

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

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 ) **File No. EO-2021-0408**  
Farm Association to Receive Net-Metering Credits )

**STAFF RULEMAKING RECOMMENDATION**

**COMES NOW** the Staff of the Missouri Public Service Commission, by and through counsel, and for its *Rulemaking Recommendation* in this matter, hereby states as follows:

**Summary**

1. Staff recommends that the Commission not adopt rulemaking procedures and that 20 CSR 4240-20.065 should continue without change consistent with Section 386.041, RSMo.

2. Staff would recommend that any discussion by St. James Solar Farm Association or any other entity interested in distributed energy resources be directed to docket EW-2021-0267 and any other docket involving potential distributed energy resources, distributed energy resource aggregation, or other docket affecting third parties acting on behalf of or in concert with retail electric customers in Missouri.

**Background**

3. The St. James Solar Farm Association, LLC (St. James Solar Farm Association), asks this Commission to adopt a net metering rule governing what the proposed rule calls “cooperative electric energy generation ventures.” The St. James Solar Farm Association

included proposed rule language to add to 20 CSR 4240-20.065<sup>1</sup>, citing Sections 386.310 and 386.890, RSMo as the Commission’s authority to proceed with such a rulemaking.

4. In response to the Commission’s order to investigate and file a recommendation, the Commission submits the following discussion and analysis.

### **Discussion**

5. Under Section 536.041, RSMo (2016),<sup>2</sup> “[a]ny person may file a written petition with an agency requesting the adoption, amendment or repeal of any rule.” The agency must act within sixty days after receipt of the petition. *Id.* The agency has four options: 1) adopt the rule; 2) continue the rule without change; 3) amend the rule; or 4) rescind the rule. *Id.* If the agency adopts the rule, amends the rule, or rescinds the rule, it must initiate regular rulemaking proceedings under Chapter 536, RSMo. *Id.* In all events, the agency must also include a concise summary of its specific facts and findings with respect to the criteria under Section 536.175.4, RSMo. *Id.*

6. For the reasons that follow, Staff recommends that the Commission not adopt rulemaking procedures and that 20 CSR 4240-20.065 should continue without change.

**I. The proposed rule would exceed the Commission’s rulemaking authority because it would govern net metering connections and agreements with municipal utilities and electric cooperatives under Chapter 394, RSMo.**

7. Section 386.890, RSMo (Supp. 2020) sets forth net metering requirements not only for electrical corporations, defined by Section 386.020(15), RSMo (Supp. 2020), but also for municipal utilities and electric cooperatives under Chapter 394. § 386.890, RSMo.

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<sup>1</sup> Paragraph 13 of the filing refers to 4 CSR 24-20.065, which was the citation title and chapter for the rule prior to moving to Title 20 of the Code of State Regulations.

<sup>2</sup> All statutory citations are to RSMo (2016) unless otherwise indicated.

8. The Commission’s rulemaking authority under the net metering statute is limited in several respects. First, the Commission’s authority under Section 386.890.6(3) is limited to “public utilities,” and the rulemaking authority for municipal systems and cooperatives is granted to “the governing body for other utilities.” Second, the Commission’s initial rulemaking authority is to promulgate rules “necessary for the administration of [Section 386.890] for public utilities, which shall include regulations ensuring that simple contracts will be used....” § 386.890.9. In contrast, only the “governing body of a rural electric cooperative or municipal utility” has authority to adopt policies and establish a simple contract for interconnection.

9. Section 386.310, RSMo, is limited to public safety and health and extends only “with respect to allocation of territory or territorial rights among electric suppliers pursuant to sections 386.310 and 394.160.” Section 394.160 provides that “[t]he jurisdiction of the public service commission shall be extended only to the extent provided in this section, and nothing herein contained shall be construed as otherwise conferring upon such commission jurisdiction over the service, rates, financing, accounting or management of any such cooperative.

10. Under Section 386.890, RSMo, the City of St. James, not the Commission, has authority to adopt policies administering Missouri’s net metering statute for the city’s retail customers. Two provisions in the rule language proposed by the St. James Solar Farm Association would have this Commission improperly promulgate rules administering the net metering statute not only for the City of St. James, but every other municipal utility and electric cooperative in the State of Missouri.

