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7 Rulemaking Hearing
8 September 2, 2008
9 Jefferson City, Missouri
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12 In the Matter of a Proposed)
Rulemaking to Amend Commission) Case No. EX-2008-0280
13 Rule 4 CSR 240-20.065)

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15 COLLEEN M. DALE, Presiding,
CHIEF REGULATORY LAW JUDGE.

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18 TERRY JARRETT,
COMMISSIONER.

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FOR: Staff of the Missouri Public
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1 P R O C E E D I N G S

2 JUDGE DALE: Good afternoon. We are here
3 today, September 2nd, 2008, in the matter of proposed
4 rulemaking to amend Commission Rule 4 CSR 240-20.065, Case
5 No. EX-2008-0280. We will begin with entries of
6 appearance, starting with Staff.

7 MR. DOTTHEIM: Steven Dottheim, P.O.
8 Box 360, Jefferson City, Missouri 65102, appearing on
9 behalf of the Staff of the Missouri Public Service
10 Commission.

11 JUDGE DALE: OPC?

12 MR. MILLS: On behalf of the Office of the
13 Public Counsel and the public, my name is Lewis Mills. My
14 address is Post Office Box 2230, Jefferson City, Missouri
15 65102.

16 JUDGE DALE: Mr. Dority?

17 MR. DORITY: Thank you, Judge. Appearing
18 on behalf of Kansas City Power & Light Company and Aquila,
19 Inc., doing business as KCP&L Greater Missouri Operations
20 Company, Larry Dority and James Fischer, Fischer & Dority,
21 PC. Our address is 101 Madison, Suite 400, Jefferson
22 City, Missouri 65101.

23 JUDGE DALE: And while I understand you're
24 not counsel, go ahead and introduce yourself, Mr. Wood.

25 MR. WOOD: Warren Wood on behalf of the

1 Missouri Energy Development Association, 326 East Capitol
2 Avenue, Jefferson City, Missouri 65101.

3 MS. TATRO: Wendy Tatro, 1901 Chouteau
4 Avenue, St. Louis, Missouri, appearing on behalf of
5 AmerenUE.

6 JUDGE DALE: Well, hopefully we'll get
7 Commissioner Clayton connected in here fairly soon.
8 Mr. Dottheim, let's go ahead and proceed with your
9 comments.

10 MR. DOTTHEIM: May it please the
11 Commission?

12 The Staff originally may not have had
13 comments, but it does now and some suggestions and
14 proposed language. Those comments are being filed. I do
15 have copies with me, and I could distribute those to the
16 Bench. I've distributed copies to at least some of the
17 participants who are here today. I don't know if the
18 Bench would like to have those marked as an exhibit, and I
19 could distribute those and explain what the comments are,
20 and offer an apology, too.

21 JUDGE DALE: I don't think an apology is
22 necessary. If you would like to distribute those, do you
23 have enough copies for the other parties?

24 MR. DOTTHEIM: I think so.

25 JUDGE DALE: Go ahead and give Commissioner

1 Jarrett his and then make sure there are enough for the
2 other parties. I'm presuming you're filing this as we
3 speak in EFIS?

4 MR. DOTTHEIM: Yes.

5 MR. BECK: It has been filed.

6 JUDGE DALE: Okay.

7 MR. DOTTHEIM: Judge, the Staff nonetheless
8 would like to apologize. We would have wished to have
9 afforded the Commissioners and yourself and the other
10 participants an opportunity to look at the comments.

11 Because of other cases, what have you, rate
12 cases, electric resource planning cases, what have you,
13 the case was -- the Staff was occupied in other matters,
14 and only late last week the Staff had occasion to take a
15 look at the current average fuel cost as that would be
16 calculated utilizing the annual reports of the various
17 electric utilities that are submitted to the Commission
18 and compare that to the avoided cost as that appears on
19 the cogeneration tariffs filed by the various electric
20 utilities pursuant to the Commission's cogeneration rules.

21 And as a consequence, the Staff was
22 surprised to see a rather significant variance. And I
23 would refer the Bench to the Staff's comments, pages 2 and
24 also page 5. The Staff's comments are in the form of
25 alternative proposals. So some of the Staff's comments

1 are repetitive, and the Staff again apologizes and
2 requests that the Commissioners and the Bench, Judge, that
3 you bear with us over the repetition that you will find in
4 the comments.

5 And based upon the significant difference
6 between the average fuel cost that's calculated as a
7 result of under arguably the proposed amended rule for net
8 metering and the avoided cost under the cogeneration
9 tariffs under the Commission's cogeneration rules, the
10 Staff thought it needed to comment and propose some
11 language, language changes.

12 Again, the Staff had not anticipated that
13 there would be this disparity and doesn't believe that
14 there should be such a disparity in what should be paid
15 under the cogeneration tariffs for avoided cost and what
16 should be paid under the net metering rules.

17 Dan Beck of the Commission Staff is here
18 this afternoon and can address that item in particular if
19 the Bench has any questions. David Elliott from the
20 Commission Staff is here this afternoon to answer any
21 questions from the Bench regarding the net metering rules
22 in general.

