

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

In the Matter of the Proposed Amendments to	)	
20 CSR 240-20.060, Filing Requirements for	)	File No. EX-2020-0006
Electric Utility Cogeneration	)	

**Comments of the Office of the Public Counsel**

The Office of the Public Counsel (OPC) provides its comments responding to the proposed amendments to the Public Service Commission (Commission) rules as follows:

1. The Commission has proposed three amendments to its rules regarding cogeneration and associated filing requirements.

2. The Commission proposes to rescind 20 CSR 4240-3.155 in its entirety, and to condense its requirements into 20 CSR 4240-20.060, mostly within the newly proposed section (11). The OPC has no comments on point.

3. The OPC questions the Commission’s decision to rescind several definitions within 20 CSR 4240-20.060. The Commission proposes to remove the definition for “qualifying facility” from the rule, but also continues to use that phrase for new, operative language. Given the repeated use of “qualifying facility” within 20 CSR 4240-20.060, and the threshold question of applicability when deciding whether these rules apply to a cogeneration facility, the OPC recommends that the Commission not remove the definition of “qualifying facility” from 20 CSR 4240-20.060.

4. The OPC also questions the proposed amendment’s rescission of the definition of “rate” in 20 CSR 4240-20.060(1), given that the amendment later adds a definition for “rate” in the proposed 20 CSR 4240-20.060(5)(D)5 that applies “for the purposes of this rule,” not just the paragraph 5 of subsection (D) of section (5). The OPC recommends using the Commission’s definition of “rate” in 20 CSR 4240-20.060(1).

5. The Commission's amendments do not alter the phrase "pursuant to paragraph (4)(E)4. of this rule" within 20 CSR 4240-20.060(3)(D). The referenced paragraph does not exist in the Commission's newly proposed section (4), and believes that the Commission likely meant for the phrase to be changed to "pursuant to paragraph [(4)(E)](5)(D)4. of this rule," or similar. The OPC recommends that the Commission make this internal citation consistent with other edits to the rule.

6. Likewise, the Commission's amendments do not alter the phrase "as derived in paragraph (4)(E)2. of this rule" within the currently existing 20 CSR 4240-20.060(4)(E)3. Given the Commission's proposed amendments, the OPC suspects this phrase should be amended to "as derived in paragraph [(4)(E)](5)(D)2. of this rule."

7. The OPC notes that there are similar internal citations that need to be revised in the currently existing 20 CSR 4240-20.060(4)(B)2. and 20 CSR 4240-20.060(4)(F).

8. The Commission proposes to amend 20 CSR 4240-20.060(4)(E)1. to remove the reference to 4 CSR 240-3.155 and insert in lieu thereof "**section (10) of this rule.**" Given the Commission's amendments to the currently existing section (10), the OPC believes that the Commission means for this reference to refer instead to the Commission's proposed section (11).

9. The Commission's proposed 20 CSR 4240-20.060(11)(D) refers to "**section (10)(C)1.**" Section (10)(C)1. does not exist in the rule if the Commission's other edits are accepted, and the OPC suspects the Commission means the new language to refer to section (11). However, the OPC questions why possible avoided cost calculation methodologies are explained for cogeneration systems less than 100 kW per section (11)(C)1., but not for larger systems under section (11)(C)2.. The OPC suggests that the Commission instead employ the phrase "**section (11)(C).**"

10. The Commission’s proposed 20 CSR 4240-20.060(11)(D) proposes avoided cost methodologies that may be employed, but the permissive nature of this language appears to be inconsistent with the Commission’s proposed 20 CSR 4240-20.060(5)(D) that denotes certain factors that shall be considered when calculating avoided costs for purchase rate purposes. The OPC is unclear as to the Commission’s intent with this divergent language, and suggests that further clarification is necessary in the proposed rule language. The OPC recommends that the Commission clarify this language with prescriptive language describing exactly what avoided cost calculation methodology is proper, and what factors that calculation must consider.

11. Clarification is particularly necessary given that the Commission’s proposed amendment to the definition of “avoided fuel cost” in 20 CSR 4240-20.065(1) refers back to “avoided fuel costs” calculated in 20 CSR 4240-20.060. The phrase “avoided fuel costs” is not used in 20 CSR 4240-20.060, and the Commission’s amendments make it unclear as to whether “avoided fuel costs” and “avoided costs” are the same and what factors must be considered to calculate avoided costs, if at all.

12. The OPC notes that the Commission’s proposed revisions to 20 CSR 4240-20.065(1) as proposed have subsection (D) follow subsection (B). The OPC recommends that the Commission include a subsection (C), with other subsections amended accordingly.

13. The Commission proposes to amend 20 CSR 4240-20.065(10) to require electric utilities to verify compliance with the proposed “**10 CSR 4240-20.060(11)(C)1.**” The OPC questions why electric utilities should not also verify compliance with 20 CSR 4240-20.060(11)(C)2, and suspects that the Commission’s use of “**10**” is a typographical error. The OPC recommends that the Commission instead employ the phrase “**20 CSR 4240-20.060(11)(C).**”

14. The Commission proposes to add a new subsection (D) to 20 CSR 4240-20.065(10). This new subsection details the Commission's own duties to upload annual net metering reports to the Commission's website. However, as a subsection, the language describing the Commission's duties follows the overarching section language of "every electric utility shall." The OPC recommends that the Commission redraft the new subsection (D) to be its own subsection, or otherwise separate it from the requirements imposed on electric utilities by subsection (10).

**WHEREFORE**, the OPC requests that the Commission incorporate the comments and recommendations provided herein in its ultimately approved amendments.

Respectfully,

OFFICE OF THE PUBLIC COUNSEL

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### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on this 31<sup>st</sup> day of July, 2020, with notice of the same being sent to all counsel of record.

/s/ Caleb Hall