

**Document Tracking for EW-2021-0077**

- Proposed Rescission of 20 CSR 4240-3.155 Requirements for Electric Utility Cogeneration Tariff Filings
- Proposed Amendment of 20 CSR 4240-20.060 Cogeneration and Small Power Production

<b>Document Title</b>	<b>Date Filed</b>	<b>Description of Changes</b>
<b>Attachment A - Staff Version 1.docx</b>	<b>10/14/2020</b>	<b>Initial Draft</b>

**Title 20 – Department of Commerce and Insurance  
Division 4240 – Public Service Commission  
Chapter 3 – Electric Utilities**

**PROPOSED RESCISSION**

**20 CSR 4240-3.155 Requirements for Electric Utility Cogeneration Tariff Filings**

*PURPOSE: This rule is being rescinded in its entirety and relevant language is being streamlined into Chapter 20.*

*AUTHORITY: section 386.250 and 393.140, RSMo 2000.\* Original rule filed Aug. 16, 2002, effective April 30, 2003. Amended: Filed July 25, 2003, effective March 30, 2004.*

*\*Original authority: 386.250, RSMo 1939, amended 1963, 1967, 1977, 1980, 1987, 1988, 1991, 1993, 1995, 1996 and 393.140, RSMo 1939, amended 1949, 1967.*

**Title 20 – Department of Commerce and Insurance  
Division 4240 – Public Service Commission  
Chapter 20 – Electric Utilities**

**PROPOSED AMENDMENT**

**20 CSR 4240-20.060 Cogeneration and Small Power Production.** The Secretary is amending section (1), section (2), section (5), section (6), section (7), section (8), section (9), and section (10) and adding new section (4), section (11), and section (12).

*PURPOSE: This amendment expands the use of standard contracts and rates for purchase from qualifying facilities and removes unnecessary language.*

(1) Definitions. Terms defined in the Public Utility Regulatory Policies Act of 1978 (PURPA) shall have the same meaning for purposes of this rule as they have under PURPA, unless further defined in this rule.

(A) Avoided costs means the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, that utility would generate itself or purchase from another source.

**(B) Fuel costs, or energy costs, means the variable costs associated with the production of electric energy and represent the cost of fuel and operating and maintenance expenses.**

**(C) Capacity costs means the costs associated with providing the capability to deliver energy.**

*[(B) Back-up power means electric energy or capacity supplied by an electric utility to replace energy ordinarily generated by a facility's own generation equipment during an unscheduled outage of the facility.*

*(C) Interconnection costs means the reasonable costs of connection, switching, metering, transmission, distribution, safety provisions and administrative costs incurred by the electric utility directly related to the installation and maintenance of the physical facilities necessary to permit interconnected operations with a qualifying facility, to the extent those costs are in excess of the corresponding costs which the electric utility would have incurred if it had not engaged in interconnected operations, but instead generated an equivalent amount of electric energy itself or purchased an equivalent amount of electric energy or capacity from other sources. Interconnection costs do not include any costs included in the calculation of avoided costs.*

*(D) Interruptible power means electric energy or capacity supplied by an electric utility subject to interruption by the electric utility under specified conditions.*

*(E) Maintenance power means electric energy or capacity supplied by an electric utility during scheduled outages of the qualifying facility.*

*(F) Purchase means the purchase of electric energy or capacity or both from a qualifying facility by an electric utility.*

*(G) Qualifying facility means a cogeneration facility or a small power production facility which is a qualifying facility under Subpart B of Part 292 of the Federal Energy Regulatory Commission's (FERC) regulations.*

*(H) Rate means any price, rate, charge or classification made, demanded, observed or received with respect to the sale or purchase of electric energy or capacity or any rule or practice respecting any such*

*rate, charge or classification and any contract pertaining to the sale or purchase of electric energy or capacity.*

*(I) Sale means the sale of electric energy or capacity or both by an electric utility to a qualifying facility.*

*(J) Supplementary power means electric energy or capacity supplied by an electric utility, regularly used by a qualifying facility in addition to that which the facility generates itself.*

*(K) System emergency means a condition on a utility's system which is likely to result in imminent significant disruption of service to consumers or is imminently likely to endanger life or property.]*

(2) Arrangements Between Electric Utilities and Qualifying Cogeneration and Small Power Production Facilities Under Section 210 of the Public Utility Regulatory Policies Act of 1978.

