

**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. EO-2022-0061
West For Approval of a Special High Load Factor)
Market Rate)

POST-HEARING BRIEF OF EVERGY MISSOURI WEST

COMES NOW Evergy Missouri West, Inc. d/b/a Missouri West (“EMW” or “Company”) and pursuant to the Missouri Public Service Commission’s (“Commission”) *Order Setting Procedural Schedule* issued December 15, 2021 (“Order”) submits its *Post-Hearing Brief* (“Brief”). In support thereof, EMW states as follows:

I. INTRODUCTION

This case involves EMW’s request for the approval of a proposed Special High Load Factor Market Rate tariff –Schedule MKT (“Schedule MKT”). This tariff is designed to meet the needs of large load, high load factor customers such large data centers by providing an energy rate based on the day-ahead hourly price of energy observed from the Southwest Power Pool (“SPP”) Integrated Marketplace. All other elements of the proposed rate are determined based on the incremental cost to serve the customers.

EMW has been working with Velvet Tech Services, LLC (“Velvet”) for more than two years to develop a tariff that will provide competitively priced electricity to its proposed data center in the Kansas City, Missouri area. Velvet plans to invest more than \$800 million in its Missouri data center that would part of the Golden Plains Technology Park, assuming the Commission approves an acceptable and workable Schedule MKT, as proposed by EMW and Velvet.

During the hearings, it became apparent that no party is opposed to the approval of a Schedule MKT by the Commission. EMW and Velvet have submitted a Non-Unanimous Stipulation and Agreement (“EMW/Velvet Stipulation”) which recommends the approval of the Schedule MKT, as

modified in the tariff attached to the stipulation to become effective no later than March 31, 2022. While the Commission Staff (“Staff”), Office of the Public Counsel (“OPC”) and Midwest Energy Consumers Group (“MECG”) initially filed testimony and/or position statements in this case opposing the approval of a Schedule MKT, the night before the evidentiary hearings commenced, OPC, MECG, and Staff filed a Non-Unanimous Stipulation and Agreement (“OPC Stipulation”) which recommended a modified version of the Schedule MKT to become effective no later than March 31, 2022. Counsel for OPC and MECG confirmed that these parties were not opposed to the approval of a Schedule MKT.¹

As Judge Hatcher observed in the hearings, this case now involves a case of “competing stipulations.”² The EMW/Velvet Stipulation provides a viable approach that will provide a path forward for the development of the Golden Plains Technology Park and Velvet’s proposed data center. The OPC Stipulation does not.

There are several provisions recommended by OPC, MECG, and Staff which are not acceptable to EMW and Velvet, and these provisions may de-rail EMW’s efforts to provide a competitively priced source of energy for large data centers. The following provisions are in dispute in this case:

1. The OPC Stipulation tariff includes a provision which requires that Schedule MKT would only be available to a non-residential customer who “has not accepted a discount under section 393.1640 in the past five years.” (“EDR prohibition” or “PED prohibition.”)³;
2. The OPC Stipulation tariff includes a “Hold Harmless” provision which may limit the ability to EMW to present evidence of economic benefits and other information

¹ Tr. 86, 98, 108.

² Tr. 108.

³ Section 393.1640 authorizes the use of an Economic Development Rider (“EDR”). EMW’s EDR is referred to as the Missouri West Limited Large Customer Economic Development Discount Rider, Schedule PED.

related to the Market Rate contract and prohibits the Commission from considering “all relevant factors” related to any proposed deficiency adjustment in a Commission proceeding. (“Hold Harmless provision”);

3. The OPC Stipulation tariff includes a RES/RESRAM provision which is not workable, acceptable and in the public interest for the reasons stated below. (“RES/RESRAM provision”)⁴; and

4. The OPC Stipulation tariff includes a provision which would mandate that any Schedule MKT customer would be “subject to any other charge or surcharge including without limitation, any charge related to the securitization of Company assets.”⁵ (“Securitization provision”)

Each of these provisions will be addressed below. EMW respectfully requests that these modifications to its proposed Schedule MKT be rejected by the Commission, and instead the recommendations, including the modified Schedule MKT, attached to the EMW/Velvet Stipulation be approved.

II. BACKGROUND

In May 2018, the Kansas City Area Development Council (“KCADC”) began working with Velvet while Velvet was evaluating multiple states, including Missouri and Kansas, for a suitable location to build a hyperscale enterprise data center on 500 acres. In November 2018, independent of Velvet, Diode Ventures, another data center project, contacted KCADC about the suitability and viability of an 882-acre site they identified at the northwest corner of US 169 and I-435 as a potential data center campus.⁶ Velvet and Diode worked together in an effort to create the proposed data center campus that has become known as the Golden Plains Technology Park. This project has been

⁴ Tr. 150-51, 212.

⁵ Tr. 200, 214.

