

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

In the Matter of Union Electric Company            )  
d/b/a Ameren Missouri's Tariffs to Adjust its        )  
Revenues for Electric Service                        )

No. ER-2022-0337

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**RENEW MISSOURI'S POST-HEARING BRIEF**

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COMES NOW Renew Missouri Advocates d/b/a Renew Missouri (“Renew Missouri”), pursuant to the September 28, 2022 “Order Adopting Procedural Schedule and Setting Test Year” and 20 CSR 4240-2.140, for its post-hearing brief to the Missouri Public Service Commission (“PSC” or the “Commission”). Renew Missouri states the following:

**I. Introduction**

On August 1, 2022, Union Electric Company d/b/a Ameren Missouri (“Ameren” or the “Company”) filed its proposal to increase electric base rate annual revenues by \$316 million. As part of its proposed rate design changes, Ameren proposed to increase the fixed customer charge for residential customers and link different customer charges to its five residential Time-of-Use (“TOU”) rate options. Both on its website<sup>1</sup> and in responses to Renew Missouri’s First Set of Data Requests,<sup>2</sup> Ameren clarified that the Overnight Savers, Smart Savers, and Ultimate Savers rate options are unavailable to customers with solar energy systems or battery storage systems taking service under Ameren’s Net Metering tariff.

Renew Missouri submitted the Rebuttal Testimony of James Owen calling for Ameren to make its TOU rates available to all customers and requesting that the Commission order Ameren

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<sup>1</sup> FAQs regarding residential Time-of-Use Rate options, available at: <https://www.ameren.com/missouri/company/rate-options/faqs>

<sup>2</sup> “RMO 002.2 Net Metering TOU Examples,” submitted in response to Renew Missouri’s Second Set of Data Requests, File No. ER-2022-0337.

to conduct a study on integrating distributed generation (“DG”) technologies and TOU rates.<sup>3</sup> Mr. Owen’s testimony called attention to the Net Metering and Easy Connection Act (the “Net Metering Statute”) that requires utilities to offer net metering customers the same rates and rate structures as non-net metering customers.<sup>4</sup> Mr. Owen’s testimony also provided policy reasons for why the Company should allow its DG customers to use TOU rates and provided examples of other states and utilities that have successfully accomplished this integration. Ameren responded with the Surrebuttal Testimony of Steven. M. Wills, who argued a different interpretation of the Net Metering Statute and offered several reasons for which the Company believes that integrating DG and TOU rates is not legally or practically possible.<sup>5</sup> The parties then addressed this issue extensively at hearing.

The evidence overwhelmingly supports Renew Missouri’s position that the Company should work toward integrating its TOU residential rate options and the customer-owned DG assets on its grid. First, when read correctly, the Net Metering Statute requires Ameren Missouri to offer its net metered customers the same, “electric energy rates, rate structure, and monthly charges,” which includes rate options. The Commission should clarify this reading of the Net Metering Statute in its order. Second, there are valuable policy objectives served by allowing net metered solar and battery customers to utilize TOU rates, including some of the same objectives that the Company’s TOU rates purport to serve. Those include reducing peak demand by shifting load, giving customers more control over their energy usage and bills, and encouraging adoption and integration of DG on the grid. The Commission should use its authority to regulate in the public interest to ensure customers with DG can fully utilize TOU rates.

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<sup>3</sup> File No. ER-2022-0337, Renew Missouri, “Rebuttal Testimony of James Owen,” Exhibit 450. Filed on February 15, 2023.

<sup>4</sup> Section 386.890.3(2), RSMo.

<sup>5</sup> File No. ER-2022-0337, Ameren Missouri, “Surrebuttal Testimony of Steven M. Wills.” Filed on March 13, 2023.

Renew Missouri respectfully requests that the Commission order Ameren to conduct a study on how to best integrate distributed generation (specifically net metered solar and battery storage systems) with the Company's TOU rate options.

