

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at the Commission's office in Jefferson City, Missouri on the 11<sup>th</sup> day of August, 2021.

In the Matter of a Petition To Interpret 20 )  
CSR 4240-20.065 And Establish The Status )  
and Eligibility of the Members of the St. )  
James Solar Farm Association to Receive )  
Net-Metering Credits )

**File No. EO-2021-0408**

**ORDER DENYING PETITION FOR RULEMAKING**

Issue Date: August 11, 2021

Effective Date: August 21, 2021

On May 24, 2021, St. James Solar Farm Association (Association) filed a *Petition to Interpret Net-Metering Regulations*. The Commission directed the Association to correct certain deficiencies in its petition. On June 17, 2021, the Association filed its *First Amended Petition for Rulemaking*.

The Association explains in its amended petition that it intends to operate a non-profit cooperative solar farm that would be connected to a municipal utility's electrical distribution system. The amended petition asks the Commission to amend 20 CSR 4240-20.065 Net Metering to include "cooperative electric energy generation ventures" as customer-generators for net-metering purposes. The Association requests that the Commission adopt amendments to the Net Metering rule and make a determination that:

- a. The Association's members are the owners or operators of a qualified electric energy generation unit;

b. The Association's members' qualified electric energy generation units are located on premises that are owned, operated, leased, or otherwise controlled by the customer-generator;

c. The electricity generated by the Association's members is intended primarily to offset part or all of the customer-generator's own electrical energy requirements; and

d. The Association is not an investor-owned utility.

The Commission received a response to the amended petition from Evergy Metro, Inc. d/b/a Evergy Missouri Metro, and Evergy Missouri West, Inc. d/b/a Evergy Missouri West (collectively referred to as "Evergy") and Union Electric Company d/b/a Ameren Missouri. The Commission also received a recommendation from the Staff of the Commission. Ameren Missouri, Evergy, and Staff opposed the Commission amending the rule as requested citing the Commission's lack of authority to promulgate net-metering rules that would govern connections and agreements with municipal utilities and electric cooperatives. Staff also made recommendations regarding the Commission's review and necessary findings for requested rule amendments under Section 536.041, RSMo. Staff recommended that the Association be directed to File No. EW-2021-0267 and any other Commission "docket affecting third parties acting on behalf of or in concert with retail electric customers in Missouri."<sup>1</sup>

The Association suggests that the Commission has authority to amend its rule under Section 386.310, RSMo. While that section gives the Commission broad authority to promulgate rules to promote and safeguard health and safety, it does not specifically

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<sup>1</sup> *Staff Rulemaking Recommendation*, (filed July 8, 2021), p. 1.

address net-metering. Section 386.890, RSMo, which is specifically known as the “Net Metering and Easy Connection Act,”<sup>2</sup> does address the Commission’s rulemaking authority for net-metering.

The Association also points to Section 386.890, RSMo, as authority for the Commission to promulgate these rule amendments. Section 386.890.6(3) grants the Commission authority with regard to customer-generator systems of greater than ten kilowatts to promulgate net-metering rules for “public utilities.” That same section grants authority to make net-metering rules, or rule equivalents, to the “governing bodies for other utilities.” A “public utility” is defined in Section 386.020(43) as including “every . . . electrical corporation” as defined in that section. Section 386.020(15) further defines “electrical corporation” and specifically excludes from that definition all “[m]unicipally owned electric utilities. . . [and r]ural electric cooperatives operating under chapter 394[.]” Thus, the Commission has no authority to promulgate rules governing the net-metering of cooperative electric energy generation ventures, such as the Association, with a municipality or electric cooperative.

Additionally, with respect to electric cooperatives, Section 394.160, RSMo, specifically states that the Commission’s jurisdiction over electrical cooperatives is limited to the cooperative’s “construction, maintenance and operation of the physical equipment of such cooperative to the extent of providing for the safety of the public and the elimination or lessening of induction or electrical interference . . . .” The jurisdiction of the Commission is specifically not extended to “the service, rates, financing, accounting or management of any such cooperative.”

