MEMORANDUM

TO: Colleen M. Dale, Secretary

DATE: October 23, 2008

RE: Authorization to File Final Order of Rulemaking with the Office of Secretary of State

CASE NO: EX-2008-0280

The undersigned Commissioners hereby authorize the Secretary of the Missouri Public Service Commission to file the following Final Order of Rulemaking with the Office of the Secretary of State, to wit:

Proposed Amendment to Rule 4 CSR 240-20.065 – Electric Utilities Net Metering

Jeff Davis, Chairman

Connie Murray by PSC

Connie Murray, Commissioner

Concurrence to Attach

Robert M. Clayton III, Commissioner

Terry M. Jarrett, Commissioner

Kevin D. Gunn, Commissioner

Title 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240 – Public Service Commission
Chapter 20 – Electric Utilities

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 386.250 and 386.890 RSMo Supp. 2007, the commission adopts a rule as follows:

4 CSR 240-20.065 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on August 1, 2008 (33 MoReg 1397). This proposed amendment will become effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on the proposed amendments was held September 2-8, 2008, and the public comment period ended September 2, 2008. Written comments were received from the Staff of the Missouri Public Service Commission (Staff), Union Electric Company d/b/a AmerenUE (AmerenUE), Rolla Municipal Utilities (RMU), The Missouri Energy Development Association (MEDA), The Missouri Public Utility Alliance (MPUA) and the Missouri Joint Municipal Electric Utility Commission (MJMEUC) Verbal comments were made by Steven Dottheim and David Elliott on behalf of the Staff; Lewis Mills, the Public Counsel; Larry Dority on behalf of "the Kansas City Power and Light Entities;" Wendy Tatro and Wade Miller on behalf of AmerenUE; Warren Wood on behalf of MEDA and Brenda Wilbers on behalf of the Department of Natural Resources Energy Center. The only person to testify at the hearing was Staff witness Daniel I. Beck.

All participants agreed that, due to changes in the law concerning net metering, amendment of the rule is necessary.

COMMENT 1: Staff counsel noted that the rule as currently drafted only sets the floor for the amount that the electric utility must credit the customer-generator for energy it generates in excess of its own needs, as it requires the amount paid to the customer-generator to be at least equal to the electric utility's avoided fuel costs. Customers who routinely exceed their own demand can qualify to receive payments under the tariffed cogeneration rates that are based on the avoided fuel costs plus other avoided generation costs. Staff proposes two alternatives; The first is to change (6)(C) "Determination of Net Electrical Energy" as follows:

> If the electricity generated by the customer-generator exceeds the electricity supplied by the electric utility during a billing period, the customer generator shall be billed for the appropriate customer charges for that billing period in accordance with section (3) of this rule and shall be credited with an amount ~~at least equal to~~ that is

the greater of the avoided fuel cost or the electric utility's avoided costs under the current tariffed cogeneration rate ~~of~~ for the excess kilowatt-hours generated during the billing period, with this credit applied to the following billing period.

The second alternative would change the definition of "avoided fuel cost" in the rule to:

(A) Avoided fuel cost means the greater of the current annual average cost of fuel for the electric utility as calculated from information contained on the Steam-Electric Generating Plant Statistics sheets in the most recent annual report submitted to the commission pursuant to 4 CSR 240-3.165, or the current average cost of fuel for the electric utility defined as the avoided cost in section (4) of the commission's rule 4 CSR 240-20.060 Cogeneration and as filed in compliance with 4 CSR 240-3.155 Requirements for Electric Utility Cogeneration Tariff Filings. Annual average cost of fuel will be calculated from information on the Steam-Electric Generating Plant Statistics Sheets of the annual report. This annual average avoided fuel cost of fuel shall be identified in the net metering tariffs on file with the commission and shall be updated annually within thirty (30) days after the electric utility's annual report is submitted.

As Staff and AmerenUE noted, the cogeneration rules apply to independent power producers who purposely generate energy to sell to the electric utility, whereas the net metering rule is for customer-generators who primarily are generating to meet their own needs and may have excess energy. This distinction does not justify the payment differential, as it should be based on the electric utility's avoided cost, which is the same irrespective of whether the electricity comes from a cogenerator or net-metering customer.

