

In the Matter of:

THE PROPOSED AMENDMENTS TO 4 CSR 240-20.060 FILING REQUIREMENTS, etc.

EX-2020-0006, VOL. I

August 11, 2020



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BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

Rulemaking Hearing

August 11, 2020

Jefferson City, Missouri

Volume 1

In The Matter of the Proposed)
Amendments to 4 CSR 240-20.060)
Filing Requirements for Electric) File No.
Utility Cogeneration) EX-2020-0006

JOHN CLARK, Presiding
REGULATORY LAW JUDGE

JASON R. HOLSMAN, Commissioner

REPORTED BY:
Beverly Jean Bentch, CCR No. 640
TIGER COURT REPORTING, LLC

A P P E A R A N C E S

JAMES M. FISCHER, Attorney at Law (By telephone)
Fischer & Dority, PC
101 Madison, Suite 400
Jefferson City, Missouri 65101
573.636.6758
FOR: Evergy Missouri Metro and Evergy Missouri West

CALEB HALL, Senior Counsel
PO Box 2230
Jefferson City, Missouri 65102
573.751.5558
FOR: Office of the Public Counsel

KAREN BRETZ, Staff Counsel
200 Madison Street, Suite 800
PO Box 360
Jefferson City, Missouri 65102-0360
573.751.4140
FOR: Staff of the Missouri Public Service Commission

TIM OPITZ, Staff Attorney
409 Vandiver Drive
Building 5, Suite 205
Columbia, Missouri 65202
FOR: Renew Missouri

PAULA N. JOHNSON, Senior Corporate Counsel (By
telephone)
PO Box 66149, MC 1310
St. Louis, Missouri 63166-6149
314.554.3533
FOR: Union Electric Company, d/b/a Ameren Missouri

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P R O C E E D I N G S

JUDGE CLARK: Let's go on the record. Today's date is August the 11th of 2020. It is currently 10:00 a.m. We're in Room 310 of the Governor Office Building.

Before I start this hearing, I'd like to go over the policies for this hearing as they relate to the COVID-19 pandemic. I'm going to ask that everybody who enters the courtroom enter through the door near the Madison Street and that if you exit you exit via the door by the bench. By doing that kind of one-way thing, it prevents people from bumping into each other in narrow corridors. I'm going to ask that we social distance as much as possible. That doesn't appear to be a problem in the courtroom right now. I'm going to ask that everybody wears a mask. If somebody comes in and is not wearing a mask, I'm going to ask them to leave and step into the hall and wait until the end to make their comments.

I'm going to ask that as much as possible if you are seated at a seat with a mike, microphone, that you make your comments from the seat that you're sitting at. If you elect to use the podium or need to use the podium, when you approach the podium there is a thing of hand sanitizer on the podium. I'm going to ask that you sanitize your hands before you touch the microphone.

1 Now, the Commission has set aside this time
2 today for a rulemaking comment hearing for oral comments
3 in the file captioned as In the Matter of the Proposed
4 Amendments to 4 CSR 240-20.060, Filing Requirements for
5 Electric Utility Cogeneration, and that is File No.
6 EX-2020-0006. And the subject of this hearing involves
7 -- I'm getting some background noise. I'm going to ask
8 that if you're not commenting that you keep your mike
9 muted. I'm also going to point out that because this
10 hearing is being done both via WebEx and over the web,
11 there's no video that's related to WebEx. You can only
12 participate via audio over WebEx. So if you've got the
13 video on in the background, which is going to be off
14 time by several seconds as it's streaming on the PSC
15 website, I'm going to ask that you turn the volume down
16 on that so that we don't pick that up as well. Please
17 mute if you're not speaking and keep the volume down on
18 the website stream.

19 To continue on, the subject of this is the
20 rescission of 20 CSR 4240-3.155 and that was the
21 requirements for electricity -- I'm picking up feedback
22 from somebody. Is there anybody who doesn't have their
23 microphone muted? That seems to be somewhat better.
24 That's the rescission of the requirements for electric
25 utility cogeneration tariff filings, and the amendments

1 for which comments are being received today are for 20
2 CSR 4240-20.060, Cogeneration of Small Power Production
3 and 20 CSR 4240-20.065, Net Metering.

4 Again, I'll probably say several times during
5 this thing if you are not speaking, please mute your
6 microphone.

7 My name is John Clark. I'm the Regulatory Law
8 Judge conducting this rulemaking hearing. At this time
9 I'd like to have the attorneys enter their appearance
10 for the record. I will go down the list of parties that
11 have submitted comments starting with Staff?

12 MS. BRETZ: Karen Bretz, Staff of the Missouri
13 Public Service Commission, PO Box 360, Jefferson City
14 65102.

15 JUDGE CLARK: Thank you, Ms. Bretz. For the
16 Office of the Public Counsel?

17 MR. HALL: Good morning, Judge. Caleb Hall
18 appearing on behalf of the Office of the Public Counsel,
19 200 Madison Street, Suite 650, Jefferson City, Missouri
20 65201.

21 JUDGE CLARK: Thank you, Mr. Hall. Is there
22 anybody present from Ameren?

23 MS. JOHNSON: Yes, Your Honor. This is Paula
24 Johnson, Senior Corporate Counsel for Union Electric
25 Company, d/b/a Ameren Missouri, business address 1901

1 Chouteau Avenue, St. Louis, Missouri 63103.

2 JUDGE CLARK: Thank you, Ms. Johnson. Is
3 there anybody here for the Empire District Electric
4 Company? I hear nobody. Is there anybody here for
5 Evergy? Mr. Fischer, I can actually see your video that
6 you're trying to talk. I believe you're muted.
7 Mr. Fischer, can you hear me?

8 MR. FISCHER: I can but I can't seem to
9 unmute. Go ahead.

10 JUDGE CLARK: I unmuted you, sir. Go ahead.
11 Please enter your appearance for the record.

12 MR. FISCHER: Yes. Appearing on behalf of
13 Evergy Metro, Inc., d/b/a Evergy Missouri Metro and also
14 Evergy Missouri West, d/b/a Evergy Missouri West, my
15 name is Jim Fischer. I'm with the law firm of Fischer &
16 Dority, 101 Madison Street, Suite 400, Jefferson City,
17 Missouri 65101.

18 JUDGE CLARK: Thank you, Mr. Fischer. Renew
19 Missouri?

20 MR. OPITZ: Thank you, Judge. Tim Opitz on
21 behalf of Renew Missouri. My address is 409 Vandiver
22 Drive, Building 5, Suite 205, Columbia, Missouri 65202.

23 JUDGE CLARK: Thank you, Mr. Opitz. Is there
24 anybody here from the Midwest Cogeneration Association?
25 They filed written comments. I hear no one. Is there

1 anybody present from the Missouri Solar Energy
2 Industries Association? They also filed written
3 comments. I hear no one.

4 Is there any counsel I have not called upon?
5 Okay. I hear no one. I will point out that this is a
6 rulemaking hearing. This is not a contested case. So
7 there's no cross-examination from the parties. The
8 Commission may however have questions for those who are
9 making comments. If you provide a comment, please be
10 sure to state your name and your position. I guess I'm
11 going to start with those who are present. I'm going to
12 start running backwards from the electrical corporations
13 who submitted comments through Renew Missouri to OPC and
14 finally ending with Staff.

15 So Ms. Johnson with Ameren, did you have any
16 oral comments that you wish to make?

17 MS. JOHNSON: I do, Your Honor. Thank you
18 very much. The first thing I would like to state is
19 that as the parties are aware, the FERC, the Federal
20 Energy Regulatory Commission on July 16 issued rules
21 regarding --

22 JUDGE CLARK: Hold on just a second, Ms.
23 Johnson.

24 MS. JOHNSON: Certainly.

25 THE COURT REPORTER: I'm sorry. Can she start

1 again and maybe turn her volume up?

2 JUDGE CLARK: Ms. Johnson, the court reporter
3 is asking if you would start again and can you maybe
4 speak just a little bit louder or turn your volume up?

5 MS. JOHNSON: Okay. Is this a better volume?

6 JUDGE CLARK: We will do the best we can.

7 MS. JOHNSON: Okay. Sorry. I will try to
8 make sure I speak slowly and clearly. My apologies. I
9 think it's important to note that FERC on July 16 issued
10 a rulemaking order that very significantly -- the PURPA
11 rules, Public Utility Regulatory Policies Act rules,
12 that have been largely unchanged since, you know, the
13 '70s and '80s with the exception --

14 Now, the reason this is important and I bring
15 this to the Commission's attention is there are a lot of
16 competing timelines in the Commission's proceedings that
17 when you sit down and draw a line through them make it
18 very clear that we've had no real opportunity to look at
19 these FERC rules over the course of developing these
20 Commission rules.