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<sup>2</sup> Section 386.890.1, RSMo 2016.

Section 536.041, RSMo, allows any person to petition a state agency requesting the adoption, amendment, or repeal of any rule. That section further requires the agency to submit a written response to the rulemaking petition within sixty days of receipt of the petition, indicating its determination of whether the proposed rule should be adopted. Similarly, Commission Rule 20 CSR 4240-2.180(3)(B) requires the Commission to respond to a petition for rulemaking by either denying the petition in writing, stating the reasons for its decision, or initiate a rulemaking in accordance with Chapter 536, RSMo.

Section 536.041 also requires the agency to offer a concise summary of the agency's "findings with respect to the criteria set forth in subsection 4 of section 536.175." The criteria in subsection 4 are designed to guide the agency's review of its existing rules under the periodic review process required by that statute. As a result, those criteria do not precisely match the review needed to determine whether the Association's rulemaking petition should be granted. However, the criteria is generally designed to require that the agency consider whether the rule is properly drafted to be consistent with the language and intent of the authorizing statute; whether the rule imposes an unnecessary regulatory burden; and whether a less restrictive, more narrowly tailored, or alternative rule could accomplish the same purpose.

The Commission finds that the specific regulatory language offered by the Association does not meet the statutory criteria. The Commission finds that:

(1) Rule 20 CSR 4240-20.065 continues to be necessary to meet the requirement under Section 386.020(15) that the Commission promulgate rules to implement net-metering for "public utilities."

(2) Rule 20 CSR 4240-20.065 is not obsolete. The rule very recently underwent review and revisions that became effective on January 30, 2021.

(3) Rule 20 CSR 4240-20.065 is designed so that it does not overlap, duplicate, or conflict with other state, federal, or local rules. However, as Staff, Ameren Missouri, and Evergy stated in their filings, the amendment as proposed by the Association may conflict with the statute giving the Commission rulemaking authority and with any municipal electric utilities or electric cooperatives that have put in place rules and regulations for net-metering interconnection.

(4) Rule 20 CSR 4240-20.065 is narrowly tailored to govern only “electrical corporations” as defined in Section 386.0202(15), RSMo.

(5) Rule 20 CSR 4240-20.065 does not need amendment to reduce regulatory burdens on individuals, businesses, or political subdivisions or eliminate unnecessary paperwork. If the Commission were to adopt the proposed amendments regulatory burdens might be increased since the persons attempting net-metering interconnection would have to come to the Commission to determine how to accomplish that instead of going to their municipal utility to determine how to do it.

(6) Rule 20 CSR 4240-20.065 incorporates by reference only the materials set out in Section 386.890.6, RSMo, with the year of those items specified.

(7) Rule 20 CSR 4240-20.065 only affects small business to the extent required by the Net Metering and Easy Connection Act and does not add additional requirements not required by statute.

(8) The Commission considered and responded to the comments of Ameren Missouri, Evergy, and Staff as set out above.

Because of all the above statutory limitations on the Commission's rulemaking authority for net-metering and because the rule amendments do not compel the Commission to take further action after its review of the statutory criteria, the Commission determines that the Association's amended petition should be denied.

**THE COMMISSION ORDERS THAT:**

1. The Association's *First Amended Petition for Rulemaking* requesting revision of Commission Rule 20 CSR 4240-20.065 is denied.
2. This order shall become effective on August 21, 2021.



**BY THE COMMISSION**

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

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

Woodruff, Chief Regulatory Law Judge


**STATE OF MISSOURI**

**OFFICE OF THE PUBLIC SERVICE COMMISSION**

**I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.**

**WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 11<sup>th</sup> day of August, 2021.**



  
**Morris L. Woodruff**  
**Secretary**

**MISSOURI PUBLIC SERVICE COMMISSION**

**August 11, 2021**

**File/Case No. EO-2021-0408**

**Missouri Public Service  
Commission**

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**Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).**

**Sincerely,**



**Morris L. Woodruff  
Secretary**

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Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.