(A) Applicability. This section applies to the regulation of sales and purchases between qualifying facilities and electric utilities.

(B) Negotiated Rates or Terms. Nothing in this section—

1. Limits the authority of any electric utility or any qualifying facility to agree to a rate for any purchase or terms or conditions relating to any purchase, which differ from the rate or terms or conditions which would otherwise be required by this rule; or

2. Affects the validity of any contract entered into between a qualifying facility and an electric utility for any purchase.

(C) Every regulated utility which provides retail electric service in this state shall enter into a contract for parallel generation service with any customer which is a qualifying facility, upon that customer's request, where that customer may connect a device to the utility's delivery and metering service to transmit electrical power produced by that customer's energy generating system into the utility's system.

*[1. The utility shall supply, install, own and maintain all necessary meters and associated equipment used for billing. The costs of any such meters and associated equipment which are beyond those required for service to a customer which is not a qualifying facility shall be borne by the customer. The utility may install and maintain, at its expense, load research metering for monitoring the customer's energy generation and usage.*

*2. The customer shall supply, install, operate and maintain, in good repair and without cost to the utility, the relays, locks and seals, breakers, automatic synchronizer, a disconnecting device and other control and protective devices required by the utility to operate the customer's generating system parallel to the utility's system. The customer also shall supply, without cost to the utility, a suitable location for meters and associated equipment used for billing, load research and disconnection.*

*3. The customer shall be required to reimburse the utility for the cost of any equipment or facilities required as a result of connecting the customer's generating system with the utility's system.*

*4. The customer shall notify the utility prior to the initial testing of the customer's generating system and the utility shall have the right to have a representative present during the testing.*

*5. Meters and associated equipment used for billing, load research and connection and disconnection shall be accessible at all times to utility personnel.*

*6. A manual disconnect switch for the qualifying facility must be provided by the customer which will be under the exclusive control of the utility dispatcher. This manual switch must have the capability to be locked out of service by the utility-authorized switchmen as a part of the utility's workman's protection assurance procedures. The customer must also provide an isolating device which the customer has access to and which will serve as a means of isolation for the customer's equipment during any qualifying facility maintenance activities, routine outages or emergencies. The utility shall give notice to the customer before a manual switch is locked or an isolating device used, if possible; and otherwise shall give notice as soon as practicable after locking or use.*

*(D) No customer's generating system or connecting device shall damage the utility's system or equipment or present an undue hazard to utility personnel.*

*(E) If harmonics, voltage fluctuations or other disruptive problems on the utility's system are directly attributable to the operation of the customer, these problems will be corrected at the customer's expense.]*

[(F)](D) Every contract shall provide fair compensation for the electrical power supplied to the utility by the customer. **For qualifying facilities whose systems fall out of the standard contract ranges described in Section (4), [I]if the utility and the customer cannot agree to the terms and conditions of the contract, the [Public Service Commission (PSC)] commission shall establish the terms and conditions upon the request of the utility or the customer. Those terms and conditions will be established in accordance with Section 210 of the [Public Utility Regulatory Policies Act of 1978] PURPA and the provisions of this rule. Any Federal Energy Regulatory Commission (FERC)-granted exemption granted from qualifying facility purchases also applies to qualifying facility purchases within the state of Missouri.**

(3) Electric Utility Obligations Under This Rule.

(A) Obligation to Purchase From Qualifying Facilities. Each electric utility shall purchase, in accordance with section (4), any energy and capacity which is made available from a qualifying facility—

1. Directly to the electric utility; or
2. Indirectly to the electric utility in accordance with subsection (3)(D) of this rule.

(B) Obligation to Sell to Qualifying Facilities. Each electric utility shall sell to any qualifying facility, in accordance with section ([5]6) of this rule, any energy and capacity requested by the qualifying facility.

(C) Obligation to Interconnect.

1. Subject to paragraph (3)(C)2. of this rule, any electric utility shall make interconnections with any qualifying facility as may be necessary to accomplish purchases or sales under this rule. The obligation to pay for any interconnection costs shall be determined in accordance with section (6) of this rule.

