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

STAFF COMMENTS

COMES NOW the Staff of the Missouri Public Service Commission ("Staff"), by and through its Office of General Counsel, pursuant to the Notice To Submit Comments in the August 1, 2008 issue of the Missouri Register, Vol. 33, No. 15, page 1407 and for its Comments respecting the Missouri Public Service Commission's ("Commission") Proposed Amendment to 4 CSR 240-20.065 Net Metering states as follows:

Attached are Staff Comments and suggested changes to the Proposed Amendment to 4 CSR 240-20.065 Net Metering. The Staff is submitting its comments and suggestions in the form of two alternatives that are intended to address the same Staff concerns and reach the same resolution of those concerns. If the Staff had more timely realized the difference in rates produced by tariffs in response to the Net Metering and Easy Connection Act and the tariffs relating to the Commission's Cogeneration rules, the Staff would have more timely filed these comments and suggestions.

Respectfully submitted,

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STAFF COMMENTS

September 2, 2008

ALTERNATIVE ONE

As currently drafted, the proposed amended rule 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.

Section 386.890.5. of the Net Metering and Easy Connection Act states:

> (3) If the electricity generated by the customer-generator exceeds the electricity supplied by the supplier during a billing period, the customer-generator shall be billed for the appropriate customer charges for that billing period in accordance with subsection 3 of this section and shall be credited an amount **at least equal to the avoided fuel cost** of the excess kilowatt-hours generated during the billing period with this credit applied to the following billing period. [Emphasis added]

Staff proposes that the Commission set a more definitive calculation of the amount in these rules. Therefore, the Staff proposes the following changes to subpart (C) of subsection (6) "Determination of Net Electrical Energy" of the proposed amendments to rule 4 CSR 240-20.065:

> 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 for the excess kilowatt-hours generated during the billing period with an amount that is the greater of the avoided fuel cost as defined in section (1)(A) or the electric utility's avoided costs under the current tariffed cogeneration rate of the electric utility filed in compliance with 4 CSR 240-20.060 Cogeneration and 4 CSR 240-3.155 Requirements for Electric Utility Cogeneration Tariff Filings. ~~at least equal to the avoided fuel cost of the excess kilowatt-hours generated during the billing period, with t~~ This credit shall be applied to the following billing period.

The existing and proposed amended net metering rule sets standards for interconnection of qualified net metering units with a generating capacity of one hundred (100) kilowatts or less. 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 distinguishing factor does not justify the net metering customer-generator receiving less credit in monetary value for any excess energy that he/she/it may generate than the cogenerator – small power producer.

Table 1 shows the average fuel cost for 2007 and the current average cogeneration rate for the investor-owned electric utilities. The average fuel costs were calculated by taking the total cost of fuel of the utility and dividing it by the total net kilowatt-hours generated by the utility as those numbers are shown in each electric utility's 2007 annual report filed with the Commission. The average cogeneration rate is an average of the avoided cost rates in each utility's cogeneration/parallel generation tariff on file with the Commission. This table shows that the average cogeneration rates are considerably higher than the average fuel costs.

Table 1: Comparison of Avoided Fuel Costs: Average Fuel Costs to Average Fuel Costs Average Cogeneration Rates (Avoided Costs)

Avoided Fuel Cost

Company	Average Fuel Cost (cents per kWh)	Average Fuel Cost Average Cogeneration Rate (Avoided Costs) (cents per kWh)
AmerenUE	1.30¢	1.96¢ [1]
KCPL	1.54¢	2.40¢ [2]
Empire	3.24¢	4.01¢ [3]
Aquila – MPS	2.18¢	5.24¢ [4]
Aquila – L&P	2.36¢	5.24¢ [5]

[1] Schedule No. 1, 3rd Revised Sheet No. 2, Electric Power Purchases from Qualifying Facilities (Summer Rate 2.39 cents/kWh, Winter Rate 1.74 cents/kWh)

[2] P.S.C. MO. No 7, Sixth Revised Sheet 31A, Parallel Generation Contract Service

