

**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

AMENDED REPORT AND ORDER

Issue Date: March 24, 2022

Effective Date: April 3, 2022

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REGULATORY LAW JUDGE: Charles Hatcher

AMENDED REPORT AND ORDER

The Commission issued its original *Report and Order* on March 2, 2022. On March 11, 2022, the Office of the Public Counsel filed a *Motion for Clarification, Rehearing, and Reconsideration*. On March 21, 2022, Velvet Tech Services LLC responded to the motion opposing and supporting different portions. On March 23, 2022, Evergy Missouri West responded to the motion. Evergy Missouri West's response generally took the same positions as Velvet Tech Services.

The Office of the Public Counsel raised several points that merit clarification. The Commission withdraws its original *Report and Order* and issues this *Amended Report and Order* to address those points. All requests for rehearing filed regarding the Commission's *Report and Order* issued on March 2, 2022, are moot as this *Amended Report and Order* supersedes the original order. This *Amended Report and Order* will be given a ten-day effective date. All applications for rehearing of this *Amended Report and Order* must be filed prior to this effective date.

Procedural History

On November 2, 2021, Evergy Missouri West, Inc. d/b/a Evergy Missouri West (EMW or "the Company") filed a request for approval of a Special High Load Factor Market Rate tariff (MKT or MKT tariff). The Company did not file a proposed tariff for approval; however, it did file a tariff exemplar and a contract exemplar along with the direct testimony of the Company witnesses.

The Commission directed notice be given, and the following parties filed applications and were allowed to intervene: Velvet Tech Services LLC (Velvet), Google LLC, and Midwest Energy Consumers Group (MECG). Velvet is the potential customer underlying EMW's request. As there are no proposed tariff sheets filed, there is

no operation of law date for this matter. However, EMW and Velvet have requested expedited treatment, specifically seeking an order issued by March 2, 2022, such that the proposed approval could take effect by March 31, 2022. The request for expedited treatment was made to accommodate Velvet's internal capital investment schedule for the development site.

The Commission established a procedural schedule leading to an evidentiary hearing. Subsequently, the parties prefiled direct, rebuttal, and surrebuttal testimony. The evidentiary hearing was held January 25 to 26, 2022.¹ The parties filed post-hearing briefs on February 10, 2022, and reply briefs on February 18, 2022.²

General Findings of Fact

1. EMW is a certificated Missouri electrical corporation as defined by Subsection 386.020(15), RSMo (Supp. 2021).

2. EMW seeks approval of exemplar MKT tariff wording, and has also provided an exemplar MKT contract under the proposed MKT tariff.³

3. The Office of the Public Counsel (OPC) is a party to this case pursuant to Section 386.710(2), RSMo (2016) and by Commission Rule 20 CSR 4240-2.010(10).

4. The Staff of the Commission (Staff) is a party to this case pursuant to Commission Rule 20 CSR 4240-2.010(10).

5. In recent years, EMW has been approached by multiple potential customers seeking high load factor facilities in EMW's Missouri jurisdictions. Most of these high load

¹ Transcript Volume (Tr. Vol.) 2 and 3.

² The case is considered submitted as of the date of the final brief. 20 CSR 4240-2.150(1).

³ Ex. 2, Ives Direct, p. 2.

factor potential customers are data centers, and expect electricity loads at or around 150 to 200 megawatts (MW) for each data center.⁴

6. Load is the amount of energy consumed over a period of time. Load factor is the fraction of the average load divided by peak load. Peak load or demand is the highest amount of energy consumed over a measured period of time.

7. One of the potential customers is intervenor Velvet, which served as the model customer for EMW's proposed MKT tariff language.⁵

8. Intervenor Google has expressed interest in a similar tariff in the service area of Evergy Metro, Inc., a sister company to EMW.⁶ A single data center would represent a load over twice the size of the Nucor Steel plant, an EMW customer operating under a different special rate tariff, when EMW was authorized to serve it.⁷

9. The Nucor Steel plant was the largest proposed customer for EMW at the time of the Commission's decision in EO-2019-0244.⁸

10. EMW is not requesting approval of the special contract and special rate under the provisions of Section 393.355, RSMo (Supp. 2021).⁹

11. 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 customers and represent a primary factor in their decision to choose a location. EMW's MKT energy price will be set by the Southwest Power Pool

⁴ Ex. 2, Ives Direct, pp. 3-7.

⁵ Ex. 2, Ives Direct, Schedule DRI-3.

⁶ *Motion to Intervene and Motion for Expedited Treatment*, filed November 8, 2021, para. 3.

⁷ Ex. 2, Ives Direct, p. 3.

⁸ EO-2019-0244, *Report and Order*, issued November 13, 2019, Finding of Fact 4.

