

Robin Carnahan
Secretary of State
Administrative Rules Division

RULE TRANSMITTAL

Administrative Rules Stamp

Rule Number 4 CSR 240-20.065

FILED

Use a "SEPARATE" rule transmittal sheet for EACH individual rulemaking.

JUN 19 2009

Name of person to call with questions about this rule:

Content Morris Woodruff Phone 573-751-2849 FAX 573-526-6010

Missouri Public
Service Commission

Email address morris.woodruff@psc.mo.gov

Data Entry same Phone _____ FAX _____

Email address _____

Interagency mailing address Public Service Commission, 9th Fl, Gov. Ofc Bldg, JC, MO

TYPE OF RULEMAKING ACTION TO BE TAKEN

- Emergency rulemaking, include effective date
 Proposed Rulemaking
 Withdrawal Rule Action Notice In Addition Rule Under Consideration
 Order of Rulemaking

Effective Date for the Order _____

Statutory 30 days OR Specific date _____

Does the Order of Rulemaking contain changes to the rule text? NO

YES—LIST THE SECTIONS WITH CHANGES, including any deleted rule text:

4 CSR 240-20.065(4)

Small Business Regulatory
Fairness Board (DED) Stamp

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JOINT COMMITTEE ON

JUN 18 2009

ADMINISTRATIVE RULES



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Director, Utility Operations

VACANT
Secretary/Chief Regulatory Law Judge

KEVIN A. THOMPSON
General Counsel

Honorable Robin Carnahan
Secretary of State
Administrative Rules Division
600 West Main Street
Jefferson City, Missouri 65101

Dear Secretary Carnahan:

Re: Amendment of 4 CSR 240-20.065

CERTIFICATION OF ADMINISTRATIVE RULE

I do hereby certify that the attached is an accurate and complete copy of the order of rulemaking lawfully submitted by the Missouri Public Service Commission for filing.

Statutory Authority: Sections 386.250, RSMo 2000.

If there are any questions, please contact: Morris L. Woodruff, Deputy Chief Regulatory Law Judge
Missouri Public Service Commission
200 Madison Street
P.O. Box 360
Jefferson City, MO 65102
(573) 751-2849
morris.woodruff@psc.mo.gov

A handwritten signature in cursive script that reads "Morris L. Woodruff".

Morris L. Woodruff
Deputy Chief Regulatory Law Judge

**Title 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240 – Public Service Commission
Chapter 20—Electric Utilities**

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 386.250, RSMO 2000, the commission amends a rule as follows:

4 CSR 240-20.065 is amended.

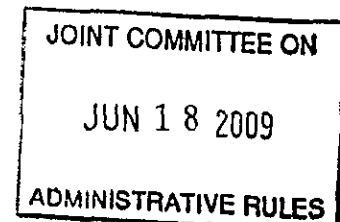
A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 1, 2009 (34 MoReg 659). The section with changes is reprinted here. The proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The public comment period ended May 1, 2009, and a public hearing on the proposed rule was held May 1, 2009. Timely written comments were received from Union Electric Company, d/b/a AmerenUE; Renew Missouri; The Empire District Electric Company; Missouri Solar Applications, LLC; and Missouri Valley Renewable Energy, LLC. In addition, legal counsel for the staff of the Missouri Public Service Commission, the Office of the Public Counsel, Union Electric Company d/b/a AmerenUE, and Renew Missouri offered comments at the hearing. Vaughn Prost, CEO of Missouri Solar Applications, LLC, Henry Rentz, President of Missouri Valley Renewable Energy, LLC, and Eric Swillinger with Missouri Solar Living also offered comments at the hearing. The comments both opposed and supported various aspects of the proposed amendment

COMMENT 1 Insurance Requirements: The current net metering rule requires customer-generator systems of ten kilowatts or less to carry no less than \$100,000 of liability insurance coverage. Systems of greater than ten kilowatts are required to carry \$1,000,000 of liability insurance coverage. The amendment would eliminate the liability insurance requirement for systems of less than ten kilowatts. The amount of liability insurance required for systems greater than 10 kilowatts would be reduced to \$100,000.