23 The alternatives that the Staff propose go
24 to how to address this Staff concern. Alternative 1 is a
25 less complicated fix arguably than Alternative 2.

1 Alternative 1 goes to a section of the Net Metering and
2 Easy Connection Act, Section 386.890.5(3), which makes
3 reference to the customer-generated generator being
4 credited an amount at least equal to the avoided fuel
5 cost. The avoided fuel cost is a term that is defined to
6 a limited extent in the Net Metering and Easy Connection
7 Act.

8 If I could refer the Bench to page 3 of the
9 Staff's comments, the bottom of the page of the Staff's
10 comment, there's Section 386.890.2(1), which has the
11 definition of avoided fuel cost that's in the Net Metering
12 and Easy Connection Act and says, avoided fuel costs, the
13 current average cost of fuel for the entity generating
14 electricity as defined by the governing body with
15 jurisdiction over any electrical corporation as provided
16 in this chapter.

17 And Staff would maintain that the
18 Commission is the governing body with jurisdiction over
19 AmerenUE, Kansas City Power & Light, Empire District
20 Electric, and as a consequence defines the term current
21 average cost of fuel and thereby avoided fuel cost. But
22 that goes more to Alternative 2.

23 But again, under Alternative 1, the
24 customer generator gets paid for any excess electricity
25 supplied at least an amount equal to the avoided fuel

1 cost, and the Staff suggests that the customer generator
2 would get paid the greater of the avoided fuel cost or the
3 amount termed the avoided cost, which the avoided cost is
4 the cost on the cogeneration tariffs.

5 That kind of in a nutshell is the
6 Alternative 1 solution from the Staff's perspective, and
7 that's again Alternative 1 that's covered on pages 1, 2
8 and 3.

9 Alternative 2 goes to the definition of
10 current average cost, and the fix that the Staff suggests
11 under Alternative 2 would be defining current average cost
12 of fuel as the higher of the cost under net metering or
13 under cogeneration. But again, that goes to the issue of
14 the rate paid under the net metering versus the rate paid
15 under cogeneration, and the Staff believes that they
16 should be the same rate, the higher rate that -- that is
17 shown for cogeneration. And again, Mr. Beck is here to
18 answer any questions that the Bench might have regarding
19 that matter.

20 Again, sorry to keep repeating this. The
21 Staff wishes it had been able to identify this item
22 earlier and had been able to submit comments earlier so
23 that the other participants could have addressed this more
24 timely than they might be after just reviewing very
25 quickly the Staff's comments if they're even able to do

1 that this afternoon.

2 Maybe on a going-forward basis a way to
3 approach that is to have the comments due just in every
4 single case prior to the hearing when the Commission
5 schedules a hearing. Of course, it's an accommodation to
6 the participants and makes it easier on the participants
7 when they can submit comments on the day of the hearing,
8 but it doesn't help the Commissioners and the RLJ and the
9 other parties when that accommodation is made because then
10 everybody pretty much is having to very quickly prepare,
11 if they can prepare at all, for anything that is said or
12 submitted on that day.

13 And that's not what the Staff intended.
14 The Staff did not intend to keep -- to catch people
15 unaware. This was something that the Staff did not
16 anticipate. So with that, I would just make those
17 introductory remarks.

18 JUDGE DALE: Thank you. Commissioner
19 Jarrett?

20 COMMISSIONER JARRETT: Thank you. Thank
21 you, Mr. Dottheim. I was wondering if Mr. Beck maybe
22 could talk a little bit about the development of the
23 comments and why, so forth, just kind of give us an
24 overview of Staff's thinking on that.

25 (Witness sworn.)

1 JUDGE DALE: Thank you.

2 DANIEL BECK testified as follows:

3 MR. BECK: My name is Daniel I. Beck,
4 B-e-c-k, and I am a member of the Staff of the Missouri
5 Public Service Commission.

6 Just kind of quickly to kind of summarize
7 some of what's been said, Friday was the first time that I
8 actually did the calculation to calculate this avoided
9 fuel cost. And simply by looking at those numbers, it was
10 quickly apparent that those were significantly different
11 than the avoided fuel cost that we use for the other
12 cogeneration rates that have -- the rate itself has been
13 in effect for over almost 30 years, and the specific rates
14 are actually updated every two years.

15 In hindsight, it makes sense that the
16 avoided -- or that the average fuel cost would be
17 significantly less than avoided fuel costs, and I would
18 sort of describe it as the IRS mileage rate that they
19 calculate. That rate doesn't just include the cost of
20 fuel. It also includes cost for maintenance and that type
21 of thing.

22 It really is sort of the same thing here.
23 One of the significant differences, when you include the
24 cost of maintenance, when you include the cost of
25 environmental taxes that are applied, those costs all go

1 into the avoided cost calculation and, therefore, reflect
2 a higher number. It seems to me that using the same
3 number as is being used in the avoided cost calculation
4 for this would provide for less confusion.

5 I think there's kind of an extra thing
6 that's happening here, and that is that because of the way
7 the statute was written, we actually have tariffs in
8 effect right now for all four utilities. I say four.
9 It's a separate tariff under KCPL's two different tariffs.
10 But we have tariffs in effect currently, and, in fact, the
11 AmerenUE and the Empire tariffs currently refer to these
12 cogeneration rates, while the other two utilities just
13 refer to the average fuel cost calculation and don't
14 specify a number at all.

