

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

In the Matter of the Application of Evergy Missouri )  
West, Inc. d/b/a Evergy Missouri for Approval of )  
a Special High Load Factor Market Rate for )  
a Data Center Facility in Kansas City, Missouri )

File No. EO-2022-0061

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**POST-HEARING BRIEF OF VELVET TECH SERVICES, LLC**

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**TABLE OF CONTENTS**

I. INTRODUCTION ..... 3

II. PROCEDURAL HISTORY ..... 3

III. ARGUMENT ..... 4

    (1) Should the Commission approve the Special High Load Factor Market Rate (“Schedule MKT”) tariff proposed by Evergy? ..... 4

        1. Overview of the Velvet Tech Services, LLC Project ..... 5

        2. Data Centers, Generally ..... 6

        3. A Long-Term and Short-Term Solution for Velvet ..... 7

        4. Customer Protections: The Structure of Schedule MKT ..... 8

        5. Customer Protections: Commission Oversight Following Approval of Schedule MKT ..... 10

        6. Approval of Schedule MKT Furthers State and Local Economic Development Efforts and State Policy in Attracting Data Centers to Missouri ..... 11

        7. Approval of Schedule MKT Furthers State Goals Related to Renewable Energy ..... 14

        8. Approval of Schedule MKT Results in Direct and Indirect Benefits to Evergy Customers ..... 15

        9. Approval of Schedule MKT is in the Public Interest ..... 16

    (1a) Is the Schedule MKT tariff lawful? ..... 17

    (2) If yes, what if any modifications to the Schedule MKT tariff proposed by Evergy or other conditions should the Commission order? ..... 18

        1. Hold Harmless ..... 19

        2. RES and RESRAM ..... 20

        3. Schedule PED (and Section 393.1640, RSMo) ..... 24

        4. Securitization ..... 26

        5. Section 393.1655 Treatment ..... 27

IV. CONCLUSION ..... 27

## **I. INTRODUCTION**

The MKT filing is a result of years of work by state and local, public and private partners to secure a massive economic development project for Missouri and a “long-term customer [for Evergy] and community partner [for Kansas City].”<sup>1</sup> The size and scope of the project is not one that comes before the Commission often:

- An \$800 million enterprise data center in Kansas City;
- A potential investment of over \$1 billion; and
- An anchor for an 882-acre data center campus consisting of 5.5 million square feet of newly constructed facilities resulting in a \$4.3 billion investment in real estate.

The un rebutted evidence shows that approval of the proposed Special High load Factor Market Rate tariff (“Schedule MKT”) is in the best interest of the State of Missouri. Schedule MKT (1) furthers economic development initiatives undertaken by the Kansas City region and the State of Missouri; (2) furthers state goals in attracting data centers to Missouri; and (3) furthers state goals in increasing the use of renewable energy sources. Consistent with other special contract tariffs, pricing under Schedule MKT is determined based on and designed to cover the incremental cost to serve the MKT customer.<sup>2</sup> In addition, the Commission will maintain oversight over Schedule MKT customers in that it must approve any Market Rate Contract and in that the Company will have continuing reporting obligations related to any Schedule MKT customers. As detailed below, approval of Schedule MKT is in the public interest; therefore, the Commission should approve the Schedule MKT, subject to the modifications contained in the Stipulation filed by Evergy Missouri West (“Evergy” or “Company”) and Velvet Tech Services, LLC (“Velvet”).

## **II. PROCEDURAL HISTORY**

Prior to filing its Application, Evergy met with representatives from Commission Staff (“Staff”) and the Office of Public Counsel (“OPC”) on September 14, 2021, and September 23,

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<sup>1</sup> Tr. 215:18-19.

<sup>2</sup> Application, 2-3; Tr. 144.

2021, to discuss the Application and underlying facts. Evergy presented Staff and OPC with the proposed tariff and exemplar Market Rate Contract and solicited feedback on the same.<sup>3</sup>

On November 2, 2021, Evergy filed its Application requesting Commission authority for approval of a special high load factor market rate for a Data Facility in Kansas City, Missouri. Evergy requested that the Commission approve Schedule MKT by March 1, 2022, so that the schedule could be effective no later than March 31, 2022. On November 9, 2021, the Commission granted the Applications to Intervene of Velvet, Google LLC (“Google”), and the Midwest Energy Consumers Group (“MECG”).

On January 24, 2022, OPC, Staff and MECG entered into a Noninanimous Stipulation and Agreement (“OPC Nonunanimous Stipulation”) proposing a modified MKT tariff, noting they would not oppose Commission approval of the tariff as modified.<sup>4</sup>

On January 24, 2022, Evergy and Velvet entered into a Non-Unanimous Stipulation and Agreement (“Evergy Stipulation”) (1) proposing and recommending approval of a modified MKT tariff (2) recommending certain customer protections regarding (a) cost and revenue tracking (b) Section 393.1655 treatment and (3) requesting variances from 20 CSR 4240-20.100.<sup>5</sup>

The evidentiary hearing before this Commission was held on January 25 and 26, 2022. The signatories of each stipulation objected at the hearing to the competing stipulation.<sup>6</sup> The only non-signatory, Google, represented at the hearing that it was “supportive of the efforts of Evergy and Velvet to present and advocate for the MKT schedule” and that it agreed with the objections raised by Evergy and Velvet to the OPC Non-Unanimous Stipulation. Tr. 77:15:22.

### **III. ARGUMENT**

#### **(1) Should the Commission approve the Special High Load Factor Market Rate (“Schedule MKT”) tariff proposed by Evergy?**

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<sup>3</sup> Ex. 1, Ives Direct, 15:22-16:8.

<sup>4</sup> Exhibit 203.

<sup>5</sup> Exhibit 8.

<sup>6</sup> On January 31, 2022, Velvet filed its written objection to the OPC Nonunanimous Stipulation, and MECG filed a written objection to the Evergy Stipulation.

Yes. Approving the MKT Tariff will provide a much-needed tool to attract large high load factor customers like Velvet. The availability of a market-based rate for Velvet (and future similarly situated customers) will unlock the benefits of an \$800 million enterprise data center for the State and the Kansas City region and create direct and indirect benefits to Evergy customers, while providing the necessary Commission oversight to protect other Evergy customers.

