

MEMORANDUM

TO: Morris L. Woodruff, Secretary


DATE: June 24, 2019

RE: Authorization to File Final Order of Rulemaking with the Office of Secretary of State

CASE NO: EX-2019-0050

The undersigned Commissioners hereby authorize the Secretary of the Missouri Public Service Commission to file the following Final Order of Rulemakings with the Office of the Secretary of State, to wit:

Amended Rule: 4 CSR 240-20.100 – Electric Utility Renewable Energy Standard Requirements



Ryan A. Silvey, Chairman

William P. Kenney, Commissioner

Scott T. Rupp, Commissioner

Daniel Y. Hall, Commissioner

Maida J. Coleman, Commissioner

John R. Ashcroft

**Secretary of State
Administrative Rules Division**

RULE TRANSMITTAL

Administrative Rules Stamp

Rule Number 4 CSR 240-20.100

Use a "SEPARATE" rule transmittal sheet for EACH individual rulemaking.

Name of person to call with questions about this rule:

Content Morris Woodruff Phone 573-751-2849 FAX 573-526-6010

Email address morris.woodruff@psc.mo.gov

Data Entry Christine Koenigsfeld Phone 573-751-4256 FAX 573-526-6010

Email address Christine.Koenigsfeld@psc.mo.gov

Interagency mailing address Public Service Commission, 9th Floor Gov. Office Bldg, JC, Mo
TYPE OF RULEMAKING ACTION TO BE TAKEN

☐ Emergency Rulemaking ☐ Rule ☐ Amendment ☐ Rescission ☐ Termination

Effective Date for the Emergency _____

☐ Proposed Rulemaking ☐ Rule ☐ Amendment ☐ Rescission

☐ Rule Action Notice ☐ In Addition ☐ Rule Under Consideration

☐ Request for Non-Substantive Change

☐ Statement of Actual Cost

☒ Order of Rulemaking ☐ Withdrawal ☐ Adopt ☒ Amendment ☐ Rescission

Effective Date for the Order _____

☐ Statutory 30 days OR Specific date _____

Does the Order of Rulemaking contain changes to the rule text? ☐ NO

☒ YES—LIST THE SECTIONS WITH CHANGES, including any deleted rule text:

Sections (4)(D)1, Section (4)(E), (4)(I), and (4)(L)

Small Business Regulatory
Fairness Board (DED) Stamp

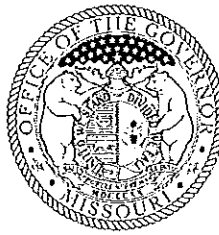
JCAR Stamp

JOINT COMMITTEE ON

JUN 24 2019

ADMINISTRATIVE RULES

STATE CAPITOL
201 W. CAPITOL AVENUE, ROOM 216
JEFFERSON CITY, MISSOURI 65101



(573) 751-3222
WWW.GOVERNOR.MO.GOV

Michael L. Parson

GOVERNOR
STATE OF MISSOURI

June 17, 2019

Mr. Ryan Silvey
Public Service Commission
200 Madison Street
PO Box 360
Jefferson City, MO 65102

RE: *Final Order of Rulemaking*

Dear Ryan:

This office has received your Final Order of Rulemaking for 4 CSR 240-20.100 Electric Utility Renewable Energy Standard Requirements.

Executive Order 17-03 requires this office's approval before state agencies release proposed regulations for notice and comment, amend existing regulations, rescind regulations, or adopt new regulations. After our review of this rulemaking, we approve the rule's submission to the Joint Committee on Administrative Rules and the Secretary of State.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew Bailey", is written over the typed name and title.