2. No electric utility is required to interconnect with any qualifying facility if, solely by reason of purchases or sales over the interconnection, the electric utility would become subject to regulation as a public utility under Part II of the Federal Power Act.

(D) Transmission to Other Electric Utilities. If a qualifying facility agrees, an electric utility which would otherwise be obligated to purchase energy or capacity from a qualifying facility may transmit the energy or capacity to any other electric utility. Any electric utility to which energy or capacity is transmitted shall purchase energy or capacity under this subsection (3)(D) as if the qualifying facility were supplying energy or capacity directly to the electric utility. The rate for purchase by the electric utility to which such energy is transmitted shall be adjusted up or down to reflect line losses pursuant to paragraph (4)(E)4. of this rule and shall not include any charges for transmission.

(E) Parallel Operation. Each electric utility shall offer to operate in parallel with a qualifying facility, provided that the qualifying facility complies with any applicable standards established in accordance with section (8) of this rule.

(4) Standard Rates for Purchase and Standard Contracts

(A) Each electric utility shall put into effect commission-approved standard rates for purchases from qualifying facilities with a design capacity:

1. Of one hundred (100) kilowatts or less; ~~or~~ **and**
2. Over one hundred (100) kilowatts to one thousand (1,000) kilowatts.

(B) There may be put into effect commission-approved standard rates for purchases from qualifying facilities with a design capacity of more than one thousand (1,000) kilowatts.

(C) **The utility shall apply and t**The commission shall approve standard contract templates for purchases from qualifying facilities with the design capacities described in (4)(A) **within 9 months of the effective date of this rule.** The approved standard contract templates will be the basis of the standard contracts utilized by each utility through its respective tariffs and shall include provisions for Renewable Energy Credit (REC) ownership. The terms and conditions of the standard contract templates will be established in accordance with Section 210 of PURPA and the provisions of this rule. Standard contract templates will be made available through the commission website.

1. For systems which qualify for net-metering under 20 CSR 4240-20.065 and section 386.890 RSMo, the standard contract shall be substantially the same as the interconnection application located on the commission's website and incorporated by reference.

2. RECs associated with qualifying facilities shall be owned by the customer; however, as a condition of receiving solar rebates for systems operational after on or after January 1, 2019, customers transfer to the electric utility all right, title, and interest in and to the RECs associated with the new or expanded solar electric system that qualified the customer for the solar rebate for a period of ten (10) years from the date the electric utility confirmed the solar electric system was installed and operational.

3. If the electric utility purchases Solar RECs (S-RECs) under a Standard Offer Contract in 20 CSR 4240-20.100(4)(H), the electric utility shall also offer purchase from qualifying facilities under the same rates and terms. S-RECs from qualifying facilities may be used for compliance with the Renewable Energy Standard (RES) requirements of section 393.1030 subject to the same conditions as all RECs and S-RECs.

(D) Each electric utility will develop technical and performance standards and interconnection test specifications specific to its distribution system to be included in its standard contract template. Technical and performance standards will include provisions related to metering, protection equipment, and disconnect switches. Technical and performance standards shall include reference to applicable standards including the year published.

(E) The standard rates for purchases under this subsection shall be consistent with ~~subsections (5)(A) and (E)~~ of this rule, and may differentiate among qualifying facilities using various technologies on the basis of the supply characteristics of the different technologies.

[(4)] (5) Rates for Purchases.

(A) Rates for purchases shall be just and reasonable to the electric consumer of the electric utility and in the public interest and shall not discriminate against qualifying cogeneration and small power production facilities. Nothing in this rule requires any electric utility to pay more than the avoided costs for purchases.

(B) Relationship to Avoided Costs.

1. For purposes of this section, new capacity means any purchase from capacity of a qualifying facility, construction of which was commenced on or after November 9, 1978.

2. Subject to paragraph [(4)](5)(B)3. of this rule, a rate for purchases satisfies the requirements of subsection [(4)](5)(A) of this rule if the rate equals the avoided costs determined after consideration of the factors set forth in subsection [(4)(E)](5)(D) of this rule.

3. A rate for purchases (other than from new capacity) may be less than the avoided cost if the [PSC] **commission** determines that a lower rate is consistent with subsection [(4)](5)(A) of this rule and is sufficient to encourage cogeneration and small power production.