The parties are largely in agreement that the Commission should approve a market-based tariff for Evergy. As counsel for OPC stated at the hearing: “[H]ere all the parties are basically saying yeah, Commission, go ahead and put the special market rate tariff into effect.”<sup>7</sup> Similarly, counsel for MECG stated: “Bottom line, MECG does not oppose the MKT tariff. I think it is a valuable option to have out there to bring in economic development.”<sup>8</sup>

### **1. Overview of the Velvet Tech Services, LLC Project**

Velvet conducted a multi-state search for a location to build a new \$800 million enterprise data center.<sup>9</sup> Velvet worked with Evergy to explore rate options to meet Velvet’s needs.<sup>10</sup> Important to Velvet’s decision making was finding a solution that provided competitive pricing and was compatible with Velvet’s renewable goals.<sup>11</sup>

Many other utilities in other states offer market-based pricing, which is attractive to companies with renewable energy goals.<sup>12</sup> With Missouri’s current limited toolbox of options, Missouri has thus far been bypassed by developers of hyperscale data centers.<sup>13</sup> Electricity is one of the biggest inputs to the cost of operating a data center. Therefore, the electricity rate and rate structure are very important to Velvet’s decision whether to locate in Kansas City.<sup>14</sup>

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<sup>7</sup> Tr. 86:8-11.

<sup>8</sup> Tr. 106:10-11

<sup>9</sup> Ex. 1, Ives Direct, Schedule DRI-3, 1.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Ex. 300, Brubaker Surrebuttal, MEB-2.

<sup>13</sup> Ex. 4, McCarthy Direct, 7.

<sup>14</sup> Ex. 4, McCarthy Direct, 8.

Velvet has been engaging with local and state partners in Missouri since 2018 in an attempt to bring this project to fruition.<sup>15</sup> Since then, Velvet has undertaken significant efforts to develop the project through a team of experts – efforts which include: confirming availability of reliable and redundant electric power; confirming availability of high quality and redundant fiber optic communications; selecting a suitable tract of land for the project located within range of KCI airport and a highly-skilled labor force; engaging and collaborating with state and local economic development agencies; and negotiating a suitable energy rate structure with Evergy.<sup>16</sup>

## 2. Data Centers, Generally

Data center operations require a large amount of energy.<sup>17</sup> For data centers, electricity is the largest single operations expense.<sup>18</sup>

According to the U.S. Chamber of Commerce Technology Engagement Center (“TEC”), beyond wages and tax revenue for state and local governments, opening data centers “Creates other real, tangible benefits for residents.”<sup>19</sup> TEC reports “[d]ata centers directly and indirectly improve local public infrastructure – roads, power lines, water, and sewage systems. They increase the pool of skilled workers and often attract additional centers or partner business...they contribute financial and other resources and collaborate with local organizations to support their communities.”<sup>20</sup>

More than 30 states have incentives that specifically target the attraction of data centers.<sup>21</sup> Several states have recently added, enhanced, or renewed their incentives to remain competitive.<sup>22</sup> Twenty-six states have incentives that last for 10 years or more, with 11 states having incentives

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<sup>15</sup> Ex. 4, McCarthy Direct, 9.

<sup>16</sup> *Id.*

<sup>17</sup> Ex. 300, Brubaker Surrebuttal, MEB-1, 12.

<sup>18</sup> *Id.*

<sup>19</sup> Ex. 300, Brubaker Surrebuttal, MEB-4, Section 5, 2.

<sup>20</sup> *Id.*

<sup>21</sup> Ex. 300, Brubaker Surrebuttal, MEB-4, Section 4, 3.

<sup>22</sup> *Id.*

that are valid indefinitely.<sup>23</sup> In 2017, the data center industry’s total economic impact on Illinois was approximately 31,500 jobs, \$2.4 billion in labor income, and \$7.1 billion in economic impact.<sup>24</sup> In Illinois, data center economic activity was responsible for generating \$877.5 million in tax revenue, of which \$321.7 million was state and local tax revenue.<sup>25</sup> Similarly, in Virginia, data centers were directly and indirectly responsible for generating more than \$600 million in state and local tax revenue.<sup>26</sup>

Data centers have utilized the availability of market-based rates, like Omaha Public Power District (“OPPD”) Rate 261M, to meet their needs in other states. OPPD’s Rate 261M was approved in 2017 and was described as a solution that brought economic development benefits to the area and supported customers’ in meeting their renewable goals by pricing retail energy at SPP market prices to align with pricing of customer renewable projects on the SPP grid.<sup>27</sup>

Market-based rate schedule approaches are available in several other states including: Nevada Power Company d/b/a/ NV Energy, Public Service Company of New Mexico, Virginia Electric and Power Company, Northern Indiana Public Service Company and Alliant Energy (Iowa).

### 3. A Long-Term and Short-Term Solution for Velvet

Competitive electricity rates are very important to data center customers and represent a primary factor in their decision to choose a location.<sup>28</sup> As Mr. Brubaker explained, “[t]he price that data centers pay for electricity is critical in the overall decision-making process as to where facilities will be placed.”<sup>29</sup>

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<sup>23</sup> Ex. 300, Brubaker Surrebuttal, MEB-4, Section 3, 6.

<sup>24</sup> Ex. 300, Brubaker Surrebuttal, MEB-4, Section 1, 40.

<sup>25</sup> *Id.*

<sup>26</sup> Ex. 300, Brubaker Surrebuttal, MEB-4, Section 2, 5.

<sup>27</sup> Ex. 1, Ives Direct, 5:7-12.

<sup>28</sup> Ex. 1, Ives Direct, 4:3-5.

<sup>29</sup> Tr. 305:8-11.

Data centers have several unique characteristics. At full operation, data centers have high load factors – which are more consistent loads than those of existing customers.<sup>30</sup> Second, “Data Center loads...‘ramp up’ over a period of years as the data center equipment is installed, tested and commissioned in phases.”<sup>31</sup>

As proposed, a customer could not take service under MKT until it could demonstrate a “high load factor.”<sup>32</sup> Velvet planned to be able to meet the applicability provisions and take service under Schedule MKT in November 2025.<sup>33</sup>

The availability of the Missouri West Limited Large Customer Economic Development Discount Rider (Schedule PED) and the availability of Schedule MKT were both important in Velvet’s determination of whether a project in Missouri would be viable.<sup>34</sup> Velvet secured the availability of a short-term solution (in Schedule PED) before finalizing any agreements related to Schedule MKT.<sup>35</sup>

Data centers are unique in a third important aspect. Generally, data centers are owned by corporations with renewable energy mandates. Evergy has been approached by multiple potential customers, and “all have corporate renewable energy mandates.”<sup>36</sup> Here, Schedule MKT was designed to meet the unique needs of these customers, in part to “facilitate [the] customer[‘s] renewable energy goals.”<sup>37</sup> Access to market pricing allows a customer, like Velvet, to align pricing of renewables with the retail energy prices they pay for electric service.”<sup>38</sup>

#### **4. Customer Protections: The Structure of Schedule MKT**

The structure of Schedule MKT itself was designed to mitigate risk to other customers. First, the tariff design is constructed to recover the incremental cost to serve customers under the

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<sup>30</sup> Ex. 1, Ives Direct, 13:24-14:2.

