

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 17<sup>th</sup> day  
of July, 2019.

In the Matter of Renew Missouri	)	
Advocates d/b/a Renew Missouri's	)	<b><u>File No. EX-2019-0378</u></b>
Petition for Amendment of Commission	)	
Rule 4 CSR 240-20.060	)	

**ORDER DENYING PETITION FOR REVISION OF  
COMMISSION RULE 4 CSR 240-20.060**

Issue Date: July 17, 2019

Effective Date: August 2, 2019

On June 3, 2019, Renew Missouri Advocates d/b/a Renew Missouri (“Renew Missouri”) filed a petition asking the Commission to amend Commission rule 4 CSR 240-20.060 related to cogeneration. Renew Missouri’s proposed rule amendment purported to grant Independent Power Producers (“IPPS”) non-discriminatory access to the market, transparent avoided cost data, and the ability to enter into fixed-term contracts with utilities as required by the Public Utility Regulatory Policies Act (“PURPA”).<sup>1</sup> Renew Missouri explained that the cogeneration rule’s effectiveness has been discussed and examined as part of two working groups, File Nos. EW-2017-0245 and EW-2018-0078, with stakeholders submitting multiple rounds of comments. Renew Missouri requests that the Commission now take action with regard to amending the cogeneration rule. Renew Missouri proposed specific language to amend the regulation as part of its petition.

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<sup>1</sup> 16 U.S.C. §2601.

Before deciding whether to grant Renew Missouri's petition, the Commission directed its Staff to investigate that petition and to file a recommendation. The Commission also invited other interested stakeholders to offer their recommendations.

Staff filed its recommendation on June 14, 2019. Staff explained the progression of the two working groups that have discussed the cogeneration rule. Staff recommended that if the Commission moves forward with a formal rulemaking proceeding, the Commission adopt the rule amendments Staff has developed as a result of the working groups. Staff also stated that its proposed amendments include revisions responsive to Executive Order 17-03 directing state agencies to streamline their regulations. Staff attached its recommended rule amendments.

In addition to the proposed amendments of Renew Missouri and Staff, the Commission received comments from Kansas City Power & Light Company ("KCP&L") and KCP&L Greater Missouri Operations Company ("GMO"), Union Electric Company, d/b/a Ameren Missouri ("Ameren Missouri"), the Office of the Public Counsel ("Public Counsel"), Sun2o Partners, LLC ("Sun2o"), Solexus Development, LLC ("Solexus"), and the Midwest Cogeneration Association ("MCA"). KCP&L, GMO, and Ameren Missouri (collectively referred to as the "electric utilities") argued that no revision to the cogeneration rule is needed. The electric utilities urged the Commission to reject Renew Missouri's proposal because it represents the most extreme of the proposals put forth by the various stakeholders in the working groups and was designed to optimize the self-interest of renewable energy developers. The electric utilities state that if the Commission is inclined to initiate a formal rulemaking it should begin with Staff's proposed rule

amendments, which the electric utilities argue are far more balanced, having been developed through the working group process.

Public Counsel commented specifically on Staff's proposed rule changes indicating that for consumer protection purposes, the cogeneration rule needed to include a requirement that a disclaimer be attached to the net metering and interconnection agreements. This disclaimer would warn the consumer about the possibilities of changing rates and regulations.

Sun2o, Solexus, and MCA (collectively referred to as the "renewable developers") each expressed support for amending the current cogeneration rule. The renewable developers argued that the Commission's current rule does not allow for the successful independent development of solar qualifying facilities under PURPA. Additionally, the renewable developers indicated that Staff's recommended amendments are a step in the right direction but are deficient in areas of contract length, legally enforceable obligations, and system size limits. The renewable developers urge the Commission to begin a formal rulemaking process to amend its cogeneration rule.

Section 536.041, RSMo 2016, 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 4 CSR 240-2.180(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 Renew Missouri's rulemaking petition should be granted. However, the gist of the criteria is to require the agency to 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 Renew Missouri does not meet the statutory criteria. Staff and the electric utilities that responded to Renew Missouri's petition raise significant concerns about whether Renew Missouri's amendments are necessary and whether Renew Missouri's proposed rule amendments would impose an unnecessary regulatory burden on the utilities. Additionally, Public Counsel suggested additional language was needed to protect consumers. Further, Staff has proposed its own rule amendments for the Commission's consideration that may be less restrictive and more narrowly tailored to accomplish the same purpose as that proposed by Renew Missouri. For these reasons, the Commission will deny Renew Missouri's petition.

Nevertheless, the working dockets related to these cogeneration issues have been underway for a significant period of time, and the Commission finds that amendments to the rule should be undertaken. Therefore, the Commission has opened a separate

rulemaking file (File No. EX-2020-0006), whereby, it will direct Staff to begin the formal rulemaking process with its proposed draft, incorporating any new changes that may have come to light in this proceeding. The Commission will direct its Staff to submit a revised rule for the Commission's consideration in that file no later than August 30, 2019.

**THE COMMISSION ORDERS THAT:**

1. Renew Missouri Advocates d/b/a Renew Missouri's rulemaking petition for revision of Commission rule 4 CSR 240-20.060 is denied.
2. The Commission's Staff shall prepare and submit a proposed rule revising Commission rule 4 CSR 240-20.060 no later than August 30, 2019.
3. This order shall become effective on August 2, 2019.



**BY THE COMMISSION**

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

Morris L. Woodruff  
Secretary

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

Dippell, Senior Regulatory Law Judge

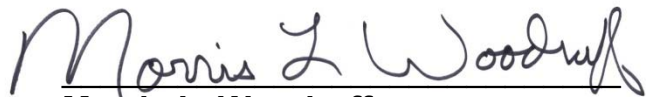
**STATE OF MISSOURI**

**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 17<sup>th</sup> day of July 2019.**



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

**MISSOURI PUBLIC SERVICE COMMISSION**

**July 17, 2019**

**File/Case No. EX-2019-0378**

**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.