## II. Discussion

***Issue 1(F)(b): What changes should be made, if any, to the residential rate plans offered by the Company? What changes, if any, should be made to the deployment of residential TOU rate plans?***

- a. The Commission should find that the Net Metering Statute requires Ameren to offer its net metered customers access to the same TOU rate plans available to non-net metered customers.

Missouri courts have long recognized that, "...the 'interpretation and construction of a statute by an agency charged with its administration is entitled to great weight'..." *In re Laclede Gas Co.*, 417 S.W.3d 815, 819 (Mo. App. 2014) (citing *State ex rel. Office of Pub. Counsel and Mo. Indus. Energy Consumers v. Mo. Pub. Serv. Comm'n*, 331 S.W.3d 677, 684 (Mo. App. 2011)). The Net Metering and Easy Connection Act – found at Section 890 of Chapter 386 of the Revised Missouri Statutes – tasks the Commission with the responsibility of promulgating rules necessary for the administration of the statute.<sup>6</sup>

Missouri's Net Metering Statute states, in part:

"3. A retail electric supplier shall:... (2) *Offer* to the customer-generator a tariff or contract that is *identical in electrical energy rates, rate structure, and monthly charges* to the contract or tariff that the customer would be assigned if the customer were not an eligible customer-generator but shall not charge the customer-generator any additional standby, capacity, interconnection, or other fee or charge that would not otherwise be charged if the customer were not an eligible customer-generator; [emphasis added]"<sup>7</sup>

Moreover, courts have held that, "[w]hen determining the meaning of statutory language, the whole act must be taken into consideration, and the words of one section or statute must be

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<sup>6</sup> § 386.890.9, RSMo.

<sup>7</sup> § 386.890, RSMo.

read in the context of other statutes on the same subject as well as with cognate sections.” *Laclede Gas Co.*, 417 S.W.3d at 823 (citing *In re KCP&L Greater Mo. Operations Co.*, 408 S.W.3d 175, 186 (Mo. App. 2013)). In *Laclede*, the Court of Appeals also looked to legislative intent to determine that the Commission’s interpretation of a statute was reasonable. *Id.* at 824.

The overall intent of the Net Metering Statute is clear: net metering customers are to be treated like every other customer, aside from their net metering service. This alone should provide sufficient reason for the Commission to ensure net metered customers have access to the same rate plan options as other customers. Even before a close analysis of the individual words, the intent of the statute’s drafters was clearly to ensure that net metering customers are not punished. While Ameren wishes to focus on the fact that the Net Metering Statute does not contemplate TOU rates, the broad parameters of the Statute should be the focus.

Next, it is useful to look closely at some of the phrases employed in the above language. Retail electric suppliers are obligated to “offer” customer-generators identical “electrical energy rates,” “rate structure,” and “monthly charges.” The word “offer” implies a series of options, rather than a simple rate being assigned. Moreover, the phrases identical “rates” and “rate structure” can easily be read to include “rate plans” or “rate options.” In particular, the phrase “rate structure” should be read to include rate design, and different rate design options. When taken in its totality, the above provision conveys that customer-generators must be “offered” the same rates – including rate design options – as other customers. To deny customer-generators rate design options that could deliver savings would be to punish those customer-generators for taking service under the net metering tariff, which countermands the clear intent of the statute.

Ameren Missouri has another interpretation of the provision. Although he is not an attorney, Ameren witness Steve Wills focuses on the second clause of the above-cited provision

that states: "... contract or tariff that the customer would be assigned if the customer were not an eligible customer-generator."<sup>8</sup> Mr. Wills notes, "This clearly indicates that the default rate – the rate a customer would otherwise be assigned to – must be identically available to the customer-generator. It says nothing about optional rates that a non-generating customer can *elect* to enroll in."<sup>9</sup> Here, Mr. Wills makes a semantic leap to conclude that, since the statute uses the word "assigned," then Ameren need only assign customer-generators the same rate; they don't need to offer the same elective options. But again, the first word of subdivision 2 is "offer," and when read together with "identical in electric energy rates, rate structure, and monthly charges," it is clear customer-generators are meant to have access to the same rate options. To pay selective attention to the word "assigned" in the way that Mr. Wills suggests would be to presume that the Legislature contemplated different rate plans and specifically chosen to deny net metering customers those other options, or at least chose to allow utilities to restrict those options. While the Legislature may not have considered TOU rates, the general principle was adopted requiring customer-generators to be treated the same as regular customers. This principle must include customer-generators being offered the same rate design options or plans. Moreover, to fixate on the word "assigned" while ignoring the totality of the provisions in the Statute and clear legislative intent runs contrary to the guidance set forth in *Laclede*.