21 For example, in File No. EW-2018-0078 and
22 EW-2017-0245, the latter one in particular, I believe
23 that was the last time, that was the Emerging Issues
24 docket, I believe that's the last time any comments were
25 made regarding these specific rules in the Emerging

1 Issues docket. And I believe that it was also
2 approximately the last time any comments were made in
3 the Cogeneration rulemaking docket.

4 Now, it was a month after that, or nearly a
5 month after that, on September 6, 2019, that the Renew
6 Missouri rulemaking docket EX-2019-0378 was closed.
7 Now, it wasn't until September 19, 2019 that FERC
8 actually issued its notice of proposed rulemaking in
9 Docket No. RM19-15. So that was the first real instance
10 where we had the good substance of what FERC was seeing
11 in its draft rules, and none of those other dockets have
12 been able to appropriately consider those.

13 Now, in the Commission File No. EX-2020-0006,
14 that is when the Commission set its proposed rule for
15 publication in the Missouri Register. And they were
16 published finally on July 1, 2020. On July 16, 2020 is
17 when FERC issued its rulemaking order. So when you
18 actually look at the timeline, while we knew there was
19 going to be an activity at FERC, I mean, Ameren Missouri
20 pointed that out in its August 2018 comments, we didn't
21 know the substance of what FERC was going to do until
22 most of the comments were already completed in the other
23 proceedings and we didn't have the rulemaking until
24 after these proposed rules were published.

25 Now, the Net Metering rules, we think those

1 are fine to go forward. We don't have any issue with
2 those going on because they're somewhat impacted but not
3 significantly impacted by what's going on with the
4 Cogeneration of Small Power Production rules. This is
5 really the first real opportunity we have to address the
6 substance of the FERC rule. So we would like to suggest
7 that we take that portion of the rulemaking back to a
8 workshop so we can more substantively consider what it
9 is that FERC has given us guidance on in these rules.

10 We understand that, you know, we're four days
11 out from the time limit for parties to ask for
12 reconsideration of the FERC rule. But even if it gets
13 tied up, we still have a lot of very useful information
14 from FERC that could help inform and better create the
15 rule -- an effective rule for the state of Missouri and
16 we may as well accept that guidance because it is very
17 much --

18 THE COURT REPORTER: I'm sorry. It is very
19 much what?

20 JUDGE CLARK: I'm sorry. Ms. Johnson, can you
21 back up to it's very much -- Ms. Johnson?

22 MS. JOHNSON: Can you hear me?

23 JUDGE CLARK: Yes, I can now.

24 MS. JOHNSON: Okay. My apologies. I think
25 it's very important that we go back and try to consider

1 the guidance that FERC is giving us because even if it's
2 tied up in reconsideration or rehearing, it still very
3 much shows the mindset of FERC and gives very valuable
4 guidance. And some of those if the rule does become
5 permanent are going to be things we really need to
6 consider.

7 First I want to talk about the creation of the
8 legally enforceable obligation, and to quote the fact
9 sheet which is summarizing the order that FERC sent out
10 with its order, the new rules regarding legally
11 enforceable obligations require, and this is a quote
12 from that rule, or from the fact sheet, require states
13 to establish objective and reasonable criteria to
14 determine a QF's commercial viability and financial
15 commitment to construction before a QF is entitled to a
16 contract or legally enforceable obligation.

17 Now, that's something that's not considered in
18 the current rule; and if the FERC rule becomes
19 permanent, then we have a state requirement and we have
20 an opportunity to go ahead and work on building those
21 criteria in now rather than having to redo the rule
22 again after, you know, after it's published. If the
23 FERC rule becomes final, then we just have to pull one
24 of these rules back and go through this process all over
25 again.

1 Now, even if it is tied up in litigation, FERC
2 does leave the criteria for the creation of a legally
3 enforceable obligation to the state, and we have
4 insights now into what some good criteria for that
5 creation might be. So even if the FERC rule doesn't go
6 into effect, it still is a good idea to come back and
7 look at putting that definition in our regulations,
8 which I can assure you based upon my prior legal
9 experience can help you avoid years worth of litigation
10 down the road.

11 So even if the FERC rule does not go forward,
12 this is still a good idea to try to address now and we
13 have some good objective criteria to look into crafting
14 of a Missouri rule on that topic. You know, the FERC
15 rule also proposes a lot of new flexibility and
16 methodologies in how to establish energy rates and QF
17 power sales contracts. I mean, we're looking at when
18 there's fixed pricing we can still look at forward
19 pricing curves and, you know, when we're looking at as
20 available energy, we can look at competitive
21 solicitations and we can do formulas that are based on
22 heat rates. All of this is stuff we have not had the
23 opportunity to fully workshop, and I think it wouldn't
24 hurt anything to pull it back and begin to look at this
25 and see if we can work on some of this new guidance and

1 codify these guidelines now rather than making
2 determinations through litigation in the future.

3 I also wanted to quickly address comments made
4 by a couple of other -- just a couple of discreet
5 comments that were made by others in this proceeding.
6 In some of the filed comments in this docket, there's
7 the suggestion that the standard offer contracts should
8 contemplate sales up to 20 MW. That is another maximum
9 that is based on the prior -- or on the currently
10 effective PURPA rule. If the new PURPA rule goes into
11 effect, utilities will have the opportunity to apply to
12 get their purchase obligation limits down to 5 MW. And
13 currently Ameren Missouri has applied for and obtained
14 the 20 MW limit. We would also go in and apply for the
15 5 MW limit. And that is something that we want to see
16 what happens. If we do accept what the suggestion of
17 the 20 MW limit, that is another rule we may have to go
18 back and revisit later if the PURPA rule becomes final
19 and effective.

20 I also wanted to state we got a preview of --
21 We're very grateful to Staff for sending us a preview of
22 what comments they are going to offer, and I do want to
23 very much thank them for clarifying how they envision
24 the process regarding standard offer contracts. That
25 was very, very helpful and has provided us some peace.

1 I'll let them speak to that in more detail obviously,
2 but I did want to thank them for sharing those comments
3 and that we're very grateful and appreciative of the
4 thought and consideration they've put into that.

5 So I guess basically I just want to summarize
6 we think it's very, very important to consider the FERC
7 rulemaking because it could have and very much will
8 have, even if it's just in guidance in future
9 litigation, it will impact how the parties are
10 approaching these PURPA details in our execution of
11 contracts and in our standard purchases. So we highly
12 recommend that that portion of the rulemaking be held
13 back and explored through continued workshops so that we
14 can actually have an opportunity to address the guidance
15 -- the substantive guidance from FERC that we have not
16 had a real opportunity to address previously in this
17 matter.

18 And that concludes the remarks I had prepared
19 that I wanted to address and I'm happy to answer any
20 questions.

21 JUDGE CLARK: Thank you, Ms. Johnson. Any
22 questions from the Commission? I don't hear anybody.
23 I've got one kind of brief question. It appears that a
24 lot of the parties that filed comments indicated that
25 they felt that this rule at least in regards to the

1 cogeneration was a step in the right direction but maybe
2 did not go far enough. Given that those were some of
3 the comments received and taking in mind what you said
4 about potential litigation, what do you see as the
5 potential harm of the Commission's rule as it stands as
6 an intermediary step given that we could be years away
7 from a FERC rule actually taking effect?

8 MS. JOHNSON: I think the biggest harm is, you
9 know, the opportunity for protracted litigation at the
10 Commission. I will, if I may relay some anecdotal
11 evidence for this, I used to work in the state of Iowa
12 for Alliant Energy and if you look at the Iowa Utilities
13 Board dockets, there's a series of cases that lasted for
14 several years regarding some wind farms that were
15 wanting to hold Alliant to the purchase obligations.

16 And Iowa at that point had not defined legally
17 enforceable obligation. It did not have a lot of
18 criteria in place for how you determine avoided costs.
19 And what we ended up doing was we had five to six years
20 worth of litigation and four connected cases, and it
21 takes up a lot of time, it takes resources, and they're
22 all things that could have been avoidable had issues
23 such as legally enforceable obligations been defined
24 from the outset and had standards for how to calculate
25 avoided costs been defined at the outset.

1 So do I think we have things a step in the
2 right direction? You know, I think we do, but we have
3 an opportunity now with FERC guidance on a lot of these
4 issues and the benefit of a lot of different
5 perspectives that they had to weigh to really help us
6 out because when you think about it right now part of
7 the calculation of avoided costs or the determination of
8 legally enforceable obligation ultimately when we are
9 making these purchases, our customers pay the price for
10 those purchases. And if we know for sure, we can do
11 things like look at a forward pricing curve. Then we
12 feel like we're protecting our customers better also.

