

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

In the Matter of Ameren Missouri's Application)
for Authorization to Suspend Payment of Solar)
Rebates)

File No. ET-2014-0085
Tariff No. YE-2014-0235

**STAFF RECOMMENDATION TO APPROVE TARIFF SHEETS
WITH LIMITED VARIANCE**

COMES NOW Staff of the Missouri Public Service Commission ("Staff"), by and through the undersigned counsel, and files this Staff Recommendation with the Missouri Public Service Commission ("Commission") to state as follows:

Background

1. On October 11, 2013,¹ Union Electric Company, d/b/a Ameren Missouri ("Ameren Missouri") filed its *Application For Authority To Suspend Payment Of Solar Rebates, Request For Variance And Motion For Expedited Treatment* and direct testimony in support thereof.

2. On November 8, the parties to this case, with the exceptions of Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company² filed with the Commission a *Non-Unanimous Stipulation and Agreement* ("*Agreement*") resolving all issues for its consideration. On November 13, the Commission issued its *Order Approving Stipulation and Agreement*.

3. In compliance with paragraph 7c of the *Agreement*, the parties have continued discussions since its filing to develop a process to conclude rebate payments and update customers on the availability of rebates.

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

4. On November 26, Ameren Missouri filed tariff sheets to implement the rebate requirement of the *Agreement* as well as a reservation type system that Ameren Missouri discussed with the parties to determine a customer's rebate eligibility.

5. On December 2, the Commission issued its *Order Directing Staff To File A Recommendation* that directed Staff to complete its review and file a recommendation on the tariff sheets no later than December 9. This Staff Recommendation complies with the Commission's *Order*.

Analysis

6. Rule 4 CSR 240-20.100 (4) contains the rule provisions for an electric utility's provision of solar rebates to a customer. In particular, subsection (4)(K) of the rule provides that "The electric utility shall provide a rebate offer for solar rebates within thirty (30) days of application and shall provide the solar rebate payment to qualified retail account holders within thirty (30) days of verification that the solar electric system is fully operational."

7. From Staff's analysis, nothing in the RES statute, the Commission's RES or net-metering rules prescribes when a rebate offering should be applied for the planning purpose of calculating the retail rate impact ("RRI") limit for Rule 4 CSR 240-20.100 (5). A utility could now choose to apply a rebate amount to the RRI calculation, the \$91.9 million rebate pool, when it receives an application

² Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company were not signatories to the *Agreement*, but did not object to it. Therefore, the Commission treated the *Agreement*

(subsequently approved) for a rebate or when the installed system becomes operational. However, as explained to Staff by Ameren Missouri, there may be an instance using the reservation system approach where a solar rebate is not paid to a customer within thirty (30) days of verification that the solar electric system is fully operational as required by subsection (4)(K) of the RES rule. For instance, once Ameren Missouri receives applications at the RRI limit and reserves rebates for those applications, some customers may continue to submit applications. A customer that receives a notice from Ameren Missouri that all rebates in the rebate pool are “reserved”, they may choose to continue with their installation regardless of the availability of a rebate. This customer’s system may also become fully operational and connected to Ameren Missouri’s system for net-metering. Concurrently, another customer(s) may fall from the reservation queue for failing to meet the required timeframes, etc., for their installation application, making the rebate dollars reserved for that installation available for the next customer’s application in the queue. For the customer that installed the system regardless of rebate availability, more than thirty (30) days may have passed since the customer’s solar system became operational. If this customer’s approved application is next in the queue for a rebate, Ameren Missouri will pay the available rebate to this customer more than thirty (30) days after the system’s operational date, but within thirty (30) days of sending the customer a rebate commitment.

8. Rule 4 CSR 240-20.100 (10) allows the Commission to grant a waiver or variance upon a written application, and after notice and the opportunity for hearing, for good cause shown.

9. Also, pursuant to Section 393.140 (11), RSMo, the Commission may approve tariff sheets to become effective on less than thirty days' notice for good cause shown.

10. Although the term "good cause" is frequently used in the law,³ 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.⁴

11. Good cause "...generally means a substantial reason amounting in law to a legal excuse for failing to perform an act required by law."⁵ 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."⁶ 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."⁷

³ *State v. Davis*, 469 S.W.2d 1, 5 (Mo. 1971).

⁴ 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.

⁵ Black's Law Dictionary, p. 692 (6th ed. 1990).

⁶ *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.")

⁷ *Bennett v. Bennett*, 938 S.W.2d 952 (Mo. App. S.D. 1997).

12. 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..."⁸ Moreover, some legitimate factual showing is required, not just the mere conclusion of a party or his attorney.⁹

13. Whether the scenario in paragraph seven (7) will come to fruition is not known, but it is a possibility. Staff does not oppose the Commission granting Ameren Missouri a limited waiver from Rule 4 CSR 240-20.100 (4)(K) limited for the payment of a rebate more than thirty (30) days after a system becomes operational when applications (subsequently approved) have fully reserved the available rebates under the RRI cap, but removal of an ineligible application makes reserved dollars available for the next eligible application in the queue.

