BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Proposed Amendments to 20 CSR 4240-20.060 Filing Requirements for Electric Utility Cogeneration.	))))	File No. EX-2020-0006

JOINT COMMENTS

COMES NOW Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri"), Evergy Metro, Inc. d/b/a Evergy Missouri Metro ("Evergy Missouri Metro"), and Evergy Missouri West, Inc. d/b/a Evergy Missouri West ("Evergy Missouri West"),[1] and The Empire District Electric Company d/b/a Liberty Utilities ("Liberty Utilities") (collectively, "Commenters") and for their *Joint Comments*, state as follows:

1. On May 6, 2020, the Missouri Public Service Commission ("Commission") issued its *Finding of Necessity and Order Directing that Proposed Rule Amendments Be Filed for Publication*, and on May 29, 2020, the Commission issued a *Notice of Rulemaking Hearing*. Drafts of the rule amendments were published in the Missouri Register on July 1, 2020. The *Notice of Rulemaking Hearing* and the Missouri Register publication both requested the submission of written comments regarding the rules by July 31, 2020.

2. In these comments, the Commenters will provide suggestions and corrections regarding the proposed rules.[2] Accordingly, the remainder of this pleading is organized as follows:

[1] Effective October 7, 2019, Evergy Metro Inc. d/b/a Evergy Missouri Metro adopted the service territory and tariffs of Kansas City Power & Light Company ("KCP&L") and Evergy Missouri West, Inc. d/b/a Evergy Missouri West adopted the service territory and tariffs of KCP&L Greater Missouri Operations Company ("GMO").

[2] The Commenters are not commenting on the rescission of 20 CSR 42400-3.155, since the substance of that regulation is being transferred into Chapter 20.

- 20 CSR 4240-20.060 – Cogeneration and Small Power Production
- 20 CSR 4240-20.065 – Net Metering

20 CSR 4240-20.060 – Cogeneration and Small Power Production

3. Before it begins its discussion of the proposed revision to the rules round at 20 CSR 4240-20.060, the Commenters draw the Commission's attention to the recent FERC[3] Order issued in Docket Nos. RM19-15-000 and AD16-16-000 on July 16, 2020 ("FERC Order").[4] The FERC Order made numerous substantive revisions to the federal PURPA[5] rules that could not be given consideration by the Commission or the participants during the workshops. FERC's revised PURPA rules will become effective 120 days from the rules' publication in the Federal Register[6], which allows the Commission to revisit its own cogeneration and small power production rules, such as the following:[7]

- The Revised PURPA rules provide more guidance in how a legally enforceable obligation ("LEO") can be formed, including that the qualifying facility ("QF") must demonstrate commercial viability and financial commitment before a LEO can be created;
- For "as available" energy, the rule explicitly allows commissions to take market pricing into consideration as a likely more accurate gage for avoided costs at the time of delivery.
- For LEOs, the rule contains additional language allowing state commissions the flexibility to:
    - Require energy rates (but not capacity rates) to vary in accordance with changes in a utility's avoided costs at the time energy is delivered;
    - Allow QFs to retain rights to fixed energy rates based on forward price curves over the PPA term; and

[3] Federal Energy Regulatory Commission.
[4] https://www.ferc.gov/sites/default/files/2020-07/07-2020-E-1.pdf
[5] Public Utility Regulatory Policies Act of 1978.
[6] Publication of the FERC Order is pending as of July 31, 2020.
[7] The FERC order also addresses issues such as the "One-Mile Rule," which would be taken up at the federal rather than state level and will not be addressed here.

- Set energy and capacity rates based on competitive solicitations.

- FERC reduced the threshold for a rebuttable presumption of the lack of a nondiscriminatory market to 5 MW when the utility is in an ISO/RTO.

All of these revisions could have an impact on the Commission's cogeneration and small power production rules as currently drafted and should help shape state policy.

4. The Commenters will address these FERC PURPA issues throughout its discussion of the Commission's proposed rule, although given the sweeping nature of the revisions to the PURPA rules, the Commenters believe additional time and workshopping would provide a clearer picture of beneficial revisions that could be made to this MPSC proposed rule based on the federal changes. In addition, the Commenters will address matters for consideration that it would have regardless of the recent FERC order.

