

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

In the Matter of a Proposed Rulemaking to)
Amend the Reporting Requirements for) File No. EX-2010-0122
Electric Utilities and Rural Electric)
Cooperatives)

**COMMENTS OF THE
ASSOCIATION OF MISSOURI ELECTRIC COOPERATIVES**

The Association of Missouri Electric Cooperatives (“AMEC”)¹ submits the following comments concerning the Missouri Public Service Commission’s (“Commission’s”) proposed amendments to the reporting requirements of Commission Rule 4 CSR 240-3.190.

Introduction

Missouri’s rural electric cooperatives (“co-ops”) historically opposed being included in 4 CSR 240-3.190 when it was first promulgated and again later when the rule was first amended in Case No. EX-2003-0489. The reasons for this still remain relevant in the context of this proceeding and will be summarized and briefly discussed below.

This being said, AMEC appreciates and certainly understands the Commission’s motivation as well as the stated intent behind the proposed amendments as these were explained during the Commission’s December 16, 2009 public agenda meeting, namely, that: 1) the Commission be timely informed of all electric accidents or incidents involving death or serious personal injury so that it does not first become aware of them via media reports, and 2) in amending the rule to that end it does not unintentionally impose unnecessary or unworkable additional obligations on the co-ops, which are not subject to the Commission’s plenary regulatory authority. AMEC again thanks the Commission for conferring and working with AMEC prior to the official publication of the proposed amendments. The Commission’s willingness to engage in candid discussions and its removal prior to publication of its originally proposed language respecting so-called “stray voltage”, and the inclusion of an “actual knowledge” requirement in section (4), has gone a long way to make the proposed rule amendments more palatable to the co-ops.

The most fundamental proposed change to the rule that will significantly affect the co-ops is the expansion of the reporting requirements in Section (4) to now include accidents or incidents occurring on the secondary (or customer side) of the meter. For several reasons it is this aspect that is of the most serious concern to the co-ops and therefore it will be the primary focus of these comments.

¹ AMEC is the statewide trade association of Missouri’s forty distribution and seven generation and transmission (“G & T”) rural electric cooperatives.

Comments By Section

4 CSR 240-3.190(1)-(3)

AMEC offers no comments on these provisions as they should and by their own do apply only to investor-owned electric utilities.

4 CSR 240-3.190(4)

A. Historical Context

As noted above, the co-ops historically opposed being made subject to 4 CSR 240-3.190(4) *et seq.* The basis of this opposition was several-fold, both general and specific. As nonprofit organizations locally owned and controlled by the members (ratepayers) they serve, co-ops are entirely different and fundamentally unlike investor-owned utilities. The public policy rationale requiring plenary oversight and comprehensive regulation of investor-owned utilities by the Commission simply does not exist or make practical sense with respect to co-ops.² This is reflected in numerous statutes unique to the co-ops that specify in great detail how co-ops must operate³ as well as in other statutes that specifically prohibit the Commission from exercising jurisdiction over the rates, financing, accounting or management of any co-op even when the Commission is granted limited jurisdiction over co-ops for particular purposes.⁴

To the extent that the Commission has been granted safety jurisdiction over co-ops, the co-ops historically have argued that the Commission should exercise that jurisdiction cautiously and then only when and to the extent absolutely necessary. Several co-ops filed written comments in 2003 when the Commission amended the rule in Case No. EX-2003-0489. These comments, which remain relevant in this proceeding, can be fairly summarized as follows:

1. The cost of complying with Commission regulatory requirements, no matter how small those costs might appear when compared to the operations of the investor-owned utilities, must be borne directly by the co-op member/ratepayer. There is no allocation of costs between investors and ratepayers, as in the case of investor-owned utilities. This consideration becomes even more critical in today's climate of ever increasing rates among all sectors of the electric utility industry and especially given that the typical co-op consumer lives in the rural areas hardest hit by the current economic decline. Despite ongoing co-op efforts

² This does not mean that co-ops are completely unregulated. In addition to full and ongoing local control by its members/ratepayers, co-ops are regulated financially and operationally at the federal level by the United States Department of Agriculture through the Rural Utilities Service (RUS).