14. Further, as outlined in the attached Staff *Memorandum*, Staff has reviewed the tariff sheets submitted by Ameren Missouri on November 26 and recommends the Commission approve the tariff sheets on less than thirty days' notice to become effective on December 22, 2013. An earlier effective date allows Ameren Missouri to implement the reservation system more quickly to the benefit of its customers.

15. Staff has verified that Ameren Missouri has submitted its 2012 calendar year annual report and is current on the payment of Commission assessments.

⁸ *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).

⁹ See generally *Haynes v. Williams*, 522 S.W.2d 623, 627 (Mo. App. E.D. 1975).

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

WHEREFORE, Staff recommends the Commission approve the tariff sheets submitted by Ameren Missouri and assigned Tracking No. YE-2014-0235 and grant the limited variance to Rule 4 CSR 240-20.100 (4)(K) as described herein for good cause shown.

Respectfully submitted,

**STAFF OF THE MISSOURI
PUBLIC SERVICE COMMISSION**

/s/Jennifer Hernandez

Jennifer Hernandez
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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 9th day of December 2013, to all counsel of record as listed in the Commission's Electronic Filing Information System.

MEMORANDUM

TO: Missouri Public Service Commission Official Case File,
Case No. ET-2014-0085, File No. YE-2014-0235, Union Electric Company d/b/a
Ameren Missouri

FROM: Claire Eubanks, Engineering Analysis

/s/ Daniel I. Beck 12/09/13 /s/ Jennifer Hernandez 12/09/13
Engineering Analysis/Date Staff Counsel's Office/Date

SUBJECT: Staff Recommendation to Approve Ameren Missouri's Tariff Sheets Filed to
Implement the Stipulation and Agreement in ET-2014-0085

DATE: December 9, 2013

On November 26, 2013, Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri") filed this solar rebate and net metering tariff revision to implement the terms and conditions of the stipulation and agreement the Commission approved on November 13, 2013. Ameren Missouri requests expedited treatment to reflect an effective date of December 22, 2013, and a variance from 4 CSR 240-20.100(4)(K) to allow a reservation system based on the date of a completed application. Rule 4 CSR 240-20.100 (4)(K) does not specify when an electric utility should apply an anticipated rebate payment for purposes of determining whether the utility has reached the retail rate impact limit of Section 5(B). Ameren Missouri proposes to count rebate payments applied for, but not yet paid, toward the solar rebate limit with the benefit of providing customers the certainty that funds will be reserved for their rebate pending completion of their system installation.

The Commission's Engineering Analysis Staff ("Staff") has reviewed the tariff sheets Ameren Missouri filed on November 26, 2013, and is of the opinion that the sheets comply with the stipulation and agreement the Commission approved on November 13, 2013. Staff is also of the opinion that the reservation system benefits Ameren's customers by providing notice that funds are reserved for their system installation at the time Ameren Missouri approves their rebate application. Approval of these tariff sheets on less than thirty days' notice would allow the Company to implement the reservation system more quickly, to the benefit of its customers. Therefore, Staff recommends the following tariff sheets filed on November 26, 2013, be approved to become effective December 22, 2013 for good cause shown:

P.S.C. MO. No. 6

2nd Revised SHEET No. 88 Cancelling 1st Revised SHEET No. 88

2nd Revised SHEET No. 88.1 Cancelling 1st Revised SHEET No. 88.1

2nd Revised SHEET No. 88.2 Cancelling Original SHEET No. 88.2

2nd Revised SHEET No. 88.3 Cancelling Original SHEET No. 88.3

Original SHEET No. 88.4

1st Revised SHEET No. 171.4 Original SHEET No. 171.4

The Staff has verified that Ameren Missouri has filed its annual report and is not delinquent on any assessment.

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of Ameren Missouri's)
Application for Authorization to Suspend)
Payment of Solar Rebates) File No. ET-2014-0085

AFFIDAVIT OF CLAIRE M. EUBANKS

STATE OF MISSOURI)
) ss
COUNTY OF COLE)

Claire M. Eubanks, of lawful age, on oath states: that she participated in the preparation of the foregoing Staff Recommendation in memorandum form, to be presented in the above case; that the information in the Staff Recommendation was provided to her; that she has knowledge of the matters set forth in such Staff Recommendation; and that such matters are true to the best of her knowledge and belief.

Claire M Eubanks
Claire M. Eubanks

Subscribed and sworn to before me this 9th day of December, 2013.

SUSAN L. SUNDERMEYER
Notary Public - Notary Seal
State of Missouri
Commissioned for Callaway County
My Commission Expires: October 03, 2014
Commission Number: 10942086

Susan L Sundermeyer
Notary Public