13 If we, rather than locking in a solid rate for
14 20 years, if we know we can go out -- and if someone
15 wants to give us as available energy, if we know we can
16 go out for solicitation and use that as evidence of what
17 unavoided costs should be, then we know that at the
18 outset and we aren't ending up litigating well, you
19 know, sure you can use that competitive solicitation but
20 we could also look at how you're modeling your energy
21 costs and use that but we're going to adjust these rates
22 and that to make the price even higher. So those are
23 the two basic issues I see. One, we could end up in
24 protracted litigation and I've experienced that before.
25 While, you know, it's job security, it's not my happy

1 place. And number two, the cost that we -- If we can
2 manage those costs at the outset, we can keep costs down
3 for our customers. Those are the two big
4 vulnerabilities I see with going with the stopgap
5 measure when we have this guidance available to work in
6 now.

7 JUDGE CLARK: Thank you, Ms. Johnson. Any
8 oral comments from Evergy?

9 MR. FISCHER: Just briefly, Judge. Evergy
10 filed written comments with Ameren as well as Liberty.
11 We had raised some technical issues there. I don't
12 think I really need to go over those too much. I think
13 I would join, though, in Paula Johnson's comments about
14 the advisability of maybe having another workshop to go
15 over the FERC order in some detail.

16 One of the very fundamental aspects of this is
17 calculating avoided costs, and it's my understanding
18 that those calculations are still somewhat up in the air
19 and fluid and it might be worth our while to spend some
20 time going over those and trying to make sure that we're
21 together with where FERC is headed.

22 So with that, that's really all I would say at
23 this point. I've asked you to look at our technical
24 comments as well. Thank you.

25 JUDGE CLARK: Thank you, Mr. Fischer. Any

1 questions from the Commission? I hear none and I have
2 none. Moving on. Any oral comments from Renew
3 Missouri?

4 MR. OPITZ: Yes, thank you, Judge. First I
5 want to thank the Commission for convening this
6 rulemaking and proceeding ahead with it despite the
7 recent FERC Order 872. Renew Missouri, we offered
8 prefiled written comments on the 31st, and I encourage
9 the Commission to adopt those edits.

10 As an initial matter and to respond in part to
11 the comments from counsel for the investor-owned
12 utilities, I want to say that FERC Order 872 is not yet
13 final. The rules that will stem from that will become
14 effective after 150 days of being published in the
15 Federal Register.

16 Moving forward with our current rules would be
17 consistent with the overarching message of Order 872
18 which continues to give this Missouri Commission the
19 ability to grant independent power producers
20 non-discriminatory access to the market, create
21 transparency to avoided cost data, and to create the
22 ability to enter into long-term fixed contracts with
23 utilities.

24 Before I get into my prepared remarks, I want
25 to respond to two items. The first being related to the

1 5 MW limitation on the standard offer contracts. Renew
2 Missouri had proposed a standard offer contract up to 20
3 MW. We still believe that's appropriate. First because
4 that is the current limit and second because Order 872
5 only changes that limit for small power producers which
6 are generally renewable energy production facilities.
7 The 20 MW limit still remains at 20 MW for cogeneration
8 facilities, which I believe one other prefiled commenter
9 pointed out and we pointed out in our comments as well.

10 So in the event that a cogeneration facility
11 wants to come to Missouri in an investor-owned utility's
12 territory, it would be important and administratively
13 efficient for that 20 MW limit to remain.

14 The second thing was related to not moving
15 forward with the cogeneration rules because of the
16 possibility for protracted litigation. My response is
17 that the Commission, Missouri Commission still remains
18 its authority to establish timelines on which cases
19 proceed. One extreme example that I was a participant
20 in was the Greenwood Solar CCN case a few years ago
21 where the procedural schedule from direct testimony
22 filed to the hearing being conducted was I believe less
23 than one month.

24 So the idea that protracted litigation would
25 run out of control, that's something entirely within the

1 purview of the Commission.

2 So now to my prepared remarks. Again, I want
3 to reiterate that adopting Renew Missouri's proposed
4 edits to the rule maintain this Commission's oversight
5 regarding avoided costs, contract terms, contract
6 lengths, and safety standards, rather than deferring
7 them to a not yet effective FERC federal order.

8 This has a benefit of allowing the regulators
9 with the most direct contact with our utilities and with
10 our state to have the most input. In my comments, I
11 want to highlight some of these technical aspects of our
12 proposed rules, as well as some of the policy reasons
13 that supporting these rules makes sense for Missouri.

14 First, PURPA requires non-discriminatory
15 access to encourage cogeneration and small power
16 production. This means that generally utilities have an
17 obligation to purchase power from qualified facilities
18 being those small power production facilities or
19 cogeneration facilities at their avoided costs. This is
20 the only real competitive pressure on vertically
21 integrated utilities whether or whether or not they are
22 inside an RTO market. Even within RTO markets as are
23 investor-owned utilities are, qualified facilities of
24 all sizes, many of which could interconnect on a
25 utility's distribution system, face barriers to entering

1 that transmission market. This is particularly true for
2 systems smaller than 20 MW. As the Commission is aware,
3 PURPA covers facilities up to 80 MW. But recent or not
4 so recent decisions have said that units smaller than 20
5 MW are presumed to have not -- to not have
6 non-discriminatory access to the market.

7 As we point out in our filed comments, the
8 proposed FERC rules, even the new rules implicitly
9 recognize that systems of 5 MW for the small power
10 production facility and 20 MW for cogeneration
11 facilities do not have non-discriminatory access to the
12 markets. And again, as I pointed out in our comments,
13 the dissenting opinion called this a gutting of the
14 current rules. But that is still five times greater
15 than the Missouri's proposed rule which is to be clear
16 an improvement from what we have five times greater than
17 what we are proposing to move to.

18 One way that Renew Missouri proposes to
19 increase our non-discriminatory access to these QFs is
20 to require meaningful standard offer contracts. The
21 availability of standard rates brings advantages by
22 reducing transaction costs and reduces the need for
23 every qualifying facility and the utilities involved to
24 negotiate for systems that would bring benefits to the
25 grid, to customers to purchase power at the avoided

1 cost, and to the environment in the case of renewable
2 small power producers and in the case of some
3 cogeneration through decreased emissions on site.

4 By increasing the sizes of standard offer
5 contracts in its Missouri regulations, this Commission
6 would take steps to significantly encourage the
7 development of these qualified facilities as the PURPA
8 statute requires. What we have proposed is expanding
9 the standard offer contracts in the Commission's rule to
10 include levels of 2.5 MW, 5 MW and up to 20 MW. The
11 reason we proposed these is because the 20 MW is the
12 outside limit that's currently in place.

13 The 2.5 and the 5 MW were previously under
14 consideration by the Commission when it asked the IOUs
15 to examine whether they would be able to put these sizes
16 on their distribution network. The utilities' responses
17 were varied, but Renew discussed three considerations
18 that they raised in the comments. First, it's worth
19 noting that KCPL, now Evergy, pointed out that it would
20 be able to accommodate varying sizes of the customer
21 system, including 1 MW, 2.5 MW and 5 MW systems as a
22 part of the standard offer contract through
23 site-specific analysis and any resulting upgrades needed
24 for the distribution system.

25 KCPL noted that it could do this because the

1 regulations currently and as proposed in the
2 Commission's rule require the qualified facility to pay
3 for interconnection costs.

4 Empire's comments point out that safety and
5 reliability should be a primary concern when thinking
6 about adding QFs. Renew Missouri agrees that safety and
7 reliability are important, but those should not be the
8 reasons to not offer standard offer contracts that have
9 avoided costs and contract terms within them.

10 The standard offer contracts can incorporate
11 safety and reliability metrics that should be met.
12 Furthermore, the proposed rule already includes
13 provisions that say each electric utility will develop
14 technical and performance standards and interconnection
15 test specifications to its distribution system to be
16 included in its standard contract template. Technical
17 and performance standards will include provisions
18 related to metering, protection of equipment and
19 disconnection switches.

20 In Renew Missouri's view, it's reasonable to
21 require qualifying facilities to adhere to safety and
22 performances standards, and the best way to accomplish
23 meeting those standards while providing transparency to
24 potential QF developers is to include these requirements
25 in the utility's standard offer contracts to be filed

1 with the Commission. The last utility Ameren Missouri
2 pointed out its view that different standard offer
3 contracts might not actually encourage qualified
4 facility development because the distribution system
5 impacts would be facility specific and QF participation
6 rates are not a function of only the capacity of the SOC
7 meaning, you know, the 5 MW or the 2.5 or the 1 MW or
8 the 20 MW limits, but they're also very dependent on the
9 price and the term of the standard offer contract.

10 We agree that those are considerations that
11 will encourage development of QFs, but we disagree with
12 Ameren that that means we shouldn't offer QFs up to that
13 size. Our response is we can address those issues by
14 including contract term and the avoided cost in these
15 standard offer contracts.