The Empire District Electric Company filed a written comment urging the Commission to retain the liability insurance requirements found in the current rule. It believes reducing or eliminating the liability insurance requirements would expose the public to the risk of injury or death without requiring the customer-generators to be financially responsible for the consequences of their actions.

Union Electric Company, d/b/a AmerenUE, indicates general support for the amendment. However, it urges the Commission retain the \$1,000,000



liability insurance requirement for generator-systems of greater than ten kilowatts. AmerenUE argues systems of that size are not likely to be installed for small residential customers, and thus, owners of such systems are likely to have the means to obtain that level of insurance to cover their potential liability.

Renew Missouri and the Office of the Public Counsel support the elimination of the liability requirement for generator-systems of ten kilowatts and less. Renew Missouri does not oppose the \$100,000 liability insurance requirement for systems greater than ten kilowatts. Public Counsel takes no position on that requirement.

Henry Rentz of Missouri Valley Renewable Energy, LLC, and Vaughn Prost of Missouri Solar Applications, LLC, install residential solar energy systems. They contend such systems are safe and no additional insurance should be required. Consequently, they support the elimination of the liability insurance requirement for generator-systems of 10 kilowatts and less. Mr. Rentz also urged the commission to eliminate the liability insurance requirement for generator-systems smaller than 100 kilowatts. Mr. Prost and Eric Swillinger of Missouri Solar Living contend that no liability insurance should be required for any customer generator-system of any size.

RESPONSE: Section 386.890.6(2) RSMo, Supp. 2008, the Net Metering and Easy Connection Act passed by the general assembly in 2007, provides that customer-generators installing systems of ten kilowatts or less shall not be required to purchase additional liability insurance. Therefore, the commission must amend the regulation to remove the insurance requirement for generator-systems of ten kilowatts or less to comply with the dictates of the statute.

Section 386.890.6(3)(b) RSMo, Supp. 2008 gives the commission authority to require owners of generator-systems greater than 10 kilowatts to purchase additional liability insurance. However, the commission does not want to discourage the installation of such systems by imposing a burdensome insurance requirement. Empire and AmerenUE did not present arguments compelling enough to convince the commission that a requirement for \$100,000 in additional liability insurance for generator-systems greater than 10 kilowatts would be insufficient to protect the public. Nevertheless, the commission believes substantial liability insurance coverage for these larger generator-systems is necessary. While residential homeowners may have generator-systems of ten kilowatts or less installed, larger systems are likely to be installed for larger commercial operations. Such commercial operators are capable of finding and affording the additional liability coverage. The commission will leave the liability insurance requirement for generator-systems of greater than 10 kilowatts at \$100,000. No change to the amendment is made as a result of this comment.

COMMENT 2 Liability Language in the Interconnection Agreement: The current net metering rule, 4 CSR 240-20.065(7), requires a customer-generator and electric utility to enter into an interconnection agreement in a form established in the rule. The commission's amendment would add a sentence to

that form agreement advising customer-generators, including those with systems of less than ten kilowatts, that they may have legal liabilities for personal injuries or property damage that would not be covered under their existing insurance policies. In addition, the amendment to Section 4 CSR 20.065(4)(B) requires any tariff or contract offered by a utility to a customer-generator to include a warning about the customer-generator's potential liability and the potential lack of coverage for that liability under the customer-generator's existing insurance policy.