Andrew Bailey
Deputy Counsel



Commissioners

RYAN A. SILVEY
Chairman

WILLIAM P. KENNEY

DANIEL Y. HALL

SCOTT T. RUPP

MAIDA J. COLEMAN

Missouri Public Service Commission

POST OFFICE BOX 360
JEFFERSON CITY, MISSOURI 65102
573-751-3234
573-751-1847 (Fax Number)
<http://psc.mo.gov>

SHELLEY BRUEGGEMANN
General Counsel

MORRIS WOODRUFF
Secretary

LOYD WILSON
Director of Administration

NATELLE DIETRICH
Staff Director

John Ashcroft
Secretary of State
Administrative Rules Division
600 West Main Street
Jefferson City, Missouri 65101

Re: 4 CSR 240-20.100 Electric Utility Renewable Energy Standard Requirements

Dear Secretary Ashcroft,

CERTIFICATION OF ADMINISTRATIVE RULE

I do hereby certify that the attached is an accurate and complete copy of the order of rulemaking lawfully submitted by the Missouri Public Service Commission.

Statutory Authority: section 393.1030, RSMo Supp. 2013, and sections 386.040 and 386.250, RSMo 2000.

If there are any questions regarding the content of this order of rulemaking, please contact:

Morris L. Woodruff, Chief Regulatory Law Judge
Missouri Public Service Commission
200 Madison Street
P.O. Box 360
Jefferson City, MO 65102
(573) 751-2849
Morris.woodruff@psc.mo.gov

Morris L. Woodruff
Chief Regulatory Law Judge

Enclosures

**Title 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240 – Public Service Commission
Chapter 20 – Electric Utilities**

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 393.1030, RSMo Supp. 2018; 386.040, RSMo 2016; and 386.250, RSMo 2016, the commission amends a rule as follows:

4 CSR 240-20.100 Electric Utility Renewable Energy Standard Requirements is amended.

A notice of proposed rulemaking containing the proposed amendment was published in the *Missouri Register* on April 1, 2019 (44 MoReg 1024-1025). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the Code of State Regulations.

SUMMARY OF COMMENTS: The public comment period ended May 1, 2019, and the commission held a public hearing on the proposed rule on May 7, 2019. The commission received timely written comments from the staff of the commission; the Office of the Public Counsel; and Union Electric Company, d/b/a Ameren Missouri. Jamie Myers and Claire Eubanks, on behalf of staff; Lera Shemwell and Dr. Geoff Marke, on behalf of Public Counsel; James Fischer, on behalf of Kansas City Power & Light and KCP&L Greater Missouri Operations Company; Tim Opitz on behalf of Renew Missouri; and Russ Mitten on behalf of Union Electric Company d/b/a Ameren Missouri, appeared at the hearing and offered comments.

COMMENT #1: Public Counsel commented that the “first come, first served” model that underlies the solar rebate model encompassed in the rule represents a largely regressive energy policy decision in that the large up-front capital costs necessary to install a rooftop solar energy system limits the availability of solar rebates for low-income customers and actually serves as an indirect intra-class price discrimination against low-income customers who subsidize the solar rebates, but are unable to claim their share of them. Public Counsel suggest that the rule be modified to offer priority for available solar rebates to homeless shelters and other low-income commercial non-profit organizations that wish to install roof-top solar facilities. Ameren Missouri replied to Public Counsel’s suggestion, contending that Public Counsel’s proposed targeting of solar rebates to certain utility customers would not be authorized by statute.



RESPONSE: The commission is aware of Public Counsel's concerns, but concludes that the proposed targeting of solar rebates to certain classes of customers is beyond the scope of the proposed amendment as published. The commission will make no changes in response to this comment.

COMMENT #2: Tim Opitz, commenting on behalf of Renew Missouri, expressed support for the proposed amendment and indicated Renew Missouri's strong support for community solar projects. He did not suggest any changes to the proposed amendment.

RESPONSE: The commission thanks Mr. Opitz and Renew Missouri for its support. The commission will make no changes in response to this comment.

COMMENT #3: James Fischer, commenting on behalf of Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company, indicated support for Ameren Missouri's comments and proposed changes.

RESPONSE: The Commission notes this comment and will address Ameren Missouri's comments and proposed changes subsequently.