16 On avoided cost methodology and contract
17 length, I would say the Commission's proposed rules are
18 an improvement on avoided cost transparency, but an
19 opportunity for comments by the parties would improve
20 the record for the Commission to make its decisions. I
21 will say it was pointed out that there may be new
22 methods available for the utility to and the Commission
23 to determine avoided costs. I think that the
24 Commission's proposed rule already accommodates the
25 availability of utilities to put forward those methods

1 assuming that the FERC rule becomes effective.

2 That would be in Section D sub 4 where it says
3 the electric utility may propose any other method that
4 can be demonstrated to reflect avoided costs. So in my
5 mind, that's another reason why there's no need for
6 delay to wait on the FERC rules. The utilities could
7 propose that.

8 This Commission in its proposed rules has a
9 variety of, I believe there's four, and that fourth one
10 being the one where the utility can propose its own
11 method, ways of determining the avoided costs to be
12 included in the standard offer contracts. The
13 Commission has experience examining avoided costs and
14 determining what is appropriate for each utility.

15 Prominent examples include MEEIA cases in
16 Missouri. In Evergy and Ameren's recent Cycle 3
17 filings, avoided costs were a prominent issue. In
18 Ameren, the parties reached an agreement that talked
19 about forecast avoided costs. In Evergy, it was the
20 primary determination that the Commission had to make
21 and it did so. Encouraging both MEEIA and qualified
22 facility development relies on avoided costs. Just as
23 our investor-owned utilities say they will not be able
24 to pursue energy efficiency without appropriate avoided
25 cost compensation, QF developers can't begin projects

1 without knowing what the avoided cost compensation is
2 that they will receive or the term of it. And that's
3 part of the importance of standard offer contracts of a
4 size that will allow them to achieve certain economies
5 of scale.

6 Prior MEEIA cases also provide some indication
7 about the necessity and certainty regarding the length
8 of contract in conjunction with long-term IRP planning.
9 In prior cycles of MEEIA, the utilities have argued that
10 the avoided cost rates used in developing the plan
11 should continue to be static based on the IRP avoided
12 costs at the time that they begin the program. Their
13 rationale was that this static cost, which the current
14 FERC rules and the proposed Commission rules would
15 allow, is that they need certainty to begin moving
16 forward with these projects. So again, the Commission
17 has experience examining avoided costs and has
18 experience examining how long those avoided costs should
19 be in place I guess as an analog for contract length.

20 The assumption that long-term contracts at
21 Commission-determined prices will be potentially above
22 the market is unfounded. Again, PURPA requires the
23 purchase to be made at the avoided cost rate which could
24 result in savings for the customers. Allowing longer
25 term contracts and larger qualified facilities than 1 MW

1 as Renew Missouri proposes in its rule enables these QF
2 developers the certainty and cost recovery to move
3 forward just like the utilities need certainty and cost
4 recovery to move forward.

5 No large-scale utility investment gets made by
6 any party without certainty regarding projected
7 revenues. For our IOUs, they recover that through rate
8 cases and those rates established by the Commission,
9 which necessarily subjects ratepayers to price risk in
10 exchange for certainty of generation supply. In the
11 case of investor-owned utilities, when they construct a
12 project, the ratepayer also however carries the risk of
13 construction cost overruns, operation and maintenance
14 expenses, and with non-renewable resources, the price
15 volatility.

16 With an IPP and in the case of qualified
17 facilities, the financiers bear all the risk of
18 developing the qualified facility. The rate that is
19 established by the Commission and the rate that they
20 begin to take under at the implementation of the legally
21 enforceable obligation is set. Furthermore, again,
22 under the rules at Sections (4) and (11), these standard
23 offer contract rates would be approved by the Missouri
24 Commission. And this is another opportunity for the
25 Commission to exercise its obligation and its authority

1 to ensure that Missourians are paying just and
2 reasonable rates for electric service. However, in the
3 standard offer contract it would be through an
4 independent power producer rather than through the
5 utility billing it itself.

6 Counsel for Ameren Missouri stated that the
7 LEO definition has changed in the proposed rule and
8 indicated that it was important consideration. Renew
9 Missouri has proposed a definition and a process for
10 when an LEO is established in our proposed rules. We
11 agree that that is an important consideration in the
12 rule because that's when the developer is able to fully
13 be aware of the prices and term of the contract that it
14 will have in order to develop its project.

15 So those are some of the technical
16 modifications that Renew Missouri proposes. One policy
17 reason, as I mentioned I talked about some of these
18 policy reasons, is that fully implementing PURPA through
19 Renew Missouri's proposed revisions can help make
20 Missouri competitive for corporate investment.

21 In addition to allowing customers to benefit
22 from the economic and renewable generation purchased at
23 avoided cost, implementing our changes will create other
24 benefits to Missouri.

25 In several recent CCN cases where our

1 utilities have proposed renewable generation, Renew
2 Missouri offers testimony that a growing number of
3 customers want more access to renewable energy resources
4 to meet their own sustainability metrics. This is
5 evidenced by dozens of major companies that have signed
6 on to support the Corporate Renewable Energy Buyers'
7 Principles and governmental bodies such as the cities of
8 St. Louis and Kansas City establishing their own clean
9 energy goals.

10 It's our view that just as we support it when
11 the utility pursues this renewable generation and it
12 will help satisfy corporate buyers' desire for renewable
13 energy, the ability of independent power producers to
14 sell their renewable energy to the utility will attract
15 and help corporate energy buyers meet their metrics.

16 Furthermore, in our comments I want to point
17 out we attach the Corporate Clean Energy Procurement
18 Index for 2020. This was a report created to guide
19 commercial and industrial renewable energy electric
20 usage across the United States. The Index ranks all 50
21 states based upon the ease with which companies can
22 procure renewable energy based on indicators tracking
23 policy mechanisms and current deployment levels.

24 Basically the report finds that Renew Missouri
25 -- or Missouri is in the bottom half ranking 29 at

1 availability of interconnection to distributed
2 generation systems to the grid. For improving our
3 Commission's cogeneration rules to better align with
4 PURPA as Renew Missouri proposes should make Missouri
5 more competitive for corporate energy procurement and
6 increasingly for site location.

7 The ability to attract companies within that
8 report focuses largely on retail customers, big box
9 stores, but Missouri has seen recent cases where the
10 ability to attract industrial customers can be advanced
11 by renewable energy. For example, the Nucor steel mill
12 in Sedalia, Missouri, the Commission allowed Evergy to
13 obtain the power needed to serve Nucor by entering into
14 a purchase power agreement for the delivery of wind
15 power. I know this was a significant consideration in
16 allowing that project to move forward at least by some
17 stakeholders in that docket.

18 In that case, importantly I think it's worth
19 highlighting the economic benefits again that upon
20 completion that project would encompass more than 250
21 million of private investment and create 250 new
22 employment opportunities with an average salary of
23 \$65,000. Increasing renewable access results in real
24 investments in jobs in Missouri with economic
25 opportunity. This is always important in Missouri but

1 it's increasingly more so during the current economic
2 downturn caused by COVID-19.

3 Another policy reason Renew Missouri proposes
4 modifications to the rule is that fully implementing
5 PURPA's mandate to encourage small power production and
6 cogeneration will lead to direct economic benefits.

7 Failing to implement PURPA so far has caused
8 Missouri to lag behind other states in developing
9 renewable energy and realizing the attendant economic
10 benefits. We have filed comments in the previous
11 workshop and in our own petition for a rulemaking last
12 summer comparing Missouri to the example of North
13 Carolina.

14 North Carolina had robust PURPA implementation
15 rules which catapulted that state to second in the
16 nation in installed utility-scale solar owned by
17 independent power producers which was responsible for
18 billions with a b of dollars in private sector energy
19 investment in that state.

20 While North Carolina has a comparable solar
21 resource and a relatively comparable population profile
22 to Missouri, the state had approximately 25 times the
23 amount of installed solar. In North Carolina, those
24 companies caused 7.75 billion in investment and employed
25 over 6,500 people. Missouri's investment so far is just

1 over 500 million and there's been about 2,819 employees.
2 As the Commission can see from the comments filed by
3 MOSEIA, the current economic downturn has hit solar
4 installers and they are concerned about prospects moving
5 forward at least based on my reading of their comments
6 filed.

7 As Missouri continues to suffer from shrinking
8 economic prospects, these rule changes proposed by Renew
9 are an intangible and significant way the Commission can
10 help jumpstart our recovery while providing energy to
11 customers at avoided cost.

12 Lastly, I just want to again thank the
13 Commission for moving forward with this docket. I would
14 encourage the Commission to adopt our changes included
15 in our prefiled comments in order to help get Missouri
16 on the right track for encouraging qualified facilities
17 as FERC requires and the types of market valuable --
18 valuable market investment that will make Missouri's
19 grid more decentralized, efficient, diverse and
20 resilient. Putting these changes forward will result in
21 a more favorable economic market and attract businesses
22 to our state, and I encourage the Commission to do so.
23 That's all the comments I have. Thank you.