15 And I do think, in my opinion as a Staff
16 member, that having a specific number spelled out in the
17 tariffs is helpful to consumers to make that decision
18 about whether they would like to enter into this, wanted
19 to make the decision in the first place to purchase this
20 type of equipment and go into a net metering agreement.

21 QUESTIONS BY COMMISSIONER JARRETT:

22 Q. Could you kind of walk through the two
23 alternatives? Start with Alternative 1 and kind of tell
24 me how that works and then Alternative 2.

25 A. Alternative 1 is basically it allows the --

1 keeps the definition of the average -- let me -- the
2 avoided fuel cost definition, it keeps it the same, and
3 instead simply proposes language that would in essence be
4 an either/or, and it will -- the first -- so this would be
5 on page 1 of Staff's comments, that we simply make the
6 credit, and we have inserted language by the way that
7 refers specifically to the credit for the kilowatt hours
8 generated during the billing period that is in excess.

9 And to explain that, if a consumer
10 generates -- I'm going to do a hypothetical just to make
11 it -- 1,000 KWHs in a single month but they use 500 KWHs
12 in that same month, then they would be entitled to a 500
13 KWH credit. So the whole topic here is what dollar amount
14 do we apply to those? And so that's the area that we're
15 talking about here.

16 And then the either/or that we're putting
17 in here is the greater of the avoided fuel cost, which in
18 essence is just the cost of the fuel on an average --
19 average dollars or cents per KWH, or, and the or is just
20 simply referring to the cogeneration, it's also sometimes
21 referred to as parallel generation, tariffs that each of
22 the utilities already has in effect. And so it would just
23 be that either/or.

24 Now, as it stands today, the rates in the
25 parallel generation or cogeneration rates are going to be

1 the greater of, which is what we're concentrating on here.
2 Quite frankly, I haven't thought of a scenario where that
3 wouldn't be the greater of, but of course you could never
4 say never, and so this language takes care of all
5 possibilities.

6 Q. All right. Just kind of using your
7 hypothetical, I'm looking at the Table 1.

8 A. Okay.

9 Q. Page 2.

10 A. Yes.

11 Q. For example, for Ameren, under the way that
12 the proposed rule is structured, the customer would be
13 entitled to \$1.30 per KWH as a credit?

14 A. That's correct.

15 Q. And under your proposed Alternative 1,
16 they'd be entitled to \$1.96 per KWH; is that right?

17 A. That's correct.

18 Q. Now, what about Alternative 2?

19 A. Alternative 2 would in essence accomplish
20 the same thing, but what it would do -- by the way, I do
21 want to make a quick clarification on Alternative 1. When
22 you change that language, there is similar language in the
23 actual contract that's also a part of this rulemaking. In
24 fact, it's I think word for word, and so it would seem
25 obvious that you would also make a word for word change in

1 the contract, and that's -- Staff refers to that on page
2 3, the very last sentence in the Alternative 1
3 description. So I just want to -- sorry to segue to that,
4 but I wanted to clarify that Section 4 of the attached
5 interconnection agreement would also be modified under
6 Alternative 1.

7 Under Alternative 2, what Staff is
8 proposing is simply to change the avoided fuel cost
9 definition, and again, it would be the greater of of the
10 two alternatives that are really just described before.
11 The only difference is, is that by doing it this way,
12 we're literally changing the definition of avoided fuel
13 cost.

14 You know, the definition of avoided fuel
15 cost was given in the statute, and so, you know, at first
16 just changing just the definition seemed to be the most
17 obvious way to deal with this issue, but then since that
18 definition is a part of the statute, it's -- that's why we
19 have Alternative 1 proposed out there.

20 COMMISSIONER JARRETT: Okay. Maybe this
21 question is for Mr. Dottheim. I was reading in
22 Alternative 2 you quote Section 386.890.2(1) where it
23 talks about the definition of avoided fuel cost, and then
24 it says the current average cost of fuel for the entity
25 generating electricity, as defined by the governing body,

1 et cetera.

2 And am I to understand it's Staff's
3 position that that language, as defined by the governing
4 body with jurisdiction, et cetera, that modifies avoided
5 fuel cost, giving us the authority to change the statutory
6 definition?

7 MR. DOTTHEIM. No. No, Commissioner. That
8 gives you the authority to define the term current average
9 cost of fuel.

10 COMMISSIONER JARRETT: So it modifies
11 current average cost of fuel?

12 MR. DOTTHEIM: Right. So you would be
13 defining current average cost of fuel as the -- as the
14 avoided cost, which avoided cost is the definition used in
15 the cogeneration tariff. So you would not -- you would
16 not be changing the definition for avoided fuel cost,
17 which is set by statute.

18 I think the statute gives you the authority
19 to define current average cost of fuel, and you would be
20 defining -- defining current average cost of fuel as the
21 greater of -- as the greater of the avoided cost, which is
22 the cogeneration rate, or the rate set by net metering,
23 the avoided fuel cost.