As a final note on the Net Metering statutory language and TOU rates, it should be clear that the Statute does not restrict or prevent utilities from integrating TOU rates and net metering if they so choose. Ameren, again through Mr. Wills' testimony, claims the Net Metering Statute prevents the Company from enabling customer-generators to utilize TOU rate plans: "The Net Metering and Easy Connect Act... is drafted in a manner that does not contemplate the application

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<sup>8</sup> *Id.*

<sup>9</sup> Wills Surrebuttal at pg. 21-22.

of TOU rates, and when applied as written, does not allow the billing of TOU rates in an economically-rational manner.”<sup>10</sup> Although the Statute may not contemplate TOU rates, there is no language preventing utilities from developing a method to bring a net metering tariff in line with a TOU rate structure. In fact, all Ameren residential customers with AMI meters are currently assigned the Evening/Morning Savers rate, a time variant or TOU rate. Ameren has already proved in principle that it is possible. Mr. Wills explains this apparent contradiction by claiming that the price differentials are small enough to not cause concern.<sup>11</sup> However, this is merely a difference of degree; the fact remains it is already being done with Ameren’s current system. Moreover, utilities in regulated states have figured it out with degrees of success as discussed in Mr. Owen’s testimony and subsection (b) below. Given this reality, Mr. Wills’ assertion that, “[t]he Company has sincere interest in making these rates available to net metering customers,”<sup>12</sup> belies the Company’s true concern that it will experience reduced revenue and loss of control as more customers adopt and install DG technologies.

Even Ameren appears to be unsure of its legal stance on what the Net Metering Statute requires or prohibits. In surrebuttal, Mr. Wills testified that integrating TOU rates and DG “cannot, based upon advice of counsel, be implemented without a statutory change.”<sup>13</sup> However, upon cross examination at hearing, Mr. Wills contradicts himself:

“I think my Surrebuttal says it [the Net Metering Statute] doesn’t allow us to offer them [TOU rates] in an economically rational manner.... I don’t believe we’ve ever said that the law says I couldn’t offer our Smart Savers rate to a Time-of-Use customer, but I said that it would destroy the price signals and create an economic irrational outcome.... I think you talked about what was going on in Virginia or in

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<sup>10</sup> *Id.* at pg. 20.

<sup>11</sup> “RMO 002.2 Net Metering TOU Examples,” submitted in response to Renew Missouri’s Second Set of Data Requests, File No. ER-2022-0337.

<sup>12</sup> *Id.*

<sup>13</sup> Wills Surrebuttal at pg. 21.



North Carolina where you would be netting within off-peak buckets or on-peak buckets. If we believed that was legal, I think we'd be doing it.”<sup>14</sup>

Mr. Wills' description of the Company's reluctance to integrate TOU rates and grid-tied DG as merely an objection around price signals and economic rationality is in stark contrast to his other statements surrounding the need for a statutory change. Obviously, the issue of what is legally permitted and what is “economically rational” are separate issues that must be evaluated in turn. However, before the policy perspective can be evaluated, the Commission must decide what the Net Metering Statute requires, permits, and prohibits.