4. Rates for purchases from new capacity shall be in accordance with paragraph [(4)](5)(B)2. of this rule, regardless of whether the electric utility making the purchases is simultaneously making sales to the qualifying facility.

5. In the case in which the rates for purchases are based upon estimates of avoided costs over the specific term of the contract or other legally enforceable obligation, the rates for the purchases do not violate this paragraph if the rates for the purchases differ from avoided costs at the time of delivery.

[(C) Standard Rates for Purchases.

1. There shall be put into effect (with respect to each electric utility) standard rates for purchases from qualifying facilities with a design capacity of one hundred (100) kilowatts or less.

2. There may be put into effect standard rates for purchases from qualifying facilities with a design capacity of more than one hundred (100) kilowatts.

3. The standard rates for purchases under this subsection shall be consistent with subsections (4)(A) and (E) of this rule, and may differentiate among qualifying facilities using various technologies on the basis of the supply characteristics of the different technologies.]

([D]C) Purchases as Available or Pursuant to a Legally Enforceable Obligation. Each qualifying facility shall have the option either—

1. To provide energy as the qualifying facility determines this energy to be available for the purchases, in which case the rates for the purchases shall be based on the purchasing utility's avoided costs calculated at the time of delivery; or

2. To provide energy or capacity pursuant to a legally enforceable obligation for the delivery of energy or capacity over a specified term, in which case the rates for the purchases, at the option of the qualifying facility exercised prior to the beginning of the specified term, shall be based on either the avoided costs calculated at the time of delivery or the avoided costs calculated at the time the obligation is incurred.

([E]D) Factors Affecting Rates for Purchases.

In determining avoided costs, the following factors, to the extent practicable, shall be taken into account:

1. The data provided pursuant to [4 CSR 240-3.155] **section (11) of this rule**, including [PSC] **commission** review of any such data;

2. The availability of capacity or energy from a qualifying facility during the system daily and seasonal peak periods, including:

A. The ability of the utility to dispatch the qualifying facility;

B. The expected or demonstrated reliability of the qualifying facility;

C. The terms of any contract or other legally enforceable obligation, including the duration of the obligation, termination notice requirement and sanctions for noncompliance;

D. The extent to which scheduled outages of the qualifying facility can be usefully coordinated with scheduled outages of the utility's facilities;

E. The usefulness of energy and the capacity supplied from a qualifying facility during system emergencies, including its ability to separate its load from its generation;

F. The individual and aggregate value of energy and capacity from qualifying facilities on the electric utility's system; and

G. The smaller capacity increments and the shorter lead times available with additions of capacity from qualifying facilities;

3. The relationship of the availability of energy or capacity from the qualifying facility as derived in paragraph (4)(E)2. of this rule, to the ability of the electric utility to avoid costs, including the deferral of capacity additions and the reduction of [oil] **fossil fuel** use; [and]

4. The costs or savings resulting from variations in line losses from those that would have existed in the absence of purchases from a qualifying facility, if the purchasing electric utility generated an equivalent amount of energy itself or purchased an equivalent amount of electric energy or capacity; **and**

**5. The stochastic effect achieved by the aggregate output of dispersed small systems, that is, statistically a dispersed array of facilities may produce a level of reliability not available by any one (1) of the units taken separately. When that aggregate capacity value which allows the utility to avoid a capacity cost occurs and can be reasonably estimated, a corresponding credit must be included in the standard rates. The tariffs should take into account patterns of availability of particular energy sources such as the benefits to a summer peaking utility from photovoltaic systems or to a winter peaking utility for wind facilities. For the purposes of this rule, rate means any price, rate, charge, or classification made, demanded, observed or received with respect to the sale or purchase of electric energy or capacity or any rule or practice respecting any such rate, charge or classification and any contract pertaining to the sale or purchase of electric energy or capacity.**

([F]E) Periods During Which Purchases not Required.

1. Any electric utility which gives notice pursuant to paragraph (4)(F)2. of this rule will not be required to purchase electric energy or capacity during any period which, due to operational circumstances, purchases from qualifying facilities will result in costs greater than those which the utility would incur if it did not make the purchases, but instead generated an equivalent amount of energy itself.