In response to the Staff's suggested changes, AmerenUE, OPC, and Staff witness Mr. Beck noted that in the case of net-metering customers, it is unlikely that the customer will generate more electricity than the customer uses in a month. As such, any electricity generated by such a customer in excess of its instant needs and that is sent it to its electric utility is used to offset the customer's usage in kilowatt hours, thereby effectively paying the customer-generator the retail unit price, which is greater than the cogeneration tariff rate. In light of the practicable application of these "payment" methods, AmerenUE, KCP&L, and MEDA were not generally opposed to paying the cogeneration rate to net metering customers. All commenters were opposed to Staff's proposal to change the definition of "avoided fuel costs" to include avoided costs other than fuel.

However, AmerenUE (in whose comments KCP&L joined) noted that all customer-generators who qualify as net metering customers also qualify as cogenerators, and can sign up under the cogeneration tariff if they wish. AmerenUE further noted that creating the system the Staff proposed would be

expensive and time-consuming to implement, and finally asserted that the Staff can require the cogeneration rate to be the net metering rate when those tariffs are filed, without any alteration to the proposed rule.

The Public Counsel and Staff noted that "regardless of whether it's a huge customer that's generating steam for its own processes and sells a lot of electricity back or someone that just has a few extra kilowatt hours per month in the summertime because their solar panels are sized for year-round use, the utility's avoided cost in either instance is going to be the same, so the rate paid per kilowatt hour to either of those entities ought to be the same."

RESPONSE: The Commission finds that those customers who generate electricity in excess of their total usage in a given month should be compensated at the cogeneration rate. The Commission finds that such a rate can be enforced in the tariff approval process, without any change to the language of the proposed rule.

COMMENT 2: AmerenUE suggested modification to the Interconnection Form (100kW or less) contained within the proposed amendment. In the section entitled "For Customers Who Have Received Approval of Customer-Generator System Plans and Specifications," the form requires that after the qualified generation unit is built, but prior to the interconnection of it to the electric utility, the customer-generator will furnish the utility a certification from a qualified professional electrician or engineer that the installation meets the plans and specification described in the application. Upon receipt of that certification, the utility will schedule interconnection within fifteen days if the premises already has electric service. AmerenUE requested that the Commission remove the fifteen day requirement. The requirement is unchanged from the previous version of the rule, which was specifically required by the former statute. However, this language is removed from the new statute. AmerenUE believed that requested interconnections will normally occur within fifteen days, but asserted that the Commission should not create a preference for customer-generators over other types of service requests. A fifteen day interconnection requirement could force AmerenUE to delay prior service requests so that it can interconnect a customer-generator within the required fifteen days.

RESPONSE: In light of the fact that potential customer generators must submit their plans to the electric utility, which has 30 to 60 days (depending on the generating unit size) to review and accept or reject the plan, then the customer constructs the system, then they have the construction certified and so notify the utility, and then the utility has fifteen days (unless a longer time is mutually agreed upon) in which to interconnect (as long as the premises already has electric service, otherwise the time frame is fifteen days from when service is established), the Commission finds that this time requirement is not onerous. Moreover, although this was in the previous version of the rule, AmerenUE provided no support, even anecdotal, for the assertion that the requirement has caused any delays in serving other customers. No change will be made as a result of this comment.

COMMENT 3: There were two major issues concerning the liability insurance provisions included in or excluded from the proposed amendment.

First, in 4 CSR 240-20.065(4)(A), the proposed amended requires a customer-generator with a system greater than ten kW to carry no less than one hundred thousand dollars of liability insurance. AmerenUE agrees that customer-generators with a system greater than ten kW should carry insurance; however, it believes the Commission should require no less than a million dollars of liability insurance. The amended rule specifies that this policy is to cover property damage as well as personal injury, including death. AmerenUE commented that one hundred thousand dollars is insufficient to cover the stated risks and should be increased to one million dollars. RMU agreed in its comments, noting other instances with commensurate risk in which the law requires a million dollars in liability insurance. AmerenUE and all other commenters except Staff and OPC noted that a customer-generator with a ten kW system (or higher) will not likely find this requirement to be unreasonable, as a customer-generator with a system of that size will have at least that level of insurance to cover its own potential liability. As the amended rule proposes, this insurance may be in the form of an endorsement on an existing policy.

The second issue pertains to whether customer-generators of ten kilowatts or less are required to carry any liability at all. The presently effective rule requires at least $100,000 in insurance coverage, which requirement is eliminated in the proposed amendment. In addition, the proposed amendment affirmatively states that no additional insurance is required.

Section 386.890.6(2) RSMo Supp. 2007 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;" however, there is no mention of a minimum amount of liability insurance for customer-generators in subdivision (1) or subsection 4.