⁹ Ex. 2, Ives Direct, p. 7.

(SPP) day-ahead hourly price at the EMW node. MKT customers will be required to demonstrate and maintain a load factor throughout the year of .85 or greater.¹⁰

12. An average annual load factor of 0.85 means the MKT customer with a peak demand of 100MW would take, on average, 85 MW of electricity every hour of the year.¹¹

13. Velvet stated it conducted a multi-state search for a suitable location for a new \$800 million enterprise data center. This data center is expected to employ more than 50 direct, full-time employees at an average salary of more than \$80,000 per year. Construction and operation of the data center would make a significant economic contribution to the Kansas City area.¹²

14. An MKT contract is not anticipated to be presented to the Commission for approval for several years, perhaps as long as five years, due to the ramp-up of use needed to achieve the full load.¹³

15. Velvet has not made a final decision about whether to locate in the Kansas City area. A key element of Velvet's decision to locate to the Kansas City area is confirmation of the availability of a competitive electricity rate.¹⁴

16. The customer service charge and the capacity charge that EMW would set forth in the MKT contract would be based on the incremental cost to serve and negotiated amounts to address design risks.¹⁵

17. Incremental cost is any cost incidental to providing additional load to serve the MKT customer.¹⁶

¹⁰ Ex. 2, Ives Direct, pp. 4-8.

¹¹ Ex. 201, Mantle Surrebuttal, p. 3.

¹² Ex. 2, Ives Direct, Schedule DRI-3 (Comments of Velvet Tech Services, LLC); Ex. 300, Brubaker Surrebuttal, p. 2.

¹³ Ex. 2, Ives Direct, p. 3, and Schedule DRI-3; Tr. Vol. 2, p. 194.

¹⁴ Ex. 2, Ives Direct, p. 7.

¹⁵ Ex. 2, Ives Direct, p. 7.

¹⁶ Ex. 300, Brubaker Surrebuttal, p. 8; EMW Revised Tariff Sheet No. 74.

18. Approval of an MKT tariff exemplar provides the MKT customer with the ability to leverage the market price for energy with a customer-owned renewable resource or portfolio of resources. These high load factor customers tend to be advanced in their use of renewable resources and often manage relatively extensive portfolios to meet their corporate renewable energy goals. As such, they can align pricing of renewable purchases with the retail energy prices they pay for electric service under the proposed market pricing tariff.

19. Attracting high load factor customers such as these high-tech data center loads to Missouri is in the interest of both the State of Missouri, the Kansas City region, and other EMW customers. To the existing EMW customer, these prospective high load factor customers would increase the sales of electricity for the utility, both to the MKT customer itself and to businesses supporting the construction and operation. For the State of Missouri and the Kansas City region, encouraging this load to locate here would promote economic development, improving the tax base and providing new employment opportunities.¹⁷

20. Approval of an MKT tariff would give EMW another tool to attract new customers to the area.¹⁸

21. Approval of an MKT tariff would contribute to additional energy sales not only directly to the data center customer, but also to secondary loads resulting from construction and operation of the new facilities. Furthermore, high load factor loads represent desirable loads for the Company. High load factor customers have a much more consistent load than customers currently served by EMW, improving the load factor

¹⁷ Ex. 2, Ives Direct, p. 14.

¹⁸ Ex. 2, Ives Direct, p. 13.

for the entire utility. When added to the system, a consistent, incremental load minimizes any need for additional generation resources.¹⁹

Findings of Fact Regarding Legality of an MKT Tariff

22. When first built, these data center loads tend to ramp up over a period of years as the data center equipment is installed, tested, and commissioned in phases. Given the load size and load factor, these potential customers are distinct from all other customers served by EMW.²⁰

23. The Company proposed that to qualify under the MKT tariff, a customer must have a monthly demand equal to or in excess of 100 MW or is reasonably projected to be at least 150 MW within five years of the new customer first receiving service from the Company, and is able to demonstrate and maintain an average load factor throughout the year of 0.85 or greater.²¹

24. EMW's proposal is designed similar to Tariff Rate 261M offered by the Omaha Public Power District, specifically with regard to customer access to SPP day-ahead market prices.²²

25. Other non-Missouri utilities that offer market-based rates include Nevada Power Company, Public Service Company of New Mexico, Virginia Electric and Power Company, Northern Indiana Public Service Company, and Alliant Energy.²³

¹⁹ Ex. 2, Ives Direct, p. 13-14.

²⁰ Ex. 2, Ives Direct, p. 3.

²¹ Ex. 2, Ives Direct, p. 8.

²² Ex. 2, Ives Direct, p. 5.

²³ Ex. 300, Schedule MEB-2.