2. Any electric utility seeking to invoke paragraph (4)(F)1. of this rule must notify, in accordance with applicable state law or rule, each affected qualifying facility in time for the qualifying facility to cease the delivery of energy or capacity to the electric utility.

3. Any electric utility which fails to comply with the provisions of paragraph (4)(F)2. of this rule will be required to pay the same rate for the purchase of energy or capacity as would be required had the period described in paragraph (4)(F)1. of this rule not occurred.

4. A claim by an electric utility that this period has occurred or will occur is subject to verification by the [PSC] **commission** as the [PSC] **commission** determines necessary or appropriate, either before or after the occurrence.

([5]6) Rates for Sales.

(A) Rates for sales shall be just and reasonable and in the public interest and shall not discriminate against any qualifying facility in comparison to rates for sales to other customers served by the electric utility. Rates for sales which are based on accurate data and consistent system-wide costing principles shall not be considered to discriminate against any qualifying facility to the extent that those rates apply to the utility's other customers with similar load or other cost-related characteristics.

(B) Additional Services to be Provided to Qualifying Facilities.

1. Upon request of a qualifying facility, each electric utility shall provide supplementary power, back-up power, maintenance power and interruptible power.

2. The [PSC] **commission** may waive any requirement of paragraph ([5]6)(B)1. of this rule if, after notice in the area served by the electric utility and after opportunity for public comment, the electric utility demonstrates and the [PSC] **commission** finds that compliance with that requirement will impair the electric utility's ability to render adequate service to its customers or place an undue burden on the electric utility.

(C) Rates for Sale of Back-Up and Maintenance Power. The rate for sales of back-up power or maintenance power—

1. Shall not be based upon an assumption (unless supported by factual data) that forced outages or other reductions in electric output by all qualifying facilities on an electric utility's system will occur simultaneously or during the system peak or both; and

2. Shall take into account the extent to which scheduled outages of the qualifying facilities can be usefully coordinated with scheduled outages of the utility's facilities.

([6]7) Interconnection Costs.

(A) **The customer shall be required to reimburse the utility for the interconnection costs of any equipment or facilities which result from connecting the customer's generating system with the utility's system according to the provisions contained in the utility's tariffs for connections at distribution or the governing Regional Transmission Organization (RTO) provisions if connecting to transmission.**

(B) If the utility and the qualifying facility cannot reach agreement as to the amount or the manner of payment of the interconnection costs to be paid by the qualifying facility, the [PSC] **commission**, after hearing **under the procedure of 20 CSR 4240-2.070**, shall assess against the qualifying facility those interconnection costs to be paid to the utility, on a nondiscriminatory basis with respect to other customers with similar load characteristics or shall determine the manner of payments of the interconnection costs, which may include reimbursement over a reasonable period of time, or both. In determining the terms of any reimbursement over a period of time, the commission shall provide for adequate carrying charges associated with the utility's investment and security to insure total reimbursement of the utility's incurred costs, if it deems necessary.

([7]8) System Emergencies.



(A) **Qualifying Facility Obligation to Provide Power During System Emergencies.** A qualifying facility shall be required to provide energy or capacity to an electric utility during a system emergency only to the extent provided by agreement between the qualifying facility and electric utility or ordered under section 202(c) of the Federal Power Act.

(B) **Discontinuance of Purchases and Sales During System Emergencies.** During any system emergency, an electric utility may discontinue purchases from a qualifying facility if those purchases would contribute to the emergency. **During any system emergency, an electric utility may discontinue [and] sales to a qualifying facility, provided that discontinuance is on a nondiscriminatory basis.**

([8]9) **Standards for Operating Reliability.** The [PSC] **commission** may establish reasonable standards to ensure system safety and reliability of interconnected operations. Those standards may be recommended by any electric utility, any qualifying facility or any other person. If the [PSC] **commission** establishes standards, it shall specify the need for the standards on the basis of system safety and reliability.

([9]10) **Exemption to Qualifying Facilities From the Public Utility Holding Company Act and Certain State Law and Rules.**

(A) **Applicability.** *[This section applies to qualifying cogeneration facilities and qualifying small power production facilities which have a power production capacity which does not exceed thirty (30) megawatts and to any qualifying small power production facility with a power production capacity over thirty (30) megawatts if that facility produces electric energy solely by the use of biomass as a primary energy source.] As defined in PURPA section 292.601 (a) & (b) and section 292.602 (a) & (b).*

(B) A qualifying facility described *[in subsection (1) (A) ] in PURPA* shall not be considered to be an electric utility company as defined in section 2(a)(3) of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79b(a)(3).