This legal question is ripe for the Commission to settle, which will provide a path forward to address the issue in practical ways for the benefit of customers. Mr. Wills repeatedly claims that Ameren has a “sincere interest in making these rates available to net metering customers,”<sup>15</sup> and that, “if we believed that was legal, I think we'd be doing it.”<sup>16</sup> Regarding battery storage, Mr. Wills states, “I think that battery storage could be something that would be beneficial and could be promoted with time-of-use rates.”<sup>17</sup> Based on these statements, it would seem that with the legal question settled, Ameren would be a willing partner in working through the integration of TOU rates and grid-tied DG technologies like solar and battery storage. Renew Missouri asks that the Commission: 1) find that the Net Metering Statute obligates an electric utility to offer the same rate plans to customer-generators; 2) find that Net Metering Statute permits – rather than restricts – an electric utility's ability to offer TOU rates to customer-generators if it so chooses; and 3) order Ameren to conduct a study on how to integrate distributed generation (including net metered solar and battery storage) with the Company's residential Time-of-Use rate plans.

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<sup>14</sup> ER-2022-0337, “Transcript – Volume 7 (Evidentiary Hearing – Jefferson City, MO – April 13, 2023),” April 21, 2023, at pg. 237-238.

<sup>15</sup> Wills Surrebuttal at pg. 21.

<sup>16</sup> Transcript Vol. 7 at pg. 238.

<sup>17</sup> *Id.* at pg. 237.

- b. The Commission should find that allowing residential customers with DG assets to use TOU rate plans serves the public interest and furthers valuable policy objectives.

Aside from the question of whether Ameren is required to offer TOU rates to customer-generators, the Commission has the authority to determine that integrating net metered DG and TOU rates is in the public interest. “The Commission’s powers to regulate in the public interest ‘are broad and comprehensive’ and include the authority ‘to order improvements[,]’” (*In the Matter of Application of KCP&L Greater Missouri Operations Company*, 515 S.W.3d 754, 760 (Mo. App. W.D. 2016) (citing *Stopaquila.Org v. Aquila, Inc.*, 180 S.W.3d 24, 34-35 (Mo. App. W.D. 2005)), and that the public interest is a matter of policy to be determined by the Commission. *State ex rel. Public Water Supply District v. Public Service Commission*, 600 S.W.2d 147, 154 (Mo. App. 1980). Moreover, “It is within the discretion of the (Commission) to determine when the evidence indicates the public interest would be served.” (Case No. EA-2016-0208, *Report and Order* pp. 18-19)(citing *State ex rel. Intercon Gas, Inc. v. Public Service Com'n of Missouri*, 848 S.W.2d 593, 597-598 (Mo. App. 1993)).

In addition to honoring the intent of the Net Metering Statute, integrating DG and TOU rates serves valuable public policy objectives. In fact, these objectives are identical to many of the goals that the Company’s TOU rates purport to serve. Integrating TOU rates with grid-tied DG benefits the public by: 1) reducing peak demand by shifting load from peak to off-peak periods; 2) giving customers more control over their energy and bills; and 3) encouraging the adoption and integration of DG on the grid. Battery storage has the unique capacity to charge up at times of low system demand and be deployed at times of system peak. A network of thousands of batteries distributed across a grid with a clear financial incentive to engage in load shifting could have a significant demand reduction impact. In addition, solar coincides with the pre-peak period of the day and can be used in combination with batteries to exaggerate the effect of reducing demand and

offsetting peak. Utility companies could use a myriad of strategies to harness the power of DG. An aggressive strategy might entail the utility installing and owning a fleet of battery storage systems charged by rooftop solar. More pragmatic would be to simply use rate design to encourage customer investments in DG in a manner that promotes load shifting and demand reduction.

Ameren agrees that TOU rates have the ability to shift load, reduce peak demand, and provide customers with more control over their bills. In Mr. Wills' Direct Testimony, he states, "TOU rates can also be a valuable system planning tool to help reduce peak demand and capacity needs, as well as to help integrate increasing levels of intermittent renewable generation."<sup>18</sup> He further states the Company's TOU rates, "...allow residential customers to have more control over their energy costs."<sup>19</sup> But despite this admission, Ameren restricts access to its TOU rate options for customers with the very technologies that can accomplish these goals most effectively. Moreover, in cross-examination, Mr. Wills admits that Ameren has not even studied the possibility of using rate design to encourage the adoption of DG technologies on the grid.<sup>20</sup>