⁶ Ex. 4, McCarthy Direct, p. 9.

a massive undertaking and has the opportunity to lift the Kansas City region to new heights in technology assets.⁷

As explained by Jill McCarthy, the Senior Vice President of Corporate Attraction for KCADC, the Golden Plains Technology Park will generate significant net new revenues for the City of Kansas City, the State of Missouri, the Platte R-3 and Smithville school districts, along with many other taxing jurisdictions. The combined project plan calls for the construction of 5.5 million square feet of new facilities for a data center campus to be built-out in multiple phases on 882 acres in Platte and Clay Counties. Over the next 11-year timeframe, Diode Ventures and Velvet plan to invest \$4.3 billion in real estate – almost 3 times the size of the new KCI Airport single terminal. The initial buildout will include personal property of another \$1.1 billion. The combined initial capital investment will be \$5.4 billion, 65% of which will be locally purchased. The project will supply an average of 1,492 new construction jobs annually and create 326 net new full-time permanent jobs that will pay an average wage of more than \$80,000, well above the Kansas City average wage.⁸ However, a key to the success of this important economic development project is the availability of competitively priced electric service in a way that facilitates the data centers' efforts to meet the renewable goals necessary to proceed with the plans to invest in the data centers.⁹ Both Velvet and Diode are committed to having 100% of their massive loads supported by renewable energy resources.¹⁰

It must be understood that the competitiveness of an electric rate is ultimately determined by the incoming prospective customer. The utility seeks to provide its best, cost-based price and incorporate that with the economic development elements in an effort to attract or retain the

⁷ Id.

⁸ Ex. 4, McCarthy Direct, pp. 12-13.

⁹ Ex. 200, Brubaker Surrebuttal, p. 3; Tr. 305-06.

¹⁰ Ex. 4, McCarthy Direct, p. 12.

customer. If the customer is not comfortable or feels that any part of the proposal is not competitive, they do not come. The testimony of Ms. McCarthy details that the Kansas City area has lost opportunities previously. In part, because of that history, that is why the Company invested significant time and effort to find a workable solution with Velvet and a solution that appears to be workable for Google. In this proceeding, other parties suggest the utility or the Commission should make the assessment of price competitiveness, but at the end of the day only the prospective customer makes the decision. The Company's request of the Commission when it brings a Market Rate contract for Commission to review, is whether the price offered in the contract, is determined to be in the public interest. EMW believes the Schedule MKT structure, and exemplar contract provided in Ives direct testimony are in the public interest.

The projects planned by these potential customers are similar in timing and energy needs. Generally, the customers are seeking to locate large data centers in the Midwest to take advantage of regional benefits (e.g., land availability, security, resiliency, energy grid connectivity, etc.) and to improve the response time and capabilities of the services hosted by these companies. These customers expect loads at or around 150MW to 200MW for each data center. The loads will be consistent, having a high load factor due to the "always on" aspect of computer/internet technology. When first built, these loads tend to increase over a period of years as the data center equipment is installed, tested and commissioned in phases. These customers plan to invest hundreds of millions of dollars into the area, supporting their construction and operations. Each customer is operating under an internal development timetable and are seeking solutions to fit those timing needs. All have corporate renewable energy mandates and seek to partner with local utilities and municipalities to ensure success of these installations. These customers are scouring the region looking for the best

combination of factors to support their investment decisions. Given the load size and load factor, these potential customers are distinct from other customers served by EMW.¹¹

The Department of Economic Development (“DED”) is very supportive of the Golden Plains Technology Park and the proposed Schedule MKT tariff proposed in this case. Michelle Hataway, on behalf of DED, addressed the impact, partnership, and support the DED has provided for the investment planned by Velvet and Diode Ventures, LLC in the Golden Plains Technology Park and emphasized the importance the proposed rate and tariff have on the project’s success.

Ms. Hataway also testified that the public policy of the Missouri as established by the Legislature is to attract data centers. The state offers an economic development incentive tool exempting data center operations from certain sales and use taxes, including those for utilities and for purchases of qualifying equipment and personal property. The Program was enacted in 2015 through the General Assembly’s passage of Senate Bill 149. The authorization for the program lies in Section 144.810, RSMo.

This tool is one of a series of exemptions targeting sales and use taxes associated with key project inputs like materials used in the construction of facilities, the acquisition of eligible personal property, and usage of electricity. There exist separate and unique local incentive opportunities with independent approval processes that could be authorized in support of investments of this scale. This regularly occurs in conjunction with the state’s incentives tools.¹²

Clearly, the proposed Golden Plains Technology Park and Velvet’s proposed hyperscale data center are supported by local and state authorities to promote the economic well-being and public interest in the Kansas City area. The Commission now has the opportunity to also lend its support for such economic development efforts by approving EMW’s Application, as modified, in this proceeding.

¹¹ Ex. 2, Ives Direct, p. 3.

¹² Ex. 5, Hataway Direct (adopting Stombaugh Direct), pp. 3-4.