<sup>31</sup> Ex. 1, Ives Direct, 3:11:13; Tr. 284:11-16.

<sup>32</sup> Ex. 1, Ives Direct, DRI-1, 4.

<sup>33</sup> Ex. 1, DRI-3, 2.

<sup>34</sup> Tr. 310:16-311:10.

<sup>35</sup> Tr. 211:9-212:2.

<sup>36</sup> Ex. 1, Ives Direct, 16.

<sup>37</sup> Ex. 1, Ives Direct 4:10-11.

<sup>38</sup> Ex. 1, Ives Direct 12:13-15.

tariff.<sup>39</sup> The tariff consists of three components: an energy charge, a customer service charge, and a demand charge.<sup>40</sup> The energy charge will be based on the Southwest Power Pool (SPP) hourly day-ahead price.<sup>41</sup> This is the largest component of the rate and provides no risk to other customers as effectively the price paid by Evergy passes directly to the MKT Customer. The customer service charge and demand charges are based on the incremental cost to serve the customer.<sup>42</sup> The contract contains minimum demand level to ensure a minimum monthly bill regardless of energy consumption and to ensure customer loads meet the capacity design assumptions.<sup>43</sup>

Second, Schedule MKT authorizes a contract with a five-year term.<sup>44</sup> As recently as 2018, the Commission approved a contract with a ten-year term.<sup>45</sup> Previously, the Commission has approved contracts with terms of ten years or more.<sup>46</sup> The five-year term provides the Commission the ability to review the contract and pricing to ensure that Market Rate Contract remains in the best interest of all Evergy's customers.

In addition, other customers are protected from the risks associated from Evergy adding excess capacity or entering into long-term Power Purchase Agreements. Instead, that risk is borne by the MKT customer. Velvet is independently committed to supporting 100% of the new data

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<sup>39</sup> Ex. 3, Ives Surrebuttal, 4:11-12.

<sup>40</sup> Ex. 1, Ives Direct, 7:17-21.

<sup>41</sup> *Id.*

<sup>42</sup> Ex. 1, Ives Direct, 7:19-21. The customer service charge in the exemplar contract is higher than the customer service charge for SIL customers. Evergy recently reported in its general rate case filings that the revenues from the company's SIL customer are sufficient to cover its incremental cost to serve. Tr. 205:8-25.

<sup>43</sup> Ex. 1, Ives Direct, DRI-2, 2.

<sup>44</sup> Ives Direct, DRI-1, 3.

<sup>45</sup> *In the Matter of the Application of KCP&L Greater Mo. Operations Co. for Approval of a Special Rate for a Facility Whose Primary Indus. Is the Prod. or Fabrication of Steel in or Around Sedalia, Mo.*, Case No. EO-2019-0244 (“Nucor”) (Nov. 13, 2019).

<sup>46</sup> *In re Kansas City Power & Light Co.*, No. EO-95-181, 1995 WL 789407, at \*4 (Nov. 22, 1995); Case No. WT-2004-0192, Order Concerning Agreement and Tariffs, Application to Intervene, and Motions to Suspend Tariffs at 12 (Nov. 20, 2003).

center load with renewable energy resources and supporting the development of new renewable generation facilities within the SPP grid.<sup>47</sup> In addition, Velvet intends to construct its own distribution substation.<sup>48</sup> Evergy expects to collect infrastructure costs associated with serving a customer under Schedule MKT from that customer either through (1) up-front charges or (2) through the MKT rate design.<sup>49</sup> Finally, Evergy and Velvet have requested a variance which would insulate all parties from having to “green” the same load twice.<sup>50</sup>

#### **5. Customer Protections: Commission Oversight Following Approval of Schedule MKT**

Schedule MKT has an important and additional safeguard for other ratepayers that has largely been ignored by OPC, Staff and MECG. No customer (including Velvet) would be served without approval of the Commission of Special High Load Factor Market Rate Contract, after the filing of such contract and certain contract documentation.<sup>51</sup>

The Special High Load Factor Market Rate Contract will contain details about the rate, start date, term, operating parameters and terms and conditions. With respect to the rate itself -- all assumptions, inputs, and calculations used to determine the rate will be filed with the Commission.<sup>52</sup> At that time, parties will have the opportunity to determine the incremental cost to serve and compare the same with the rates proposed. The Commission will have the opportunity to review the parties’ determinations.

Beyond the contract, the filing will include additional information for Commission review. First, Evergy will describe the service to be provided, defining the customer requesting service, the nature of the loads and the proposed service. Second, Evergy will also detail the cost of service, including the expected costs and revenues associated with providing service under the rate, inclusive of all assumptions, inputs, and calculations used to determine the customer rate. Third, the filing will detail the economic benefits expected to be brought to the area as a result of

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<sup>47</sup> Ex. 300, Brubaker Surrebuttal, 15:18-25

<sup>48</sup> Tr. 354:18-20.

<sup>49</sup> Ex. 1, Ives Direct, 9.

<sup>50</sup> See, *infra*, Section (2)2.

<sup>51</sup> Ex. 8, Schedule 1, 5.

<sup>52</sup> Ex. 8, Schedule 1, 4.

providing service.<sup>53</sup> Commission oversight of the contract itself, with full information regarding the rate, costs of service, and projected benefits, is a significant safeguard and provides protection for other customers.

In addition, the tariff itself provides for additional reporting requirements that protect other customers. First, “The Company will make provisions to uniquely identify the costs and revenues for each respective Special High Load Factor Market Rate Contract within its books and records. This information will be available to support periodic reporting as ordered by the Commission.”<sup>54</sup> Second, “The Company will remove all identifiable costs of service under this tariff from the FAC charge recovered from all customers, and the Company will track those costs and identify those costs separately from other costs specifically identified in the FAC monthly reports submitted to the Commission.”<sup>55</sup> These reporting requirements give the Commission the information necessary for continued monitoring of a Schedule MKT customer. In addition, Evergy commits to identify the portion of its revenue requirement associated with the incremental costs to serve the customer at the time of a general rate proceeding.<sup>56</sup> These extensive monitoring and reporting commitments on the part of Evergy to ensure that an MKT costs and revenues are isolated for continued review by the Commission.