26. Staff raised four concerns in prefiled testimony as to the legality of the Commission's authority in this matter, but testified at the evidentiary hearing that their concerns regarding the legality of an MKT tariff have been satisfied.²⁴

27. During the evidentiary hearing, counsel for OPC indicated that it was not opposed to the approval of an MKT tariff.²⁵

28. During the evidentiary hearing, counsel for MCEG indicated that it was not opposed to the approval of an MKT tariff.²⁶

29. It is expected that each prospective customer would have some level of interconnection cost to provide service. It is also expected that these prospective customers may have advanced needs such as redundant feeds. At the time a customer contacts the Company for service under the proposed rate, EMW would evaluate these needs and manage the costs accordingly. Based on EMW's experience with the design case customer, some of these costs would be paid entirely, up front, by the customer and others would be incorporated into the rate design and recovered through future billings.²⁷

Findings of Fact Regarding a Hold Harmless Provision

30. The intent of the MKT tariff and subsequent contract is that all additional costs incurred to provide service to the new MKT customer would be paid for by the new MKT customer, and not by existing customers.²⁸

²⁴ Tr. Vol. 3, pp. 481-486.

²⁵ Tr. Vol. 2, p. 86.

²⁶ Tr. Vol. 2, p. 98 and 108.

²⁷ Ex. 2, Ives Direct, p. 9.

²⁸ Ex. 300, Brubaker Surrebuttal, p. 8.

31. Approval of the MKT tariff exemplar would establish an incremental cost-based capacity and market energy framework where costs specifically related to serving the MKT customer's energy needs are recovered from the MKT customer.²⁹

32. OPC, Staff, and MECG proposed tariff wording on the issue of including a hold-harmless provision that they adapted from EMW's Special Incremental Load (SIL) tariff used for Nucor.³⁰

33. EMW and Velvet's proposed tariff wording on the issue of a hold-harmless provision states, "In the event that any Commission ordered deficiency adjustment is required, the Schedule MKT customer for which there is Commission determined deficiency of revenues to cover the incremental costs to serve will receive a Special High-Load Factor Market Rate Contract rate adjustment sufficient to pay for half the determined cost to serve, with the remainder of the deficiency being borne by the Company."³¹ In other words, EMW's shareholders and the involved MKT customer would be responsible for any such revenue shortfall, not ratepayers.

34. EMW and Velvet also proposed tariff wording on the issue of a hold-harmless provision which 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

²⁹ Ex. 2, Ives Direct, Schedule DRI-3.

³⁰ Ex. 203, Non-unanimous Stipulation and Agreement, Schedule 1, p. 4 of 6, Additional Provisions (continued), para. 3, stating, "Non-MKT customers shall be held harmless from any deficiency in revenues provided by any customer served under this tariff or from any stranded investment or cost(s) associated with serving customers under this rate schedule." And see para. 4., stating "In no event shall any revenue deficiency (that is, a greater amount of the Customer's costs compared to the Customer's revenues) be reflected in the Company's cost of service in any rate proceeding for the duration of service to the Customer(s) during the terms of the contract between Company and Customer served under this tariff."

³¹ Ex. 8, Non-unanimous Stipulation and Agreement, Schedule 1, p. 5 of 7, Additional Provisions, para. 4.

customers taking service from the Company.”³² This sentence is the central area of disagreement regarding which hold-harmless wording the Commission should authorize.

Findings of Fact Regarding Securitization

35. Wording regarding securitization being placed in the MKT tariff was also in dispute. EMW and Velvet argued that including a securitization provision was premature and unnecessary.³³

36. OPC, Staff, and MCEG included wording in Exhibit 203 that read as follows, “Customer will be subject to any other charge or surcharge including without limitation any charge related to the securitization of Company assets.”³⁴

Findings of Fact Regarding the Renewable Energy Standard

37. Velvet has committed to having 100% of its load supported by new renewable energy resources located in the SPP footprint.³⁵

38. Neither of the proposed MKT tariffs, Exhibit 8 and Exhibit 203, includes any minimum generation or usage requirements for any MKT customer concerning renewable energy.³⁶

39. The proposed MKT tariff of EMW and Velvet, Exhibit 8, Schedule 1, states “renewable attributes means Renewable Energy Credits that the MKT customer has retired, or had retired on its behalf, documented annually from an established renewable registry.”³⁷

³² Ex. 8, Non-unanimous Stipulation and Agreement, Schedule 1, p. 5 of 7, Additional Provisions, para. 4.

³³ Ex. 6, Lutz Surrebuttal, p. 9; Ex. 300, Brubaker Surrebuttal, p. 20.

³⁴ Ex. 203, Non-unanimous Stipulation and Agreement, Schedule 1, p. 4 of 6, Additional Provisions (continued), para. 5.

³⁵ Ex. 300, Brubaker Surrebuttal, p. 3; Tr. 142, 307.

