develop proposed language to include in tariff sheets to comply with any Commission order.

13. Staff has verified that Ameren Missouri has submitted its 2013 calendar year annual report and is current on the payment of Commission assessments.

14. Staff is not aware of any matter that will affect, or will be affected by, a Commission decision in this case.

WHEREFORE, Staff recommends that the Commission deny Ameren Missouri’s application and reject its proposed tariff sheets assigned Tracking No. JE-2014-0429, to wit:

P.S.C. Mo. SCHEDULE NO. 6

3rd Revised SHEET NO. 88.1 Cancelling 2nd Revised SHEET NO. 88.1
2nd Revised SHEET NO. 88.2 Cancelling 1st Revised SHEET NO. 88.2

⁹ *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).

¹⁰ See generally *Haynes v. Williams*, 522 S.W.2d 623, 627 (Mo. App. E.D. 1975).

and, should the Commission reject Staff's primary recommendation to take no other action, Staff recommends that the Commission, as allowed by rule 4 CSR 240-20.100(10) when good cause is shown, grant Ameren Missouri a variance from 4 CSR 240-20.100(4)(K) to allow it to file tariff provisions that allow qualification for the \$2 per Watt solar rebate, if the inspector for the authority having jurisdiction verifies to Ameren Missouri by July 31, 2014, that the system was operational on or before June 30, 2014.

Respectfully submitted,

/s/ Nathan Williams

Nathan Williams

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been emailed this 16th day of May 2014, to all counsel of record as listed in the Commission's Electronic Filing Information System.

/s/ Nathan Williams

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

In the Matter of Ameren Missouri's Solar)
Rebate)

File No. EE-2014-0313

AFFIDAVIT OF DANIEL I. BECK

STATE OF MISSOURI)
) ss
COUNTY OF COLE)

Daniel I. Beck, of lawful age, on oath states: that he has knowledge of the facts stated in the foregoing Pleading; that the information is true and correct to the best of his knowledge and belief.

Daniel I Beck

Daniel I. Beck

Subscribed and sworn to before me this 15th day of May, 2014.

Susan L Sundermeyer
Notary Public