³ See, Chapter 394 RSMo. 2000.

⁴ See, e.g., Sections 394.080.5, 394.315.2 RSMo. 2000.

to control costs and encourage energy conservation, an unfortunately very large number of co-op members continue to struggle just to pay their electric bills.

2. Most co-ops do not have large systems and accordingly have limited resources, a limited workforce, and generally a higher cost of service per customer than investor-owned utilities. Co-op miles of energized lines range from 900 to just under 6000. Most co-ops serve less than a total of 30,000 meters, with many of those serving less than 9,000 meters. The highest number of customers served per mile of line (density) is 11.2; most co-ops have a density of between 2.7 and 5.

3. Co-ops already comply with myriad safety regulations and requirements imposed by RUS, OSHA, the co-ops' worker's compensation provider (MECIP), and the co-op's insurance carrier (Federated Rural Electric Insurance Exchange). Co-ops collectively fund ongoing and regularly scheduled lineman training and safety compliance courses for their employees through AMEC. Missouri's co-ops have a long history of rigid compliance to National Electric Safety Code standards, as required by RUS (as well as the Commission), and co-op systems are certified and annually inspected for non-compliance. Imposing additional safety regulations and requirements are costly, generally duplicative and therefore unnecessary, and as such provide no discernable net benefit to the co-op member/ratepayer.

4. The creation and existence of unnecessary accident/incident documentation increases the risk that such documents will be used in litigation against the co-op, regardless of the merits and ultimate outcome of the litigation. While Section 386.480 RSMo 2000 does permit accident/incident reports initially to be filed with the Commission as confidential, subsequent disclosure to the public or third parties is not prohibited.⁵

Admittedly, the Commission previously has rejected these arguments as a basis to fully exclude co-ops from 4 CSR 240-3.190. To the extent that the Commission continues to believe that co-ops should remain subject to portions of the rule, AMEC requests that the Commission at least consider these points as they relate to the expansion of the rule as currently proposed.

B. Secondary/Customer Side of the Meter

The current rule by its terms does not impose any reporting requirement when the accident⁶ occurs on the secondary or "customer side" of the meter. This is consistent

⁵ It is unclear how the Commission's procedures regarding the disclosure of confidential information (under 4 CSR 240-2.135 and a Commission protective order, if any) would apply in the co-op scenario as these appear to apply only when there is a docketed case.

⁶ The proposed amendments add the terms "event" as well as "incident". While AMEC certainly does not object to the addition of these terms, it does note a usage/drafting inconsistency between the first and second sentence of Section 4 that the Commission might wish to review.

with long-standing, nationwide industry practice that draws a bright red line for purposes of utility responsibility and liability at the point of delivery to the customer. The reason for this bright red line is because the utility has no control over what occurs on the secondary side of the meter once it delivers the electricity to the meter. As a practical matter, the utility could exercise no such control even if it wanted to. Co-ops, however, do require their members to comply with all applicable electric codes and accepted industry practices as one of the requirements of the membership agreements that are executed when the member first signs up for service. However, unless something occurring on the secondary side of the meter somehow is adversely affecting the co-op system on the co-op's side of the meter, the co-op really has no way of even knowing about the problem, let alone attempt to provide a remedy, unless co-op field personnel discover it by pure happenstance or the member directly contacts the appropriate co-op personnel.

Setting aside the additional issues of potential legal liability, for these reasons alone the co-ops oppose the imposition of any new responsibility to report accidents or incidents occurring on the secondary side of the meter, and therefore, AMEC urges the Commission to reconsider the issue and then delete any reference to it in its final rule.