³⁶ Ex. 8, Non-unanimous Stipulation and Agreement, Schedule 1; Ex. 203, Non-unanimous Stipulation and Agreement, Schedule 1.

³⁷ Ex. 8, Non-unanimous Stipulation and Agreement, Schedule 1, p. 5 of 7, Additional Provisions, para. 6.

40. EMW and Velvet have requested two variances to the Commission's Renewable Energy Standard (RES) and Renewable Energy Standard Rate Adjustment Mechanism (RESRAM) rules. The first variance would exclude an MKT customer's load from the definition of "total retail electric sales" under 20 CSR 4240-20.100(1)(W), when the MKT customer demonstrates it has retired, or had retired on its behalf, Renewable Energy Credits greater than or equal to the then-existing RES requirement that would have been applied to the MKT customer load. The second variance would exclude the RES compliance costs needed to serve an MKT customer from being characterized as part of EMW's RES revenue requirement under 20 CSR 4240-20.100(1)(S)(1), when the MKT customer demonstrates it has retired, or had retired on its behalf, Renewable Energy Credits greater than or equal to the then existing RES requirement that would have been applied to the MKT customer load.³⁸

41. EMW and Velvet have also requested that the MKT customer's participation on the system would not affect the rate limitations on other large power customers under Section 393.1655, RSMo (Supp. 2021).³⁹

42. A similar limitation regarding treatment under Section 393.1655, RSMo (Supp. 2021) was approved in the Nucor Steel file, EO-2019-0244.⁴⁰

43. OPC's witness, Dr. Marke, calculated that a 150 MW customer, the smallest customer that can be served under the MKT tariff, with an average annual load factor of 85%, equals 1,116,900 megawatt-hours (MWh) (150 times 8,760 hours of the year).

³⁸ Ex. 8, Non-Unanimous Stipulation and Agreement, para. 6; *see also* EMW post hearing brief 18-19.

³⁹ Ex. 8, Non-Unanimous Stipulation and Agreement, para. 7.

⁴⁰ Ex. 305, EO-2019-0244, Non-Unanimous Stipulation and Agreement, para. 9.

Dr. Marke, using EMW's projected load for 2023, calculates that including one MKT customer would raise the RES requirement of EMW 13%.⁴¹

Findings of Fact Regarding the Economic Development Rider

44. EMW offers a discount rate that is authorized by the economic development rider (EDR) statute, Section 393.1640, RSMo (Supp. 2021). The rate is titled Limited Large Customer Economic Development Discount Rider, Schedule PED (Schedule PED).⁴²

45. OPC, Staff, and MECG offered a proposal for additional MKT tariff wording in a nonunanimous stipulation and agreement filed the evening prior to the start of the evidentiary hearing.⁴³ The proposal purported to limit a potential MKT customer's access to Schedule PED. The proposal was not mentioned in any party's prefiled testimony or position statements.

Findings of Fact Regarding Substation Voltage

46. EMW proposes to include language allowing it to offer access to transmission voltage as well as substation voltage customers.⁴⁴

47. Staff objected to the inclusion of the substation voltage language based on concerns of ownership, documenting and parsing portions of the cost of service, and maintaining that existing customers should not be liable for recovery of any stranded plant.⁴⁵

⁴¹ Tr. Vol. 3, pp. 569-570.

⁴² Ex. 308, Limited Large Customer Economic Development Discount Rider, Schedule PED.

⁴³ Ex. 203, Non-Unanimous Stipulation and Agreement, filed January 24, 2022.

⁴⁴ Ex. 8, Non-unanimous Stipulation and Agreement, Schedule 1, p. 1 of 7, "Substation voltage customer – Service is taken directly out of a distribution substation at primary voltage. The customer will own the feeder circuits out of this substation."

⁴⁵ Tr. Vol 3, pp. 495-503.

General Conclusions of Law

A. EMW is a public utility, and an electric corporation, as those terms are defined in Subsections 386.020(18) and (43), RSMo (Supp. 2021). By the terms of the statute, EMW is an electrical corporation and is subject to regulation by the Commission pursuant to Sections 393.140 and 386.250, RSMo (2016).

B. Section 393.130.1, RSMo (2016) requires that all charges made or demanded by an electrical corporation for electrical service be just and reasonable and not more than allowed by law or order of this Commission. Subsection 2 of that statute further states:

No ... electrical corporation ... shall directly or indirectly by any special rate, rebate, drawback or other device or method, charge, demand collect or receive from any person or corporation a greater or less compensation for ... electricity ..., except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions.