III. APPROVAL OF THE SPECIAL HIGH LOAD FACTOR MARKET RATE ("SCHEDULE MKT") TARIFF

The Schedule MKT tariff is designed to meet the needs of these special, high load factor customers by providing an energy rate based on the day-ahead hourly price of energy observed from the Southwest Power Pool ("SPP") Integrated Marketplace and inclusive of all cost to provide that energy. All other elements of the proposed rate are determined based on the incremental cost to serve the customers.¹³

High load factor loads represent desirable loads for the Company. Importantly, these loads are expected to provide desired economic development within the greater Kansas City area, which will be beneficial for the community and for all existing retail customers. EMW has been working closely with Velvet that has served as the design case for the tariff and the processes proposed in this filing.

Each customer receiving service under the Schedule MKT rate will have unique pricing for all non-energy components of the rate. These individual rate elements as well as all specific terms and conditions for the rate will be based on the individual customer project and memorialized in an associated Market Rate contract. If the Schedule MKT tariff is approved, all subsequent Market Rate contracts will be filed for review and approval prior to the time each customer receives service under Schedule MKT. An example of this Market Rate contract, based on the design case customer, is attached to the Direct Testimony of Mr. Ives as Confidential Schedule DRI-2¹⁴, although each future Market Rate contract will be unique to capture the details of the respective load.¹⁵

EMW chose to design a simple, three-part rate for providing service to these large, high load factor customers. The key element is the energy pricing. Energy price is set by the SPP day-ahead

¹³ Application, pp. 2-3, Tr. 144.

¹⁴ Ex. 1, Ives Direct, Schedule DRI-2 (Confidential).

¹⁵ Application, pp. 4-5.

hourly price at the EMW node and inclusive of all cost to provide that energy. The customer service charge and the demand charge are set based on the incremental cost to serve and negotiated amounts to address design risks. Specific to providing capacity to support the tariff, the Company expects options may include, but are not limited to construction of physical resources or a distinct, request for proposal for firm capacity offered in the SPP market. All efforts will be made to maximize the benefit of the capacity options for the Customer and the Company. Availability of this service will be limited to customers who are able to meet and maintain load and load factor minimums. The Company proposes that customers have a monthly demand equal to or in excess of 100 megawatts (“MW”) or is reasonably projected to be at least 150 MW within five (5) years of the new customer first receiving service from Company, and at full load, must be able to demonstrate and maintain an annual load factor throughout the year of 0.85 or greater. During initial startup or commissioning, not to exceed five years, demonstrate and maintain an average annual load factor throughout the year of 0.85 or greater. Customers receiving service under this tariff will be served at substation or transmission voltages. Terms of service under the Special High Load Factor tariff will be five years with the opportunity for renewal, subject to pricing change to reflect then current conditions. Billing under the proposed tariff will be excluded from charges from the Company’s Fuel Adjustment Clause and other embedded cost recovery riders.¹⁶

A. THE SCHEDULE MKT TARIFF IS LAWFUL

The Commission has often exercised its ratemaking authority to approve special contracts and related tariffs under Sections 393.130, 393.140(11), and 393.150(1) RSMo. and its general ratemaking authority. Many special contracts have been approved by the Commission utilizing

¹⁶ Id. at 3-4.

such authority over the Commission’s regulatory history.¹⁷ These special contract tariffs and special contracts have been approved outside the context of general rate cases.¹⁸

In the Staff’s rebuttal testimony, Staff asserted that the Commission could not approve the Schedule MKT outside the context of a rate case and without complying with the terms of Section 393.355, RSMo.¹⁹ However, during the hearings, Mr. Jim Busch, the Director of the Industry Analysis Division of the Commission, explained that the Staff was no longer asserting this argument since the Commission very recently ruled against the Staff position in EMW’s *Transportation Electrification Report and Order*.²⁰ It may also be worth noting that in the 2019 Nucor proceeding which involved the approval of a special contract, Staff’s brief stated that Section 393.355 is not the exclusive statutory authority for approving special contracts and that the Commission has the statutory authority under Sections 393.150(1) to approve special contracts.²¹

Contrary to the initial assertions of Staff in this proceeding, EMW did not file it Application and tariffs pursuant to the terms of Section 393.355, RSMo., a statute regarding special rate contracts for aluminum and steel producers or facilities resulting in incremental monthly load increases over 50 megawatts. While this statutory tool is evidence of a regulatory and pricing climate that gave Missouri a distinct competitive advantage in attracting certain types of customers to Missouri, this

¹⁷ See e.g., *Report and Order, In the Matter of a Demand Curtailment Agreement Between Kansas City Power & Light Company and Armco Steel Corporation*, Case No. EO-78-227 (August 22, 1978); *Order Approving Proposed Rate Schedule And Special Contract, In the Matter of the Application of Kansas City Power & Light Company for Approval of a Rate Schedule Authorizing the Use of Special Contracts and Approval of a Specific Special Contract between KCPL and an Existing Customer*, Case Nos. EO-2006-0192 and EO-2006-0193 (March 16, 2006); *Order Approving Agreement and Tariff, In the Matter of a Special Contract filed by Kansas City Power & Light Company*, Case No. EO-95-67 (issued October 26, 1994); *Report and Order, In the Matter of the Application of KCP&L Greater Missouri Operations Company for Approval of a Special Rate for a Facility Whose Primary Industry Is the Production or Fabrication of Steel in or Around Sedalia, Missouri*, File No. EO-2019-0244 (issued November 13, 2019)(Ex. 3, Ives Surrebuttal, pp. 6-11).