24 COMMISSIONER JARRETT: Okay. Just reading
25 the language here, the entity generating electricity as

1 defined by the governing body with jurisdiction over any
2 municipal electric utility, rural electric cooperative as
3 provided in Chapter 394, Revised Statutes of Missouri, or
4 electrical corporation as provided in this chapter.

5 Who's the governing body with jurisdiction over municipal
6 electric utilities, rural electric cooperatives?

7 MR. DOTTHEIM: In this instance, it's
8 municipal electric utilities unto themselves. I think
9 maybe you're referring -- or if you're going in the
10 direction of the comments filed by the City of Rolla, I
11 think counsel for the City of Rolla sought to address
12 certain work in the drafting of that legislation, which is
13 of concern.

14 But I don't believe that this Commission
15 is -- really has under net metering jurisdiction for
16 either municipal electric utilities or rural electric
17 cooperatives. But there are some less than clear or
18 complete facets of the legislation, one of the facets
19 having to deal with liability insurance, which we may get
20 into a little bit later.

21 COMMISSIONER JARRETT: Right. Well, I
22 guess my point is, the way I read this, as defined by the
23 governing body with jurisdiction over municipal electric
24 utility, rural cooperative as provided in Chapter 394,
25 that modifies the entity generating electricity. It

1 doesn't modify the current average cost of fuel. And so,
2 therefore, however the governing body that has
3 jurisdiction over municipals and cooperatives, however
4 they define the entity generating electricity, that
5 applies to the coops and the municipals.

6 So you could just basically for our
7 purposes as the PSC delete all of that, and for our
8 purposes avoided fuel cost is the current average cost of
9 fuel for the electrical corporation as provided in this
10 chapter. Is that -- you know, do you have any thoughts
11 about? I mean, the as defined by the governing body comes
12 right after the entity generating electricity. So doesn't
13 just modify that?

14 MR. DOTTHEIM: Yes, you could.

15 COMMISSIONER JARRETT: And if that's the
16 case, then what authority do we have to change the
17 statutory definition of anything?

18 MR. DOTTHEIM: Under your reading, I think
19 that would be a -- that would be a fair reading.

20 COMMISSIONER JARRETT: Because in your
21 proposed language under A, avoided fuel costs means, and
22 then you insert the greater of, where the statute doesn't
23 have the language the greater of.

24 MR. DOTTHEIM: Yes.

25 COMMISSIONER JARRETT: But you don't think

1 my reading is the correct reading, I guess.

2 MR. DOTTHEIM: Well, it certainly could
3 be -- could be one, but then I think you -- I think you
4 have to come back to, if you go to page 6, and this is
5 also -- it's also on page 1 listed for Alternative 1, but
6 on page 6 when you go to 386.890.5(3), the rate can be at
7 least equal to the avoided fuel costs.

8 COMMISSIONER JARRETT: And that seems to
9 give us some discretion --

10 MR. DOTTHEIM: Yes.

11 COMMISSIONER JARRETT: -- to make it
12 higher --

13 MR. DOTTHEIM: Yes.

14 COMMISSIONER JARRETT: -- than the avoided
15 fuel cost --

16 MR. DOTTHEIM: Yes.

17 COMMISSIONER JARRETT: -- as defined by the
18 statute?

19 MR. DOTTHEIM: Yes. So I think even with
20 your reading, I think we still can get to the end result.
21 But yes, I think you have a very interesting reading of
22 that -- of that language, and I think that argument can be
23 made.

24 COMMISSIONER JARRETT: All right. Thank
25 you. That's all I have.

1 JUDGE DALE: I have a couple questions.
2 When you were discussing the cogeneration rates, you were
3 saying that this -- that essentially that rate includes
4 the avoided fuel costs and other avoided costs that won't
5 be incurred by the utility but are incurred by the
6 cogenerator. For example, you mentioned environmental
7 surcharges or something like that.

8 MR. BECK: Actually, it seems a bit odd,
9 but you actually end up wanting to find out what cost the
10 utility is going to avoid by not having to -- by the
11 customer supplying the KWH; therefore, the utility doesn't
12 have to generate that KWH and supply it. So you end up
13 looking at what the utility gets to avoid by not having to
14 generate that KWH. It still is the same topics. Fuel
15 cost is one piece, but the operation and maintenance part
16 of those costs are variable depending on how much you run
17 your plant and, therefore, they have an effect.

18 The environmental costs, some of those
19 environmental taxes and fees are actually on a per KWH
20 basis, and for each KWH you generate, you have to pay that
21 or otherwise provide for that. And those are the type of
22 additional fees that get to be avoided and, therefore,
23 make sense that they would count toward the cost. Now --

24 JUDGE DALE: So let me see if I understand
25 you, then. So what you're saying is that the cogeneration

1 rates that are in the tariffs are based on the company
2 itself's avoided costs, irrespective of the cost the
3 cogenerator incurs?

4 MR. BECK: That's correct.

5 JUDGE DALE: Okay.

6 MR. BECK: So we don't really know what the
7 cogenerator's real costs are at all, I guess.

8 JUDGE DALE: Okay. Thank you. I was just
9 confused.

10 MR. BECK: Oh, it's -- it's -- it's not the
11 most straightforward thing, but it does in essence make
12 sense if you kind of realize it's all about the
13 cogenerator generating power and the utility avoiding that
14 generation.