Subsection 3 adds:

No ... electrical corporation ... shall make or grant any undue or unreasonable preference or advantage to any person, corporation or locality, or to any particular description of service in any respect whatsoever, or subject any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

The courts that have examined this issue have made fact-based inquiries about the statutory proscription against unjust and unreasonable rates and undue or unreasonable preference or disadvantage.⁴⁶

⁴⁶ For example see, *State ex rel. City of Joplin v. Pub. Serv. Comm'n*, 186 S.W.3d 290 (Mo. App. W.D. 2005).

C. Section 393.140(11), RSMo (2016) gives the Commission power to:

require every ... electrical corporation ... to file with the commission ... schedules showing all rates and charges made, established or enforced or to be charged or enforced, all forms of contract or agreement and all rules and regulations relating to rates, charges or service used to be used, and all general privileges and facilities granted or allowed by such ... electrical corporation

EMW has appropriately filed an exemplar of the MKT tariff and related contract with the Commission.

D. Section 393.150.1, RSMo (2016) gives the Commission authority to conduct a hearing regarding any “new rate or charge, or any new form of contract or agreement” submitted by a utility, and to make an order regarding the propriety of such rates, charges, contract or agreement.

E. The prohibition against single-issue ratemaking requires the Commission to set rates based on a consideration of all relevant factors rather than a single factor, so that rates are not raised to cover increased costs in one area without a recognition that there may be off-setting cost reductions in other areas.⁴⁷

F. The MKT tariff and related contract concern a new service being offered by EMW and do not change the factors that were considered by the Commission in setting EMW’s existing rates, which will not change if the new MKT tariff is adopted.⁴⁸

G. Section 393.355, RSMo (Supp. 2021) gives the Commission authority to approve a special electric rate under specific circumstances, but its terms do not limit any other authority the Commission has to approve a special electric rate under more general authority granted by other statutory provisions.

⁴⁷ *State ex rel. Pub. Counsel v. Pub. Serv. Comm’n*, 397 S.W.3d 441, 448 (Mo. App. W.D. 2013).

⁴⁸ *State ex rel. Pub. Counsel v. Pub. Serv. Comm’n*, 397 S.W.3d 441, 448 (Mo. App. W.D. 2013).

H. Witness credibility is solely a matter for the fact-finder, “which is free to believe none, part, or all of the testimony.”⁴⁹

I. An administrative agency, as fact-finder, also receives deference when choosing between conflicting evidence.⁵⁰

J. The evidentiary hearing produced two competing proposals for resolution of the case. OPC, Staff, and MCEG proposed Exhibit 203 as their nonunanimous stipulation and agreement. EMW and Velvet proposed Exhibit 8 as their nonunanimous stipulation and agreement. Each nonunanimous stipulation and agreement was objected to, thus by Commission Rule 20 CSR 4240-2.115(2)(D), both stipulations become statements of position of the parties proposing them.

Conclusions of Law Regarding a Hold Harmless Provision

K. The Commission approved a hold harmless provision in EO-2019-0244, Everyg’s approval for a Special Rate for Incremental Load Service for Nucor, which is stated as follows:

The Special Incremental Load Rate will be designed to recover no less than the incremental cost to serve the Customer over the term of the Special Incremental Load Rate Contract. Non-participating customers shall be held harmless from any deficit in revenues provided by any customer served under this tariff.⁵¹

Conclusions of Law Regarding Securitization

L. The securitization statutes at issue, Sections 393.1700-1715, RSMo (Supp. 2021), provide in pertinent part in Section 393.1700.2(3) as follows,

(c) A financing order issued by the [C]ommission . . . shall include . . .

⁴⁹ *State ex rel. Public Counsel v. Missouri Public Service Comm’n*, 289 S.W.3d 240, 247 (Mo. App. W.D. 2009).

⁵⁰ *State ex rel. Missouri Office of Public Counsel v. Public Service Comm’n of State*, 293 S.W.3d 63, 80 (Mo. App. S.D. 2009).

⁵¹ Ex. 301, original sheet No. 157.2, Special Rate, Provisions, and Terms, para. 2.

d. A requirement that, for so long as the securitized utility tariff bonds are outstanding and until all financing costs have been paid in full, the imposition and collection of securitized utility tariff charges authorized under a financing order shall be nonbypassable and paid by all existing and 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 on August 28, 2021, even if a retail customer elects to purchase electricity from an alternative electric supplier following a fundamental change in regulation of public utilities in this state[.]

Conclusions of Law Regarding the Renewable Energy Standard (RES)

M. The RES statute, Section 393.1030.1, RSMo (Supp. 2021), gives the Commission authority to prescribe by rule a portfolio requirement for all electric utilities to generate or purchase electricity generated from renewable energy resources. Specifically, the portfolio requirement shall provide that electricity from renewable energy resources shall constitute a specified percentage of each electric utility's sales.

