

**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) File No. EF-2022-0155
West for a Financing Order Authorizing)
the Financing of Extraordinary Storm Costs)

BRIEF OF VELVET TECH SERVICES, LLC

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I. INTRODUCTION

Velvet Tech Services, LLC plans to construct an \$800 million Enterprise Data Center in the Kansas City area.¹ The project is a result of numerous partnerships at the local, state, and regional level.² The project includes a potential investment of over \$1 billion and Velvet's data center is set to serve as 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.³

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.⁴ Here, Velvet supports MEEG's position on Issue 4 as to allocation. Staff's allocation proposal will significantly impact hyperscale projects and is inconsistent with the principles of cost-causation. Moreover, placing the burden of securitization on the state's largest customers is inconsistent with the public policy of the state and the

¹ File No. EO-2022-0061, *In the Matter of the Application of Evergy Missouri West, Inc. d/b/a Evergy Missouri West for Approval of a Wholesale Energy Market Rate for a Data Center Facility in Kansas City, Missouri*, Second Amended Report and Order (May 18, 2022), 7.

² File No. EO-2022-0061, Ex. 4, McCarthy Direct, 9.

³ File No. EO-2022-0061, Ex. 1, Ives Direct, DRI-3, 1.

⁴ See File No. EO-2022-0061, *In the Matter of the Application of Evergy Missouri West, Inc. d/b/a Evergy Missouri West for Approval of a Wholesale Energy Market Rate for a Data Center Facility in Kansas City, Missouri*, Second Amended Report and Order (May 18, 2022).

securitization statute. Velvet respectfully urges the Commission to adopt a class (and cost-)based allocation method for any securitization charges.

II. ALLOCATION (ISSUE 4)

Costs should be allocated among customer classes consistent with the requirement in the securitization statute and consistent with the direct testimony of Mr. Lutz.⁵ Staff's straight energy based charged puts the burden of securitization disproportionately on Evergy's largest customers – potentially disincentivizing large customers from locating in Missouri and is contrary to the way this Commission has traditionally and consistently approached and facilitated economic development.

(1) THE IMPACT ON HYPERSCALE PROJECTS

The impact of Staff's proposal with respect to securitization on hyperscale projects is significant. Staff Witness Lange took issue with the testimony of Evergy Witness Lutz as his testimony did not include a "Billing Rate" for Schedule MKT on Schedule BDL-1.⁶ Lange argued a rate must be present for MKT since the statute describes the charge as "non-bypassable."⁷ Rather than suggesting the Commission simply apply the Large Power Service billing rate proposed by Mr. Lutz (\$0.00265) to the MKT Class (or something even less since the billing rate in Mr. Lutz's Schedule SUR generally decreases as the size of the customers in the class increases), Lange suggests something entirely new. Applying the LPS or some lower (non-zero) rate to MKT would be lawful and satisfy the nonbypassable issue raised by Staff.

⁵ See Ex. 15, Lutz Direct.

⁶ Ex. 15, Lutz Direct.

⁷ Ex. 104, Lange Rebuttal, 20:20-21:3.

Instead, rather than a class-based allocation method, Lange suggests a straight energy charge.⁸ In her own words, Lange explains, “The SUTC will be recovered from all customers based on each customer’s consumption of energy, adjusted to reflect that customer’s consumption of energy at transmission voltage[.]”⁹ Based on calculations from Evergy, Lange’s proposal would result in a billing rate of \$0.00382 for all customers receiving transmission level service. That is 44% above the rate proposed by Evergy (for LPS).

The sheer size of the customers on the SIL and MKT tariffs is important. Nucor is currently the largest energy user within Evergy Missouri West’s service territory.¹⁰ Schedule MKT Customers are likely to have monthly demands three times that of Schedule SIL customers.¹¹ Because Schedule SIL customers are entirely exempt, a straight energy charge saddles schedule MKT customers with a large portion of the securitization costs.