#### **6. Approval of Schedule MKT Furthers State and Local Economic Development Efforts and State Policy in Attracting Data Centers to Missouri**

“[T]he very highest evidence of the public policy of any state is its statutory law.”<sup>57</sup> It is the public policy of the State of Missouri to incentivize the attraction and location of data centers in Missouri. In 2015, the legislature created tax exemptions specifically for “new data storage

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<sup>53</sup> Ex. 8, Schedule 1, 4.

<sup>54</sup> Ex. 8, Schedule 1, 5

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> See *Moorshead v. United Rys. Co.*, 96 S.W. 261, 271 (1906); see also *State ex rel. St. Louis v. Pub. Serv. Comm'n of Mo.*, 73 S.W.2d 393, 400 (Mo. banc 1934) (“public policy of the state must be derived by legislation”).

center project[s].”<sup>58</sup> Consistent with this purpose, state and local economic development partners have been engaged over the course of the last two years to not only specifically attract, but in doing so, potentially attract other data centers to Golden Plains Technology Park.

If Velvet is able to proceed with the project, Velvet would commit to investing at least \$800 million capital, with the potential to exceed \$1 billion. Velvet’s data center will provide more than 50 direct, full-time jobs at an average annual salary of approximately \$77,000.<sup>59</sup> The capital investment and new jobs created by the project will yield increases in state and local tax revenue. A Research Triangle International (“RTI”) study shows that each \$1 million of capital investment in the region will support six jobs in the Kansas City regional economy, and that every direct data center job supports an additional 2.5 jobs within the local economy.<sup>60</sup> This, in turn, results in additional capital investment and jobs in the state, thereby further increasing the tax base and providing additional economic benefits.<sup>61</sup> The construction phase of the project is expected to result in the multi-year (5-6 years) employment of approximately 1,000 construction workers.<sup>62</sup> Construction employees utilize lodging, eating and hospitality venues resulting in increased tax base and indirect jobs.

What is more, Velvet will serve as the anchor for the new Golden Plains Technology Park, an innovative 882-acre data center campus development in Kansas City, Missouri.<sup>63</sup> The combined project plan calls for construction of 5.5 million square feet of new facilities – with an investment of \$4.3 billion in real estate (three times the size of the new KCI Airport terminal).<sup>64</sup> Platte County stands to benefit substantially from PILOTs, real property taxes and business personal property taxes.<sup>65</sup>

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<sup>58</sup> Section 144.810, RSMo.

<sup>59</sup> Ex. 1, Ives Direct, DRI-3, 1; Tr. 37 :10-14, 18-25.

<sup>60</sup> Ex. 1, Ives Direct, DRI-3, 2.

<sup>61</sup> Ex. 4, McCarthy Direct, 14.

<sup>62</sup> Ex. 1, Ives Direct, DRI-3, 1.

<sup>63</sup> Ex. 4, McCarthy Direct, 12.

<sup>64</sup> Ex. 4, McCarthy Direct, 12.

<sup>65</sup> Ex. 4, McCarthy Direct, 12-13.

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\*\*\* Ex. 300, Brubaker Surrebuttal, MEB-1, 3.

<sup>67</sup> Ex. 300, Brubaker Surrebuttal, MEB-1, 9.

<sup>68</sup> Ex. 300, Brubaker Surrebuttal, MEB-1, 8.

<sup>69</sup> Ex. 300, Brubaker Surrebuttal, MEB-1, 3.

<sup>70</sup> Ex. 300, Brubaker Surrebuttal, MEB-1, 5.

<sup>71</sup> *Id.*

<sup>72</sup> Ex. 300, Brubaker Surrebuttal, MEB-1, 3.

<sup>73</sup> Ex. 300, Brubaker Surrebuttal, MEB-1, 6.

<sup>74</sup> Ex. 300, Brubaker Surrebuttal, MEB-1, 4

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Velvet's initial investment will thereby help establish the Golden Plains Technology Park as an industry focused location for future growth for Kansas City. The additional technical and primary job growth will create many opportunities for supporting commercial and retail businesses to thrive and grow in the Kansas City region. A vibrant economy is in the best interest of the state of Missouri and in the best interest of all Evergy customers. Approval of Schedule MKT, as modified by the Evergy Stipulation, furthers the state and local economic development efforts and ensures that the benefits, both direct and indirect, flow to the citizens of Kansas City and the state of Missouri.

#### **7. Approval of Schedule MKT Furthers State Goals Related to Renewable Energy**

As noted above, "the very highest evidence of the public policy of any state is its statutory law."<sup>76</sup> The public policy of Missouri is to encourage the use of renewable energy.<sup>77</sup> Evergy is not currently in a position to source and provide renewable generation to meet the 100% renewable needs of customers at the size and potential scale of an MKT customer.<sup>78</sup> Instead, Evergy can partner with a sophisticated group of customers that already understand how to source their own utility scale renewables across the country.<sup>79</sup> Here, Velvet is committed to supporting 100% of the new data center load with renewable energy resources and supporting the development of new renewable generation facilities within the SPP grid.<sup>80</sup> Velvet will add enough additional renewable generation to the SPP grid to cover its load, and Evergy will be purchasing generation to support Velvet's load from SPP. Velvet's 100% commitment is well beyond the minimum of 15%

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<sup>75</sup> Ex. 300, Brubaker Surrebuttal, MEB-1, 8

<sup>76</sup> See *Moorshead v. United Rys. Co.*, 96 S.W. 261, 271 (1906); see also *State ex rel. St. Louis v. Pub. Serv. Comm'n of Mo.*, 73 S.W.2d 393, 400 (Mo. banc 1934) ("public policy of the state must be derived by legislation").

<sup>77</sup> See Section 393.1030, RSMo.

<sup>78</sup> Tr. 243:11-244:16.

<sup>79</sup> *Id.*

<sup>80</sup> Ex. 300, Brubaker Surrebuttal, 15:18-25.

renewable energy standard in Section 393.1030, RSMo. A simple demonstrative example shows the overall the positive effect on the use of renewable energy.

	Before New Data Center Load	New Data Center Load	After New Data Center Load
Renewable Energy	30	10	40
Total Energy	200	10	210
Percentage of Renewables	15.00%	100.00%	19.05%

As can be seen, the addition of a 100% renewable load results in an increase in the total renewable energy used in Missouri whether calculated on total load or on a percentage of total load.

A partnership with an entity committed to support its load with 100% new renewable generation increases the renewable energy usage for Missouri customers. The statute is designed to encourage renewable energy usage. Schedule MKT, coupled with Velvet’s renewable energy commitment, furthers the state’s interest in encouraging the use of renewable energy.