All commenters except Staff and OPC assert that the phrase "additional liability insurance beyond what is required" indicates a legislative intent for there to be some liability insurance required. OPC notes that the "old" §386.877, which was the first net metering act, specifically gave the Commission the authority to set liability insurance levels for customer-generators. Section 386.890, the "new" net metering act, does not explicitly authorize the Commission to require liability insurance. RMU's concludes that the Legislature meant to include some level of liability insurance, while OPC asserts that it is also easy to conclude that the Legislature did not. As such, the Commission's authority under § 386.890 RSMo Supp. 2007 to establish a requirement that a smaller customer generator be required to carry liability insurance in the amount of $100,000, or any other amount, is unclear. OPC opposes including the insurance requirement at this time, as the Legislature can revisit the matter and clarify whether such insurance is required. In light of the differences between 386.890 and 386.877, OPC believes the intent was not to require liability insurance for the smaller customer-

generators, in keeping with the intent of the new statute, which is to enable customer generators to more simply and easily hook up their own generating systems to the utility grid.

RMU noted that it had surveyed other states' net metering statutes and rules concerning liability insurance and found that in states where liability on the part of the electric company was limited in situations in which a net metering customer's equipment or actions harmed a third party, there was no insurance requirement. In states like Missouri, without liability immunity, insurance was usually required. RMU noted the dangerous nature of electricity and opined that electric utilities and other cooperative and municipal electric suppliers will be the "deep pockets" to which harmed entities will turn for recourse. However, §386.890.11 RSMo Supp. 2007 provides that 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. RMU asserts that as it is not absolutely immune, it will necessarily incur expenses defending suits in which they are named, but were not at fault. It further notes that the additional coverage, in the form of a rider or special endorsement would cost approximately $21 to $27 each year for $100,000 to $1,000,000 in liability coverage. 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.

RESPONSE AND EXPLANATION OF CHANGE: The Commission's authority to establish a requirement that a smaller customer-generator (less than 10 kW) be required to carry liability insurance in the amount of $100,000, or any other amount, is not clear under §386.890 RSMo Supp. 2007. However, the Commission finds that its authority is clear under §§386.040, 386.250.7, 386.310 and 386.610 RSMo 2000 that establishing liability insurance levels for customer-generators is within the Commission's jurisdiction to promote and safeguard health and safety, thus providing a view to the public welfare with regard to customer generators. The cost to customer-generators to buy the required liability insurance is de minimus and the potential for harm is great; it is thus reasonable to continue to require smaller customer-generators to carry $100,000 of liability insurance.

As to customer-generator systems in excess of ten kilowatts, the Commission finds it has clear authority to impose insurance requirements, agrees that the $100,000 amount is insufficient, and will require a minimum

liability insurance rider or endorsement of at least $1,000,000, as more fully set forth below.

COMMENT 4: MEDA sought clarification of (1)(C)7. of the proposed amendment. That paragraph requires that a customer-generator system contain a mechanism that automatically disables the unit and interrupts the flow of electricity back onto the electric utility's electrical lines in the event that service to the customer-generator is interrupted. Companies are interpreting this to require that the unit be "disabled" only to the extent of interrupting power flow from the customer's equipment to the power lines in the event of a power outage or unacceptable service conditions. They are not interpreting this as a requirement that customers' back-up sources of power during power outages must be turned off until power is restored, as this would clearly be an absurd reading of the statute. This reading would also be in clear conflict with Section C of the contract in the proposed rule where it refers to a parallel blocking scheme being permissible. MEDA requests that the rulemaking order comment on the accuracy of that interpretation.
RESPONSE AND EXPLANATION OF CHANGE: The Commission agrees with the interpretation, but finds that the proposed language is confusing. The definition will be clarified as set forth fully in §(1)(C)7. below.

COMMENT 5: DNR noted that in Section B of the contract, where it gives system types, those types do not reflect changes in the statute. Solar should be Solar/Thermal. Wind is correct. Biomass should be removed. Fuel Cell should be added. Thermal should be added. Photovoltaic is correct. Hydroelectric should be added.
RESPONSE AND EXPLANATION OF CHANGE: The Commission finds these changes to be reasonable and will be make them to the Interconnection Application, as set forth below.

4 CSR 240-20.065 Net Metering

(1) Definitions.

(C) Customer-generator means the owner or operator of a qualified electric energy generation unit that meets all of the following criteria:

7. Contains a mechanism that automatically disables the unit and interrupts the flow of electricity onto the electric utility's electrical lines whenever the flow of electricity to the customer-generator is interrupted.

(4) Customer-Generator Liability Insurance Obligation.

(A) Customer-generator systems ten kilowatts (10kW) or less 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.

