

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held by internet and audio conference on the 28<sup>th</sup> day of April, 2021.

In the Matter of the Application of )  
Checkmate Design for a Variance of ) **File No. EE-2021-0180**  
Commission Rules )

**ORDER DENYING APPLICATION FOR VARIANCE**

Issue Date: April 28, 2021

Effective Date: May 28, 2021

On December 23, 2020, Checkmate Design, LLC (Checkmate Design), filed an application requesting that it be granted a variance from the requirement to individually meter a residential building located at 4440 Manchester Ave. in St. Louis, Missouri. On January 6, 2021, the application was refiled by an attorney. The January 6, 2021 application stated that the applicant was Grove Lofts STL, LLC (Grove Lofts) the developer and operator of the multi-family property. The entry of appearance, made by Missouri-licensed attorney Laura K. Rebbe, indicated that both Checkmate Design and Grove Lofts were her clients.

The Commission added Grove Lofts as a party to the case and directed Checkmate Design and Grove Lofts (hereinafter referred to as “Applicants”) to clarify the role of Checkmate Design in this request for variance. No clarification was provided.

The application requested “Hardship Variance . . . under the following exceptions 20CSR4240-20.050(4)(A) and 20CSR4240-20.050(4)(E) [*sic*].”<sup>1</sup> As explained below, the Commission interpreted this request both as a request that the Commission find the

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<sup>1</sup> Application, (filed January 6, 2021), p. 3.

subject property meets the criteria of the exceptions of Commission Rule 20 CSR 4240-20.050(4)(A) and (4)(E), and that the Commission grant a variance for good cause from the requirement for individual metering in Commission Rule 20 CSR 4240-20.050(2).

The building that is the subject of the application will contain two commercial and 60 residential units with split HVAC systems at the units and rooftop units for common space. Each residential unit has an all-electric kitchen, individual water heating, and a washer/dryer. Five residential units are designed for residents with disabilities. The application further provides a list of energy efficient appliances, mechanical units, and thermostats that were installed in the housing project and indicates that 35% of the common space energy cost is estimated to be offset with solar panels.<sup>2</sup> The applicant estimates that the additional cost of individual metering to be approximately \$75,000.

The electric service provider at the subject property is Union Electric Company, d/b/a Ameren Missouri (Ameren Missouri). Ameren Missouri was made a party to the case and filed a response to the application opposing the variance request. Ameren Missouri argues that the Applicants have not shown they have met any of the exceptions to the individual metering rule. Ameren Missouri also argues that “[t]he requested variance violates the spirit, if not the letter, of the Public Utility Regulatory Policies Act of 1978, 16 USC 2601, [PURPA] by providing a disincentive for residents to minimize their monthly expenses by conserving electricity” and “violates the Commission’s trend toward making electric costs transparent and encouraging the thoughtful and judicious

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<sup>2</sup> Common areas are corridors, elevators, stairs and building exterior power.

consumption of electricity via a number of methods, including but not being limited to, time of use rates.”<sup>3</sup>

Under Commission Rule 20 CSR 4240-20.050(5)(C), once an application for variance is received, the Variance Committee (consisting of two members of the Commission’s staff, one staff attorney, and the Public Counsel as an ex officio member) shall consider the application and make a written recommendation of its findings to the Commission. On March 1, 2021, the Variance Committee filed its written recommendation.

The Variance Committee reviewed the application and found that it does not meet the criteria for an exception to the individual metering requirement. The Variance Committee found that the application does not meet the exception in 20 CSR 4240-20.050(4)(A) because the subject housing is not intended to be transient, or (4)(E) because the renewable energy resources (solar panels) will only be used to offset common space energy requirements.

The Variance Committee found that tenants of the building will have the ability to control their thermostats within a predetermined temperature range and can request further adjustments from the leasing managers. The Variance Committee found that because the occupants of each unit will have substantial control over the electric energy usage of the unit, the long-run benefits to the electric consumer of separate meters exceed the cost of installing separate meters. The Variance Committee also found that if each apartment is separately metered, each occupant would be able to participate in Ameren Missouri’s new time-of-use residential rate offerings and the educational

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<sup>3</sup> *Response of Union Electric Company d/b/a Ameren Missouri*, (filed January 19, 2021), paragraphs 8 and 9.

platforms that accompany the rate offerings. Further, the Variance Committee found that granting the requested variance is not consistent with the goals of PURPA to increase conservation of electric energy, increase efficiency in the use of facilities and resources by electric utilities, and establish equitable retail rates for electric consumers.

The Variance Committee unanimously determined that the application does not meet the criteria for an exception to the individual metering requirement and that granting a variance would not be in the public interest. The Variance Committee recommended that the application be denied.

Commission Rule 20 CSR 4240-20.050(2) requires that “[e]ach residential and commercial unit in a multiple-occupancy building . . . [have] a separate electric meter for each residential or commercial unit.” Commission Rule 20 CSR 4240-20.050(4) states that separate metering is not required in the following circumstances:

(A) For transient multiple-occupancy buildings and transient mobile home parks—for example, hotels, motels, dormitories, rooming houses, hospitals, nursing homes, fraternities, sororities, campgrounds and mobile home parks which set aside, on a permanent basis, at least eighty percent (80%) of their mobile home pads or comparable space for use by travel trailers;

(B) Where commercial unit space is subject to alteration with change in tenants as evidenced by temporary versus permanent type of wall construction separating the commercial unit space—for example, space at a trade fair;

(C) For commercial adjacent buildings;

(D) For that portion of electricity used in central space heating, central hot water heating, central ventilating and central air-conditioning systems;

(E) For buildings or mobile home parks where alternative renewable energy resources are utilized in connection with central space heating, central hot water heating, central ventilating and central air-conditioning systems; or

(F) For all portions of electricity in commercial units in buildings with central space heating, ventilating and air-conditioning systems.

Although the application specifically requests exceptions from individual metering under Commission Rule 20 CSR 4240-20.050(4)(A) and (4)(E), the subject building does not meet the criteria for either of these exceptions.

Commission Rule 20 CSR 4240-20.050(5) also provides that any person or entity may request a variance from all or parts of the rule and that a variance may be granted for good cause. Thus, the Commission considers this application as requesting a variance from the individual metering rule for good cause.

Commission Rule 20 CSR 4240-20.050(5) provides, in part:

1. The variance committee shall consider all variance applications filed by utilities and shall make a written recommendation of its findings to the commission for its approval.

2. Each applicant for a variance shall have ten (10) days from the date of the variance committee's findings to either accede or request a formal hearing before the commission.

3. If applicant accedes, the commission may adopt the variance committee's findings or set the matter for formal hearing upon the application of any interested person or upon the commission's own motion.

The Variance Committee's findings indicate that the subject property does not meet the criteria for an exception to the individual metering rule and that it would not be in the public interest to grant a variance. More than ten days have passed since the Variance Committee's written report of its findings was received and no party has requested a hearing before the Commission. The Commission has considered the findings of the Variance Committee and adopts them. The request for variance from Commission Rule 20 CSR 4240-20.050 is denied.

**THE COMMISSION ORDERS THAT:**

1. The application for variance from Commission Rule 20 CSR 4240-20.050 for a building at 4440 Manchester Ave. in St. Louis, Missouri, is denied.

2. This order shall become effective on May 28, 2021.



**BY THE COMMISSION**

A handwritten signature in black ink that reads "Morris L. Woodruff". The signature is written in a cursive, flowing style.

Morris L. Woodruff  
Secretary

Silvey, Chm., Kenney, Rupp, Coleman, and  
Holsman CC., concur.

Dippell, Deputy Chief Regulatory Law Judge