11. First, the proposed provision that customer-generators may “own, operate, lease, or otherwise control, premises to operate a cooperative electric energy generation venture either

directly, or through an entity which they have the ability to control,”<sup>3</sup> would apply on its face to both electrical corporations under Chapter 386 and municipal utilities and electric cooperatives under Chapter 394. The provision appears to relate more to statutory interpretation than implementing any public health or safety regulation promulgated by the Commission under Section 394.160. This provision consequently would exceed the Commission’s rulemaking authority. Moreover, because this provision appears to be a central aspect of the proposed rulemaking, this reason alone is sufficient to not adopt the proposed rulemaking.

12. Second, the proposed provision that “[a] retail electric supplier may, but shall not be required, to enter into an interconnection agreement with a cooperative electric energy generation venture and may create such additional conditions or requirements for such interconnection agreement as the electric supplier deems necessary or desirable,”<sup>4</sup> would again apply on its face to both electrical corporations under Chapter 386 and municipal utilities and electric cooperatives under Chapter 394. Even assuming other portions of the proposed addition to the rule are consistent with the net metering statute, this provision would allow retail electric suppliers to refuse to interconnect with customer-generators for reasons that are “necessary or desirable” and not for reasons limited to public health and safety, and it is therefore very likely in conflict with Section 386.890.3, which provides that retail electric suppliers “shall” make net metering available.

13. For the reasons stated above, the proposed rule exceeds the Commission’s authority. Staff recommends the Commission allow 20 CSR 4240-20.065 to continue without change consistent with Section 536.041, RSMo.

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<sup>3</sup> First Amended Petition for Rulemaking at 6 (EFIS Item 3).

<sup>4</sup> *Id.* at 7.

**II. Consideration of what meets the definition of “electrical corporation” under Section 386.020(15), RSMo (Supp. 2020) should be considered in another docket, such as EW-2021-0267, because any rulemaking governing who or what qualifies an “electrical corporation” under Section 386.020(15), RSMo (Supp. 2020) would have impacts beyond the administration of the net metering rule.**

14. The term “electrical corporation” is defined at Section 386.020(15), RSMo (Supp. 2020). The Commission’s authority over electrical corporations extends beyond net metering. *E.g.*, § 386.250, RSMo (“The jurisdiction, supervision, powers and duties of the public service commission ... shall extend under this chapter: (1) [t]o the manufacture, sale or distribution of ... electricity for light, heat and power, within the state, and to persons or corporations owning, leasing, operating or controlling the same.....”).

15. The St. James Solar Farm Association’s proposed rulemaking includes a provision that “...such customer-generators shall not be considered to be owners of an investor-owned utility and the cooperative electric energy venture shall not be considered an investor-owned utility.”<sup>5</sup>

16. The St. James Solar Farm Association’s proposed model is one of but many potential iterations of distributed energy resources. The Commission is currently considering the effect of FERC Order 2222 in Missouri PSC Docket EW-2021-0267. Distributed energy resources, whether they involve a retail customer or a retail customer acting in concert with a third party, might be governed by one or more laws, such as the Public Utility Regulatory Policies

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<sup>5</sup> *Id.* at 7. The proposed rulemaking does not define the term “cooperative electric energy venture.” To the extent the Commission were to initiate rulemaking procedures in response to the petition in this case, Staff would recommend that a rule defining this term be considered.

Act (PURPA), 16 USC § 824a-3, involvement in wholesale sale of electricity by distributed energy resources and distributed energy resource aggregators under the Federal Power Act, and Chapters 386, 393, and 394 RSMo.

17. Regardless of the laws governing the distributed energy resource or the distributed energy resource aggregator, the Commission's authority is defined and limited by Chapters 386 and 393, RSMo. The Commission's authority depends in large part on what meets the definition of "electrical corporation" under Section 386.020(15), RSMo (Supp. 2020).

18. Accordingly, what does and what does not meet the definition of "electrical corporation" should be address in a larger context, and not solely in a rulemaking addressing net metering. Failure to consider all possible implications of a rule addressing the definition of "electrical corporation" would risk the Commission overstepping its authority in some instances and failing to properly exercise its authority in other instances.

19. For the reasons stated above, the Staff recommends the Commission allow 20 CSR 4240-20.065 to continue without change consistent with Section 536.041, RSMo.