**8. Approval of Schedule MKT Results in Direct and Indirect Benefits to Evergy Customers**

First, the addition of high load factor customers benefits other customers. According to Evergy, high load factor customers have a much more consistent load than customers currently served by Evergy, and therefore improve the load factor for the entire utility.<sup>81</sup> When a high load factor customer is added to the system, that customer’s consistent, incremental load minimizes any need for additional generation resource.<sup>82</sup>

Second, any amount paid by an MKT Customer over incremental cost is a contribution to fixed costs, which benefits all customers. Third, Velvet has proposed a significant “Renewable

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<sup>81</sup> Ives Direct,13:24 – 14:2.

<sup>82</sup> *Id.*

Energy Support Charge.” This charge is a charge paid for by Velvet, over and above the energy price, service charge, and capacity charge, solely for the “benefit of all retail customers to support the recovery of new renewable resources.”<sup>83</sup> Not only will these funds further the expansion of renewable energy for Evergy customers, but also it will directly reduce costs paid by Evergy’s other ratepayers. Beyond this direct benefit to Evergy’s ratepayers, a project of this size and scope means other indirect benefits that are in the best interest of all Evergy customers – a larger retail customer base (both from new employees and new businesses) within the Evergy service area.<sup>84</sup>

#### **9. Approval of Schedule MKT is in the Public Interest**

Schedule MKT furthers state and local economic development efforts, furthers the state’s renewable energy goals, and provides direct and indirect benefits to Missourians, Kansas Citians, and other Evergy customers. The structure of the MKT tariff and continued oversight by the Commission provides sufficient customer protections.

Whether something is in the public interest is a matter of policy for determination by the Commission.<sup>85</sup> It is within the discretion of the Commission to determine when the evidence indicates the public interest would be served.<sup>86</sup> Determining what is in the interest of the public is

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<sup>83</sup> Ives Direct, DRI-2, 2.

<sup>84</sup> Ex. 300, Brubaker Surrebuttal, 4.

<sup>85</sup> *State ex rel. Pub. Water Supply Dist. v. Pub. Serv. Comm'n*, 600 S.W.2d 147, 154 (Mo. App. 1980); *State ex rel. Mo. Pac. Freight Transp. Co. v. Pub. Serv. Comm'n*, 288 S.W.2d 679, 682 (Mo. App. 1956).

<sup>86</sup> *State ex rel. Intercon Gas, Inc. v. Pub. Serv. Comm'n of Mo.*, 848 S.W.2d 593, 597-598 (Mo. App. 1993); *State ex rel. Pub. Water Supply Dist. v. Pub. Serv. Comm'n*, 600 S.W.2d 147, 154 (Mo. App. 1980).

a balancing process.<sup>87</sup> In making such a determination, “the ultimate interest is that interest of the public as a whole.”<sup>88</sup>

The OPC Nonunanimous Stipulation does not provide a viable solution – Evergy has stated it would not offer a contract under such conditions.<sup>89</sup> Significant benefits will accrue to the state of Missouri because the structure of Schedule MKT, as modified by the Evergy Stipulation, will facilitate the opening of a new \$800 million enterprises data center, which will provide many direct and indirect jobs and associated economic development benefits. Schedule MKT, as modified by the Evergy Stipulation, would also allow Evergy to negotiate additional contracts with other similarly situated customers (like Google). Schedule MKT, as modified by the Evergy Stipulation, is in the public interest, represents a reasonable resolution to this proceeding, and should be approved by this Commission.

#### **(1a) Is the Schedule MKT tariff lawful?**

The Commission has broad discretion to set just and reasonable rates.<sup>90</sup> The Commission’s authority to set just and reasonable rates is derived from Sections 393.130, 393.140(11) and 393.150, RSMo. Specifically, under Section 393.150, RSMo, the Commission has the authority to determine the propriety of any new rate or charge after a hearing on the same. As this Commission has previously determined, Section 393.355, RSMo, is not the exclusive means by which the Commission can consider special contract tariff schedules and contracts.<sup>91</sup>

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<sup>87</sup> *State ex rel. Pub. Water Supply Dist. v. Pub. Serv. Comm'n*, 600 S.W.2d 147, 154 (Mo. App. 1980); *State ex rel. Churchill Truck Lines, Inc. v. Pub. Serv. Comm'n*, 555 S.W.2d 328, 335 (Mo. App. 1977); *In the Matter of Sho-Me Power Elec. Coop.'s Conversion from a Chapter 351 Corp. to a Chapter 394 Rural Elec. Coop.*, Case No. EO-93-0259, 1993 WL 719871, Report and Order (Sept. 17, 1993).

<sup>88</sup> *Id.*

<sup>89</sup> Tr. 204:1-4

<sup>90</sup> *State ex rel. Capital City Water Co. v. Mo. Pub. Serv. Comm'n*, 850 S.W.2d 903, 910-11 (Mo. App. W.D. 1993) (citing *State ex rel. Util. Consumers Council v. Pub. Serv. Comm'n*, 585 S.W.2d 41, 49 (Mo. banc 1979)).

<sup>91</sup> *Nucor*, Case No. EO-2019-0244 (Nov. 13, 2019).

As the courts and the Commission have recognized on numerous occasions, this authority includes the authority for the Commission to approve economic development tariffs<sup>92</sup> and tariffs authorizing special contracts between utilities and individual customers, just as in this case.<sup>93</sup> The Commission has specifically addressed questions concerning the lawfulness of special contracts, holding that “special contracts are recognized both historically and in the statutes and are a lawful method of providing service to customers of regulated utilities.”<sup>94</sup> The Commission is not limited to approving schedules for new service offerings in general rate cases.<sup>95</sup> The Commission can, and should, approve the MKT Tariff under its traditional ratemaking authority.

**(2) If yes, what if any modifications to the Schedule MKT tariff proposed by Evergy or other conditions should the Commission order?**

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<sup>92</sup> See, e.g., Case No. EA-2005-0180, Order Approving Stipulation and Agreement (March 10, 2005) (approving service to Noranda under LTV rate schedule); Case No. WT-2005-0156, Order Approving Tariff (Oct. 2, 2003) (approving an economic development tariff proposed by Missouri-American Water Company); Case No. ET-2019-0149 (approving Ameren Missouri economic development riders).