24 JUDGE CLARK: Thank you, Mr. Opitz. Any
25 questions from the Commission?

1 COMMISSIONER HOLSMAN: Yes, Judge. I've got
2 one. This is Commissioner Holsman.

3 JUDGE CLARK: Go ahead, Commissioner.

4 COMMISSIONER HOLSMAN: Thank you. Thank you
5 for your testimony. In the past a little bit here we
6 had a policy discussion about time of use and access for
7 net metered customers to have non-discriminatory access
8 to the same rates as the rest of their rate base. How
9 does Missouri stack up with other states when it comes
10 to non-discriminatory access of renewable energy users?
11 Can you speak to that?

12 MR. OPITZ: Specific to the net metering
13 customers, which has the 100 KW limit, I think we're
14 about average for that net metering. Now, that's set by
15 Missouri statute. When it comes to independent power
16 producers such as qualified facilities, I would say that
17 Missouri lags considerably.

18 We can look at states that have moved forward
19 with it like North Carolina, South Carolina has done so,
20 and we're seeing states in the industrial midwest like
21 Michigan and Minnesota move forward with more
22 independent power producers. Just as an example by way
23 of potential investment that could happen is there are
24 significant industrial users such be it commercial
25 poultry grow houses or let's say hog CAFOs that use

1 significant power.

2 With updated standard offer contracts, right
3 now they're limited to essentially 100 KW or they've got
4 to negotiate separate compensation with the utility.
5 With the standard offer contract, it would really ease
6 the ability of these power producers to put power on
7 site to, one, it could be behind the meter, it could be
8 in front of the meter, to power their operations because
9 they're going to have more certainty in what
10 compensation they'll get when the power they produce is
11 put back onto the grid.

12 Now, behind the meter it could be sized to
13 appropriately fit it; but when you're looking at a large
14 facility, there may be times when they are down for
15 operations or whatever it is and they aren't putting
16 that power back on the grid. So having the ability to
17 enter a standard offer contract would make it in my view
18 a lot easier for some of these industrial customers to
19 participate in renewable energy.

20 COMMISSIONER HOLSMAN: Don't we have some
21 retail customers now in the state of Missouri that
22 already have 1 MW behind the meter at their own -- Isn't
23 there an IKEA or something that has a 1 MW system that
24 is generating power just for their use?

25 MR. OPITZ: Yes, I believe that's true and I

1 think that their compensation was negotiated directly
2 with Ameren Missouri. Now, Ameren, their current
3 tariffs I believe already permit up to 1 MW and I think
4 that was as a result of just their own initiative there.
5 But I would say that their tariff sheets say you can
6 elect to -- up to that amount you can elect to receive a
7 certain compensation that changes every other year, I
8 believe, or you can elect to not receive any
9 compensation depending on how you hook your meter up.

10 So if we were to, say, increase the standard
11 offer contract to 5 MW, if there were a facility that
12 could accommodate that amount of power, they would still
13 have the opportunity to sell that excess onto the grid
14 whereas right now I don't think any of the current
15 utilities have tariffs in place that would easily allow
16 a non-sophisticated company to participate in that
17 market.

18 COMMISSIONER HOLSMAN: What do you think would
19 happen with the current customers who are in that
20 situation where they already are taking advantage of
21 that 1 MW of power, are they going to be subject to the
22 new opportunities that are going to be presented? Will
23 they be able to renegotiate their position with the
24 company or how does that -- how do you address that?

25 MR. OPITZ: Again for the net metering

1 customers, that would remain I guess subject to the net
2 metering rules. It's basically going to offset their
3 retail rate plus the utility's avoided cost for a
4 customer --

5 COMMISSIONER HOLSMAN: No, I'm talking about
6 the commercial customers.

7 MR. OPITZ: A commercial customer like an
8 IKEA?

9 COMMISSIONER HOLSMAN: Exactly. If they
10 already have a relationship with Ameren under the
11 existing tariff and this goes forward, will they be able
12 to then go back and renegotiate their position or are
13 they grandfathered in to the existing position or do we
14 know what happens with folks who are already producing
15 this kind of power?

16 MR. OPITZ: So I don't know the particular
17 details of their individual contract. I think that they
18 have a separate contract outside of the tariff. I'm not
19 100 percent sure on that. But I would envision that
20 when the new tariffs go into place, the existing
21 customers would be able to take advantage of those
22 opportunities. And the reason I envision that is
23 because I've seen case law and it was sort of discussed
24 in that Nucor case that says yes, the utility and
25 customers can enter contracts but it's ultimately the

1 Commission that will establish the rates to be paid and
2 the Commission isn't binding itself.

3 So the Commission can go ahead and update
4 those contracts as it were if it sees fit is my view.

5 COMMISSIONER HOLSMAN: What kind of forecast
6 do you make if this goes forward with the type of --
7 What percentage of the overall portfolio would you see
8 --

9 JUDGE CLARK: Commissioner Holsman, could you
10 repeat that question, please?

11 COMMISSIONER HOLSMAN: Yes. What kind of
12 forecast do we see if this goes forward now? What kind
13 of percentage of the overall portfolio will be taken
14 advantage of by new businesses that may be moved to
15 Missouri or existing businesses here that would take
16 advantage of an agreement or a tariff like this that
17 would allow them to either generate their own power or
18 have an agreement with someone who does for them? How
19 much are we talking about here in terms of the usage of
20 the new tariff?

21 MR. OPITZ: I guess to the direct percentage,
22 I don't know, Commissioner. I think that again that
23 will be dependent on what this Commission determines the
24 avoided cost rates and the terms of the standard offer
25 contracts that this rule would require the utilities to

1 file what that ultimately would be. I think that -- I'm
2 aware of a few companies in Missouri who would take
3 advantage of the solar at a large scale and a few that
4 are interested in something that might qualify under the
5 cogeneration rules.

6 Now, that's just an anecdotal handful of
7 businesses that I'm aware of; but to put a specific
8 percentage, I don't know and I think it will be
9 dependent on what the Commission decides the avoided
10 costs and contract length in those standard offer
11 contracts will be.

12 COMMISSIONER HOLSMAN: Okay. Thank you very
13 much. Thank you, Judge. That's all I have.

14 JUDGE CLARK: Thank you, Commissioner. Just
15 to clarify, the Renew included an amended version of the
16 proposed rule as Attachment A to its written comments,
17 correct?

18 MR. OPITZ: That's correct, Judge, and our
19 modifications are because the Secretary of State uses
20 bolding and italicized, I highlighted them in yellow the
21 language that we modified.

22 JUDGE CLARK: I saw that. So there was
23 legally enforceable contract was a big yellow area for
24 you guys. In other words, you propose language in
25 regard to that. Just to summarize, you indicated that

1 you did not see, as some other parties have indicated
2 they see, any sort of issue with avoided costs as put
3 forth?

4 MR. OPITZ: Can you repeat that? I thought
5 you were going to ask about LEOs, but then you kind of
6 asked about avoided costs.

7 JUDGE CLARK: You're correct. I noticed that
8 the LEO was the major change, one of the major changes
9 that you proposed to the amended rule. I noticed you
10 didn't really address avoided costs and then during your
11 oral comments you seem to indicate that you didn't have
12 a problem with the way avoided costs is currently put.
13 You said that the Commission has experience handling or
14 addressing avoided costs, and you even cited a Section
15 (D)4, I guess sort of a choose your own adventure
16 avoided costs for lack of a better word for the utility.
17 So you don't seem -- but other parties have indicated or
18 other commenters have indicated that they thought that
19 avoided costs was not defined, that there failed to be a
20 distinction between avoided costs and fuel costs.

21 MR. OPITZ: Sure. So first I would say it's
22 true that there isn't a number that you can divine from
23 this proposed rule, right, just as there isn't a
24 particular number with the current rules. But this
25 proposed rule, and Renew Missouri was relatively

1 satisfied with it, we didn't offer any changes to those
2 calculations, provided options on how to evaluate what
3 that avoided cost should be when the utilities make
4 their filings. That included one that Renew Missouri
5 has advocated for in the past which is as developed from
6 their IRP. Look at the rules here.

7 JUDGE CLARK: I guess without having to have
8 you look at the rules, you felt that they were adequate
9 the way they were in the proposed rule?

10 MR. OPITZ: Yes. We felt that those were
11 adequate ways to attempt to measure avoided costs. Our
12 objectives here are to ensure that they're transparent,
13 which I believe the rule talks about they'll be
14 submitted and available on the Commission's web page
15 whenever they're submitted. However, given that there
16 are these options available, particularly that number 4
17 where the utility can sort of as you say choose your own
18 adventure, I did insert an additional section (E) that
19 talks about a time frame and sort of a process for
20 choosing which of those will be included in the standard
21 offer contract. That would then be -- When it's
22 included in the standard offer contract, that could then
23 be the effective rate that the qualifying facility
24 developer once they establish their legally enforceable
25 obligation that they're able to move forward with.