¹⁸ *Id.*

¹⁹ Ex. 102, Kliethermes Rebuttal (adopted by Busch), p. 4.

²⁰ Tr. 482-83; *Report and Order*, pp. 27-29, Re: Application of Evergy Metro, Inc. d/b/a Evergy Missouri Metro for Approval of a Transportation Electrification Program, File No. ET-2021-0151 (issued January 12, 2022).

²¹ Ex. 304, Staff Brief, pp. 2-6, In the Matter of the Application of KCP&L Greater Missouri Operations Company for Approval of a Special Rate for a Facility Whose Primary Industry Is the Production or Fabrication of Steel in or Around Sedalia, Missouri, File No. EO-2019-0244 (filed November 1, 2019).

statute is not required to be utilized²² and does not serve the needs of high load factor customers and the Company under the circumstances of this case. In any event, all parties are recommending that a version of the Schedule MKT be approved.²³

IV. MODIFICATIONS TO THE SCHEDULE MKT PROPOSED BY EMW AND VELVET SHOULD BE APPROVED

In this proceeding, the parties held several pre-filing meetings, technical conferences, and settlement conferences to discuss the benefits related to the Schedule MKT. EMW first met with representatives from Staff and OPC on September 14th of 2021 to preview this filing and the structure of the EMW proposal. EMW held a second meeting with representatives from Staff and OPC on September 23rd to discuss this filing. For the September 23rd meeting, a draft of the proposed tariff and the exemplar Market Rate contract were provided to the attendees. During these meetings, EMW solicited feedback from the attendees, offered additional meetings if parties were interested including an offer of further meetings in October. No follow up meetings were requested by the parties after the information presented in the September meetings.²⁴

EMW and Velvet have endeavored to listen to the feedback and concerns raised by other parties to the proceeding. The surrebuttal testimony of Bradley D. Lutz describes numerous tariff modifications acceptable to EMW and Velvet based upon comments received from parties in their rebuttal testimony.²⁵ Many of the modifications were intended to address the concerns raised by Staff and Public Counsel witnesses and MECG's counsel in this proceeding. Some were significant changes, while other modifications were in the nature of wordsmithing the language of the tariff.

²² *Report and Order*, pp. 12-13, In the Matter of the Application of KCP&L Greater Missouri Operations Company for Approval of a Special Rate for a Facility Whose Primary Industry Is the Production or Fabrication of Steel in or) Around Sedalia, Missouri, File No. EO-2019-0244 (issued November 13, 2019).

²³ Ex Nos. 8 and 203.

²⁴ Ex. 3, Ives Surrebuttal, p. 16.

²⁵ Ex. 6, Lutz Surrebuttal, pp. 4-11; Tr. 155.

Some of the more significant changes included in the modified EMW/Velvet tariff are as follows:

(1) under the “Availability” section, deleting the requirement that customers must be in the data center industry (i.e. NAICS Code 518210 or 541511) to be eligible for the Schedule MKT;²⁶

(2) under the “Rate for Capacity Service” section, modifying the paragraph to ensure non-participants are held harmless;²⁷

(3) under the “Rate for Pricing for All other Service” section, modifying the paragraph to ensure all proper costs were included in the contract and prevent the inadvertent omission of other charges from the contract;²⁸

(4) under the “Contract Determination” section, modifying the paragraph to explain how the approval process will work and what happens if the Commission does not approve the contract;²⁹

(5) lengthening the time for review of Market Rate Contracts from 60 days to 90 days;³⁰

(6) eliminating the Company’s discretion to unilaterally add voltage levels to the eligibility section of the tariff;³¹

(7) under the “Additional Provisions” section, strengthening paragraph 1 to ensure all assumptions, inputs and calculations used to determine the rate will be filed with the Commission.³²

These modifications have improved the proposed EMW/Velvet tariff and should be adopted by the Commission in its final order in this case.

²⁶ Ex. 3, Ives Surrebuttal, pp. 12-13, Tr. 155.

²⁷ Tr. 45, 63-64.

²⁸ Ex. 6, Lutz Surrebuttal, p. 7.

²⁹ Id.

³⁰ Tr. 50, 157.

³¹ Tr. 50, 198.

³² Ex. 6, Lutz Surrebuttal, pp 8-9.