Here, to qualify for Schedule MKT, a customer must have a monthly demand of 100,000 kW (or expect to be at 150,000 kW within five years) and have an annual load factor of 0.85.¹² If one were to assume a monthly demand of 100,000 kW, a load factor 0.85, and the rate suggested by Mr. Lutz for LPS,

⁸ See Ex. 104, Lange Rebuttal.

⁹ Ex. 104, Lange Rebuttal, 2:7-9.

¹⁰ File No. EO-2019-0244, *In the Matter of the Application of Evergy Missouri West For Approval of a Special Rate for a Facility Whose Primary Industry is the Production or Fabrication of Steel in or Around Sedalia, Missouri*, Report and Order (Nov. 13, 2019), 5.

¹¹ Compare SIL Tariff (Ex. 502) to MKT Tariff (Ex. 503).

¹² See Ex. 503, MKT Tariff.

an MKT customer would pay \$1.9 million annually just for securitization.¹³ Under the Lange proposal, that amount jumps to \$2.8 million annually.¹⁴ What is more, is the assumptions used in arriving at \$2.8 million are the minimum numbers necessary to even qualify for Schedule MKT.

Velvet does not deny that the statute is clear the charge is “nonbypassable.” At the same time, nothing in the statute prevents this Commission from adopting the allocation in Mr. Lutz’s Direct testimony and adopting the LPS billing rate (or a lower billing rate) for MKT customers to satisfy the concerns of Staff. Further, nothing in the statute prevents this Commission from capping the impact of the securitization charge on hyperscale projects to harmonize the securitization statute with the state’s interests in economic development, data centers, and renewables. Nothing prevents the Commission from stating that in no event shall any single customer pay more than \$2 million annually for securitization or in no event shall any single customer pay the securitization charge on any energy in excess of 744,600 mwh annually.¹⁵ This type of “cap” would be consistent with the concerns of large customers in past cases to provide both a stable and competitive energy rate. Of course, any amount paid by Velvet for securitization lowers the cost of securitization for every other customer.¹⁶ This would resolve Staff’s issue with the Lutz testimony that the charge is nonbypassable, and at the same time, would harmonize the securitization

¹³ See Ex. 504, Calculation.

¹⁴ See Ex. 504, Calculation; Tr. 173:23-174:1.

¹⁵ 100,000 kW at an 85% load factor is 744,600 mWhs (100,000 kW * 8760 * .85).

¹⁶ Tr. 166:17-20.

statute with Missouri's existing economic development, data center, and renewable energy statutes.

(2)STAFF'S PROPOSAL IS INCONSISTENT WITH PRINCIPLES OF COST CAUSATION

Here, the company is proposing to recover the Qualified Extraordinary Costs of Winter Storm Uri through the issuance of the Securitization Bonds.¹⁷ Mr. Lutz attempted to allocate the costs of Winter Storm Uri among the customer classes based on class revenues energy billing determinants from the last general rate proceeding.¹⁸ Lutz's testimony is generally consistent with the principles of cost-causation. This Commission has consistently adhered to cost causation as "[a]bove all, in the opinion of the Commission, the touchstone of rate design is that the rates must and should reflect the cost to serve that particular customer or group of customers."¹⁹

It is undisputed that Velvet was not an Evergy customer at the time of Winter Storm Uri.²⁰ Staff admits that with respect to cost-causation, Velvet did not cause one penny of the costs associated with Winter Storm Uri.²¹ Still, under Staff's proposal MKT customers would pay in excess of \$2.8 million annually for such costs. The Commission should reject Staff's proposal as inconsistent with the principles of cost causation.

(3)PLACING THE BURDEN OF SECURITIZATION ON THE STATE'S LARGEST CUSTOMERS IS INCONSISTENT WITH THE PUBLIC POLICY OF THE STATE

¹⁷ Ex. 15, Lutz Direct 4:16-18.

¹⁸ *Id.* at 8.

¹⁹ *In re Gas Service Company*, 21 Mo. P.S.C. 262 (1976).

²⁰ Tr. 166:13-16.

²¹ Tr. 189:2-6; Tr. 217:15-17.

