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 Wholesale Energy Market Rate for a Data Center Facility in Kansas City, Missouri	)))))	**File No. EO-2022-0061**

REPLY BRIEF OF STAFF

Respectfully Submitted,

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REPLY BRIEF OF STAFF

COMES NOW Staff of the Missouri Public Service Commission and submits the following Reply Brief in reply to the initial briefs of Evergy Missouri West, Inc. d/b/a Evergy Missouri West ("Evergy," "EMW," or "Company"), Velvet Tech Services, LLC ("Velvet"), and Google LLC ("Google") pursuant to the schedule previously ordered by the Commission.

INTRODUCTION

Rather than replying to every individual statement made by Evergy, Velvet, and/or Google, having presented and argued its positions in its initial brief, Staff is limiting its replies to those matters which Staff believes will most aid the Commission. Therefore, the failure of this Reply Brief to address any matter raised in the initial briefs of Evergy, Velvet, and/or Google should not be construed as agreement in any way therewith.

The Commission should recognize that when Evergy or Velvet refer in their briefs to Schedule MKT as "cost-based" or containing a "cost-based price," they are not using that term as it is commonly used in Missouri utility ratemaking; i.e., it is not a fully-distributed cost determined after consideration of all relevant factors. Instead, it is merely incremental cost of a particular customer. This is a significant departure from fully-distributed cost ratemaking.

Beginning on page 10 of its initial brief and continuing through page 11, Evergy begins its discussion of what it refers to as "several pre-filing meetings, technical conferences, *and settlement conferences*." While it does not distinguish between what was discussed at these various types of meetings, this appears to be an effort on the part of Evergy to introduce settlement discussions into its brief. As the Commission is aware, settlement discussions are privileged pursuant to Commission rule[1] and are not to be disclosed. Therefore, this portion of Evergy's brief should be stricken and disregarded.

Issue No. 1: Should the Commission approve the Special High Load Factor Market Rate ("Schedule MKT") tariff proposed by Evergy Missouri West ("EMW") [and Velvet, pursuant to their non-unanimous stipulation (Ex. 8 and Ex 8 Schedule 1)]?

a. Is the Schedule MKT tariff [proposed by Evergy and Velvet in Ex. 8 Schedule 1] lawful?

RESRAM / RES

The arguments regarding the RES requirements and RESRAM charges presented by Evergy and Velvet are similar in many respects. All of their arguments as to why their proposal is better than the proposal of Staff, OPC and MECG hinge on their requested variances being granted. Beginning on page 21 of its brief Velvet appears to argue that the General Assembly has given the Commission discretion to ignore the relevant statute, Section 393.1030, RSMo. This is clearly not correct, especially given the statute's language in subsection (6) that "The commission shall have the authority to promulgate rules for the implementation of this section, but *only to the extent such rules are consistent*

[1] 20 CSR 4240-2.090(7).

with, and do not delay the implementation of, *the provisions of this section*." (Emphasis added) Evergy, on the other hand, essentially just ignores the statute, claiming on page 19 of its brief "EMW/Velvet are not requesting a variance to the RES statute. The EMW/Velvet Stipulation requests a variance from the RES rule promulgated by the Commission."

The problem with the arguments of both Evergy and Velvet, as set forth in detail in Staff's initial brief, is that the Commission rule contains the same RES requirements as the renewable energy statute, Section 393.1030, RSMo., and while the Commission can grant a variance from a rule, it cannot grant a variance from the statute. The Evergy/Velvet proposal is therefore unlawful.

Under this point of their initial briefs, both Evergy and Velvet base much of their argument on Velvet's stated "commitment" to have 100% of its load supported by renewable energy resources. However, unlike Evergy's RES requirements which are imposed by statute, it must be remembered that Velvet's commitment is purely a voluntary choice on the part of Velvet.[2] The RES requirements are imposed on Evergy, not on Velvet.[3]

Evergy also claims on page 18 of its brief that its proposal in this case is consistent with the Nucor case. Evergy first conflates charges under the RESRAM with requirements under the RES. As discussed in more detail in Staff's initial brief,

[2] Tr. Vol. 3, page 453 lines 13-19. As Judge Hatcher stated at the hearing: "So the utility turns it in [retires the renewable energy credit] to meet a statutory requirement. . . .I don't understand why Velvet wants it." Tr. Vol. 3, page 452, lines 10-11 and 21.
[3] See Section 393.1030, RSMo.

RESRAM charges and RES requirements are not the same thing.[4] Second, it must be remembered that in the Nucor situation, Evergy is contracting the purchased power agreement ("PPA") for Nucor under the tariff and Evergy is retaining the renewable energy credits ("RECs"), and retiring those RECs on behalf of Evergy under the RES requirements – not on behalf of Nucor.[5] This is not what Evergy and Velvet are proposing in the instant case, as Velvet would retain its RECs and retire them on its own behalf. Therefore, Evergy's reliance on the Nucor situation is inapposite.

Similarly, in its brief Velvet claims the Evergy/Velvet proposal is consistent with Evergy's solar subscription pilot, or Schedule SSP. However, under Schedule SSP Evergy is administering the pilot program, and Evergy – not the customers – owns, or will own, the solar resources.[6] Again, this is not what is proposed in the instant case. Moreover, it should be noted that Schedule SSP explicitly states that

> The rates hereunder are subject to adjustment as provided in the following schedules:
>
> - Fuel Adjustment Clause (FAC)
> - Renewable Energy Standard Rate Adjustment Mechanism Rider (RESRAM)
> - Demand-Side Investment Mechanism Rider (DSIM)
> - Tax and License Rider[7]

[4] "So when we're talking about RES requirements it's the renewable energy standard, which is a statute that requires the utilities to provide electricity from renewable energy resources and that's based on their sales that they make.· The highest level of the standard is 15 percent and it starts in 2021 at 15·percent.· There were stairsteps before then. And continually, you know -- continues at 15 percent annually.