Renew Missouri, as well as Public Counsel, Mr. Rentz and Mr. Prost oppose the inclusion of this language in the form agreement, as well as in tariffs and contracts. They are concerned that the warning language would scare-off customers who are considering the installation of a generation system, thereby erecting an unnecessary barrier to what is supposed to be an easy connection. Renew Missouri further points out that the Net Metering and Easy Connection Act (Subsections 386.890.16 & .17, RSMo Supp. 2008) specifically establish that manufacturers, sellers, and installers of units used by customer-generators may be held liable for the negligent acts, but makes no mention of the liability of the customer-generators. Renew Missouri contends there is no reason for the commission's regulation to "harp on the remote possibility of damage resulting from net-metered systems when it is not even mentioned in the statute." Public Counsel adds that the commission should not be offering an advisory opinion in its rule about what "the law may and may not be about liability."

RESPONSE: The commission is not trying to scare customer-generators away from making the easy connection contemplated by the controlling statute. However, customer-generators should be made aware that they might not have insurance coverage for whatever liability risk they face. It is then up to the customer-generator to decide whether the system they are installing is safe enough for them to willingly take on that risk. The commission will not remove the challenged language from the amended rule. No change to the amendment is made as a result of this comment.

COMMENT 3 Improper Claim of Authority: Public Counsel expresses concern that in submitting the proposed amendment to the Secretary of State, the commission cited Section 386.887, RSMo Supp. 2007, as its authority for promulgating the amendment. Public Counsel correctly points out that that section was repealed in 2007 and could not be authority for this rulemaking.

RESPONSE: Public Counsel's concern is noted. Fortunately, that error was corrected before the proposed amendment was published in the Missouri Register. No change to the amendment is made as a result of this comment.

COMMENT 4 Improper Reference to Cooperatives: Staff raised a concern about a reference in the amendment to tariffs or contracts offered by a utility or cooperative. Staff explained that the Consumer Clean Energy Act had given the commission authority over rural electric cooperatives regarding net metering.

However, the Net Metering and Easy Connection Act repealed that act in 2007, and the current statute does not give the commission authority over such cooperatives. For that reason, Staff advises the commission to remove the references to cooperatives from the amendment. Public Counsel and Renew Missouri expressed support for the change proposed by Staff.

RESPONSE AND EXPLANATION OF CHANGE: Staff's concern is well taken. The commission will remove the references to cooperatives from the amendment.

**Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 20—Electric Utilities**

4 CSR 240-20.065 Net Metering

(4) Customer-Generator Liability Insurance Obligation.

(A) Customer-generator systems greater than ten kilowatts (10 kW) shall carry no less than one hundred thousand dollars (\$100,000) of liability insurance that provides for coverage of all risk of liability for personal injuries (including death) and damage to property arising out of or caused by the operation of the net metering unit. Insurance may be in the form of an existing policy or an endorsement on an existing policy.

(B) Customer-generator systems ten kilowatts (10 kW) or less shall not be required to carry liability insurance; however, any tariff or contract offered by a utility to customer-generators shall contain language stating that absent clear and convincing evidence of fault on the part of the retail electric supplier, those retail electric suppliers cannot be held liable for any action or cause of action relating to any damages to property or persons caused by the generation unit of a customer-generator or the interconnection thereof pursuant to section 386.890.11, RSMo Supp. 2008. Further, any tariff or contract offered by utilities to customer-generators shall state that customer-generators may have legal liabilities not covered under their existing insurance policy in the event the customer-generator's negligence or other wrongful conduct causes personal injury (including death), damage to property, or other actions and claims.

MEMORANDUM

TO: Colleen M. Dale, Secretary

DATE: June 16, 2009

RE: Authorization to File Order of Rulemaking with the Office of Secretary of State

FILE NO: EX-2009-0267

The undersigned Commissioners hereby authorize the Secretary of the Missouri Public Service Commission to file the following Order of Rulemaking with the Office of the Secretary of State, to wit:

Amended Rule 4 CSR 240-20.065 – Net Metering



Robert M. Clayton III, Chairman



Jeff Davis, Commissioner



Terry M. Garrett, Commissioner



Kevin D. Gunn, Commissioner
