

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

In the Matter of a Proposed Rulemaking to)
Amend Commission Rule 4 CSR 240-20.065.)

) **Case No. EX-2008-0280**

OPINION OF COMMISSIONER ROBERT M. CLAYTON III
CONCURRING IN PART AND DISSENTING IN PART

This Commissioner concurs in the majority's Final Order of Rulemaking for issues associated with "Net Metering" and customer-owned generation. The proposal stems from SB 54 passed during the 2007 legislative session known as the "Easy Connection Act," which strives to reduce the barriers associated with customers installing their own renewable generation and interconnectivity with the electrical grid. For years, interconnection barriers, extraordinary costs, liability concerns and low payments for customer-supplied excess generation, have limited investment for those who wish to produce their own power. This Commissioner fully supports the spirit of the East Connection Act, but this Commissioner must dissent, in part, from the Final Order of Rulemaking because it reinstates at least one barrier that customers must overcome to interconnect to the grid.

The Final Order of Rulemaking clearly identifies the standards of interconnection that must be met by both customers and utilities, removing doubt and uncertainty from significant investment. Customers will also benefit from the increased rate at which electrical companies will purchase excess energy in the event that their generation exceeds their usage. That rate, typically referred to as "avoided cost," has been reevaluated to be the rate for which customer-owned generation or all distributed generation is entitled to receive for excess power.

Such payments may lead to making customer-owned generation more economical and more helpful in addressing load growth and capacity issues in Missouri's electrical grid.

Unfortunately, one provision was reinstated in the rule which is a counter to legislative intent. SB 54 provides "for systems of ten kilowatts or less, a customer-generator whose system meets the standards and rules under subdivision (1) of this subsection shall not be required to purchase additional liability insurance beyond what is required under subdivision (1) of this subsection and subsection (4) of this section." No liability insurance requirements are established in subdivision (1), and subsection (4) does not exist. Therefore, this Commission cannot lawfully require 10 kW or smaller systems to carry any insurance, because this is beyond the scope of this Commission's authority.

Moreover, as the Public Counsel noted in his comments at the hearing, the legislation was an effort to make connection easier, so removing the insurance requirement is consistent with statutory intent, whereas retaining the requirement is contrary to that intent. When a statute is confusing, administrative agencies have a duty to construe the statute as consistently as possible with the legislative intent. This Commissioner believes the majority erred by adding the insurance requirement for 10 kW or smaller systems.

The suggestion that this coverage is not expensive is irrelevant, and the record is unclear on the impact of this requirement. Safety should always be the Commission's first priority and the majority references safety when it mandates unnecessary insurance coverage. However, insurance coverage does not encourage safe behavior or correct any inherent safety concerns. Safety is addressed in the rule with mandates for certification by electricians, mandates for certain types of equipment to eliminate the chances of safety hazards and mandates for

installation to be conducted in a prescribed manner. All equipment must be up to code and in line with IEEE standards and certification of these steps must be transmitted to the utility.

By requiring unneeded insurance, regardless of cost, the majority reinstates a barrier or a disincentive for customers to generate their own electricity. The record does not reflect any examples of known hazards associated with modern installation of distributed generation and no party has identified an example of injury caused by distributed generation. This provision makes connecting to the grid not as easy as the legislature intended.

For the foregoing reasons, this Commission concurs, in part, and dissents, in part.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert M. Clayton III", written over a horizontal line.

Robert M. Clayton III
Commissioner

Dated at Jefferson City, Missouri
on this 23rd day of October, 2008.