N. The RES statute, Section 393.1030.1, RSMo (Supp. 2021), states that the portfolio requirements shall apply to all power sold to Missouri consumers whether such power is self-generated or purchased from another source in or outside of this state.

O. The RES statute, Section 393.1030.6, RSMo (Supp. 2021), grants the Commission authority to promulgate rules for the implementation of this section, but only to the extent such rules are consistent with the provisions of that section.

P. The Commission's RES Rule 20 CSR 4240-20.100(1)(W) defines total retail electric sales, or total retail electric energy usage, as meaning 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.

Q. The Commission's RES Rule 20 CSR 4240-20.100(1)(S)(1) defines the RES revenue requirement as "[a]ll expensed RES compliance costs (other than taxes and depreciation associated with capital projects) that are included in the electric utility's

revenue requirement in the proceeding in which the RESRAM is established, continued, modified, or discontinued.”

R. The Renewable Energy Standard Rate Adjustment Mechanism (RESRAM), defined in Commission Rule 20 CSR 4240-20.100(1)(P), means a mechanism that allows periodic rate adjustments to recover prudently incurred RES compliance costs and passes-through to customers the benefits of any savings achieved in meeting the requirements of the RES.

S. The Commission’s RES Rule that allows for variances, 20 CSR 4240-20.100(11), provides the Commission may grant a variance from any provision of the RES Rule for good cause shown.

Conclusions of Law Regarding the Economic Development Rider

T. Commission Rule 20 CSR 4240-2.130(7)(C) states that “rebuttal testimony shall include all testimony which explains why a party rejects, disagrees or proposes an alternative to the moving party’s direct case.” A proposed alternative to prohibit or restrict service under Section 393.1640 RSMo (Supp. 2021), (the economic development rider statute), should have been included in rebuttal testimony to allow the moving party an opportunity to respond in surrebuttal testimony under Rule 20 CSR 4240-2.130(7)(D).

U. The Commission’s *Order Setting Procedural Schedule*, issued December 15, 2021, ordered paragraph 6.E, directed the parties to submit a list of issues and specifically stated, “The Commission will view any issue not contained in this list of issues as uncontested and not requiring resolution by the Commission.”

V. The Commission's *Order Setting Procedural Schedule*, issued December 15, 2021, ordered paragraph 6.F, directed the parties to submit position statements summarizing their position on each disputed issue.

W. Commission Rule 20 CSR 4240-2.115(D) states that an objected-to nonunanimous stipulation and agreement becomes a non-binding position statement of the signatory parties.

X. The Commission's authority to reject the inclusion of requests made for the first time in surrebuttal has been affirmed by the Court of Appeals. The Court stated, in discussing the Commission's pre-filed testimony rule and direct testimony shall contain that party's entire case-in-chief, as follows:

These procedures are important due to the highly technical nature of the issues presented at the hearing, in that it affords other parties a reasonable opportunity to provide evidence in response.⁵²

The Court continued, as follows:

As found by the [Commission], allowing [the utility] to make this request for the first time in surrebuttal precluded other parties from conducting discovery on the issue and from presenting evidence to refute [the utility's] allegations. The [Commission] had the authority to reject the projected costs in its calculations on this basis.⁵³

Conclusions of Law Regarding Substation Voltage

No additional conclusions of law are necessary.

Decision

The Commission, having considered the competent and substantial evidence upon the whole record, makes the above findings of fact and conclusions of law. The positions

⁵² *In the Matter of Kansas City Power & Light Company's Request for Authority to Implement a General Rate Increase for Electric Service*, 509, S.W.3d 757, 771-772 (Mo. App. W.D. 2016), Motion for Rehearing and/or Transfer to Supreme Court Denied November 1, 2016.

⁵³ *In the Matter of Kansas City Power & Light Company's Request for Authority to Implement a General Rate Increase for Electric Service*, 509, S.W.3d 757, 772 (Mo. App. W.D. 2016), Motion for Rehearing and/or Transfer to Supreme Court Denied November 1, 2016.

and arguments of all of the parties have been considered by the Commission in making these findings. Any failure to specifically address a piece of evidence, position, or argument of any party does not indicate that the Commission did not consider relevant evidence, but indicates rather that omitted material is not dispositive of this decision.

If the Commission is to authorize wording for an MKT tariff, it must find that the rates established in that tariff are just and reasonable, and that they do not establish an undue or unreasonable preference in favor of a particular customer. The Commission finds that the approval of an MKT tariff would not be an undue or unreasonable preference because of the unique characteristics of the customers that would qualify to take service under the MKT tariff. The evidence shows that an MKT tariff for high load factor customers would be in the public interest. The opening of the proposed data center would provide unquestioned economic development benefits to the Kansas City region, and to the State of Missouri as a whole.