15 JUDGE DALE: Thank you. I don't have any
16 other questions. Mr. Dottheim, did you want to say
17 anything else?

18 QUESTIONS BY MR. DOTTHEIM:

19 Q. Mr. Beck, when you were seeking to clarify
20 earlier, you were referring to the four electric utilities
21 having tariffs in effect. Were you referring to the
22 electric utilities having presently net metering tariffs
23 in effect?

24 A. That's correct.

25 Q. And were you referring to some of those

1 utilities having net metering tariffs in effect based on
2 cogeneration rates?

3 A. Yes. Specifically, AmerenUE and the Empire
4 District Electric tariffs have in their net metering
5 provisions reference, specifically reference the
6 cogeneration rates. They direct the reader to those
7 sections of other sections of the tariffs, the
8 cogeneration sections.

9 Q. And could you identify for clarity the
10 rates that Kansas City Power & Light and Aquila have for
11 net metering presently?

12 A. The language for Aquila is current annual
13 average cost of fuel, and I will say that that's
14 specifically on Sheet No. 113 of their tariffs, Section 4.
15 And for Kansas City Power & Light, on Sheet No. 40A of
16 their tariffs, they also have reference to annually
17 calculated avoided fuel costs.

18 That same language I would point out is
19 included in Empire District Electric's tariffs on
20 Sheet 13. However, they -- their tariffs have the phrase
21 annually calculated avoided fuel costs and then have a
22 parentheses, as defined in the company's tariff Schedule
23 CP, close paren, and the tariff Schedule CP is their
24 cogeneration tariff sheets.

25 MR. DOTTHEIM: Thank you.

1 JUDGE DALE: Thank you, Mr. Beck. You may
2 step down.

3 Mr. Mills, you may either come to the
4 podium or remain seated, whichever you prefer.

5 MR. MILLS: I'll just remain seated if
6 that's all right with you. Just a few brief comments, and
7 let me address first the questions and discussion that
8 Commissioner Jarrett had with Mr. Dottheim about
9 386.890.2(1).

10 First, with respect to the -- just the way
11 the sentence is structured and the way it perhaps ought to
12 be read, I think the phrase toward the entity generating
13 electricity is a prepositional phrase that modifies cost.
14 So I think, strictly construed, you would read the phrase
15 as defined by the governing body to refer back to cost
16 rather than the entity. So I think the way I read it, the
17 defined by refers to the average cost of fuel rather than
18 the entity generating it.

19 Second, just in terms of what it would mean
20 if you read it the other way so that, you know, the entity
21 with jurisdiction over defining an electrical corporation
22 in this chapter, if you read that to mean the Commission,
23 386.020(15) already defines electrical corporation and has
24 for many, many years. And I don't think that by enacting
25 the Easy Connection and Net Metering Act that the

1 Legislature had any intention of giving the Commission the
2 right by this to define in some different way the entity
3 generating electricity as an electrical corporation.

4 So I don't think either from a construction
5 of the sentence standpoint or really just sort of a common
6 sense standpoint of what's defined where that this is
7 going to give the Commission the jurisdiction to redefine
8 an electrical corporation, although I certainly have to
9 say that it's not as well worded as it ought to be and
10 it's not entirely clear.

11 COMMISSIONER JARRETT: Right. Right. And
12 my -- I guess my point is that really that whole -- that
13 whole clause there from, you know, the comma after avoided
14 fuel cost to the comma after RSMo really doesn't apply to
15 the Public Service Commission because we're not the
16 governing body with jurisdiction over municipal electric
17 utilities or rural electric cooperatives.

18 MR. MILLS: Well, I think it sets out three
19 different things. There are -- the entity generating
20 electricity could be either a municipal electric utility
21 which has jurisdiction in one -- vested in one body, or
22 rural electric cooperative which has jurisdiction as
23 provided in Section 394, or an electrical corporation as
24 that is defined in 386.020(15), which is governed by as
25 provided in this chapter, this Chapter 386, which is

1 governed by the Public Service Commission.

2 So I think it's setting out which entities
3 have the right to define the current average cost of fuel,
4 and it's different for each of those three types of
5 electric generators.

6 And then sort of in a broader perspective,
7 with respect to Staff's comments in general, I think given
8 the general intent of the Legislature and the purpose of
9 the Net Metering and Easy Connection Act, that it only
10 makes sense that customers would be compensated at a rate
11 at least equal to the currently standing cogeneration
12 rate.

13 I think that's why that the Legislature put
14 in the language in 386.890.5(3) that the credit shall be
15 an amount at least equal to the avoided fuel cost. And I
16 think a reasonable way to calculate that would be the way
17 that the cogeneration rates are calculated.

18 So I support the proposed concept behind
19 the changes that the Staff has recommended in its comments
20 filed today. I haven't really gone through the specific
21 language they've proposed to see if that's the best or the
22 cleanest way to achieve that.