(C) Any qualifying facility shall be exempted (except as otherwise provided) from Missouri [PSC] **commission** law or rule respecting the rates of electric utilities and the financial and organizational regulation of electric utilities. A qualifying facility may not be exempted from Missouri PSC law and rule implementing subpart C of PURPA.

### **(11) Filing Requirements**

(A) **On or before January 15 of every odd-numbered year, unless otherwise ordered by the commission, all regulated electric utilities shall file, in accordance with 20 CSR 4240-2.065 (4), tariffs which contain the standard contracts as described in section (4) of this rule and the standardized rates for sales and purchase described in section (5) and section (6) of this rule. The biennial filings will consider the factors affecting rates for purchases as described in section (5)(D) and be accompanied by the data described in section (11)(B) and the verification described in (11)(C) of this rule.**

(B) **Each regulated electric utility shall maintain for public inspection the following data:**

1. **The estimated avoided cost on the electric utility's system, solely with respect to the energy component, for various levels of purchases from qualifying facilities. These levels of purchases shall be stated in blocks of not more than one hundred (100) megawatts for systems with peak demand of one thousand (1,000) megawatts or more, and in blocks equivalent to not more than ten percent (10%) of the system peak demand for systems of less than one thousand (1,000) megawatts. The avoided costs shall be stated on a cents per kilowatt-hour basis, during daily and seasonal peak and off-peak periods, by year, for the current calendar year and each of the next five (5) years;**

2. **The electric utility's plans for the addition of capacity by amount and type, for purchases of firm energy and capacity and for capacity retirements for each year during the succeeding ten (10) years; and**

3. **The estimated capacity costs at completion of the planned capacity additions and planned capacity firm purchases, on the basis of dollars per kilowatt and the associated energy costs of each**

unit, expressed in cents per kilowatt hour. These costs shall be expressed in terms of individual generating units and of individual planned firm purchases.

(C) Each regulated electric utility shall verify it maintains and aggregates the following information:

1. For systems less than 100 kW:
  - A. Characterization of the distribution circuits where the systems are connected,
  - B. Aggregate capacity of the systems for each feeder or load, and
  - C. Relevant interconnection standard requirement that specify the performance of the system.
2. For systems over 100 kW and under 1000 kW:
  - A. Type of generating resource,
  - B. Distribution bus nominal voltage where the system is connected,
  - C. Feeder characteristics for connecting the system to distribution bus, if applicable,
  - D. Capacity of each resource,
  - E. Relevant interconnection standard requirements, and
  - F. Actual plant control modes in operation.

(D) In establishing the avoided cost on the electric utility's system in accordance with section ~~(1011)~~(~~CB~~)1., the following methodologies may be utilized:

1. Proxy Unit. This methodology assumes that the electric utility avoids building a proxy generating unit by utilizing the qualifying facilities power. The fixed costs of the hypothetical proxy unit set the avoided capacity cost and variable costs set the energy payment.
2. IRP Based avoided cost. This methodology relies on the electric system resource planning to predict future needs and costs that may be avoided by qualifying facilities.
3. Market Based Pricing. Qualifying facilities with access to competitive markets receive energy and capacity payments at market rates.
4. The electric utility may propose any other method that can be demonstrated to reflect avoided costs.

**(12) Implementation of Certain Reporting Requirements.** Any electric utility which fails to comply with the requirements of subsection (11)(B) shall be subject to the same penalties to which it may be subjected for failure to comply with the requirements of the Federal Energy Regulatory Commission's (FERC's) regulations issued under Section 133 of PURPA.

*AUTHORITY: sections 386.250 and 393.140, RSMo 2000.\* Original rule filed Oct. 14, 1980, effective May 15, 1981.*

*Amended: Filed Aug. 16, 2002, effective April 30, 2003.*

*\*Original authority: 386.250, RSMo 1939, amended 1963,1967, 1977, 1980, 1987, 1988, 1991, 1993, 1995, 1996 and 393.140, RSMo 1939, amended 1949, 1967.*