5. 20 CSR 4240-20.060 – General. It appears that some of the internal references in the draft rule have not been updated. For example:

- (5)(B)(2) regarding Relationship to Avoided Costs references subsection (4)(E) of the draft rule. However, the subsection referred to in the drafted rule has become section (5)(D).

- Section (5)(D) references "section (10)" of this rule, but the correct reference may actually be to section (11).

- Additionally, Section (11) contains a reference to Section 19(C)1, which appears to be in error. Likely, this was intended to refer to the new (5)(C).

The Commenters do not contend that this list is all-inclusive. All references should be reviewed and updated, as necessary.

6. 20 CSR 4240-20.060(1). The Commenters suggest that the Commission could consider revising the definition section to point to the FERC PURPA rules generally, as amended, for a definitional guide. It appears the Commission has already done this to some extent by deleting numerous definitions from this section. Two of the three remaining

definitions are used only once in the remainder of the rule. The other remaining definition – avoided costs – has recently been clarified and enhanced by the FERC Order. If the Commission decides to adopt the definitions in the proposed rule, the following adjustments or clarifications that would benefit the implementation of this provision.

> (A) The definition of "avoided costs" should refer back to the FERC rule.
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> (B) While "fuel costs" is a defined term in this section, the term only appears once in the rule itself. The term is used in several unrelated regulations (e.g., Chapter 22 resource planning rules) without definition. Defining the term here may cause that definition to be used across a variety of regulations. If the term is intended to be all-encompassing, that may not be an issue. However, placing the definition in this one rule could make it more difficult to find.
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> (C) This provision contains a definition of "capacity costs," and raises the same general issues as the definition of "fuel costs," which the Commenters will not repeat here.

7. 20 CSR 4240-20.060(2). The Commenters note that the provisions of (C) 1-6, (D), and portions of (E) have been deleted. Many of these provisions include standards for safety, reliability, and cost recovery of these measures. For example:

> (C)(4) removes the sentence, "The customer shall notify the utility prior to the initial testing of the customer's generating system and the utility shall have the right to have a representative present during the testing." This sentence is not covered by any other rules and the Commenters believe that this protection needs to be retained in the rule in order to properly identify and accommodate testing activity within their respective operations and ensure the customer generating systems are prepared to become part of utility systems.
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> (C)(6) requires a manual disconnection switch and measures that would allow a problematic QF to be islanded, and (E) addresses cost recovery related harmonics and voltage fluctuations caused by a QF.

With FERC's PUPRA provisions, specifically 18 CFR 292.308, enabling state commissions to oversee just such issues, the Commenters question why the Commission would delete these provisions. It appears that the Commission shifted these requirements

to discussions in the contracting process, but without these standards specifically enumerated, this will become more difficult.

8. 20 CSR 4240-20.060(3). This provision almost completely mirrors the existing 18 CFR 292.303. If the Commission is deleting other provisions and instead citing to FERC's PURPA rules, this would be another appropriate place to do so.

9. 20 CSR 4240-20.060(4). The Commenters have several comments on this proposed rule:

> (A) This is a provision of the Commission's proposed rules that is directly impacted by the FERC Order revising its PURPA rules, and represents a clear example of why this portion of the rulemaking should be withdrawn and further workshopped to ensure the new PURPA rules are fully considered and implemented. The new rule PURPA rule (18 CFR 292.304(d)(2)) specifically states that, "a state regulatory authority … may require that rates for purchases of energy from a qualifying facility pursuant to a legally enforceable obligation vary through the life of the obligation…" This is a new concept and has not been be fully vetted by this Commission. Without an explicit consideration of and tie to the new PURPA rules, it is not clear that concepts such as the variable rate over the contract term would apply.
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> Additionally, the proposed rule requires the creation of "standard contract templates" for QF purchases. A standard contract template takes away the flexibility to deal with certain situations on a case-by-case basis. For example, a utility interconnection study may determine that the installation of a QF in a rural area may create a unique system load issue that would be harder to negotiate if a standard form contract was in place. Even if a utility is allowed to state that the template need not be firm and may be negotiated, it still puts utilities in a more vulnerable negotiating position. Since the utilities must balance not only the purchase of power but also the costs of that power (and investments necessary to transmit that power) to its customers, it is logical that it should retain a reasonably balanced negotiating position than a standard template would allow. Pricing and contract length are critical to retain flexibility over given that it is ultimately the utility's customers, and not the utility, who bear the burden of these costs.
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> Also, the rule is unclear regarding how this standard contract would be developed and implemented. For example, is the rule