<sup>93</sup> See, e.g., *State ex rel. GS Techs. Operating Co., Inc. v. Pub. Serv. Comm'n*, 116 S.W.3d 680 (Mo. App. W.D. 2003). The court explained that “[t]o acquire electric service at an advantageous price, GST entered into a special contract with KCPL, which was approved by the Commission.” *Id.* at 685. GST was KCPL's largest single-point retail customer and under the contract, GST paid significantly less for electricity than it would have paid under KCPL's general service tariffs. *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *State ex rel. Sprint Spectrum L.P. v. Mo. Pub. Serv. Comm'n*, 112 S.W.3d 20, 28-29 (Mo. App. W.D. 2003). *Nucor*, Case No. EO-2019-0244 (Nov. 13, 2019); *In Re Kansas City Power & Light Co.*, Case No. EO-2006-0192, 2006 WL 1134426 (Mar. 16, 2006); *In Re Kansas City Power & Light Co.*, Case No. EO-2006-0193, 2006 WL 1134423, at \*1 (Mar. 16, 2006); *In Re Kansas City Power & Light Co.*, Case No. EO-95-181, 1995 WL 789407 (Nov. 22, 1995); *In Re Kansas City Power & Light Co.*, Report and Order, Case No. EO-95-67 (Oct. 26, 1994); *In Re Kansas City Power & Light Co.*, Report and Order, Case No. EO-78-227, 22 Mo. P.S.C. 260 (1978).

The Commission should approve Schedule MKT, as modified by the Evergy Stipulation. No other modifications to the MKT tariff or conditions are warranted. First, it should be noted that the MKT tariff proposed by Evergy and Velvet contain many modifications based on the concerns raised by OPC and Staff.<sup>96</sup> However, the modifications proposed by the Evergy Stipulation differ from the OPC Nonunanimous Stipulation in a number of major respects, and to the extent the OPC modifications are different, they should be rejected, as discussed below. Instead, the Commission should adopt the modifications proposed in the Evergy Stipulation.

#### 1. **Hold Harmless**

The Commission should accept the hold harmless provision in the Evergy Stipulation and reject the hold harmless modifications in the OPC Stipulation. The Evergy hold harmless provision allows the Commission to determine whether an adjustment is necessary due to any “deficiency in revenues from the cost to serve for which the rates were designed to recover by any customer served under this tariff.”<sup>97</sup> In making that determination, the Evergy hold harmless provision would give the Company and the Schedule MKT customer the right “to present evidence for the Commission’s consideration of other economic benefits as a result of Schedule MKT customers taking service from the Company” to the Commission for its consideration.<sup>98</sup> This weighing of benefits against costs is consistent with past Commission decisions in determining rate impacts.

In evaluating the impact of a future MKT contract, the Commission can and should review all relevant factors in determining whether a deficiency exists. Missouri courts have held that the Commission determination should be based on consideration of all relevant factors.<sup>99</sup> With respect

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<sup>96</sup> *See generally*, Ex. 3, Ives Surrebuttal; Ex. 6, Lutz Surrebuttal; Ex. 300, Brubaker Surrebuttal; Ex. 9.

<sup>97</sup> Ex. 8, Schedule 1, 5.

<sup>98</sup> *Id.*

<sup>99</sup> *State ex rel. Mo. Water Co. v. Pub. Serv. Comm'n*, 308 S.W.2d 704, 719 (Mo. 1957); *State ex rel. Midwest Gas Users' Ass'n v. Pub. Serv. Comm'n*, 976 S.W.2d 470, 479 (Mo. App. W.D. 1998); *State ex rel. Office of Pub. Counsel v. Pub. Serv. Comm'n of Mo.*, 858 S.W.2d 806 (Mo. App. W.D. 1993).

to general rate cases, the recent transportation electrification case, and MEEIA cases, the Commission has accounted a consideration of “benefits” as one factor in its analyses.<sup>100</sup>

OPC, Staff and MECG now want to prohibit the Commission from even considering and evaluating benefits that may arise from the addition of a customer taking service under Schedule MKT. This seems very surprising in that an evaluation of all relevant factors is the established method.<sup>101</sup> OPC, Staff and MECG’s desire to limit this Commission’s authority in evaluating the impact of the contract is short-sighted. For example, MECG has complained of Evergy’s high costs. One way to bring that cost down (and a benefit of a large economic development project) is to increase the number of residential and commercial ratepayers – spreading the fixed costs out over more ratepayers. There are numerous other benefits a project of the size and scope of an enterprise data center will bring to the table. All Evergy and Velvet are asking for is the ability to present such evidence to the Commission.

OPC, Staff, and MECG want to take away this Commission’s long-standing authority to consider all relevant factors which effectively will ensure that there is no opportunity for economic growth and development in the Kansas City area. This Commission should not hold up a project of such enormous benefit and, at the same time, limit its own jurisdiction and scope of review. Instead, the Commission should adopt the hold harmless provisions from the Evergy Stipulation to allow for consideration of all relevant factors, including benefits, in its determination of whether a deficiency exists and whether an adjustment is appropriate. This protects this Commission’s power and authority and lets the project move forward.

## 2. RES and RESRAM

As a general matter, MKT customers committed to supporting 100% of new load with new renewable generation within the SPP grid should not be subject to RESRAM charges. As Mr. Lutz explained:

[RESRAM is] a recovery charge for RES [Renewable Energy Standard] compliance costs. Velvet is expected to provide their own renewables to offset their load under the proposed rate. The Company does not believe it is consistent with cost causation principles to ask a customer willing to provide their own renewables to cover the cost of RES compliance.

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<sup>100</sup> Tr. 196:12-198:5.

<sup>101</sup> See Testimony of James Busch, Tr. 487:17-25.

This Commission has approved special contracts exempting customers from certain riders when it has deemed just and reasonable to do so. That certainly applies here.<sup>102</sup>

This exemption is consistent with the Commission’s recent actions in adopting Schedule SIL.<sup>103</sup>

Here, good cause exists for the Commission to grant the variances as set forth in the Evergy Stipulation and to adopt the RESRAM language in the tariff attached to the Evergy Stipulation. This solution is preferable because it insulates all parties from additional costs to “green” a load that is already “green.” This solution has already been applied by the Commission in other contexts, such as the Solar Subscription Rider, adopted in 2018.<sup>104</sup> The Commission has broad authority in interpreting both the statute and the rule, and regularly exercises its authority to grant variances related to RES and RESRAM.

Staff first argued that this Commission lacks the authority to grant exemptions from RESRAM and suggested at the hearing that the Commission lacks the authority to grant the variances requested by Evergy and Velvet. These arguments ignore the broad authority and discretion granted to the Commission by the General Assembly.