1 And so, you know, I think Renew Missouri's
2 preference would be that the avoided cost is based on
3 the integrated resource plan development because these
4 projects I think are long term. We propose 15 years for
5 these rates. But I think that most projects will be
6 around for 20 years or so.

7 We think that that's how the utilities do
8 their own planning. So we think that's the appropriate
9 way to look at avoided costs. Now, the electric
10 utilities may have some different method and so when
11 they put forward their filing they might say well, we
12 want to use the market prices in our RTO as our avoided
13 cost. So then we would want that opportunity in that
14 section (E) to say well, Commission, we appreciate that
15 the company's perspective is that but here is why you
16 should go with their IRP based which Commission you have
17 experience looking at, you know, within the context of
18 the utilities integrated resources plans and
19 increasingly within the utilities MEEIA filings.

20 JUDGE CLARK: Okay. Thank you.

21 MR. OPITZ: Thank you.

22 JUDGE CLARK: Is that gentleman to your left,
23 is he with you?

24 COMMISSIONER HOLSMAN: Judge --

25 JUDGE CLARK: Yes, Commissioner.

1 COMMISSIONER HOLSMAN: -- I've got one more
2 question based on that response there.

3 JUDGE CLARK: Go right ahead, Commissioner.

4 COMMISSIONER HOLSMAN: Thank you. You
5 mentioned a 15-year contract. Can you explain a little
6 bit why you think it's necessary to have a 15-year
7 contract in the proposal?

8 MR. OPITZ: Yes, Commissioner. So I think it
9 was in our proposed rules I put them in the section (4)
10 under the standard rates for purchase, talking about the
11 contract tenure of 15 years. In prior dockets, we had
12 proposed I think up to 20 years, 25 years. There was
13 significant pushback on that. So we decided and we
14 consulted with, you know, people who are IPP developers
15 that said basically if we can't have some certainty for
16 15 years, it's going to be nearly impossible for us to
17 get the financing and to move forward with any of these
18 projects. We think 15 years is shorter than what the
19 utilities have to plan. Usually they're doing 20-year
20 IRPs. The current rules I think as applied every two
21 years the companies file their cogeneration and avoided
22 cost rates. I think it's February -- maybe it's January
23 15. So basically right now if you are taking something
24 under the avoided cost rates, it's only good for two
25 years. And to develop a qualifying facility that has to

1 basically pay for itself within two years, it's
2 something that's just not feasible at least in my
3 knowledge and conversation with certain developers. But
4 while we would appreciate, and I think a longer term
5 would certainly go a long ways in encouraging more
6 development, I think 15 years we settled on in this rule
7 as something that is more palatable hopefully to this
8 Commission and still gives some encouragement to our
9 qualifying facility developers.

10 COMMISSIONER HOLSMAN: Thank you. Judge, I
11 would like to have that question posed to the utilities
12 as well.

13 JUDGE CLARK: Okay. Ms. Johnson?

14 COMMISSIONER HOLSMAN: When it's appropriate.

15 JUDGE CLARK: I think now would be the
16 appropriate time since the utilities have already gone
17 back. If you would, Ms. Johnson, can you answer that
18 question? Are you still on the WebEx?

19 MS. JOHNSON: I'm still here, yes, Your Honor.
20 Could you restate the question for me, please?

21 JUDGE CLARK: I believe it was as to the
22 length of the 15-year contract and why 15-year contract
23 was appropriate or inappropriate. And I believe
24 Mr. Opitz said that that was the amount of planning time
25 needed and additionally it was still less than the

1 amount of time that utilities plan for given that their
2 IRP is usually done on a 20-year planning period.

3 MS. JOHNSON: Thank you.

4 JUDGE CLARK: Did I correctly state your
5 question, Commissioner Holsman?

6 COMMISSIONER HOLSMAN: Yes, yes, you did.

7 JUDGE CLARK: Go ahead and answer, Ms.
8 Johnson.

9 MS. JOHNSON: Certainly. Thank you. I
10 appreciate you restating it. I wanted to make sure I
11 got the gist of the question correctly. I think we do a
12 20-year planning horizon when we're developing our IRP,
13 but I think it's also important to remember that we redo
14 our IRP every three years. So I think we still need to
15 retain flexibility when we're looking at some of these
16 developments. There might be -- There very well are a
17 lot of different case-by-case things that could impact
18 the length of the viability --

19 JUDGE CLARK: Ms. Johnson, can you back up
20 just a second. You cut out during that last sentence.
21 If you could back up one sentence, please.

22 MS. JOHNSON: Certainly. I just think it's
23 important to think about all the things that on a
24 case-by-case basis because depending on the technology,
25 you know, whether it's wind or solar panel or

1 cogeneration facility, it's dependent on where it's
2 located. There are a lot of factors that we really need
3 to maintain the flexibility to look at those factors on
4 the whole and figure out how they figure into the
5 planning, because, again, we look at a certain planning
6 horizon but we also re-up that every three years because
7 we're not just looking at economics. We're looking at
8 what's actually needed. And there is a very good chance
9 that at some point there may not be the need in which
10 case we may need to go back and renegotiate some of
11 these contracts which may be somewhat difficult if we're
12 locked into a 15-year plus term. So I really think we
13 need to maintain that flexibility so we can continue
14 adjusting as needed as we go through these processes in
15 our planning processes.

16 COMMISSIONER HOLSMAN: As a follow up to that,
17 do you agree that not having at least the certainty of
18 15 years will discourage or make it more difficult to
19 get financing or get the projects in place if a bank
20 won't, you know, secure the note for that period of
21 time? Will that make it more difficult to do these
22 projects if they don't have a 15-year guarantee?

23 MS. JOHNSON: You know, that's really a
24 question that the developer and the bank have to work
25 through together. I don't know that I could necessarily

1 speak to that directly, but I do know I can speak to
2 wanting to make sure that when we're doing our planning
3 that we're doing it for the greatest benefit for our
4 customers because at the end of the day they're the ones
5 who pay those energy costs. And if we're paying for
6 energy costs that as we get along with our planning we
7 determine we didn't need, are we really doing a
8 disservice to our customers.

9 COMMISSIONER HOLSMAN: So it's fair to say
10 that you oppose the 15-year requirement?

11 MS. JOHNSON: I think in certain cases it may
12 be appropriate, but I oppose locking it in, because we
13 really need to be able to look at these developments on
14 a case-by-case basis.

15 COMMISSIONER HOLSMAN: Okay. Thank you.
16 Judge, I don't know if Evergy has any position on it or
17 not. That is satisfactory for me from Ameren.

18 JUDGE CLARK: Thank you. Mr. Fischer, do you
19 have anything to add on behalf of Evergy?

20 MR. FISCHER: I don't think I have too much to
21 add from what Paula Johnson said. I would note that,
22 you know, just in my experience the IRP process we do
23 change that quite a bit every three years you see quite
24 a change over a period of time and I think that's
25 important to take into account. I'd want my subject

1 matter experts to weigh in on some of those technical
2 questions about financing though.

3 JUDGE CLARK: Thank you, Mr. Fischer.
4 Commissioner Holsman, do you have any other questions at
5 this time?

6 COMMISSIONER HOLSMAN: Not at this time, no.
7 Thank you.

8 JUDGE CLARK: Mr. Opitz, it looks like you
9 wanted to address some of those.

10 MR. OPITZ: Yes, Judge. Well, I want to go
11 back to before we deferred to the other utilities. You
12 started to ask who was sitting next to me. I just want
13 to say this is Renew Missouri's Executive Director James
14 Owen. I don't know if he has any comments or I don't
15 know what your question was to do that, but I wanted to
16 circle back to that.

17 JUDGE CLARK: We're trying to socially
18 distance as much as possible. I noticed that this
19 gentleman walked in late. If he wasn't with you, I
20 wanted to be sure that maybe we put him at a different
21 table. That was my only concern there.

22 MR. OPITZ: Thank you, Judge.

23 JUDGE CLARK: If you're comfortable with him
24 being there with you, that's fine for me.

25 MR. OWEN: We've been sharing office space of

1 recent. So I think we're both okay. We'll do whatever
2 is comfortable with the court.

3 MR. OPITZ: Thank you, Judge. I guess I would
4 note that although the IRP process does change every
5 three years once that plant is in the ground, you know,
6 the utility recovers that. They don't change the plant
7 every three years. That's all I have to say.

8 JUDGE CLARK: Thank you, Mr. Opitz. Okay.
9 Are there any -- I know I asked once already but just in
10 case they joined, but is there anybody from Midwest
11 Cogeneration Association, Missouri Solar Energy
12 Industries Association or the Empire District Electric
13 Company that has joined the hearing? I hear no one.
14 With that in mind, I will move on to the Office of the
15 Public Counsel. Did you have any additional oral
16 comments you wanted to offer to the Commission today,
17 Mr. Hall?