23 It may be simpler just to say, to define
24 current average cost of fuel as that shown on the
25 company's cogeneration tariffs. As Mr. Beck said, I can't

1 really imagine a situation in which the way that it is
2 currently defined in the Commission's proposed rule would
3 ever be less than the cogeneration calculated rate. So I
4 don't know that you have to go to the complexity of saying
5 it's either this or that when it's almost inevitable that
6 it will be that rather than this, that being the
7 cogeneration rate.

8 With respect to the filed comments of
9 AmerenUE, really they raise two. One is the liability
10 insurance level ought to be raised for larger generators,
11 and I think that's also supported by the Rolla Municipal
12 Utilities. I don't know that I have a real concern with
13 that. I think as AmerenUE pointed out, it's very likely
14 that any customer that's going to have generating
15 facilities that are 10 KW or greater is going to be a
16 fairly large facility and likely will already have
17 liability insurance in that amount.

18 With respect to the point that the Rolla
19 Municipal Utilities raised in terms of requiring liability
20 insurance for generators, customer generators with less
21 than 10 KW, if you look at the old 386.877, which was the
22 first net metering act, it specifically gave the
23 Commission the authority to set liability insurance rates
24 for -- or levels for customer generators.

25 386.890 doesn't have that explicitly.

1 There clearly is a drafting error in the statute
2 somewhere, and Rolla Municipal Utilities assumed that
3 because Section 4 refers to liability insurance not above
4 levels specified elsewhere, that there -- that the
5 Legislature meant to include some level of liability
6 insurance. I think it's just as likely that the
7 Legislature put the wrong phrase in Section 4 and did not
8 mean to specify the liability insurance levels for smaller
9 customer generators.

10 So I don't think that the Commission really
11 has clear authority to establish a requirement that a
12 smaller customer generator be required to carry liability
13 insurance in the amount of \$100,000 or any other amount.
14 So I would oppose that change proposed by the Rolla
15 Municipal Utilities.

16 Sort of in line with that, if it is, in
17 fact, not the Legislature's intent that the Commission not
18 impose such liability insurance levels, then it would be
19 simple enough for the Legislature to revisit that and set
20 that in statute in a future version. But I think since
21 it's clearly different in 386.890 as opposed to the old
22 386.877, my best guess as to the intent of the Legislature
23 would be that they meant not to require liability
24 insurance for the smaller customer generators.

25 And I think that's also in keeping with the

1 whole notion of the statute, which is to enable customer
2 generators to more simply and easily hook up their own
3 generating systems to the utility grid.

4 Those are the only comments I have.

5 JUDGE DALE: Thank you, Mr. Mills. I don't
6 have any questions. Mr. Dority?

7 MR. DORITY: Thank you. Thank you, Judge.

8 As the record will reflect, the KCPL entities did not file
9 written comments in this proceeding, and I certainly
10 understand and appreciate Staff's constraints regarding
11 its ability to formulate its comments in this matter as
12 Mr. Dottheim laid out.

13 However, as the record reflects and
14 Mr. Beck's comments would support, the KCP&L entities do,
15 in fact, have current tariffs on file that have been
16 approved by this Commission, and it appears that Staff is
17 now suggesting that those should be altered. And in that
18 light, I guess I would just simply ask the Commission to
19 keep the record open in this proceeding and allow the
20 parties at least the opportunity to respond with written
21 comments to Staff's proposal.

22 We may not, in fact, respond at all, but we
23 would at least like the opportunity to read and digest
24 their recommendations, and I believe there is precedent
25 for the Commission keeping the record open in rulemaking

1 proceedings. We're not asking for any exorbitant length
2 of time in that regard, but I would ask if that is
3 possible that we would be given the opportunity to file
4 supplemental comments in response to Staff's
5 recommendations.

6 JUDGE DALE: And how much more time would
7 you need?

8 MR. DORITY: Ten days, a week.

9 JUDGE DALE: How about on Monday morning?

10 MR. DORITY: That will be fine.

11 JUDGE DALE: Eight o'clock. So if I start
12 to go -- if I start to adjourn this proceeding, will
13 someone remind me that I'm merely recessing it until
14 eight o'clock Monday morning?

15 MR. DORITY: Thank you, Judge.

16 JUDGE DALE: Mr. Wood?

17 MR. WOOD: Do I need to be sworn in?

18 JUDGE DALE: No. You can just make
19 comments.

20 MR. WOOD: Very good. Thank you. I would
21 very briefly note, in the proposed rule, 1, under the
22 definitions, sub C7, there is a reference to -- that
23 automatically disables, and I would briefly note that 1C7
24 is being interpreted as requiring an interruption of power
25 flow from the customer to the power lines in the event of

1 a power outage or unacceptable service conditions. This
2 is not being interpreted as a requirement that customers'
3 backup sources of power during power outages must be
4 turned off until power is restored as this would clearly
5 be an absurd reading of the statute.

6 This reading would also be in clear
7 conflict with Section C of the contract in the proposed
8 rule where it refers to a parallel blocking scheme being
9 permissible.

10 That is the only note I have on behalf of
11 MEDA. It might be helpful during the rulemaking order if
12 there was some reference to the accuracy of that
13 interpretation. Thank you very much.