“Missouri courts have long recognized that when the decision involves the exercise of regulatory discretion, the PSC is delegated a large amount of discretion, and many of its decisions necessarily rest largely in the exercise of its own judgment.”<sup>105</sup> “Construction of the statutory scheme by the PSC, in accordance with their judgment as to the intent of the Legislature, is the process that is envisioned for the administrative system in Missouri.”<sup>106</sup>

Section 393.1030, RSMo, sets forth the state’s minimum renewable energy standards, but in doing so specifically delegates significant authority to the Commission. The statute reads:

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<sup>102</sup> Ex. 6, Lutz Surrebuttal, 9:22-28; *see also* Ex. 300, Brubaker Surrebuttal, 19:4-6 (“Applying additional charges for renewable energy not acquired to serve this customer would not be cost-based or equitable”).

<sup>103</sup> *See* Exhibit 301, Schedule SIL.

<sup>104</sup> Ex. 104, Schedule SSP.

<sup>105</sup> *State ex rel. Mo. Coal. for the Env't v. Joint Comm. on Admin. Rules*, 519 S.W.3d 805, 811 (Mo. banc 2017) (citing *State ex rel. Sprint Mo., Inc. v. Pub. Serv. Comm'n*, 165 S.W.3d 160, 164 (Mo. banc 2005)).

<sup>106</sup> *Id.*

1. The commission shall, in consultation with the department, prescribe by rule a portfolio requirement for all electric utilities to generate or purchase electricity generated from renewable energy resources. Such portfolio requirement shall provide that electricity from renewable energy resources shall constitute the following portions of each electric utility's sales:

...  
(4) No less than fifteen percent in each calendar year beginning in 2021.<sup>107</sup>

The statute also provides “The commission... shall make whatever rules are necessary to enforce the renewable energy standard.”<sup>108</sup> Section 393.1030.6, RSMo, reinforces the Commission’s authority: “The commission shall have the authority to promulgate rules for the implementation of this section, but only to the extent such rules are consistent with...the provisions of this section.”

Not only does the statute expressly give the Commission broad authority to interpret the RES requirement through rule, but also the Commission also has broad authority in interpreting the statute itself. “The PSC has been given the statutory authority to interpret statutes pursuant to the administration of its charge...and its interpretation is afforded great weight.”<sup>109</sup> When interpreting a statute, the PSC must construe the statute in light of the entire statutory scheme.<sup>110</sup>

The Commission has acted under its express statutory authority and promulgated 20 CSR 4240-20.100. The rule sets forth “Requirements” explaining, “The RES portfolio requirements are based on total retail electric sales of the electric utility.” The Commission has defined “Total retail electric sales” by rule.<sup>111</sup>

The Commission also explicitly reserved for itself the ability to grant a variance from any provision of 20 CSR 4240-20.100:

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<sup>107</sup> Section 393.1030.1, RSMo; *see also* Section 393.1030.6, RSMo.

<sup>108</sup> Section 393.1030.2, RSMo.

<sup>109</sup> *State ex rel. Mo. Energy Dev. Ass'n v. Pub. Serv. Comm'n*, 386 S.W.3d 165, 173 (Mo. App. W.D. 2012) (citing *Evans v. Empire Dist. Elec. Co.*, 346 S.W.3d 313, 318-19 (Mo. App. W.D. 2011)).

<sup>110</sup> *Evans v. Empire Dist. Elec. Co.*, 346 S.W.3d 313, 318 (Mo. App. W.D. 2011).

<sup>111</sup> *See* 20 CSR 4240-20.100(W) (“the megawatt-hours (MWh) of electricity delivered in a specified time period by an electric utility to its Missouri retail customers as reflected in the retail customers' monthly billing statements.”).

(11) Variances. Upon written application, and after notice and an opportunity for hearing, the commission may grant a variance from any provision of this rule for good cause shown.

The Commission has previously granted electric utilities variances under 20 CSR 4240-20.100(11).<sup>112</sup>

Evergy and Velvet have requested variance from the definitions of the “total retail electric sales” and “RES revenue requirement.” The variances should be granted here because good cause exists. First, the variances avoid costs to all parties to “green” a load which is already “green.” Velvet has committed to supporting 100% of the new data center load with renewable energy resources and supporting the development of new renewable generation facilities within the SPP grid.<sup>113</sup> Second, Velvet has committed to demonstrating that it has retired, or had retired on its behalf, RECs greater than the RES requirement applied to the Schedule MKT Customer load. Third, the addition of Velvet (and other customers who have the ability to support their load with 100% renewables) is not only consistent with but goes well beyond the state’s existing renewable energy goals. With respect to “total retail electric energy usage” by Evergy’s customers, there will actually be increased renewable electric energy usage following the addition of Velvet.

The OPC Nonunanimous Stipulation seeks to require Velvet to pay for any and all incremental RES compliance costs, either through a renewable energy support charge or otherwise. This proposal asks Velvet to essentially pay 115% of RES compliance costs, well beyond the 15% paid by Evergy’s other customers. Applying additional charges for renewable energy would not be cost-based or equitable.<sup>114</sup>

The solution proposed by the Evergy Stipulation is consistent with the Commission’s recent approval of Schedule SSP (The Solar Subscription Pilot), which allow customers access to the generation output of a solar resource and receive electricity from solar resources. As Mr. Brubaker testified, “It’s essentially the same thing.”<sup>115</sup> With respect to Schedule SSP:

The Participants share of the solar resource energy production will be subtracted from the metered energy consumed by the Participant for the billing month. Should the solar

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<sup>112</sup> Tr. 566:13-14.

<sup>113</sup> Ex. 300, Brubaker Surrebuttal, 15:18-25.

<sup>114</sup> Ex. 300, Brubaker Surrebuttal, 19:4-6.

<sup>115</sup> Tr. 370:8-11.

resource energy production amount for a given month be larger than the Participant's metered energy consumption, the net energy will be zero for that month.<sup>[116]</sup>

The result of this provision is two-fold (1) if the customer's share of renewable energy covers 100% its usage, because net energy is zero, there is no RESRAM charge and (2) the customer's renewable energy is not included in "total electric retail sales" and therefore falls outside of the RES portfolio requirements. This is exactly how the mechanism proposed in the Everage Stipulation would work. At the hearing, counsel for OPC agreed that the variance proposal in the Everage Stipulation "would solve the problem in as far as it would mean that there was not increased RES compliance costs passed onto other customers."<sup>117</sup>

### 3. Schedule PED (and Section 393.1640, RSMo)

For the first time in the OPC Nonunanimous Stipulation, filed the day before the hearing, OPC, Staff and MECG proposed that future Schedule MKT customers be prohibited from taking service under the new tariff if they had taken a discount under Section 393.1640, RSMo.<sup>118</sup> The Commission should reject this modification for failure to raise the issue in Rebuttal Testimony, Surrebuttal Testimony, or the List of Issues. In addition, the record is devoid of any evidence to support such prohibition.