contemplating one standard contract for all utilities or a contract for each utility? Will these contracts dictate terms such as pricing and contract length? Will there be sufficient flexibility to address case-by-case situations? Will they need to be technology-specific (i.e., separate contracts for solar, wind, cogeneration, etc.)? How will utilities be expected to deal with the lag time between the effective date of this rule and the Commission approval of the standard contract template(s)? In what kind of proceeding will these contract templates be developed? There are a sufficient number of open questions, and these questions are complicated further by the recent FERC Order which creates other contracting options and considerations.

Finally, if the Commission proceeds with the rulemaking in its current form, the Commenters question whether the "or" between the clause of (A)1 and 2 should be an "and." As written, the use of "or" between (A)1. and (A)2. leaves it unclear if electric utilities are required to put into effect commission-approved standard rates for both purchases from qualifying facilities with a design capacity of one hundred (100) kilowatts or less *and* qualifying facilities with a design capacity of over one hundred (100) kilowatts to one thousand (1,000) kilowatts, *or* by their choice only one of these. Assuming that the intention of the rule is the former, the Commenters cannot discern what the basis is for differentiating the rate for these two groups. The Commenters suggest that there is a not a need for a separate rate for qualified facilities with a design capacity of 100 kilowatts or less.

(B) The Commenters are not certain they understand the intent of this provision. It is not put forward as a requirement as it was for smaller QFs in (A). The Commission would seem to have this discretionary ability regardless of the regulation, so it appears to be superfluous. This provision could be deleted.

(C)1 and (2) The Commenters question whether it may cause undue confusion to include net metering and renewable energy standard ("RES") provisions in a cogeneration and small power production rule. Perhaps these provisions are better located in the net metering rule, with a cross-reference included here to point those researching in the right direction. Additionally, it may be appropriate to replace these provisions instead with a statement that "a utility shall not be required to purchase RECs that are not needed for RES compliance."

(D) The Commenters would appreciate guidance regarding the timing allowed to develop the technical and performance standards, as well as for the standard contract template, as this is an effort that

could take some time to accomplish. The Commenters suggest at least six months to finish this task, and suggest this may be something that should be added to the rule to provide clarity.

10. 20 CSR 4240-20.060(5). This proposed provision represents another area where additional time to fully consider the FERC Order revising the PURPA regulations would be appropriate. Sections (A) and (B) of this provision, for example, do not contain proposed revisions, but they do reference the use of avoided costs as an appropriate price for purchases. With the recent FERC Order, methods for calculating and implementing avoided costs are changing. Both sections (B) and (C) of this provision contain references to a "legally enforceable obligation." This, too, is a term that has been clarified by the FERC Order, so it may be an appropriate time to examine the definition of this term. Section (D) discusses many factors that may impact rates for purchases, but does not include factors identified in the FERC Order such as variable pricing over time, market comparisons, etc. Accordingly, it is appropriate that this particular rule be re-opened for additional development in light of the revised PURPA regulations.

11. 4 CSR 240-20.060(6)(B)1. The Commenters suggest that the words, “or as required by the utility” be added after the phrase “Upon request of a qualifying facility” that begins this rule sentence. In this way, the utility has a way to apply its stand-by rate should a customer not request a stand-by rate even though the customer is taking stand-by services from the utility systems.

20 CSR 4240-20.065 – Net Metering

12. General. It appears that some of the internal references in the draft rule have not been updated. For example:

- Section (1)(G) regarding the definition of Operational should be updated to the (F) to for sequential order.

- A section number was skipped resulting in sections (4) – (8) being numbered incorrectly.
- In Section (9)(A)2, there appears to be two sections labeled "A."

The Commenters do not contend that this list is all-inclusive. All references should be reviewed and updated, as necessary.