14 JUDGE DALE: Have you filed written
15 comments?

16 MR. WOOD: No.

17 JUDGE DALE: Could you, please, since there
18 will be time, could you follow up with specific language
19 that you would like to see?

20 MR. WOOD: Yes, I could.

21 JUDGE DALE: Thank you. That would help
22 immensely.

23 Ms. Tatro?

24 MS. TATRO: Good afternoon. On Friday,
25 AmerenUE filed its written comments, and I hope that you

1 have them in front of you. I will not go into them
2 further here, although I want to address the Staff
3 proposal and a couple other issues. But I did want to let
4 the Commission know that I have two individuals with me
5 here today if there are questions. I have Andy Sugg,
6 which is S-u-g-g, one of our engineers, and I have Wade
7 Miller who's in the regulatory group. Between the two of
8 them, I think we can provide answers to questions on our
9 comments.

10 I appreciate, Madam Judge, the extra time
11 to file comments responding to Staff's proposal, and I
12 presume when you are leaving the record open, that applies
13 to all parties equally.

14 JUDGE DALE: Absolutely.

15 MS. TATRO: Okay. UE's initial feeling on
16 the two alternatives that have been proposed by Staff is
17 that the least preferred is the one that redefines avoided
18 cost as the cogeneration rate. Other -- in other forums
19 there's discussion where avoided fuel costs may be
20 discussed and typically it's been, to the best of my
21 knowledge, it's been used as the average rate, that annual
22 average rate which is published, and I just worry that
23 changing the definition in one context then spills over.
24 I'm just worried it could cause some confusion. And if
25 the first alternative gets Staff what they need, that

1 might be the cleaner and safer methodology to use.

2 That said, however, AmerenUE has some
3 objection to the phrase, the greater than language. The
4 average cost is set, I guess, would be annually because
5 it's in the annual report, and the cogeneration rate is
6 reset every two years. And in the unlikely instance that
7 the average rate would somehow be different or higher than
8 the cogeneration rate, then you're asking the billing
9 system, which can't do it, to know to flip over to the
10 other rate, or UE, which by the way has different rates,
11 right, fall and summer, so we have to look at different
12 cogeneration rates, and make that manually, I suppose,
13 that change if that were to occur.

14 It just seems like a complication that
15 isn't really necessary and potentially could be
16 problematic. That's a bit of a concern there.

17 JUDGE DALE: But you'll be following up on
18 that particular issue in writing?

19 MS. TATRO: I will.

20 JUDGE DALE: Thank you.

21 COMMISSIONER JARRETT: This is a question,
22 anybody can answer this, but I'll start with you since
23 you're still up on the floor. Is there a difference
24 between a cogenerator and, say, some guy that wants to put
25 a windmill up at his residence? I mean, is there --

1 MS. TATRO: I believe that there is. I
2 believe a cogenerator is generating for the purpose of
3 producing power greater than their own use. Whereas,
4 somebody who puts the windmill up might be doing it mostly
5 for their own use and might occasionally have excess that
6 they would want to sell back to the system. Do you
7 disagree with me?

8 MR. MILLER: A little bit.

9 MS. TATRO: Maybe I should put one of my
10 witnesses up.

11 MR. MILLER: Generally cogeneration
12 refers --

13 JUDGE DALE: Excuse me. You need to be at
14 a microphone. You can even sit there with Ms. Tatro if
15 you want.

16 MR. MILLER: Wade Miller with Ameren.
17 Generally cogeneration refers to using the heat that would
18 otherwise just escape and using the heat source for a
19 purpose. That's what cogeneration normally refers to.
20 It's not necessarily related to how much power is being
21 produced versus consumed. It's just the fact that more
22 than electricity generation is occurring. You've got
23 electricity generation and recovery of the heat for some
24 other process.

25 COMMISSIONER JARRETT: Okay. And I guess

1 my question, if anybody would care to comment on this is,
2 what was the purpose of this statute? Is it for people
3 that are cogenerators or is it for the small residence or
4 small business that simply wants to generate some of their
5 own power and be able to sell their excess? Would they
6 be --

7 MR. MILLER: To my knowledge, true
8 cogeneration systems of this size, less than 100 KW, are
9 very, very rare. So I believe that the Net Metering Act
10 was primarily intended to help facilitate small energy
11 production, either being photo cells or windmills are the
12 two primary means available today, although there are a
13 few other types of just straight generation that is
14 considered renewable as well.

15 COMMISSIONER JARRETT: Okay. So maybe I'll
16 ask Staff and OPC then, why would we want to use the
17 cogeneration rates when the folks that this is -- that
18 this statute is meant for aren't cogenerators?

19 MR. BECK: Well, I guess the first thing
20 I'd say is that, in reality, we're not going to actually
21 pay the customer anything. They're going to get a credit
22 on their bill, and the credit on their bill is going to be
23 for the amount that they're currently -- as long as they
24 don't generate more than they actually use, the credit is
25 going to be equal to the rate that they use, which is

1 approximately 7 cents per KWH is what -- that's a real
2 rough number, but that's approximately what a customer
3 pays the utility as a residential that pays the utility to
4 use for each KWH they use.