When we're talking about the renewable energy standard rate adjustment mechanism [RESRAM], that is intended to represent the [*sic*] all [the] cost and all benefits related to compliance with the renewable energy standard and *that is a charge* that per Evergy's tariff is assessed to all customers." (Emphasis added) Tr. Vol. 3, page 467 lines 8-22.

[5] Tr. Vol. 3, page 451 lines 11-18.

[6] Ex. No. 104, Revised Sheet No. 109.

[7] Ex. No. 104, Original Sheet No. 109.5.

Velvet's reliance on Schedule SSP is also inapposite. The Commission should adopt the language proposed by Staff/OPC/MECG.

SECURITIZATION

On page 8 of its brief, in its description of its proposed Schedule MKT, Evergy states, "Billing under the proposed tariff will be excluded from charges from the Company's Fuel Adjustment Clause *and other embedded cost recovery riders*." (Emphasis added) This would appear to include securitization charges. However, in their briefs both Evergy and Velvet claim it is premature to address securitization charges, preferring instead to address this in Evergy's future securitization cases.[8]

Evergy's intent clearly seems to be to exclude Schedule MKT customers from securitization charges, whether now or later, as shown in the language highlighted above from its brief. However, as discussed in Staff's initial brief, this would be in direct violation of the applicable statute, Section 393.1700, RSMo. To provide otherwise in a future financing order as envisioned by Evergy and Velvet would be unlawful. The Staff/OPC/MECG proposed tariff language recognizes this fact and should be included in the tariff by the Commission.

Issue No. 2: If yes, what if any modifications to the Schedule MKT tariff proposed by EMW [and Velvet, pursuant to their non-unanimous stipulation (Ex. 8 and Ex 8 Schedule 1)] or other conditions should the Commission order?

[8] It should be noted that Velvet's brief, page 26, states, "Evergy has not filed a petition for a securitization mechanism." However, on December 10, 2021, Evergy filed a notice of intent to file a securitization case. See File No. EF-2022-0155.

SUBSTATION VOLTAGE CUSTOMERS

Despite being listed during the hearing by Judge Hatcher as one of the areas of disagreement[9] between the "competing tariffs," neither Evergy, Velvet, nor Google bothered to address the issue of substation voltage customers in their initial briefs. Therefore, Staff's initial brief on this point stands unrefuted, and the language proposed by Staff/OPC/MECG which removes substation voltage customers from the tariff availability should be adopted.

EDR DISCOUNTS

It should first be noted that, in their initial briefs, Evergy, Velvet and Google all ignore Exhibit 904, which was offered at the hearing by Staff/OPC/MECG as an alternative to the language contained in the proposed tariff, Exhibit 203 Schedule 1. The Exhibit 904 language would clearly allow Velvet to use Schedule PED and then migrate to Schedule MKT.

This was the only area of disagreement between the "competing tariffs" which Google addressed in its brief. Google attempts in its brief to frame the issue as though the proposal of Staff/OPC/MECG places restrictions on the use of Schedule PED rather than placing restrictions on the use of Schedule MKT. Google goes so far as to label as "sophistry" the argument that the proposal places restrictions on the use of Schedule MKT rather than placing restrictions on Schedule PED. Although Google wins the name-calling contest, its argument is wrong. Schedule MKT is at issue in this case, not Schedule PED. Any restrictions arising from this case will apply to Schedule MKT, not Schedule PED.

[9] Tr. Vol. 3, page 494 lines 6-11.

Without resorting to name-calling, Velvet makes a similar argument in its brief. However, on page 25 of its brief Velvet also quotes a portion of the statute, Section 393.1640, RSMo., which states as follows: "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." Therefore, if conditions were being placed on Schedule PED discounts, this language would seem to permit such conditions.

"HOLD HARMLESS" PROVISIONS

Both Evergy and Velvet attempt to portray their proposed "hold harmless" tariff provision as simply allowing them to present evidence concerning, and the Commission to consider, what they refer to in briefs as "all relevant factors." However, nowhere in their proposed tariff language does the phrase "all relevant factors" appear. Instead, their proposal states "It is expressly recognized that the Company and the Schedule MKT customer shall have 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." As can be seen, this proposal says nothing about "all relevant factors." In fact, it is questionable whether the evidence to be presented by Evergy and Velvet would be relevant at all from a cost of service ratemaking perspective. Evergy's proposal could be interpreted to allow them to present evidence on virtually anything they claimed to be an "economic benefit." And who must be the recipient of these alleged benefits? Non-Schedule MKT customers? Evergy? The Greater Kansas City area? The State of Missouri? This proposed language is too vague, and creates an exception to Evergy's obligation to hold other customers harmless that is too large, to be approved.

WHEREFORE, Staff respectfully submits this Reply Brief of Staff for the Commission's consideration, and for the reasons set forth in its initial brief and this reply brief, Staff requests the Commission issue an order adopting Staff's position on each of the issues in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to counsel of record as reflected on the certified service list maintained by the Commission in its Electronic Filing Information System this 18th day of February, 2022.

/s/ Jeffrey A. Keevil