The evidence also shows that a qualified MKT tariff customer would be a unique customer of EMW because it would use more than double the electricity of another unique user, Nucor, which was EMW's largest customer when EMW was authorized to serve it in 2019. Approval of an MKT tariff promotes the attraction of other high load factor customers. Further, the MKT customer load would be a consistent load, which when added to the system minimizes any need for added generation. A high load factor customer is desirable as it would increase the sales of electricity, improve the tax base, and provide new employment opportunities. Under these circumstances, a rate for qualifying high load factor customers that is less than its fully allocated cost that would be determined in a general rate case proceeding, but more than its incremental cost to serve

the MKT customer, is just and reasonable within the meaning of Section 393.130, RSMo (2016), and is not unduly or unreasonably preferential.

Decision Regarding Hold Harmless

The Commission finds that the appropriate hold harmless wording should remain consistent with prior hold harmless wording approved for other EMW tariffs by the Commission, but also take into account the particulars of the present case. The Commission finds that hold harmless provision proposed in Exhibit 203 represents the stated intent of EMW and remains consistent with EMW's other hold harmless provisions, and serves as the foundation of the Commission's requirements for a hold harmless provision in this case. Although Exhibit 203 is the foundation, the Commission acknowledges there could be other economic factors at play. Any proceeding involving a deficiency adjustment shall allow any party to argue whether or not specific quantifiable societal or other benefits or costs should be included in that analysis. However, any language regarding the inclusion of such factors should be limited in its applicability to a determination whether a deficiency adjustment is warranted.

Decision Regarding Securitization

The Commission finds that such language is unnecessary due to the self-applying nature of Section 393.1705, RSMo (Supp. 2021) which directs that the Commission include in any securitization financing order that the securitization charge is "nonbypassable and paid by all existing and future retail customers receiving electrical service from the electrical corporation." Thus, the Commission rejects any proposed wording regarding securitization to be included in the MKT tariff.

Decision Regarding the Renewable Energy Standard

The Commission finds that it does have the authority to provide the requested variance from RES counting and RESRAM charges. The RES statute delegates rulemaking authority to the Commission, but only to the extent such rules are consistent with the RES.

The objective of the RES is to increase renewable generation or to increase the purchase of electricity generated from renewable resources. Denying the requested variances would, by one calculation, raise the RES requirements of EMW's existing customers by 13%. However, understanding that some MKT customers desire that their load use renewable energy resources above the RES's minimum of 15%, granting the variances would encourage those customers with the largest loads and high load factors, the MKT customers, to increase their own utilization of renewable energy beyond the amount that would have otherwise been applied to that load.

The MKT tariff does not have a requirement for a minimum renewable component. In the case of an MKT customer that does not use renewables, the MKT customer would not qualify to receive such a variance. Restricting the exclusion to apply only when an MKT customer meets or exceeds the minimum RES requirement that would have otherwise been applied to the MKT customer's load ensures that the purposes of the RES statute are still being met, even with a variance which excludes the counting of what would be EMW's largest customers. The Commission finds that exclusion of the MKT customer's entire load from EMW's total retail electric sales when the MKT customer demonstrates it has retired, or had retired on its behalf, Renewable Energy Credits greater than or equal to the RES requirement that would have been applied to the MKT customer load is consistent with the goals and framework of the RES. The Commission

finds good cause to grant the variances as the attraction of high load factor customers because high load factor customers have a much more consistent load and would improve the load factor for EMW, and that the granted variance is consistent with the goals of the RES to increase renewable generation and increase consumption of renewable energy.

EMW and Velvet's proposed MKT tariff, Exhibit 8, Schedule 1, states that the MKT customer would document annually its Renewable Energy Credit retirements. The Commission will direct this requirement be included in MKT contracts with further detail as to how the Commission will be kept informed of compliance.

Decision Regarding the Economic Development Rider

The Commission rejects the late inclusion of the issue proposed by Staff, OPC, and MCEG to limit MKT customers from taking service under a separate economic development rider (EDR) tariff, specifically Schedule PED. The Commission rejects this issue because it was not introduced timely as an issue or in compliance with the procedural order governing this case.

The parties submitted a proposed procedural schedule, filed by Staff on behalf of all parties, requesting a Commission procedural order to include two rounds of prefiled testimony (rebuttal, and surrebuttal and cross-surrebuttal) with an evidentiary hearing, and briefing to follow. The Commission's procedural order adopted the parties' procedural schedule and ordered the parties to submit pre filed testimony, and a list of issues and position statements that referenced the contested issues that needed Commission determination. The Commission's first notice of the EDR issue came in a nonunanimous stipulation and agreement filed the evening prior to the evidentiary hearing. The introduction of the EDR issue came without explanation as one provision of the

nonunanimous stipulation and agreement, later marked as Exhibit 203. Other parties objected to the nonunanimous stipulation and agreement. Once there were objections to the nonunanimous stipulation and agreement, it became a position statement of the supporting parties under Commission Rule 20 CSR 4240-2.115(D).