While the securitization statute does state the charge is nonbypassable, the statute must be read in harmony with Missouri's other statutes. "[S]tatutory provisions are 'not read in isolation but [are] construed together, and if reasonably possible, the provisions will be harmonized with each other.'"²²

The Missouri general assembly has enacted statutes designed to attract large customers to Missouri, statutes which are designed to attract data centers to Missouri, and statutes which are designed to encourage the use of renewable energy resources. The securitization statute cannot be read or implemented without also recognizing the public policy of this state in attracting large scale economic development projects and data centers to Missouri, and in incentivizing the use renewable energy resources.

"[T]he very highest evidence of the public policy of any state is its statutory law."²³ 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 center project[s]."²⁴

²² *State ex rel. MoGas Pipeline LLC v. Pub. Serv. Comm'n*, 395 S.W.3d 562, 568 (Mo. App W.D. 2013) (quoting *Brinker Mo., Inc. v. Dir. of Revenue*, 319 S.W.3d 433, 437 (Mo. banc 2010)); see also *Evans v. Empire Dist. Elect. Co.*, 346 S.W.3d 313, 318 (Mo. App. W.D.2011) (statutes are to be harmonized when possible).

²³ 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").

²⁴ See Section 144.810, RSMo.

In addition, Missouri has specific statutes designed to attract new, large customers to Missouri.²⁵ This statute forms the basis for Evergy's PED/EDR tariff, which Velvet relied upon in deciding whether to locate in Missouri.²⁶

Finally, the people enacted a renewable energy standard, through a ballot initiative, mandating increases in renewable energy resources.²⁷ Velvet has made a renewable energy commitment.²⁸ Hyperscale customers often have renewable energy commitment goals thus increasing the use of renewable energy resources when locating in Missouri.²⁹

As described above, the impact of Staff's proposal on hyperscale projects is significant – significant enough to potentially disincentivize the development of large-scale projects, data centers, or projects which utilize renewables from locating in Missouri. Staff asks the Commission to interpret and implement the securitization statute in a way that works to the detriment of and is contrary to three other sets of provisions in Missouri law.

Simply put, the public policy of Missouri is to foster, support and attract large scale projects such as the project proposed by Velvet. By allocating the

²⁵ See Section 393.1640.1, RSMo.

²⁶ File No. EO-2022-0061, *In the Matter of the Application of Evergy Missouri West, Inc. d/b/a Evergy Missouri West for Approval of a Wholesale Energy Market Rate for a Data Center Facility in Kansas City, Missouri*, Tr. 310:16-311:10.

²⁷ See Section 393.1030, RSMo.

²⁸ See File No. EO-2022-0061, *In the Matter of the Application of Evergy Missouri West, Inc. d/b/a Evergy Missouri West for Approval of a Wholesale Energy Market Rate for a Data Center Facility in Kansas City, Missouri*, Second Amended Report and Order (May 18, 2022), 12.

²⁹ *Id.* at 7-8.

securitization charge on a straight energy basis, which is not required by any statute, Staff's proposal frustrates this public policy. This Commission, consistent with the purposes of the state as set forth in statute, should continue to encourage the growth and development of businesses in Missouri. The Commission should reject Staff's position.

(4) PLACING THE BURDEN OF SECURITIZATION ON THE STATE'S LARGEST CUSTOMERS IS INCONSISTENT WITH THE SECURITIZATION STATUTE AND THE COMMISSION'S PREVIOUS DECISIONS IN APPROVING CONTRACT RATES.

Section 393.1700, RSMo, the statute authorizing Evergy to seek securitization, specifically exempts certain customers from the securitization charges. The definition of "securitized utility tariff charge" is as follows:

[T]he amounts authorized by the commission to repay, finance, or refinance securitized utility tariff costs and financing costs and that are, except as otherwise provided for in this section, nonbypassable charges imposed on and part of all retail customer bills, collected by an electrical corporation or its successors or assignees, or a collection agent, in full, separate and apart from the electrical corporation's base rates, and paid by all existing or future retail customers receiving electrical service from the electrical corporation or its successors or assignees under commission-approved rate schedules, **except for customers receiving electrical service under special contracts as of August 28, 2021**, even if a retail customer elects to purchase electricity from an alternative electricity supplier following a fundamental change in regulation of public utilities in this state;

Section 393.1700(16), RSMo. The statute further defines "special contract" as "electrical service provided under the terms of a special incremental load rate schedule at a fixed price rate approved by the commission."