The effect of the proposed restriction is to kill the usefulness of Schedule MKT for customers, like data centers, with extended load ramp periods, that want to bring and build large scale projects in Missouri. This proposed restriction would deny economic growth and development in the Kansas City area, if not across the entire State of Missouri. OPC, Staff and MECG simply invent this new requirement out of whole-cloth and then assert an intent by the legislature that is unsupported by the statute itself.

The modification proposed in the OPC Nonunanimous Stipulation is not permitted by the plain language of the statute. Section 393.1640, RSMo, states as long as customers meet the statutory criteria they qualify for the discount: "The discount shall be applied to such incremental load from the date when the meter has been permanently set until the date that such incremental load no longer meets the criteria required to qualify for the discount[.]" The intent of the statute is

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<sup>116</sup> Ex. 104.

<sup>117</sup> Tr. 93:7-10.

<sup>118</sup> Ex. 203.

clear from a reading of its plain language: to attract new customers (and new electricity load) to locate in Missouri.

OPC, Staff and MECG have suggested that the intent was only to offer the discount if, following the utilization of the discount, a customer takes service under a fully-embedded cost of service rate, like Large Power Service (LPS). However, there is nothing in Section 393.1640 that indicates the legislature had any intention of limiting the use of other lawfully applicable tariffs once a customer had taken advantage of the statute's provisions. The statute also specifies what limitation may be placed on the discount: "The electrical corporation may include in its tariff additional or alternative terms and conditions to a customer's utilization of the discount, subject to approval of such terms and conditions by the commission."<sup>119</sup> The statute does not permit an electrical corporation to essentially eliminate the discount for customers who may or may not take service under a different tariff in the future.<sup>120</sup>

At the time Section 393.1640 was passed in 2018, there were a number of other tariffs (e.g. special contract tariffs) and riders (e.g., economic development riders) that would allow a customer to take service at a less than fully-embedded cost of service. Yet the legislature did not place any prohibition on the use of such tariffs. Further, there is nothing in the plain language of Section 393.1640 requiring a customer to "pay back" any discounts. There is nothing in the statute requiring a customer who relocates out of state or shuts after taking service under Schedule PED to "pay back" the discounts it received.

While it is commonplace for a tariff to prohibit the use of *concurrent* (or stacking) discounts or incremental cost tariffs, it is not common to restrict a customer's ability to choose any tariff under which it lawfully qualifies. For example, service under SIL "may not be combined with service under an Economic Development Rider[.]"<sup>121</sup> Currently, nothing would prevent a customer from taking the full five-year advantage of Section 393.1640 and then transitioning to Schedule SIL or the Special Contract tariff.<sup>122</sup>

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<sup>119</sup> Section 393.1640, RSMo.

<sup>120</sup> *Id.*

<sup>121</sup> Ex. 301, Schedule SIL.

<sup>122</sup> *See* Exs. 301, 303.

Here, the availability of Schedule PED is important in Velvet's determination of whether a project in Missouri is viable.<sup>123</sup> Velvet applied for and was approved to take service under Schedule PED prior to finalizing any agreements related to Schedule MKT.<sup>124</sup> The absence of any one of the pieces of the deal makes the project less viable. *Id.* Therefore, the Commission should reject the PED prohibition proposed in the OPC Nonunanimous Stipulation.

Without waiving its arguments above, Velvet does not object to the compromise language offered during the hearing by Mr. Ives.<sup>125</sup> Under that language, a future MKT customer desiring to switch directly from Schedule PED to MKT would have to request to switch within two years of taking service under Schedule PED or prior to that Customer's average monthly peak load exceeding 50MW (whichever comes first).<sup>126</sup> This would essentially eliminate three years of eligibility of the discount under PED for future MKT customers, but would balance a customer's existing statutory right to the discounted rate and other customers' interests raised during the hearing.

#### 4. **Securitization**

The Commission should reject OPC's proposal to add a reference to a securitization mechanism in the MKT tariff. Section 393.1700.2(1) authorizes an electric corporation to petition the commission for a financing order to finance energy transition costs through an issuance of securitized utility tariff bonds. Not later than two-hundred fifteen days after the petition is filed, the Commission has the authority to reject the petition, approve the petition, or approve the petition subject to conditions.

Including a reference to a potential, unknown future charge is premature at this time.<sup>127</sup> Evergy has not filed a petition for a securitization mechanism, nor has the Commission approved a securitization mechanism. Only if and when Evergy files a petition under Section 393.1700 *and*

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<sup>123</sup> Tr. 310:16-311:10.

<sup>124</sup> Tr. 211:9-212:2.

<sup>125</sup> Ex. 7.

<sup>126</sup> *Id.*

<sup>127</sup> Ex. 300, Brubaker Surrebuttal, 20:1-5.

if and when the Commission approves the same (with or without conditions) would it be the appropriate time to modify any existing tariffs as to the application of any securitization charges.<sup>128</sup>

#### **5. Section 393.1655 Treatment**

Consistent with the Evergy Stipulation, the Commission should make a finding that the Schedule MKT Customer's average rate and kilowatt hours usage shall not be included in the rate limitation calculations performed under Section 393.1655, RSMo, a Schedule MKT customer's contract rate shall not be affected by the provisions of Section 393.1655, RSMo, and the Schedule MKT customer shall not be considered to be, in whole or part, a member of Evergy's large power service rate class under Section 393.1655.7(4), RSMo. Section 393.1655, RSMo, by its plain language "rate classes" and the setting of "rates in the applicable general rate proceeding" neither of which applies to customers taking service pursuant to a special contract.

#### **IV. CONCLUSION**

There is a tremendous opportunity for economic growth and development in the State of Missouri and the approval of the Evergy Stipulation is the final piece of the puzzle to bring the growth and development to fruition. It is the public policy of the State of Missouri to encourage data centers to locate in Missouri and Schedule MKT, as modified by the Evergy Stipulation, achieves this policy. An enormous development, new jobs, and local and state tax revenues are on the line. Now is the time to complete the puzzle and unlock data center growth and development in Missouri.

The record established competent and substantial evidence to support the approval of the Evergy Stipulation. The law allows the Commission to approve the Evergy Stipulation. No good reason, in law or fact, has been established in the record for the Commission to take any other action.

**WHEREFORE**, Velvet Tech Services respectfully urges the Commission to grant the relief requested in Evergy's Application, and approve Schedule MKT, as modified by the Evergy Stipulation, and for such other and further relief is just and proper under the circumstances.

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<sup>128</sup> Ex. 6, Lutz Surrebuttal, 7:18-21.

