

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

In the Matter of Staff's Review of Commission	)	
Rules 4 CSR 240-20.060 (Cogeneration)	)	
4 CSR 240-3.155 (Filing Requirements for	)	<b>Case No. EW-2018-0078</b>
Electric Utility Cogeneration Tariff Filings) and	)	
4 CSR 240-20.065 (Net Metering)	)	

**REPLY COMMENTS OF THE MISSOURI INDUSTRIAL ENERGY CONSUMERS**

The Missouri Industrial Energy Consumers (“MIEC”)<sup>1</sup> presents these comments in response to the comments submitted by other parties on or about October 13, 2017.<sup>2</sup> MIEC has reviewed and will comment generally on some of the positions taken by Renew Missouri/Cypress Creek Renewables, Missouri Division of Energy, Kansas City Power & Light Company and KCPL-GMO, and Ameren Missouri.

As a back drop for the comments, MIEC supports the principles and requirements set forth in the Public Utility Regulatory Policies Act (“PURPA”) with respect to the determination of avoided cost, providing nondiscriminatory standby rates (for the supply of backup and maintenance power) as well as modifications to the initial PURPA statute that have clarified and improved the implementation of PURPA.<sup>3</sup>

MIEC also agrees with the comments of Kansas City Power & Light Company and KCPL-Greater Missouri Operations with respect to the concerns about subsidies associated with net metering. When net metering is used by customers whose rates are basically energy-only (including with a nominal customer charge) there will be a significant subsidy flowing to the net-meter customers from other customers if the net-metering customers are not providing adequate compensation for their use of the

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<sup>1</sup>MIEC is a non-profit company that represents the interests of industrial customers in Missouri utility matters.

<sup>2</sup>Responses to comments were invited by the Commission's Order of October 31, 2017.

<sup>3</sup>This includes recently enacted provisions which remove the PURPA purchase obligation as to QFs above a specific size, when those QFs are in organized markets or power pools, such as MISO and SPP, that allow QFs to supply power directly to the market, rather than to the local regulated utility.

delivery service network. As KCPL points out, a number of states have recognized this problem, and taken steps to limit further use of net metering and to preclude compensation for excess generation by net-metering customers at amounts in excess of the utility system's short-run avoided cost.

### **Points of General Agreement**

MIEC agrees with Renew Missouri/Cypress Creek Renewables and others that Missouri should follow the PURPA guidelines, and agrees that there should be transparency of methodology and avoided cost results. In response to the comments of Renew Missouri/Cypress Creek Renewables at page 5 of its comments, MIEC would note that there are two general categories of avoided cost contracts. One is "as available" which is based on the short-term avoided cost, or expected avoided cost, for the period of the contract term. It does not include a capacity component. The second is a more long-term concept whereby the QF agrees to provide firm power and energy to the utility for a specified period of time, under a carefully defined set of terms and conditions. While it may be relatively straightforward to provide short-term avoided cost, there are many complexities associated with long-term contracts that do not lend themselves to "standardization" or to a "cookie cutter" approach. Rather, because of the complexity of the utility system needs and operations and the nature and complexity, as well as the flexibility and functionality of the QF, customized contracts are a much more logical route.

The guidepost should essentially be the PURPA provisions requiring electric utilities to offer to purchase electric energy from qualifying facilities at rates that are just and reasonable to the electricity consumers and in the public interest, non-discriminatory with respect to QFs, and not in excess of the incremental costs to the electric utility of alternative electric energy.<sup>4</sup>

### **Areas of Concern**

MIEC is concerned about the comments of Renew Missouri/Cypress Creek Renewables that seem to suggest Missouri is not doing all that it should because the penetration of solar and other renewable

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<sup>4</sup>See comments of Kansas City Power & Light Company and KCPL-GMO, at pages 2 and 3.

generation is less than in other states, such as Michigan and North Carolina. MIEC finds it somewhat troubling that such comparisons would be made without considering the individual circumstances of each state. Missouri, Michigan and North Carolina are quite different in terms of load growth, need for capacity, avoidable costs, renewable mandates and many other important characteristics that differ across these states. What makes sense in North Carolina, Michigan or any other state does not necessarily make sense in Missouri. Take, for example, the need for capacity. States with high renewable mandates, with the need for additional capacity, and high avoided cost will naturally create a more receptive environment for third-party merchant generation than will states (like Missouri) not possessing these characteristics.

At pages 7 and 8 of its comments, Renew Missouri/Cypress Creek Renewables cite to a claim that PURPA requires utilities to offer power purchase agreements that are of a duration sufficient to “allow QFs reasonable opportunities to attract capital from potential investors.” In interpreting this requirement, it should be recognized that the amount of avoided costs that can be paid to a QF is directly a function of the host utility’s need for capacity and the cost of that utility’s alternatives to satisfy that capacity need. A long-term contract simply for the purpose of allowing additional QFs to be financed, without regard to the underlying nature of the host utility’s need for capacity and its avoided cost, would not satisfy PURPA’s requirements that QF contracts be just and reasonable to the electricity consumers and in the public interest.

The comments of Renew Missouri/Cypress Creek Renewables with respect to legally enforceable obligations are somewhat one-sided. While the discussion is from the point of view of the seller, these comments effectively ignore the equally important consideration that when a seller enters into a contract to supply firm power to a utility, that obligation must be enforceable as well. This means that any such contracts must have commercial provisions adequate to enforce performance of the seller, including providing assurances of the ability to deliver, adequate credit support provisions, and other important factors such as termination rights for non-performance or sub-performance, liquidated damages and other typical commercial contract provisions.

Respectfully submitted,

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