COMMENT #4: Ameren Missouri proposes a change in the definition of "RES or Renewable Energy Standard" found in subsection 4 CSR 240-20.100(1)(O). That definition currently refers to sections 393.1025 and 393.1030, RSMo. Ameren Missouri would add a reference to section 393.1670, RSMo, which was created by SB 564 in 2018. The commission's staff opposed Ameren Missouri's proposal because the proposed amendment does not address section (1) of the rule, and because staff is considering these changes in another rulemaking that will address cogeneration and net metering rule changes.

RESPONSE: The commission has proposed to amend only section (4) of this rule. The revised definition proposed by Ameren Missouri in section (1) of the rule is thus outside the section addressed by this proposed amendment and the public has not been notified of any potential changes in section (1) of the rule. In addition, the commission intends to address amendment of section (1) of the rule in a future rulemaking. The commission will make no changes in response to this comment.

COMMENT #5: Ameren Missouri is concerned that while the rule's definition of "customer generator" in 4 CSR 240-20.100(1)(D) is broad enough to include solar rebates made to projects that do not qualify for net metering status, other provisions of the rule juxtapose "customer generator" with "net metering", leaving the impression that a "customer generator" must also receive "net metering" service. Section 393.1670 RSMo does not require a "customer generator" to receive "net metering" service as such customer may instead apply as a Qualifying Facility as defined by the Federal Energy Regulatory Commission. For

that reason, Ameren Missouri proposes to delete references to net metering from 4 CSR 240-20.100(2)(B)3, 100(3)(C), 100(3)(C)1, and 100(3)(C)2. Ameren Missouri is concerned that without these changes, provisions of the rule will be inappropriately limited to "net metering" customers. The commission's staff opposed Ameren Missouri's proposal because the proposed amendment does not address section (1) of the rule, and because staff is considering these changes in another rulemaking that will address cogeneration and net metering rule changes.

RESPONSE: The commission has proposed to amend only section (4) of this rule. The revised definition proposed by Ameren Missouri in section (1) of the rule is thus outside the section addressed by this proposed amendment and the public has not been notified of any potential changes in section (1) of the rule. In addition, the commission intends to address amendment of section (1) of the rule in a future rulemaking. The commission will make no changes in response to this comment.

COMMENT #6: Ameren Missouri is concerned that paragraph 4 CSR 240-20.100(4)(D)2 of the proposed amendment limits its application to residential net-metered customers. Ameren Missouri contends SB 564 does not require net-metering as a requirement for receipt of a solar rebate as a residential customer could instead choose to apply as a Qualifying Facility. Ameren Missouri recommends the limiting language be removed from the paragraph and explains that its solar rebate tariff does not contain this limiting language. Staff explains that this is simply clarifying language to explain that net metering customers with systems between 25 kW and 100 kW are eligible to receive a solar rebate. Staff does not believe it is necessary to delete the language.

RESPONSE AND EXPLANATION OF CHANGE: The commission is mindful of Ameren Missouri's concern that solar rebates not be limited to net-metered customers, but will not remove the questioned language. Instead, the phrase "or interconnected" will be added after "residential net-metered" to make it clear that the provisions are not limited to net-metered customers.

COMMENT #7: Ameren Missouri is concerned that subsection 4 CSR 240-20.100(4)(E) would require all solar electric systems that are less than 100 kW in size to meet all net metering requirements. It contends that net metering requirement is contrary to SB 564 and Ameren Missouri's current solar rebate tariff. Requiring net metering would eliminate the possibility that a small system could instead choose to select Qualifying Facility status. Ameren Missouri proposes alternative language that would not require net metering. Staff initially opposed Ameren Missouri's proposed modification as unnecessary and inappropriate, but now suggests the addition of an alternative reference to the requirements a customer-generator must meet under another commission rule that would not imply a net metering requirement.