V. MODIFICATIONS OF THE SCHEDULE MKT PROPOSED BY OPC, MECG AND STAFF SHOULD BE REJECTED

The following provisions proposed to the Schedule MKT tariff recommended by OPC, MECG, and Staff should be rejected:

A. ECONOMIC DEVELOPMENT RIDER (“EDR”) PROHIBITION

The OPC Stipulation includes the following provision which will have the potential to kill the prospect for bringing Velvet,³³ other large data centers, or other high load factor economic development projects to Missouri using the Schedule MKT:

The OPC Stipulation tariff includes a provision which requires that Schedule MKT would only be available to a non-residential customer who “has not accepted a discount under section 393.1640 in the past five years.”³⁴ (“EDR prohibition” or “PED prohibition.”)³⁵;

Under this EDR prohibition provision, Velvet would not be eligible for the Schedule MKT if it had exercised its statutory right under Section 393.1640 to participate in EMW’s Economic Development Rider (i.e. Missouri West Limited Large Customer Economic Development Discount Rider, Schedule PED). As explained in the hearings, Velvet needs a transition for approximately two years while it builds its facilities and ramps up its load to qualify for the Schedule MKT.³⁶ Initially, Velvet would not have sufficient load or the high load factor required to qualify under Schedule MKT during this ramp-up period. The addition of the EDR prohibition makes the OPC Stipulation’s approach unworkable and not in the public interest.³⁷

³³ Tr. 204, 223.

³⁴ Ex. 203, OPC Stipulation, Schedule 1, Schedule MTK, Availability Section.

³⁵ Section 393.1640 authorizes the use of an Economic Development Rider (“EDR”). EMW’s EDR is referred to as the Missouri West Limited Large Customer Economic Development Discount Rider, Schedule PED.

³⁶ Tr. 36-7, 155-56, 194.

³⁷ Tr. 220, 223.

Importantly, there is no such EDR prohibition in any of EMW's tariffs that would prohibit a customer receiving service under the EDR or PED from migrating to the Special Incremental Load ("SIL") schedule³⁸, the Special Contract tariff³⁹, or any other tariff.

In any event, there is no competent and substantial evidence in the whole record to support the inclusion of the EDR or PED prohibition in Schedule MKT. None of the testimony filed by Staff or Public Counsel addressed this EDR prohibition, and statements of counsel are not competent and substantial evidence.⁴⁰ The Commission must therefore reject the request of OPC, MECG, and Staff to include it in the final Schedule MKT. Under these circumstances, the inclusion of the EDR prohibition provision contained in the OPC Stipulation in Schedule MKT would be unlawful and unreasonable.

Notwithstanding these concerns, EMW introduced Exhibit No. 7 in the hearing in the spirit of compromise which contains a provision that would address the ability of a high load factor customer to migrate to the Schedule MKT if the customer had been taking service under the EMW's Economic Development Rider within two years.⁴¹ Exhibit No. 7 states:

Customers receiving service under another rate schedule with the Economic Development Rider and requesting service under Schedule MKT shall make such request within two (2) years of taking service under the Economic Development Rider or prior to that Customer's average monthly peak load exceeding 50MW. If the Customer remains on the Economic Development Rider after it exceeds two (2) years or 50MW, before being allowed to request service under Schedule MKT, the Customer must take service under a standard, otherwise applicable rate schedule for a period of time equal to the time that the Customer took service under the Economic Development Rider after it exceeded two (2) years or 50MW.

As stated by Mr. Ives, this provision would be acceptable to EMW if the Commission included it in the final version of Schedule MKT.⁴² It would also be acceptable to specifically reference the

³⁸ Ex. 301, EMW Tariff, P.S.C.Mo. No. 1, Original Sheet Nos. 157 thru 157.1, inclusive. (SIL tariff);

³⁹ Ex. 303, EMW Tariff, P.S.C.Mo. No. 1, 1st Revised Sheet Nos. 141 thru 1432.

⁴⁰ State v. Dowell, 25 S.W.3d 594, 609 (Mo.App.W.D. 2000); State v. Coleman, 954 S.W.2d 1, 6, (Mo.App.1997).

⁴¹ Tr. 269-70, 284-85.

⁴² Tr. 285.

Missouri West Limited Large Customer Economic Development Discount Rider, Schedule PED in this paragraph.⁴³ It should be noted that compromise language as offered above, while helpful to the design case customer, could create unforeseen impediments to future customers seeking to utilize this tariff. Similar concerns have been raised by counsel for Google in this proceeding.

For these reasons, the PED Prohibition, as proposed by OPC, MECG, and Staff should be rejected.

B. HOLD HARMLESS PROVISION

The OPC Stipulation tariff includes a “Hold Harmless” provision which will limit the ability to EMW to present evidence of economic benefits and other information related to the Market Rate contract and will prohibit the Commission from considering “all relevant factors” related to any proposed deficiency adjustment in a Commission proceeding. (“Hold Harmless” provision).