C. Alternative/Additional Suggestions—Section (4)

AMEC recognizes that the Commission's primary impetus for amending the rule was to insure the Commission was notified of all significant accidents or incidents, regardless of where the accident or incident occurred, so that the Commission would not be surprised to first learn about it in the media. AMEC further understands that it obviously is not the Commission's intent to somehow require reporting of an accident or incident on the customer side of the meter when the appropriate co-op personnel are not even aware of it. If the Commission upon reconsideration still wishes to expand the scope of its reporting requirements, AMEC asks the Commission in the alternative to at least attempt to refine and "tighten up" the language as currently proposed in Section (4)(B) and (C). To that end, some suggested changes are set forth below.

In addition, AMEC has identified some language elsewhere in Section (4) that it believes would benefit from some further minor refinement. For example, the proposed language in Section (4)(B) creates some confusion as to which utility is responsible to make a report where two utility service areas might overlap, which is the case in some areas. Likewise, it seems appropriate to try to address the situation when the injured person delays seeking medical treatment. Beyond this, AMEC's suggested changes only involve drafting consistency.

Below are AMEC's suggested modifications to the language of Section (4) as published, with AMEC's proposed new language underlined and the published language deleted by strike through:

(4) Every electric utility and rural electric cooperative **shall notify designated commission personnel** *[report to the manager of the Energy Department of the commission or his/her designee,]* by telephone *[or through EFIS, a brief description]* of an accident **or event incident** by the end of the first business day following the discovery of any accident **or event incident**. *[resulting from electrical contact with its energized electrical supply facilities which results in admission to a hospital or the fatality of an employee or other person or any other accident resulting from electrical contact considered significant by the utility. The electric utility or rural electric cooperative shall submit, either by mail or through EFIS within five (5) business days following the discovery, an update of the incident and any details not available at the time of the initial report.]* **Accidents or incidents that shall be reported shall be those resulting from:**

(A) **Electrical contact, arc or flash with its energized electrical supply facilities that results in immediate admission to a hospital or the fatality of an employee or other person; or**

(B) **Human contact with electric current of significant voltage at a premises within areas where it supplies power or operates energized electrical supply facilities that results in immediate admission to a hospital or the fatality of an employee or other person, even when the source of contact with the problem electric current is believed to have originated occurred on the customer's side of the meter, provided the management of the utility or rural electric cooperative first has received proper credible notice from a competent source or has actual knowledge of the accident or event; or**

(C) **any other accident or event resulting from electrical contact, arc, or flash with ensuing property damage considered to be significant by the management of the utility or rural electric cooperative.**

4 CSR 240-3.190(5)

Any time an entity reports an accident, liability considerations necessarily become involved. AMEC believes the reporting requirements of this rule are solely intended to keep the Commission duly informed, not to create another layer of liability gamesmanship. AMEC believes clarification language therefore should be added to Section (5) to make it clear that potential claimants cannot argue that providing the verbal notification and written report to the Commission constituted a waiver of the insurer-insured privilege, the work product privilege, or the in-anticipation-of-litigation privilege. To that end, AMEC suggests adding the following:

(5) **The electric utility or rural electric cooperative shall submit to designated commission personnel within five (5) business days following the discovery, a written report consisting of an update of the accident or event and any details not available at the time of the initial telephone notification. Neither the notification required by Section (4) nor the submission of the written report required by this Section, nor the public availability of either, shall be deemed to be an admission or waiver of any privilege of the notifying or reporting electric utility or rural electric cooperative.**

4 CSR 240-3.190 renumbered (6)-(10)

AMEC offers no comments on these sections.

Conclusion

AMEC sincerely appreciates being given the opportunity to work with the Commission on this important matter prior to publication of the Commission's proposed amendments and offers on behalf of AMEC and its member rural electric cooperatives the information and comments set forth above for the Commission's continued consideration.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was delivered by electronic transmission to the General Counsel's Office and the Office of the Public Counsel on the 5th day of March, 2010.

/s/ Charles Brent Stewart