(B) Customer-generator systems greater than ten kilowatts (10kW) shall carry no less than one million dollars ($1,000,000) of liability insurance.

INTERCONNECTION APPLICATION/AGREEMENT FOR NET METERING SYSTEMS WITH CAPACITY OF ONE HUNDRED KILOWATTS (100 kW) OR LESS

B. Customer-Generator's System Information

Manufacturer Name Plate (if applicable) AC Power Rating: _____ kW

Voltage: _____ Volts System Type: __Solar/Thermal

____Wind ____Fuel Cell ___Thermal ___Photovoltaic ____Hydroelectric

__ Other (describe) _____

Service/Street Address: _____

Inverter/Interconnection Equipment Manufacturer: _____

Inverter/Interconnection Equipment Model No: _____

Are required System Plans, Specifications & Wiring Diagram attached? Yes__ No __

Inverter/Interconnection Equipment Location (describe): _____

_____

Outdoor Manual/Utility Accessible & Lockable Disconnect Switch Location (describe):_____

Existing Electrical Service Capacity: _____Amperes Voltage: _____ Volts

Service Character: Single Phase __ Three Phase __

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**

OPINION OF COMMISSIONER ROBERT M. CLAYTON III
CONCURRING IN PART AND DISSENTING IN PART

This Commissioner concurs in the majority's Final Order of Rulemaking for issues associated with "Net Metering" and customer-owned generation. The proposal stems from SB 54 passed during the 2007 legislative session known as the "Easy Connection Act," which strives to reduce the barriers associated with customers installing their own renewable generation and interconnectivity with the electrical grid. For years, interconnection barriers, extraordinary costs, liability concerns and low payments for customer-supplied excess generation, have limited investment for those who wish to produce their own power. This Commissioner fully supports the spirit of the East Connection Act, but this Commissioner must dissent, in part, from the Final Order of Rulemaking because it reinstates at least one barrier that customers must overcome to interconnect to the grid.

The Final Order of Rulemaking clearly identifies the standards of interconnection that must be met by both customers and utilities, removing doubt and uncertainty from significant investment. Customers will also benefit from the increased rate at which electrical companies will purchase excess energy in the event that their generation exceeds their usage. That rate, typically referred to as "avoided cost," has been reevaluated to be the rate for which customer-owned generation or all distributed generation is entitled to receive for excess power.

Such payments may lead to making customer-owned generation more economical and more helpful in addressing load growth and capacity issues in Missouri's electrical grid.

Unfortunately, one provision was reinstated in the rule which is a counter to legislative intent. SB 54 provides "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 purchase additional liability insurance beyond what is required under subdivision (1) of this subsection and subsection (4) of this section." No liability insurance requirements are established in subdivision (1), and subsection (4) does not exist. Therefore, this Commission cannot lawfully require 10 kW or smaller systems to carry any insurance, because this is beyond the scope of this Commission's authority.

Moreover, as the Public Counsel noted in his comments at the hearing, the legislation was an effort to make connection easier, so removing the insurance requirement is consistent with statutory intent, whereas retaining the requirement is contrary to that intent. When a statute is confusing, administrative agencies have a duty to construe the statute as consistently as possible with the legislative intent. This Commissioner believes the majority erred by adding the insurance requirement for 10 kW or smaller systems.

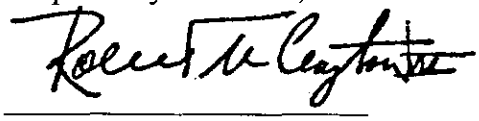
The suggestion that this coverage is not expensive is irrelevant, and the record is unclear on the impact of this requirement. Safety should always be the Commission's first priority and the majority references safety when it mandates unnecessary insurance coverage. However, insurance coverage does not encourage safe behavior or correct any inherent safety concerns. Safety is addressed in the rule with mandates for certification by electricians, mandates for certain types of equipment to eliminate the chances of safety hazards and mandates for

installation to be conducted in a prescribed manner. All equipment must be up to code and in line with IEEE standards and certification of these steps must be transmitted to the utility.

By requiring unneeded insurance, regardless of cost, the majority reinstates a barrier or a disincentive for customers to generate their own electricity. The record does not reflect any examples of known hazards associated with modern installation of distributed generation and no party has identified an example of injury caused by distributed generation. This provision makes connecting to the grid not as easy as the legislature intended.

For the foregoing reasons, this Commission concurs, in part, and dissents, in part.

Respectfully submitted,



Robert M. Clayton III
Commissioner

Dated at Jefferson City, Missouri
on this 23rd day of October, 2008.