RESPONSE AND EXPLANATION OF CHANGE: The commission is mindful of Ameren Missouri's concerns, but rather than entirely replace the existing language of the subsection, the commission will add a reference to 4 CSR 240-20.100(1)(D) which defines customer-generator. This reference will address the concerns of both Ameren Missouri and the commission's staff.

COMMENT #8: Ameren Missouri proposes to modify 4 CSR 240-20.100(4)(L) to strike references to net metering and the twelve month limitation from the net metering rule.

RESPONSE AND EXPLANATION OF CHANGE: The language Ameren Missouri proposes to strike is duplicative and unnecessary. The commission will remove it from the rule.

COMMENT #9: Staff proposes to eliminate the list of values per watt for systems operational at various dates, mostly in the past, contained in paragraph 4 CSR 240-20.100(4)(L)1. Staff explained that the list of values is duplicative of the list found in the statute and is thus unnecessary. No other commenter opposed the deletion of the list.

RESPONSE AND EXPLANATION OF CHANGE: The commission will delete the paragraph as proposed by Staff.

COMMENT #10: Staff proposes to strike an unnecessary comma in subsection 4 CSR 240-20.100(4)(I), which had not been proposed to be amended.

RESPONSE AND EXPLANATION OF CHANGE: The commission will delete the comma.

4 CSR 240-20.100 Electric Utility Renewable Energy Standard Requirements

(4) Solar Rebate. Pursuant to section 393.1030 and section 393.1670, RSMo, and this rule, electric utilities shall include in their tariffs a provision regarding retail account holder rebates for solar electric systems. These rebates shall be available to Missouri electric utility retail account holders who install new or expanded solar electric systems comprised of photovoltaic cells or photovoltaic panels. As used in this section, customer means retail account holder.

(D) Solar electric systems installed by retail account holders must consist of equipment that is commercially available and factory new when installed on the original account holder's premises, and the principal system components (i.e., photovoltaic modules and inverters) shall be covered by a functional warranty from the manufacturer for a minimum period of ten (10) years, unless determined otherwise by the commission, with the exception of solar battery components. Rebuilt, used, or refurbished equipment is not eligible to receive the rebate.

1. Solar rebates made available prior to January 1, 2019, shall be limited to twenty-five (25) kW for any applicable retail account. Retail accounts which have been awarded rebates for an aggregate of less than twenty-five (25) kW shall qualify to apply for rebates for system expansions up to an aggregate of twenty-five (25) kW. Systems greater than twenty-five (25) kW but less than one hundred (100) kW in size shall be eligible for a solar rebate up to the twenty-five (25) kW limit of this section.

2. Solar rebates for systems that become operational after January 1, 2019 shall be available for new or expanded solar electric systems up to twenty-five (25) kW for residential customers and one hundred and fifty (150) kW for non-residential customers. Residential net-metered or interconnected solar electric systems greater than twenty-five (25) kW but less than one hundred (100) kW in size shall be eligible for a solar rebate up to the twenty-five (25) kW limit of this section. Customers shall be eligible for rebates on new or expanded systems for the increment of new or expanded capacity and not for capacity on which rebates offered under any other provision of law have previously been paid, up to the system kilowatt limits outlined in this section.

(E) Solar electric systems which are less than 100 kW in size shall meet all requirements of 4 CSR 240-20.065, Net Metering, or all the requirements a customer-generator must meet under 4 CSR 240-20.100(1)(D).

(I) No customer-generator is required by this rule to sell any or all S-RECs to the electric utility; however, a condition of receiving a solar rebate from an electric utility is that all right, title, and interest in and to the RECs associated with the new or expanded solar electric system that qualifies the customer-generator for the solar rebate is transferred to the electric utility paying the rebate for a period of ten (10) years from the date the electric utility confirms the customer-generator's solar electric system is operational.

(L) The electric utility shall provide the solar rebate payment to qualified customer-generators within thirty (30) days of confirming the customer-generator's solar electric system is operational.