The OPC Stipulation’s “Hold Harmless” provision states:

If the Customer’s rate revenues do not exceed the cost to serve the Customer as reflected in the revenue requirement calculation, **the Company shall make an additional revenue adjustment covering the shortfall to the revenue requirement calculation through the true-up period, to ensure that non-Special High-Load Factor Market Rate customers will be held harmless from such effects from the service under the Special High-Load Factor Market Rate.** 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.⁴⁴ (**emphasis added**)

For the reasons stated herein, the OPC Stipulation’s “Hold Harmless” provision should be rejected.

The OPC Stipulation’s Hold Harmless provision is designed to limit EMW from introducing evidence of the economic benefits and other relevant evidence in any proceeding in which the

⁴³ Tr. 290-91.

⁴⁴ OPC Stipulation, Schedule 1, Schedule MTK, Additional Provisions Section, Paragraph 4.

Commission considered making a revenue deficiency adjustment related to the Special High-Load Factor Market Rate.⁴⁵ Under this Hold Harmless provision, the Commission would be limited to making a mathematical calculation of whether the incremental costs exceed the revenues produced from the Market Rate Contract.

By contrast the EMW/Velvet Stipulation includes the following “Hold Harmless” provision:

At the time of a general rate proceeding the portion of the Company’s revenue requirement associated with the incremental costs to serve the Customer shall be identified. The Customer’s rate revenues shall be reflected in Company’s net revenue requirement. **Non-Participating customers shall be held harmless for any deficiency in revenues from the cost to serve for which the rates were designed to recover by any customer served under this tariff. 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.** 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. **(emphasis added)**

Under EMW/Velvet’s “Hold Harmless” provision, EMW and the Schedule MKT customer would have the opportunity to present evidence for the Commission’s consideration of other economic benefits as a result of Schedule MKT customers taking service from the Company. This type of evidence would be prohibited under the OPC Stipulation’s “Hold Harmless” provision, as interpreted by OPC and Staff.⁴⁶

The Commission has often held that it is obligated under State ex rel. Utility Consumers Council of Missouri v. Public Service Commission, 585 S.W.2d 41 (Mo. banc 1979) and Section 393.270(4), RSMo to consider “all relevant factors” when establishing just and reasonable rates.⁴⁷

⁴⁵ See cross-examination of Mr. Busch by OPC counsel. Tr. 476-78.

⁴⁶ Id.

⁴⁷ See Order Denying Reconsideration And Offering Clarification, Noranda Aluminum, Inv. v. Union Electric Company

For example, in Re Missouri Gas Energy, the Commission stated: “There is no provision in Chapters 386 and 393, RSMo (1994) which specifies one particular manner by which rates may be determined. Rather, the Commission is granted considerable discretion in the determination of rates. Associated Natural Gas Co. v. Public Service Commission, 706 SW2d 870, (Mo. App. 1985); 393.150, RSMo (1994). Rates may not be based on one factor but must be based upon all relevant factors. State ex rel. Utility Consumers' Council of Missouri, Inc. v. Public Service Commission, 585 S.W.2d 41 (Mo. 1979).”⁴⁸

Mr. Jim Busch testified that the Commission tries to take into account all relevant factors whenever it looks at adjustments in rate cases or other cases. In other words, the Commission will consider all sides of the issue and consider all competent and substantial evidence before making its decision.⁴⁹

Mr. Maurice Brubaker, an outside expert with decades of experience before the Commission, also explained the “all relevant factors” standard as follows: “It usually means that you look at all things that could impact on the structure of the proposal or the decision or the rate and take those into account.”⁵⁰ The EMW/Velvet “Hold Harmless” provision is consistent with this long-recognized legal obligation.

OPC has made a point in the hearings that the Hold Harmless language in the OPC Stipulation comes largely from similar language in EMW’s SIL tariff.⁵¹ As Mr. Lutz has pointed out, the Nucor case and the SIL tariff was adopted in a completely distinct environment, with different inputs and

d/b/a Ameren Missouri, Case No. EC-2014-0223 (June 11, 2014); *Order Directing Filing, Re Missouri Public Service*, Case No. ER-2001-672 (July 27, 2001)(“Public Counsel contends that proceeding with UtiliCorp's rate case would violate the ‘all relevant factors’ requirement imposed by Section 393.270.4, RSMo 2000. This statute requires that the Commission consider all relevant factors in setting just and reasonable utility rates.”) In re Missouri Public Service, 2001 WL 1448577.

⁴⁸ *Order Denying Midwest Gas Users Association’s Motion For Rehearing or Reconsideration of True-Up Audit and Hearing, Re Missouri Gas Energy*, Case No. GR-98-40, 1998 WL 698362 (July 27, 1998).

⁴⁹ Tr. 487-88.

⁵⁰ Tr. 309.