18 MR. HALL: Yes, Your Honor, briefly. As can
19 be made apparent by our filing, we're not taking any
20 substantive position in this rulemaking docket. We
21 offered comments purely from a drafting and technical
22 standpoint. We ask the Commission to take note that --
23 take note of consistent citations within its rules once
24 it's proposing them. We want to reiterate a consistent
25 application of the term avoided costs versus the term

1 avoided fuel costs. There's the -- Renew -- there's
2 the, rather, the net metering statute that separately
3 defines avoided fuel costs. That term is used as
4 separate and apart from avoided costs, and we want the
5 Commission to consider and deliberate on when it wants
6 to use that term versus another because when you look at
7 these two rules it seems like the use of avoided fuel
8 costs versus avoided costs seems to denote that there's
9 a difference between the two and to avoid future fights
10 and disagreements as to that term the Commission should
11 take note of using terms exactly for what they mean and
12 what it wants them to do.

13 I guess finally there's been a -- our office
14 received comments from staff. In response to the
15 comments that OPC made regarding the definitions
16 section, the Commission is proposing to refer generally
17 back to definitions within PURPA for many of the terms
18 that are proposed to be deleted here. I'm open to be
19 proven wrong, but the concern that I have is I'm being
20 told that avoided costs -- not avoided costs but
21 qualifying facility and other terms are defined within
22 PURPA but when I go back to PURPA I'm not finding those
23 terms. I can't find that phrase qualifying facility
24 defined in 92 STAT. 3117 which was the original
25 enactment of PURPA. I'm not finding it within 16 U.S.C.

1 2602 or in 16 U.S.C. 824. So perhaps this type of
2 confusion could be alleviated by citing specifically to
3 the federal code that the Commission is relying upon for
4 future definitions. Those are all my comments. Thank
5 you.

6 JUDGE CLARK: Thank you, Mr. Hall. Any
7 questions from the Commission? I hear none. I have no
8 questions. I've had an opportunity to look over the
9 written comments. And finally the Commission Staff, do
10 you have any comments that you wanted to offer?

11 MS. BRETZ: Yes. Thank you, Judge. Good
12 morning.

13 JUDGE CLARK: Now, you had -- I'm sorry to
14 interrupt. You had actually sent around electronically
15 to the parties today an attachment to your comments here
16 today.

17 MS. BRETZ: Yes. I e-mailed to all counsel
18 and all parties a copy of our written comments. We
19 don't intend to enter those into evidence. We're
20 providing that to facilitate the Commission and the
21 court reporter, this is getting pretty detailed, to help
22 people understand what our position is on this. So
23 we're not offering this as evidence. We're simply
24 offering it as a handout.

25 JUDGE CLARK: Okay. And I wasn't trying to

1 prevent you from doing so. It said evidence in the
2 first paragraph, I believe.

3 MS. BRETZ: We would only offer it as
4 demonstrative evidence.

5 JUDGE CLARK: Exhibit it says in the first
6 paragraph. Okay. Well, then go ahead, and you're
7 welcome to reference it. If you decide that you want to
8 file it as an exhibit in this case, let me know.

9 MS. BRETZ: We will. Thank you. As to the
10 issue of whether this rulemaking procedure should
11 proceed, staff --

12 JUDGE CLARK: Can you pull your mike down?

13 MS. BRETZ: Oh, yes. Thank you. As to the
14 issue of whether this rulemaking docket should proceed,
15 we would direct the Commission to our July 29 filing.
16 There has been significant stakeholder input to this
17 point and putting off the process with the Missouri
18 rules while we wait for a final rule from FERC would
19 actually derail the process and is also inconsistent
20 with the Executive Order 17-03, which states that a
21 federal agency should streamline their regulations.

22 As to the rule substantively, we would ask
23 Claire Eubanks to offer some comments which will be
24 similar to what was sent to the parties last night and
25 this morning.

1 JUDGE CLARK: Okay. Thank you. Go ahead, Ms.
2 Eubanks.

3 MS. EUBANKS: Good morning. My name is Claire
4 Eubanks and I am the Manager of the Engineering Analysis
5 Department. I would like to respond to some of the
6 comments that stakeholders filed. Staff Counsel has
7 provided a copy of my comments to assist the Commission.

8 Staff and stakeholders have considered
9 amendments to the Cogeneration and Net Metering rules
10 over four recent dockets, including EW-2018-0078 where
11 Staff additionally reviewed the existing rules in
12 compliance with Executive Order 17-03. As a result of
13 that review, Staff recommends the Cogeneration Filing
14 Requirements be moved to Chapter 20-Electric Utilities.
15 Therefore, with this rulemaking, Staff is proposing to
16 rescind 20 CSR 4240-3.115-Requirements for Electric
17 Utility Cogeneration Tariff Filings and incorporate the
18 filing requirements into 20 CSR 4240-20.060-Cogeneration
19 and Small Power Production. Additionally, Staff is
20 proposing an amendment to 20 CSR 4240-20.065-Net
21 Metering. This change is designed to simplify the
22 existing Commission rules by combining most
23 electric-only rules into the electric utility chapter.

24 As indicated in Staff's comments filed on July
25 29, 2020, Staff supports the rescission as proposed.

1 Staff will address the individual provisions of the
2 amendments to the Cogeneration and Small Power
3 Production and Net Metering rules based on the
4 stakeholder comments filed.

5 The proposed revisions to the Cogeneration and
6 Small Power Production rule includes several instances
7 of re-numbering. For clarity, Staff will reference the
8 proposed rule location as published by the Secretary of
9 State on July 1, 2020. I will also note that the
10 published rule corrected many of the renumbering issues
11 identified by OPC and the utilities.

12 First starting with the Prepared Responsive
13 Comments to the Cogeneration and Small Power Production
14 rule. Starting with definitions. Stakeholders
15 suggested several changes to either add or remove
16 definitions from what was published by the Secretary of
17 State on July 1, 2020. The utilities and the Office of
18 Public Counsel commented on the definition of avoided
19 costs contained in 20 CSR 4240-20.060(1)(A). Because
20 the language in 20 CSR 4240-20.060(1) indicates
21 definitions shall have the same meaning as PURPA unless
22 otherwise defined, the utilities recommended the avoided
23 cost definition be removed. As originally proposed in
24 the notice of proposed rulemaking, there were no changes
25 to 20 CSR 4240-20.060(1)(A), and this subsection was not

1 published in the Missouri Register.

2 There's additional notation in the footnote in
3 the handout. Staff is not opposed to the definition
4 being removed from the rule. A little later, Staff will
5 respond to OPC's concerns regarding the definition of
6 avoided costs as it pertains to the Net Metering rule.

7 Renew suggested adding two definitions: time
8 of delivery rates and time of obligation rates. These
9 phrases are not used in 20 CSR 4240-20.060(5)(C) or in
10 Renew's proposed additions.

11 Finally, the Commission proposes to remove the
12 definition for qualifying facility from the rule, but
13 also continues to use that phrase for new, operative
14 language. Given the repeated use of qualifying facility
15 within 20 CSR 4240-20.060, and the threshold question of
16 applicability when deciding whether these rules apply to
17 a cogeneration facility, OPC recommended that the
18 Commission not remove the definition of qualifying
19 facility from 20 CSR 4240-20.060. As previously stated,
20 because the language in 20 CSR 4240-20.060(1) indicates
21 definitions shall have the same meaning as PURPA unless
22 otherwise defined, and because the qualifying facility
23 is defined by PURPA and its implementing federal
24 regulations, it is not necessary to define qualifying
25 facility in the Commission's rule.

1 As OPC noted today, they had trouble finding
2 that specific definition. We will have to find the
3 reference specific. I didn't write that down for
4 today's comments.

5 So now I will address specific comments on
6 specific rule sections. Starting with 20 CSR
7 4240-20.060(4)-Standard Rates for Purchase and Standard
8 Contracts.

9 Specifically starting with paragraph (A).
10 Staff recommends changing 20 CSR 4240-20.060(4)(A)1 to
11 read Of one hundred (100) KW or less; and.

12 Regarding Renew's suggestion to add several
13 tiers of standard contracts up to 20 MW. Staff offers
14 that the 1,000 KW limit was chosen based on weighing the
15 comments of the utilities and other stakeholders during
16 the working docket. Most persuasive to a lower
17 threshold was Empire's comment on evaluating its
18 distribution system at various levels and that even at
19 1,000 KW there were deficiencies in some areas of its
20 system. Further, the standard contract would not limit
21 the ability of larger systems to interconnect and
22 receive rates for purchase. The cogeneration or small
23 power production facility owner would in those cases
24 negotiate a contract with the utility rather than being
25 offered a standard contract. If the Commission is

1 interested in increasing the standard contract size,
2 Staff recommends the range in 20 CSR 4240-20.060(4)(A)2
3 be changed rather than adding additional tiers. Staff
4 also recommends the utilities comment on whether there
5 is a fiscal impact that is not already being considered
6 with the additional tiers.