[3] P.S.C. Mo. No. 5, Section 4, 15th Revised Sheet No. 6, Cogeneration Purchase Rate (Summer Rate 4.13 cents/kWh, Winter Rate 3.95 cents/kWh)

[4] P.S.C. MO. No 1, 2nd Revised Sheet 102, Cogeneration Purchase Schedule

[5] P.S.C. MO. No 1, 2nd Revised Sheet 102, Cogeneration Purchase Schedule

The Cogeneration rules and tariffs were established after the Commission implemented Section 210, Cogeneration and Small Power Production, of the Public Utility Regulatory Policies Act (PURPA) of 1978.[6] The electric utilities offer these rates to small power producers that are less than one hundred (100) kilowatts in size. Electric utilities are required to update their cogeneration rates at the beginning of every odd-numbered year. Section 1253 of the Energy Policy Act of 2005 ("EPAct 2005") prospectively repealed the requirement that utilities purchase electricity from cogeneration and small power production facilities for new facilities and new contracts where FERC finds that the facilities have nondiscriminatory access to an adequate competitive wholesale market. Neither the Staff nor any other entity sought to amend or rescind 4 CSR 240-20.060 Cogeneration or 4 CSR 240-3.155 Requirements for Electric Utility Cogeneration Tariff Filings as a result of the enactment of EPAct 2005.

Staff recommends making a corresponding change to Section 4) Energy Pricing and Billing of the Interconnection Agreement included in 4 CSR 240-20.065.

ALTERNATIVE TWO

The Net Metering And Easy Connection Act section of Senate Bill No. 54, Laws of Missouri 2007, defines "avoided fuel cost" as follows:

> Section 386.890.2(1) "Avoided fuel cost", **the current average cost of fuel for the entity generating electricity, as defined by the governing body with jurisdiction over any** municipal electric utility, rural electric cooperative as provided in chapter 394, RSMo, or **electrical corporation as provided in this chapter**; [Emphasis supplied]

The Staff recommends that the Commission change the definition of "avoided fuel cost" and "current average cost of fuel" set out in the Proposed Amendment of 4 CSR 240-20.065

[6] Section 201 of PURPA adds certain definitions to Section 3 of the Federal Power Act.

published in the August 1, 2008 issue of the Missouri Register, Vol. 33, No. 15, pages 1397-1407, 4 CSR 240-20.065(1) to read as follows:

> (A) Avoided fuel cost means <u>the greater of</u> the current annual average cost of fuel for the electric utility as calculated from information contained <u>on the Steam-Electric Generating Plant Statistics sheets</u> in the most recent annual report submitted to the commission pursuant to 4 CSR 240-3.165~~.~~<u>, 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.</u> ~~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~~ <u>avoided fuel</u> 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~~.

Senate Bill No. 54 repealed Section 386.887 the Consumer Clean Energy Act, House Bill No. 1402, Laws of Missouri 2002, which was the first and only prior net metering statute. Section 386.887.2. did not contain a definition of "avoided fuel cost," "avoided cost," or "average fuel cost," but defined the term "value of electric energy" as follows: "the total resulting from the application of the appropriate rates, which may be time of use rates at the option of the supplier, to the quantity of electric energy produced from qualified net metering units or to the quantity of electric energy sold to the customer-generators." The term "avoided cost" did appear in Section 386.887.3. as follows: "By August 28, 2003, each retail electric supplier shall adopt rates, charges, conditions and contract terms for the purchase from and the sale of electric energy to customer-generators. . . . Rates for electric energy generated by the customer-generator from a qualified net generating unit and sold to the retail electric supplier or its wholesale generator shall be the avoided cost (time of use or nontime of use) of the generation used by the retail electric supplier to serve its other customers."

The "avoided cost" calculation is a major factor in the Commission's Cogeneration Rules and the investor-owned electric utilities' cogeneration tariffs. Table 1 shows the average fuel cost and the average cogeneration rate for the investor-owned electric utilities. The average fuel costs were calculated by taking the total cost of fuel of the utility and dividing it by the total net kilowatt-hours generated by the utility as those numbers are shown in each electric utility's 2007 annual report filed with the Commission. The average cogeneration rate is an average of the avoided cost rates in each utility's cogeneration/parallel generation tariff on file with the Commission. This table shows that the average cogeneration rates are considerably higher than the average fuel costs.