⁵¹ Tr. 479.

different considerations.⁵² The SIL rate design is substantially different from the Schedule MKT is this case.⁵³

Perhaps more importantly, the Hold Harmless provision in the SIL was the subject to a settlement where the parties worked together on a number of gives and takes to achieve the final outcome with this provision being part of the final settlement.⁵⁴ The Nucor Stipulation includes a provision which limits the precedential value for any other proceeding.⁵⁵ In this case, EMW is opposed to the inclusion of OPC's Hold Harmless provision in this case.⁵⁶

For these reasons, OPC's attempt to hamstring EMW's ability to present its case, including the consideration of economic benefits of a Schedule MKT contract, should be rejected.

C. RES/RESRAM PROVISION

As explained above, Velvet has committed to having 100% of its load supported by renewable energy resources.⁵⁷ Under the EMW/Velvet Stipulation, the Renewable Energy Standard Rate Mechanism ("RESRAM") would not be applicable to Velvet since Velvet will be sourcing sufficient renewable resources to cover 100% of its expected load—exceeding the 15% Renewable Energy Standard ("RES") in Missouri. Under these circumstances, it is not appropriate to require

⁵² Tr. 119, 149

⁵³ Tr. 119.

⁵⁴ *Id.*

⁵⁵ Ex. 305, pp. 7-8 includes the following provisions:

13. This Stipulation is being entered into solely for the purpose of settling the issues/adjustments 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.

14. 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. No Signatory shall assert the terms of this agreement as a precedent in any future proceeding.

⁵⁶ Tr. 119, 149.

⁵⁷ Ex. 300, Brubaker Surrebuttal, p. 3; Tr. 142, 307.

Velvet to pay a second time under the RESRAM for covering the Missouri's Renewable Energy Standard requirement.

The EMW/Velvet Stipulation and proposed Schedule MKT includes an approach which is workable and will not create additional RES compliance costs.⁵⁸ The EMW/Velvet Stipulation contains the following provision:

6. Notwithstanding any provisions of the Company's RESRAM tariff to the contrary, a Schedule MKT Customer shall not be subject to RESRAM charges unless a Schedule MKT customer does not have has renewable attributes supporting its load greater than or equal to the then existing Renewable Energy Standard. For Schedule MKT customers with such renewable attributes, the kWh supported by Schedule MKT customer's "renewable attributes" will be subtracted from the calculation of total retail electric sales in in 20 CSR 4240-20.100. 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.⁵⁹

Exempting Velvet's load from the RESRAM would also be consistent with the Commission's order in the Nucor special contract case. In that case, Nucor was authorized to take service under EMW's SIL tariff. Under the SIL tariff, Nucor is not required to be charged the RESRAM surcharge.⁶⁰

In addition, under the EMW/Velvet Stipulation and Schedule MKT, the addition of Velvet's load to EMW's system would not require an increase to EMW's overall RES requirement since Velvet would have already covered 100% of its proportionate RES requirement with its own renewable sources.

Paragraph 6 of the EMW/Velvet Stipulation contains the recommendation that two variances to the Commission's RES/RESRAM rules be granted. Under the first variance, the rule's definition of "total retail electric sales" (as defined in 20 CSR 4240-20.100(1)(W)) would not include the

⁵⁸ Tr. 212.

⁵⁹ Ex. 8, EMW/Velvet Stipulation, Schedule 1, page 5 of 7.

⁶⁰ Ex. 301, Original Sheet 157.1.

Schedule MKT customer's load. The Signatories recommend that if the Schedule MKT customer demonstrates that it has retired or had retired on its behalf, Renewable Energy Credits greater than or equal to the then existing RES requirement applied to the MKT customer load, then the Schedule MKT customer's retail sales would not be included in EMW's calculation of its RES portfolio requirement in 20 CRS 4240-20.100(2). This variance would ensure that EMW's RES requirement would not be increased as a result of the Schedule MKT customer's Market Rate contract since that Schedule MKT customer would have already covered its share of the state's existing renewable energy goals.

Contrary to the assertion of Staff counsel during the hearings,⁶¹ 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 which determines the method for calculating EMW's RES compliance requirement. The RES rule 20 CSR 4240-20.100(1)(W) defines "total retail electric sales." This phrase is defined by the Commission's rule and the Commission may grant a variance from it.⁶² OPC counsel Clizer stated he was not sure that OPC would likely appeal this issue if the Commission adopted the EMW/Velvet approach.⁶³ Mr. Clizer recognized that the EMW/Velvet approach will protect other customers from paying a higher RESRAM charge as a result of Schedule MKT customers taking service from EMW.⁶⁴

Under the second variance, the RES compliance costs needed to serve a Schedule MKT customer would not be characterized as part of EMW's RES revenue requirement under 20 CSR 4240-20.100(1)(S)(1). This would ensure that Velvet's Market Rate contract would not increase the RES revenue requirements for other customers.

⁶¹ Tr. 80.