**III. The criteria under Section 536.175.4, RSMo, support a decision to not adopt rulemaking procedures and to allow 20 CSR 4240-20.065 to continue without change.**

20. Section 536.175.4, RSMo, sets forth eight criteria to consider:

(1) Whether the rule continues to be necessary, taking into consideration the purpose, scope, and intent of the statute under which the rule was adopted;

(2) Whether the rule is obsolete, taking into consideration the length of time since the rule was modified and the degree to which technology, economic conditions, or other relevant factors have changed in the subject area affected by the rule;

(3) Whether the rule overlaps, duplicates, or conflicts with other state rules, and to the extent feasible, with federal and local governmental rules;

- (4) Whether a less restrictive, more narrowly tailored, or alternative rule could adequately protect the public or accomplish the same statutory purpose;
- (5) Whether the rule needs amendment or rescission to reduce regulatory burdens on individuals, businesses, or political subdivisions or eliminate unnecessary paperwork;
- (6) Whether the rule incorporates a text or other material by reference and, if so, whether the text or other material incorporated by reference meets the requirements of section 536.031;
- (7) For rules that affect small business, the specific public purpose or interest for adopting the rules and any other reasons to justify its continued existence; and
- (8) The nature of the comments received by the agency under subsection 2 of this section, a summary of which shall be attached to the report as an appendix and shall include the agency's responses thereto.

21. With respect to these criteria, Staff recommends the Commission issue the following findings:

- a. First, the rule continues to be necessary to meet the requirement at Section 386.890.6(3) that the Commission “shall” promulgate rules for public utilities setting forth safety, performance, and reliability standards. The scope and intent of the rule are still appropriately limited to electrical corporations under Section 386.020(15).
- b. Second, the current rule is not obsolete. The Commission very recently completed a review and rulemaking for this rule which went into effect on January 30, 2021. The Commission at that time did not express an intent to expand the rule such as proposed in St. James’ *Petition*.
- c. Third, the current version of the rule does not overlap, duplicate, or conflict with other state statutes or rules or federal or local rules. As proposed, and for the reasons stated above, the proposed rule does risk overlap and duplication and conflict with existing rules governing the Commission’s authority over

electrical corporations and any policies, agreements, or rules adopted by municipal utilities and electric cooperatives. The Commission's authority under Section 394.140, RSMo, should remain within the rules prescribed under that statute, and not be scattered into net metering regulations under 20 CSR 4240-20.065.

- d. Fourth, the current version of the rule is appropriately narrowly tailored to governing electrical corporations under Section 386.020(15). The Commission has historically not interfered with net-metering conducted by electric cooperatives or municipalities and the Petition does not include sufficient analysis or information showing why the Commission should exert authority over those entities.
- e. Fifth, a rule governing the proposed business model of the St. James Solar Farm Association could provide regulatory certainty and reduce burdens on individuals, business, and local governments. However, the Commission does not have the authority to promulgate the rule as proposed by the St. James Solar Farm Association. Moreover, the type of regulatory certainty necessary to reduce burdens on individuals, businesses, and local governments would necessarily address not just the model proposed by the St. James Solar Farm Association, but also other potential distributed energy resources or other distributed energy resource aggregators.
- f. Sixth, the current rule's reference to "applicable safety, performance, interconnection, and reliability standards established by the National Electrical Code, the National Electrical Safety Code, the Institute of the Electrical and



Electronics Engineers, Underwriters Laboratories, the Federal Energy Regulatory Commission, and any local governing authorities,” merely echoes the statutory language of Section 386.890.6 and refers to IEEE 1547a-2014, UL 1703-2002, and UL 1741-2010 as applicable standards.

- g. Seventh, the rule’s recent updates effective January 2021 considered the impact on small businesses. That initial notice of rulemaking stated that “The proposed amended does not adversely affect small businesses that may elect to participate in net metering,” and the amended was successfully promulgated.
- h. Eighth, to the extent that the Commission receives additional comments from intervenors in this docket, those comments should be considered and responded to. Staff requests the Commission to adopt the analysis above as a response to the comments of the petitioner St. James Solar Farm Association.

### **Conclusion**

22. For the foregoing reasons, Staff recommends that the Commission not adopt rulemaking procedures and that 20 CSR 4240-20.065 should continue without change consistent with Section 386.041, RSMo. In addition, Staff recommends the Commission could consider the Petitioner’s proposed business model in the course of a wider investigation, such as its pending workshop docket, EW-2021-0267, relating to FERC Order 2222 and distributed energy resource.

**WHEREFORE**, Staff prays that the Commission will not adopt rulemaking procedures and that 20 CSR 4240-20.065 should continue without change consistent with Section 386.041, RSMo; consider Petitioner’s proposed business model in course of a wider investigation,

including its pending workshop docket, EW-2021-0267; and grant such other and further relief as is just in the circumstances.

Respectfully submitted,

**/s/ Whitney Payne**

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### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, or First Class United States Postal Mail, postage prepaid, on this 8th day of July, 2021, to all counsel of record.

**/s/ Whitney Payne**