The only current customer on the special incremental load (SIL) rate is Nucor Steel. In the case approving the SIL tariff and the Nucor contract, the

Commission explained that competitive³⁰ and stable³¹ rates are critical to large customers like Nucor. The Commission also found the special contract to be in the public interest, in part, because “[t]he opening of the Nucor steel plant in Sedalia will provide unquestioned economic development benefits to that city and region, and to the State of Missouri as a whole.”³²

The securitization bill does not specifically exempt customers on the MKT Tariff and states that the charge is nonbypassable. As discussed *supra*, this language can and should be harmonized to limit the impact on the very projects which this state has chosen to incentivize. A class-based allocation method or cap of the securitization charge on the state’s largest customers does just that.

Velvet (or any hyperscale customer) has similar needs to those customers on the SIL – stability and competitive rates. This is exactly why these customers often seek special contracts. With respect to Velvet, in approving the MKT tariff, the Commission explained: “The price of electricity comprises a substantial component of the operating and expense budget for a data center. Thus, competitive electricity rates are very important to these potential

³⁰ File No. EO-2019-0244, *In the Matter of the Application of Evergy Missouri West For Approval of a Special Rate for a Facility Whose Primary Industry is the Production or Fabrication of Steel in or Around Sedalia, Missouri*, Report and Order (Nov. 13, 2019), 6 (“Competitive electricity rates are very important to Nucor and were a primary factor in its decision to locate its plant in Sedalia.”).

³¹ *Id.* at 12 (“The evidence also shows that the steel plant will not be viable without the certain and stable electric rates made available by this special contract and tariff[.]”).

³² *Id.*

customers and represent a primary factor in their decision to choose a location.”³³

This finding in the MKT case is particularly noteworthy. In that case, Staff opposed economic development and the legislative policy of encouraging large scale projects. This Commission rejected Staff’s attempt to negate the public policy of the State of Missouri. Now Staff seeks a second bite at the apple – to once again frustrate the public policy of the state and lessen any incentive for large customers to locate in Missouri by saddling them with the bulk of the securitization charges. The Commission should reject Staff’s attempt to negate the economic development and growth policies enacted by the State of Missouri.

The legislature has shown a preference for limiting the burden of securitization charges on the state’s largest customers that need both competitive rates and stability. The Commission has recognized these needs and the public interest in attracting and retaining the kind of customers that would take service under SIL or MKT. Staff’s position is not only contrary to the securitization statute itself but is inconsistent with the Commission’s previous decisions in approving contract tariffs and rates.

III. CONCLUSION

This Commission, through its decision in EO-2022-0061, unlocked a massive economic development project in the Kansas City area. To now saddle

³³ File No. EO-2022-0061, *In the Matter of the Application of Evergy Missouri West, Inc. d/b/a Evergy Missouri West for Approval of a Wholesale Energy Market Rate for a Data Center Facility in Kansas City, Missouri*, Second Amended Report and Order (May 18, 2022), 6.

future MKT customers with the bulk of the costs from Winter Storm Uri is inconsistent with the Commission’s decision in EO-2022-0061 and inconsistent cost causation principles, and with the public policy of the state as evidenced by state statutes.

WHEREFORE, Velvet Tech Services respectfully urges the Commission to adopt the cost-based allocation set forth in the testimony of Evergy Witness Lutz and as supported by MECG, or in the alternative, consistent with the public policy of the state, limit the impact of the securitization charge on hyperscale projects consistent with the public policy of the State of Missouri, and for such other and further relief just and proper under the circumstances.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was serve upon all of the parties of record or their counsel, pursuant to the Service List maintained by the Data Center of the Missouri Public Service Commission, on this 31st day of August, 2022.

 /s/ Stephanie S. Bell
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