

**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 West for Approval of)	
a Special High Load Factor Market)	Case No. EO-2022-0061
Rate for a Data Center Facility in)	
Kansas City, Missouri)	

NONUNANIMOUS STIPULATION AND AGREEMENT

COMES NOW the Office of the Public Counsel (“OPC”), Midwest Energy Consumers Group (“MECG”), and the Staff of the Public Service Commission (“Staff”) (collectively, “Signatories”) and, by and through their respective counsel, for this Nonunanimous Stipulation and Agreement (“Stipulation”), respectfully state as follows:

Background

1. Evergy Missouri West, Inc. d/b/a Evergy Missouri West (“Evergy” or “the Company”) filed an *Application* requesting Commission approval for a tariff that would permit a special high load factor market rate on November 2, 2021.
2. On November 9, 2021, the Commission granted the Applications to Intervene of Velvet Tech Services, LLC; MECG; and Google LLC.
3. The parties have met repeatedly throughout the pendency of the case in an effort to reach settlement.
4. On January 20, 2022, the signatories each independently filed

position statements that requested, *inter alia*, that, if the Commission approved the Special High Load Factor Market Rate (“MKT”) tariff proposed by Evergy, the Commission only do so after making modifications to address the concerns that had been (or may be raised by) each party.

5. Given the similarity of positions, the signatories met and agreed to the proper language that should be included in any approved tariff to address the concerns of the signatories. The agreed upon language has been incorporated into a version of the MKT tariff that has been attached as Schedule 1 to this Stipulation.

Agreement

6. **Special High Load Factor Market Rate Tariff** – The Signatories agree that, should the Commission approve any version of the MKT tariff, the Commission should approve the version of the MKT tariff attached as Schedule 1 to this Stipulation, to become effective no later than March 31, 2022. The signatories further agree and state that they will not oppose Commission approval of the version of the MKT tariff attached as Schedule 1 to this Stipulation. Of primary concern, many of the provisions included in the attached tariff are designed to protect non-MKT customers from any detriments caused by the addition of MKT customers and the special nature of their service.

General Provisions

7. Contingent upon Commission approval of this Stipulation without modification, the Signatories hereby stipulate to the admission into the evidentiary record of the testimony of their witnesses, and the witnesses of the parties who do

not oppose this Stipulation, on the issues that are resolved by this Stipulation.

8. This Stipulation is being entered into solely for the purpose of settling the issues in this case explicitly set forth above. Unless otherwise explicitly provided herein, none of the Signatories to this Stipulation shall be deemed to have approved or acquiesced in any ratemaking or procedural principle, including, without limitation, any cost of service methodology or determination, method of cost determination or cost allocation or revenue-related methodology.

9. This Stipulation is a negotiated settlement. Except as specified herein, the Signatories to this Stipulation shall not be prejudiced, bound by, or in any way affected by the terms of this Stipulation: (a) in any future proceeding; (b) in any proceeding currently pending under a separate docket; and/or (c) in this proceeding should the Commission decide not to approve this Stipulation, or in any way condition its approval of same.

10. This Stipulation has resulted from extensive negotiations among the Signatories, and the terms hereof are interdependent. If the Commission does not approve this Stipulation unconditionally and without modification, then this Stipulation shall be void and no Signatory shall be bound by any of the agreements or provisions hereof.

11. This Stipulation embodies the entirety of the agreements between the Signatories in this case on the issues addressed herein, and may be modified by the Signatories only by a written amendment executed by all of the Signatories.

12. If approved and adopted by the Commission, this Stipulation shall

constitute a binding agreement among the Signatories. The Signatories shall cooperate in defending the validity and enforceability of this Stipulation and the operation of this Stipulation according to its terms. This Stipulation does not constitute a contract with the Commission and is not intended to impinge upon any Commission claim, right, or argument by virtue of the Stipulation's approval. Acceptance of this Stipulation by the Commission shall not be deemed as constituting an agreement on the part of the Commission to forego the use of any discovery, investigative or other power which the Commission presently has or as an acquiescence of any underlying issue. Thus, nothing in this Stipulation is intended to impinge or restrict in any manner the exercise by the Commission of any statutory right, including the right to access information, or any statutory obligation.

13. If the Commission does not approve this Stipulation without condition or modification, and notwithstanding the provision herein that it shall become void, (1) neither this Stipulation nor any matters associated with its consideration by the Commission shall be considered or argued to be a waiver of the rights that any Signatory has for a decision in accordance with RSMo. §536.090 or Article V, Section 18 of the Missouri Constitution, and (2) the Signatories shall retain all procedural and due process rights as fully as though this Stipulation had not been presented for approval, and any suggestions, memoranda, testimony, or exhibits that have been offered or received in support of this Stipulation shall become privileged as reflecting the substantive content of settlement discussions and shall be stricken from and not be considered as part of the administrative or evidentiary record before the Commission for any purpose whatsoever.

14. If the Commission accepts the specific terms of this Stipulation

without condition or modification, only as to the issues in these cases explicitly set forth above, the Signatories each waive their respective rights to call, examine and cross-examine witnesses pursuant to RSMo. §536.070(2), their respective rights to present oral argument and written briefs pursuant to RSMo. §536.080.1, their respective rights to the reading of the transcript by the Commission pursuant to §536.080.2, their respective rights to seek rehearing pursuant to §386.500, and their respective rights to judicial review pursuant to §386.510. These waivers apply only to a Commission order approving this Stipulation without condition or modification issued in this proceeding and only to the issues that are resolved hereby. It does not apply to any matters raised in any prior or subsequent Commission proceeding nor any matters not explicitly addressed by this Stipulation.

15. The Signatories shall also have the right to provide, at any agenda meeting at which this *Stipulation* is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that each Signatory shall, to the extent reasonably practicable, provide the other parties with advance notice of the agenda meeting for which the response is requested. Signatories' oral explanations shall be subject to public disclosure, except to the extent they refer to matters that are privileged or protected from disclosure pursuant to the Commission's rules on confidential information.

WHEREFORE, the Signatories respectfully requests the Commission issue an order in this case approving this Stipulation subject to the specific terms and conditions contained herein.

Respectfully submitted,

By: /s/ John Clizer
John Clizer (#69043)
Senior Counsel
Missouri Office of the Public Counsel
P.O. Box 2230
Jefferson City, MO 65102
Telephone: (573) 751-5324
Facsimile: (573) 751-5562
E-mail: john.clizer@opc.mo.gov

Attorney for the Missouri Office of the
Public Counsel

/S/ JEFFREY A. KEEVIL
Jeffrey A. Keevil
Missouri Bar No. 33825
P. O. Box 360
Jefferson City, MO 65102
(573) 526-4887 (Telephone)
(573) 751-9285 (Fax)
Email: jeff.keevil@psc.mo.gov

Attorney for the Staff of the
Missouri Public Service Commission

David L. Woodsmall, MBE #40747
308 East High Street, Suite 204
Jefferson City, Missouri 65101
(573) 797-0005 (telephone)
david.woodsmall@woodsmalllaw.com

Attorney for the Staff of the
Midwest Energy Consumers Group

CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing have been mailed, emailed, or hand-delivered to all counsel of record this twenty-fourth day of January, 2022.

/s/ John Clizer