Submitting a position statement on a late-filed issue not raised in compliance with the procedural order or Commission rules does not circumvent those processes and automatically make the issue one that must be decided by the Commission. The Commission's rules regarding the introduction of issues are there to give sufficient notice to the other parties and the Commission about an issue that must be resolved by the Commission.

The Commission was not given sufficient advance notice of this issue, and the resolution of this issue was not essential to the Commission's decision in this case. As the Court of Appeals reasoned in discussing the Commission's rules on testimony, the procedures to set forth the issues are important due to the highly technical nature of the issues presented, and in that it affords other parties a reasonable opportunity to conduct discovery and provide evidence in response.

Furthermore, cross-examination is the opportunity to question and inquire of a witness about the submitting parties' position, even late-filed positions. Cross-examination was allowed at the evidentiary hearing. However, on this issue, OPC, Staff and MCEG were the parties submitting a late-filed position in their nonunanimous stipulation and agreement, and were not the parties pursuing cross-examination against a late-filed position. Regardless, OPC, Staff, and MCEG were able to cross-examine witnesses for EMW about the EDR issue.

Commission rules set forth a process that is designed for the regulation of utilities. The regulation of utilities generally involves highly technical issues. Commission Rule 20 CSR 4240-2.130(7)(C), requiring issues to be raised in rebuttal testimony, the Commission's *Order Setting Procedural Schedule* in this case directing that issues not listed are considered not requiring resolution, and the Commission's same *Order Setting Procedural Schedule* directing position statements on each issue all require advance notice of an issue. The Commission's rule allowing cross examination is consistent with the need for advance notice of issues in that it allows issues to be developed in an evidentiary hearing. But in the present case, the introduction of an issue the evening prior to the evidentiary hearing foreclosed discovery by other parties. Even though the other parties responded, and even though cross-examination was allowed – the record was not developed enough to permit consideration by the Commission.

Decision Regarding Substation Voltage

The Commission finds that the expressed concerns over the inclusion of substation voltage offerings should not limit EMW's ability to offer substation voltage. The main concern expressed was whether existing customers would be held harmless for the cost of the substation. The Commission finds this is already addressed above, and thus authorizes the substation voltage as included in Exhibit 8. Any concerns over the allocation of the cost of the substation may be further defined, in accordance with this order and the MKT tariff, when the appropriate MKT customer contract is submitted to the Commission.

Based on its findings of fact and conclusions of law described in this Amended Report and Order, the Commission will approve the proposed wording included in Exhibit 8, as modified above, for the exemplar MKT tariff of EMW. The Commission makes this

decision consistent with its findings of fact and conclusions of law in approving EMW's Special Incremental Load tariff in EO-2019-0244.

As no tariff changes are being approved, the Commission will hold open this file in anticipation of the expected future tariff filing. To meet the requested effective date of Velvet and EMW, the Commission finds it reasonable to make this order effective on less than 30-days' notice.

THE COMMISSION ORDERS THAT:

1. The *Report and Order* issued on March 2, 2022, is withdrawn.
2. The wording as submitted in Exhibit 8, and modified as discussed in the body of this order, is approved as exemplar wording for an MKT tariff.
3. The RES variances requested by EMW and Velvet are granted. The variances are described in Paragraph 38 of the *Report and Order* and are restated below:
 - a. The first variance excludes an MKT customer's load from the definition of "total retail electric sales" under 20 CSR 4240-20.100(1)(W), when the MKT customer demonstrates it has retired, or had retired on its behalf, Renewable Energy Credits greater than or equal to the then existing RES requirement that would have been applied to the MKT customer load.
 - b. The second variance excludes the RES compliance costs needed to serve an MKT customer from being characterized as part of EMW's RES revenue requirement under 20 CSR 4240-20.100(1)(S)(1), when the MKT customer demonstrates it has retired, or had retired on its behalf, Renewable Energy Credits greater than or equal to the then existing RES requirement that would have been applied to the MKT customer load.
4. This file will remain open to receive the filing of a tariff in compliance with the Commission's order.

5. This Amended Report and Order shall become effective on April 3, 2022.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff". The signature is written in a cursive, flowing style.

Morris L. Woodruff
Secretary

Silvey, Chm., Rupp, Coleman, Holsman, and
Kolkmeier CC., concur.

Hatcher, Regulatory Law Judge


STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 24th day of March, 2022.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

March 24, 2022

File/Case No. EO-2022-0061

**Missouri Public Service
Commission**

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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,



**Morris L. Woodruff
Secretary**

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.