5 So in this case, the vast majority of KWHs
6 that are generated by this type of customer are really
7 just going to be a credit at that 7 cents, which is the
8 same 7 cents that they're going to -- they would have to
9 pay the utility, and it's going to cancel each other out.

10 The only time the credit comes into effect
11 is in that rare instance and, quite frankly, for the type
12 of small generators that we're talking about here, there's
13 only, to my knowledge a handful in the state in the first
14 place, but I'm not aware of any of those generating more
15 power than they actually use, but it could happen, and in
16 that rare circumstance they're going to receive this
17 credit, which as you saw from the numbers is much less
18 than the 7 cents.

19 If you really were planning on setting up a
20 generator and you were planning on generating a fairly
21 large amount of KWHs, you in essence would like to be
22 paid, you know, a lot more than that number, a lot more
23 than 2, 3, 4 cents. And I think, in fact, sorry to kind
24 of bring this up, but PURPA recently, the Industry Policy
25 Act of 2005 had some revisions really dealing with the

1 very largest cogenerators where they in essence can
2 participate in the market and sell at market prices
3 instead of selling at some kind of specific agreed-to
4 number with the utility.

5 I think that's -- if you really were a
6 fairly large generator, you would have the ability to
7 participate in, for example, the MISO market and sell at
8 market prices your electricity, and I think that would be
9 what a larger entity would likely do.

10 COMMISSIONER JARRETT: That's my goal at
11 home.

12 MR. BECK: That's -- you know, it is one of
13 those things, that in the end utilities do operate in a
14 fairly efficient manner and they're hard to compete with
15 in their own business. That's the reality that most
16 consumers realize, I think.

17 COMMISSIONER JARRETT: Thank you.
18 Mr. Mills, did you have any?

19 MR. MILLS: Just to add on that a little
20 bit. Really, the way that the rate for -- one, I agree
21 with Mr. Beck, that specifically by statute 386.890, to
22 qualify for this program, the customer generator has to
23 have their system sized primarily to offset part or all of
24 their own electrical generation requirements, so that if
25 you build a system that's designed to sell back more than

1 Brenda Wilbers. I'm with the Department of Natural
2 Resources Energy Center.

3 I just wanted to point out one thing in the
4 contract. In Section B where it says system types, those
5 don't reflect the change in the statute that has been made
6 in the proposed rule. So I just wanted to point that out
7 that those need to be updated also. Did you catch that
8 already, Steve?

9 MR. DOTTHEIM: How do you propose offhand
10 that the contract would need to be changed, Ms. Wilbers,
11 if you could identify those changes?

12 MR. STEWART: Sure. Where it says system
13 type, the first one, solar, I think should be solar
14 thermal. Wind is okay. Biomass should be removed because
15 it was removed from the statute. Fuel cell should be one.
16 And then remove thermal by itself. Photovoltaic is fine.
17 Hydroelectric needs to be added since it was specifically
18 added in the statute.

19 I'd also like to comment that we
20 participated in workshops that the Commission held when
21 they were putting together the rule, provided comments.
22 We think that the proposed rule does address the statutory
23 changes. It is a significant improvement over the
24 previous statute and rule in the way that it does provide
25 additional incentives for customers to install renewable

1 capacity.

2 We are talking about small systems, up to
3 100 kilowatts, but I think -- I think the purpose of a
4 statute is to try to encourage these systems at the
5 customer's cost. So I think -- we haven't looked at
6 Staff's proposal today in depth, but that does make sense
7 to us, although we're not the experts in that area. Any
8 questions?

9 JUDGE DALE: Thank you. Is there anyone
10 else who wishes to make any further comments on the
11 record? Mr. Dottheim?

12 MR. DOTTHEIM: Again, for purpose of
13 clarity, there was a comment made by Ms. Tatro that I
14 just, not to belabor the record, want to respond to. The
15 Staff does not believe that it is proposing a change in
16 the statutory definition of the term avoided fuel cost.
17 The Staff believes that it is addressing the term current
18 average cost of fuel, which in the Staff's reading of the
19 statute, the Staff believes that term can be defined by
20 the Commission itself. Thank you.

21 JUDGE DALE: Any other last words? Hearing
22 none, then we will be in recess until eight o'clock on
23 Monday morning, at which time we will adjourn. Thank you
24 all very much.

25

1 C E R T I F I C A T E

2 STATE OF MISSOURI)
3) ss.
4 COUNTY OF COLE)

5 I, Kellene K. Feddersen, Certified
6 Shorthand Reporter with the firm of Midwest Litigation
7 Services, and Notary Public within and for the State of
8 Missouri, do hereby certify that I was personally present
9 at the proceedings had in the above-entitled cause at the
10 time and place set forth in the caption sheet thereof;
11 that I then and there took down in Stenotype the
12 proceedings had; and that the foregoing is a full, true
13 and correct transcript of such Stenotype notes so made at
14 such time and place.

15 Given at my office in the City of
16 Jefferson, County of Cole, State of Missouri.

17 _____
18 Kellene K. Feddersen, RPR, CSR, CCR
19 Notary Public (County of Cole)
20 My commission expires March 28, 2009.
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