7 Moving on to 20 CSR 4240-20.060(4)(C). Staff
8 recommends changing the first sentence of 20 CSR
9 4240-20.060(4)(C) to read The utility shall apply and
10 the commission shall approve standard contract templates
11 for purchases from qualifying facilities with the design
12 capacities described in (4)(A) within 9 months of the
13 effective date of this rule.

14 Next in 20 CSR 4240-20.060(4)(D). Staff
15 recommends adding a sentence to 20 CSR 4240-20.060(4)(D)
16 stating Technical and performance standards shall
17 include reference to applicable standards including the
18 year published.

19 Moving on to 20 CSR 4240-20.060(5)-Rates for
20 Purchase. 20 CSR 4240-20.060(5)(D)1. Staff recommends
21 changing this rule reference to read The data provided
22 pursuant to section (11) of this rule, including
23 commission review of any such data.

24 Moving on to 20 CSR 4240-20.060(11)-Filing
25 Requirements. I have two comments on this section. 20

1 CSR 4240-20.060(11)(C)2. As discussed previously, Renew
2 suggests adding several tiers of standard contracts
3 above 1,000 KW in 20 CSR 4240-20.060(4). If the
4 Commission revises Section (4) to include a value higher
5 than 1,000 KW, Staff recommends 20 CSR
6 4240-20.060(11)(C)2 be modified to include the higher
7 value rather than adding the additional paragraphs as
8 recommended by Renew.

9 20 CSR 4240-20.060(11)(D). Staff recommends
10 this portion be modified to read In establishing the
11 avoided costs on the electric utility's system in
12 accordance with paragraph (11)(B)1, the following
13 methodologies may be utilized.

14 Other comments related to the section. Renew
15 Missouri suggests adding language to section (11)
16 regarding opening a contested case. Staff believes this
17 language is unnecessary and would point the Commission
18 to section (11)(A) which states the required filings
19 will be made in accordance with 20 CSR 4240-2.065(4)
20 which is the Commission's rule for tariff filings which
21 create cases. The filing of the tariff will establish a
22 case file for the Commission to specifically approve the
23 tariff.

24 Renew Missouri suggests adding a section (13)
25 related to Legally Enforceable Obligations. Staff notes

1 that Legally Enforceable Obligations are also discussed
2 in 20 CSR 4240-20.060(5)(C).

3 Would you like to ask questions regarding
4 cogeneration now or shall I move on to our prepared
5 comments on net metering?

6 JUDGE CLARK: Are there any Commission
7 questions regarding cogeneration? I hear none, Ms.
8 Eubanks, if you would like to continue on into net
9 metering.

10 MS. EUBANKS: Here are prepared responsive
11 comments regarding net metering starting with the
12 definitions. OPC questioned the clarity of the net
13 metering definition of avoided fuel costs referring back
14 generally to the Cogeneration and Small Power Production
15 rule.

16 PURPA allows for the calculated avoided costs
17 to include capacity and/or energy. However, the net
18 metering statute Chapter 386.890 RSMo defines avoided
19 fuel costs as the current average cost of fuel for the
20 entity generating electricity, as defined by in this
21 instance, the Commission. The existing definition
22 points to the rate established per the Cogeneration rule
23 such that net metering customers would receive the same
24 rate as cogeneration customers. Staff proposes 20 CSR
25 4240-20.065(1)(B) be modified to read Avoided fuel cost

1 means the incremental costs to the electric utility of
2 electric energy, but for the purchase of, excuse me, but
3 for the purchase from the customer-generator, the
4 utility would generate itself or purchase from another
5 source. Avoided fuel cost is used to calculate the
6 electric utility's standard rate for purchase from
7 systems less than one hundred (100) KW pursuant to 20
8 CSR 4240-20.060. The information used to calculate this
9 rate is provided to the Commission biennially and
10 maintained for public inspection.

11 Moving on to 20 CSR 4240-20.065(5) Qualified
12 Electric Customer-Generator Obligations.

13 20 CSR 4240-20.065(5)(A). The utilities
14 recommended removing the version identification from the
15 referenced standards for ease of updating the rule in
16 the future but offered the change would be appropriate
17 in the technical and performance standards developed per
18 proposed rule 20 CSR 4240-20.060(4)(D).

19 Staff had proposed to identify the version of
20 the standard because otherwise the rule implies the most
21 recent version is applicable. Further, foundational
22 steps have not yet been made to adopt the most recent
23 IEEE 1547 revision. Specifically, the revised standard
24 includes a new definition, the Authority Governing
25 Interconnection Requirements and suggests a stakeholder

1 process to consider policy implications of adopting the
2 new standard. It is Staff's opinion that the Commission
3 is the Authority Governing Interconnection Requirements
4 though the Commission may choose to delegate that
5 authority to the utility. Although Staff was interested
6 and continues to be interested in pursuing adoption of
7 the revised standard, the utility stakeholders were not
8 prepared to do so in the working docket for this
9 rulemaking.

10 Because the proposed amendments to the
11 Cogeneration rule contemplate Commission approval of the
12 technical specifications, Staff recommends the version
13 reference be removed as recommended by the utilities
14 provided that the Commission adopt Staff's proposed
15 language here today presented earlier in 20 CSR
16 4240-20.060(4)(D) and forthcoming in 20 CSR
17 4240-20.065(7)(A), which is where I'm moving next on the
18 Interconnection Application.

19 20 CSR 4240-20.065(7)(A). As discussed
20 previously, if the standard version references are
21 removed from the final rule, Staff recommends 20 CSR
22 4240-20.065(7)(A) be modified to read as follows: Each
23 customer-generator and electric utility shall enter into
24 an interconnections agreement, which includes technical
25 and performance standards and interconnection testing

1 requirements developed per 20 CSR 4240-20.060(4)(D).

2 The interconnection agreement will be substantially the
3 same as the interconnection application located on the
4 Commission's website and incorporated by reference.

5 The utilities expressed concerns with removing
6 the form from the rule and placing it on the Commission
7 website. Specifically related to existing Ameren
8 variances, Staff sees this modification as a
9 simplification which would not require variances for
10 minor wording changes. Further, removing forms from the
11 rule would be in compliance with Executive Order 17-03.

12 20 CSR 4240-20.065(8)(C). Staff recommends 20
13 CSR 4240-20.065(8)(C) be amended to read Verify
14 compliance with 20 CSR 4240-20.065(11)(C) for
15 customer-generator systems; and.

16 And finally, 20 CSR 4240-20.065(8)(D). Staff
17 recommends 20 CSR 4240-20.065(8)(D) be renumbered to be
18 20 CSR 4240-20.065(9).

19 Finally, as Staff noted in its July 29
20 comments, the Federal Energy Regulatory Commission is in
21 the process of amending its PURPA rules. At the
22 appropriate time, Staff plans to file another working
23 docket to further address any amendments to the
24 Commission's rules. Any comments that are not addressed
25 in this rulemaking may be further addressed in that

1 future rulemaking.

2 Thank you and I am happy to answer any
3 questions.

4 JUDGE CLARK: Any questions from the
5 Commission? Hearing none. It looks like at least in
6 regard to these last couple, those just kind of codify
7 suggestions that I've seen in other comments from other
8 parties; is that correct?

9 MS. EUBANKS: Yes, proposed language in
10 response to other parties' comments.

11 JUDGE CLARK: Thank you very much.

12 MS. EUBANKS: You're welcome.

13 JUDGE CLARK: Are there any other comments at
14 this time?

15 MS. DIETRICH: Your Honor, Natelle Dietrich,
16 Director Industry Analysis Division. Just to clarify
17 the record, there have been several references to
18 Executive Order 17-03, and I believe in one of the
19 discussions it was mentioned that that was a federal
20 executive order. I just wanted to clarify that that's a
21 state federal order Governor Greitens issued.

22 JUDGE CLARK: Thank you for clarifying that.
23 I did hear the word federal, but I knew what we were
24 talking about. Thank you. That has to do with the
25 simplification of the rules state wide.

1 MS. DIETRICH: Correct.

2 JUDGE CLARK: Are there any other comments at
3 this time? Are there any other issues or matters that
4 need to be addressed by the Commission during this
5 rulemaking hearing? Okay. I see none. With that in
6 mind, this hearing is adjourned and we will go off the
7 record.

8 (Off the record.)
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CERTIFICATE OF REPORTER

I, Beverly Jean Bentch, RPR, CCR No. 640,
Certified Court Reporter with the firm of Tiger Court
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