Both in discovery responses and in testimony, Ameren cites practical difficulties preventing the Company from integrating DG and TOU rates. In Mr. Wills' testimony, he explains that the Net Metering Statute requires that all energy a customer-generator produces must be netted against all energy a customer-generator consumes from the utility:

"This means that any kWh of energy produced can net with any kWh of consumption – i.e., these kWh's must be economically valued equally – irrespective of the time (peak vs. off-peak, etc.) they occur. This dynamic is completely counter to the concept of TOU rates, which makes it clear that kWh have unique economic values during different time periods."<sup>21</sup>

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<sup>18</sup> File No. ER-2022-0337, Ameren Missouri "Direct Testimony of Steven M. Wills,". Filed on August 1, 2022, at pg. 10.

<sup>19</sup> *Id.* at pg. 5

<sup>20</sup> ER-2022-0337, "Transcript – Volume 7 (Evidentiary Hearing – Jefferson City, MO – April 13, 2023)," April 21, 2023, at pg. 231.

<sup>21</sup> Wills Surrebuttal at pg. 20.

On first glance, the concern Mr. Wills raises may seem fatal. However, other states have confronted the same challenge and charted a course forward that has allowed customer-generators to use time-varying rates to increase the savings from their DG systems and increase aggregate load shifting and demand reduction. Mr. Owen’s written testimony provides the examples of Dominion Energy in Virginia and Duke Energy in South Carolina.<sup>22</sup> These utilities have solved this offsetting or netting challenge by only allowing kWh credits to be applied against the same TOU tier. For example, excess kWh generation during the off-peak period can only be netted against kWh consumed during the off-peak period, and so on for an on-peak period and each successive TOU tier. This compromise does not violate the Net Metering Statute’s requirement that excess kWh generation equally offset kWh consumed and could provide Missouri utilities with a method of integrating TOU rates and DG moving forward.

In evaluating the integration of DG with TOU rates, the Commission should not be swayed by objections to the practical challenges involved in such integration. Rather, the Commission should grant Renew Missouri’s requested relief and order a study to be conducted so that parties can confront and solve these challenges. Moreover, an order requiring such a study would be consistent with the Commission’s *Order Approving Four Partial Stipulations and Agreements* in case numbers ER-2022-0129 and ER-2022-0130. In its *Order*, the Commission approved a settlement term<sup>23</sup> requiring Evergy to complete the same study to evaluate integrating DG and TOU rates in its Missouri service territories. An equitable outcome for customer-generators in the state would require Ameren to study and develop methods for integration as well.

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<sup>22</sup> Owen Rebuttal at pg. 11-12.

<sup>23</sup> File No. ER-2022-0129 and ER-2022-0130, *Rate Design and Program Settlement (7)(e)*: “The Company will develop a report that examines the technical, billing, and legal barriers to offering Time-of-Use rate options to residential customer-generators with net-metering or interconnection agreements. This report shall also explore potential solutions to the barriers identified. The report shall be shared with the Signatories to this case and other interested stakeholders before the filing of the Company’s next rate case.”

### III. Conclusion

Renew Missouri respectfully requests that the Commission issue an order clarifying that the Net Metering Statute requires Ameren to offer its net metered customers access to the same TOU rate plans available to non-net metered customers. In addition, Renew Missouri requests that the Commission order Ameren to conduct a study on integrating DG technologies and TOU rates. Plain reading of the Net Metering Statute indicates that customer-generators must be offered the same rate plans and structures as non-net metering customers. Allowing customer-generators full access to TOU rates will help to incentivize adoption of these technologies that benefit the grid, benefit DG customers, and benefit all customers of Ameren Missouri. While Ameren raises concerns over the challenges of integrating DG into its time-varying rate options, these are the very challenges a comprehensive study will assist the Company in resolving. Finally, a Commission order on this issue will provide consistency across the state for all customers with DG technologies.

WHEREFORE, Renew Missouri submits its *post-hearing brief*.

Respectfully,

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Certificate of Service

I hereby certify that copies of the foregoing have been emailed to all counsel of record this 5<sup>th</sup> day of May 2023:

**/s/ Alissa Greenwald**

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