13. 20 CSR 4240-20.065(1). The Commenters question whether additional clarity should be given in light of the deletion of the definition of "customer generator" from this rule. The definition proposed for deletion does mirror the definition found in the cited statute (i.e., Section 386.890 RSMo Supp. 2016). However, the rule also incorporates the definitions contained in 20 CSR 4240-20.100. At that location, there is another definition of "customer generator," for the purposes of that rule, which conflicts with the statutory definition of net metering. This creates a potential for confusion. The Commenters suggest, then, that it may be beneficial to reinstate a definition of customer-generator that refers specifically to "as defined by Section 386.890 RSMO Supp. 2016)."

14. 4 CSR 240-20.065(5). The Commenters have the following concerns with regard to Section (5):

> (A) The draft rule provides that customer-generators can waive the liability insurance minimum policy requirements "for good cause shown." The Commenters are unclear how this provision would be implemented and believes that there could be differing interpretations of what constitutes good cause which could lead to Commission complaints. For this reason, the Commenters requests that the "good cause" language be removed.
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> (G) The Commenters believe that a new section (G) needs to be added with a provision that allows a utility to require a customer-generator to test its generating capacity per the applicable RTO requirements. At the July 2020 Southwest Power Pool ("SPP") Market and Operations Policy Committee meetings, new requirements were approved at SPP for behind-the-meter generation under 10 MW and not registered in the SPP market to be tested similar to other generators in order for a utility to claim the

> generating capacity towards meeting SPP supply adequacy requirements.
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> (G) The electric utility may require that a customer-generator's system capacity be tested in accordance with the applicable Regional Transmission Organization's capacity accreditation requirements.

15. 4 CSR 240-20.065(6)(A). The Commenters recommend removing the dates from the standards and adding "as revised from time to time." The standards are currently going through revisions and UL issues revisions periodically. IEEE 1547 was recently updated to a -2018 version and a new revision of UL 1741 is being adopted this year to reflect these changes. UL 1703 is being replaced by UL 61730, but both currently co-exist. Existing solar panel models must meet 1703 but new models must meet 61730. As the proposed rules stand new inverters that meet the new 1547-2018 requirements for smart inverters could not be required. It is more appropriate to have the specific version of the standards be listed in the utility's technical interconnection requirement specifications.

16. 20 CSR 4240-20.065(9). The Commenters have several concerns regarding the revisions in the proposed rules, which are discussed further as follows:

> Agreement – This proposed revision remove references to an agreement that was previously incorporated fully into the rule itself; instead, the agreement is to be posted on the commission's website. Ameren Missouri , however, has existing variances from the rule allowing it to vary slightly from the agreement contained therein.[8] If the agreement is removed, Ameren Missouri is unclear how this will impact its existing variances and what kind of variances from the agreement text may be allowable thereafter. Ameren Missouri requests that these questions be clarified further before the agreement is eliminated from the rule.
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> (A) The Commenters are unsure how the agreement to be located on the commission's website is to be developed, i.e., informally, in a separate, docketed proceeding, etc. Further, if there is a dispute over the agreement's development, it is not clear how those disputes

[8] See, File Nos. EE-2017-0235, EE-2019-0027, and EE-2020-0191.

will be raised or resolved. The Commenters suggest more clarity on this issue could mitigate the potential for future disputes.

(A)1 This revision requires "a signature page for the customer and solar installer to indicate acknowledgement of the entire interconnection application." From a practical perspective, the Commenters are unsure how this will be implemented, particularly since electronic signatures are prevalent and installers often operate as agents for the customer. Currently, for example, the Commenters allow an online application and agreement process, so signatures are affirmed electronically. Rather than having both the solar installer and the customer perform an electronic signature through an online portal or similar mechanisms, an "either/or" provision could be included. In other words, if a physical signature page is for some reason unavailable, perhaps a letter confirming the terms of the agreement is sent to the customer would be a reasonable alternative.

WHEREFORE, for the foregoing reasons, the undersigned respectfully request that the Commission accept these comments for consideration in determining the next steps regarding the proposed rule revisions.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been emailed to the parties of record on this 31st day of July 2020:

/s/ Roger W. Steiner
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