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Aquila – L&P	2.36¢	5.24¢ [11]

The Commission's Cogeneration rules and related tariffs were established after the Commission implemented Section 210, Cogeneration and Small Power Production, of the Public Utility Regulatory Policies Act (PURPA) of 1978.[12] The electric utilities offer these rates to

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[7] Schedule No. 1, 3rd Revised Sheet No. 2, Electric Power Purchases from Qualifying Facilities (Summer Rate 2.39 cents/kWh, Winter Rate 1.74 cents/kWh)
[8] P.S.C. MO. No 7, Sixth Revised Sheet 31A, Parallel Generation Contract Service
[9] P.S.C. Mo. No. 5, Section 4, 15th Revised Sheet No. 6, Cogeneration Purchase Rate (Summer Rate 4.13 cents/kWh, Winter Rate 3.95 cents/kWh)
[10] P.S.C. MO. No 1, 2nd Revised Sheet 102, Cogeneration Purchase Schedule
[11] P.S.C. MO. No 1, 2nd Revised Sheet 102, Cogeneration Purchase Schedule
[12] Section 201 of PURPA adds certain definitions to Section 3 of the Federal Power Act.

small power producers that are less than one hundred (100) kilowatts in size. Electric utilities are required to update their cogeneration rates at the beginning of every odd-numbered year. Section 1253 of the Energy Policy Act of 2005 ("EPAct 2005") prospectively repealed the requirement that utilities purchase electricity from cogeneration and small power production facilities for new facilities and new contracts where FERC finds that the facilities have nondiscriminatory access to an adequate competitive wholesale market. Neither the Staff nor any other entity sought to amend or rescind 4 CSR 240-20.060 Cogeneration or 4 CSR 240-3.155 Requirements for Electric Utility Cogeneration Tariff Filings as a result of the enactment of EPAct 2005.

The existing and proposed amended net metering rule sets standards for interconnection of qualified net metering units with a generating capacity of one hundred (100) kilowatts or less. 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 distinguishing factor does not justify the net metering customer-generator receiving less credit in monetary value for any excess energy that he/she/it may generate than the cogenerator – small power producer.

Section 386.890.5. of the Net Metering and Easy Connection Act states:

> (3) If the electricity generated by the customer-generator exceeds the electricity supplied by the supplier during a billing period, the customer-generator shall be billed for the appropriate customer charges for that billing period in accordance with subsection 3 of this section and shall be credited an amount **at least equal to the avoided fuel cost** of the excess kilowatt-hours generated during the billing period with this credit applied to the following billing period. [Emphasis added]

and again Section 386.890.2. defines "avoided fuel cost" as follows:

> (1) "Avoided fuel cost", the current average cost of fuel for the entity generating electricity, as defined by the governing body with jurisdiction over any municipal

electric utility, rural electric cooperative as provided in chapter 394, RSMo, or electrical corporation as provided in chapter 386, RSMo;

If "avoided fuel cost" and "current average cost of fuel" are defined as the Staff proposes in these comments, i.e., the greater of the "avoided cost" as defined in section (4) of the Commission's Cogeneration 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, or the "current annual average cost of fuel" for the electric utility as calculated from information contained in the most recent annual report submitted to the Commission pursuant to 4 CSR 240-3.165, then only in very rare circumstances would the "avoided cost" be less than the current annual average cost of fuel." The proposed definition would always meet the requirement of Section 386.890.5(3) and would most likely be consistent with the rate that the electric utilities are required to offer other small power producers.

4 CSR 240-3.155 requires updates every two years for the Cogeneration rates, so the Staff recommends that language be added to the 4 CSR 240-20.065 Net Metering rule that requires the electric utility to file updates to the net metering rates when the electric utility files to update tariffs pursuant to 4 CSR 240-3.155.

Therefore, the Staff respectfully recommends that the Commission adopt the Staff's proposed language.