⁶² 20 CSR 4240-20.100(11).

⁶³ Tr. 93.

⁶⁴ Id.

The effect of these two variances is to recognize that EMW's RES requirements and the RESRAM itself should not be affected by the Schedule MKT customer's Market Rate contract since the customer will have demonstrated that it had retired or had retired on its behalf, RECs equal to or more than equal to what would be otherwise considered its share of the RES compliance costs.

In contrast to the EMW/Velvet Stipulation, the OPC Stipulation and proposed Schedule MKT includes a provision related to the RES/RESRAM that is not workable and will create additional RES compliance costs for EMW:

7. Any provisions of Evergy Missouri West's RESRAM tariff to the contrary notwithstanding, Customer will not be subject to RESRAM charges if its contribution through a renewable energy contribution charge meets or exceeds the incremental RES compliance costs attributable to the Customer. In such an event, all monies collected through the renewable energy contribution charge shall be used to offset Evergy Missouri West's RESRAM revenue requirement.⁶⁵

The OPC Stipulation would not waive Velvet's RESRAM charges unless its contribution through a renewable energy contribution charge meets or exceeds the incremental RES compliance costs. Velvet expects to make a renewable energy contribution, currently a confidential amount, in addition to its commitment to source 100% of its own load with renewable energy resources.⁶⁶ Velvet's additional renewable energy contribution will reduce the amount paid by other EMW customers for RESRAM. However, the primary method for Velvet to contribute to the State's public policy goals to encourage renewable energy is by its commitment to source 100% of its own load with renewable energy. It would not be workable to use the OPC Stipulation approach that would require an additional contribution through a renewable energy contribution charge that meets or exceeds the incremental RES compliance costs attributable to the Schedule MKT customer in order to obtain an exemption from the RESRAM for the Schedule MKT customer. Under this approach,

⁶⁵ Ex. 203, OPC Stipulation, Schedule 1, Schedule MTK, Availability Section, Paragraph 7.

⁶⁶ Ex. 300, Brubaker Surrebuttal, p. 4, Tr. 308.

Velvet would be paying for 115% of the RES compliance costs⁶⁷--not the 15% RES standard compliance costs paid by other customers.

The OPC Stipulation's provision related to RESRAM is not workable or consistent with the plans being proposed by Velvet for encouraging the development of renewable energy resources in the Southwest Power Pool. It should be rejected, and EMW/Velvet Stipulation recommendations related to the RES/RESRAM provision should be adopted.

D. SECURITIZATION PROVISION

The Schedule MKT recommended by OPC, MECG, and Staff includes the following provision which will require the Commission to apply any future surcharge related to Securitization to Schedule MKT customers:

Customer will be subject to any other charge or surcharge including without limitation, any charge related to the securitization of Company assets.⁶⁸

For the reasons stated herein, the Securitization provision should be rejected by the Commission.

The regulatory authority for securitizing assets of an electric corporation was recently granted by the General Assembly.⁶⁹ Section 393.1700 RSMo. is a very complex statute that will require careful analysis in any future proceeding in which an electric company is requesting the authority to securitize some of its assets. To date, the Commission has not authorized any public utility to securitize any of its assets, pursuant to this statutory authority.⁷⁰ It would be premature to address the securitization of assets as a part of the Schedule MKT tariff being considered in this proceeding. The Commission should consider this issue along with all the other issues related to securitization

⁶⁷ Tr. 307-08.

⁶⁸ Ex. 203, OPC Stipulation, Schedule 1, Schedule MTK, Availability Section, Paragraph 5.

⁶⁹ §§393.1700, RSMo.

⁷⁰ Tr. 200.

surcharges (including the applicability of any securitization surcharge to specific tariffs) at the time it has a securitization proceeding pending before it.

VI. CONCLUSION

In conclusion, the State of Missouri is at a crossroads that is likely to lead to substantial investments in technology assets in the Kansas City area if the Commission approves EMW's request in this proceeding. EMW respectfully requests that the Commission adopt the recommendations contained in the EMW/Velvet Non-Unanimous Stipulation and Agreement filed on January 24, 2022,⁷¹ including the attached Schedule MKT tariff.

WHEREFORE, EMW respectfully submits this Brief and requests the Commission grant the relief requested in its Application, as modified in its surrebuttal testimony and the EMW/Velvet Non-Unanimous Stipulation And Agreement, and pursuant to arguments and evidence presented at the January 25th and 26th evidentiary hearings.

⁷¹Paragraph 7 of the EMW/Velvet Stipulation is designed to ensure that the Schedule MKT customer's participation on the system would not affect the rate limitation on other Large Power customers contained in the PISA statute, Section 393.1655. This provision was approved by the Commission in the NUCOR case. See Ex. 305, pp. 5-6.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, or First Class United States Postal Mail, postage prepaid, on this 8th day of February 2022, to all counsel of record.

/s/ Roger W. Steiner

Roger W. Steiner