

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

STAFF MOTION FOR CLARIFICATION

COMES NOW Staff of the Missouri Public Service Commission and submits the following Motion for Clarification and in support thereof states as follows:

1. The Commission issued its *Amended Report and Order* (“Amended Order”) in this case on March 24, 2022. Said Amended Order had an effective date of April 3, 2022.

2. The Amended Order contains certain decisions that are unclear and Staff therefore requests the Commission issue an order clarifying its decisions on the matters set forth below.

Issue for Clarification #1

3. In paragraph 3 of the “Ordered” section, the Amended Order grants the RES variances requested by Evergy Missouri West, Inc. d/b/a Evergy Missouri West (“EMW” or “Company”) and Velvet Tech Services LLC (“Velvet”), as follows:

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.

As can be seen from the foregoing, both of these variances are from portions of Commission rule 20 CSR 4240-20.100.

4. The specific *tariff* language submitted by EMW and Velvet to address the RES requirement / RESRAM issue, reflected in Exhibit 8, paragraph 6 under “Additional Provisions,” in part addresses “the calculation of total retail electric sales in 20 CSR 4240-20.100.”

5. Section 393.1030.1, RSMo. contains specific RES portfolio requirements¹ based on an electric utility’s sales, and further provides 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 the state. Specifically, Section 393.1030.1, RSMo., provides as follows:

1. The commission shall, in consultation with the department, prescribe by rule a portfolio requirement for all electric utilities to generate or purchase electricity generated from renewable energy resources. Such portfolio requirement shall provide that electricity from renewable energy resources shall constitute the following portions of each electric utility's **sales**:

¹ These statutory RES portfolio requirements are the same as the RES portfolio requirements contained in rule 20 CSR 4240-20.100. Since the portfolio requirements are the same in the rule and the statute, Staff had argued that, in order to achieve what they wanted to achieve, EMW and Velvet needed a variance from both the rule *and* the statute, and that the Commission could not grant a variance from the *statute*. However, in this Motion, Staff does not intend to argue whether the Commission can or cannot grant a variance from the statute, or reargue any part of its prior argument, but seeks clarification of the Commission’s decision. Staff needs clarification of the issues addressed in this Motion in order to process EMW’s RES compliance filings.

- (1) No less than two percent for calendar years 2011 through 2013;
- (2) No less than five percent for calendar years 2014 through 2017;
- (3) No less than ten percent for calendar years 2018 through 2020; and
- (4) No less than fifteen percent in each calendar year beginning in 2021.

At least two percent of each portfolio requirement shall be derived from solar energy. 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. A utility may comply with the standard in whole or in part by purchasing RECs. Each kilowatt-hour of eligible energy generated in Missouri shall count as 1.25 kilowatt-hours for purposes of compliance. (Emphasis added)

6. The Amended Order contains certain conclusions of law regarding the RES statute, Section 393.1030, RSMo., in paragraphs M, N and O, but does not state whether the Commission did or did not grant a variance from the calculation of “sales” or “all power sold” under the statute identified in paragraph 5 above. Therefore, Staff seeks clarification as to whether the Commission intended to grant a variance from the statute and if so what variance the Commission intended to grant and under what conditions; alternatively, if the Commission did not intend to grant a variance from the statute, Staff seeks clarification as to the Commission’s intent regarding how the statutory language set forth above in paragraph 5 should be applied in light of the variances granted from the rule and the tariff language submitted by EMW and Velvet.

Issue for Clarification #2

7. In paragraph 3(a) of the “Ordered” section, the Amended Order states as follows:

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.

8. Section 393.1030 and its implementing regulation, 20 CSR 4240-20-100, contain requirements for Renewable Energy Credits, or RECs, and Solar Renewable Energy Credits, or S-RECs. Section 393.1030.1, RSMo., requires "[a]t least two percent of each portfolio requirement shall be derived from solar energy." 20 CSR 4240-20.100(1)(R)5 requires, "[a]t least two percent (2%) of each RES portfolio requirement listed in this section shall be derived from solar energy."

9. The discussion about RECs and S-RECs was raised during the hearing, when Ms. Mantle of the Office of the Public Counsel testified as follows in response to a question from Velvet attorney Ms. Bell:

Q. [by Ms. Bell] Okay. So we are assuming a hypothetical where the variance is [sic] requested in the stipulation are granted and the tariff language attached in Paragraph 6 is also adopted. We're also going to assume the MKT customer documents that RECs have been retired sufficient to cover more than the RES renewable requirement, currently 15 percent. Under that hypothetical, would you agree there would be no additional cost under the renewable energy standard?

A. [by Ms. Mantle] I pause because there is also a 2 percent solar requirement in the renewable energy standard. I -- *if you assume that RECs are retired for at least 2 percent of the renewable standard is from the solar REC* and you make the assumptions that the variances were granted and

the language was -- was legal, *then* there would be no cost then -- additional cost for the customers.² (Emphasis added)

10. The Commission's Amended Order does not specifically address the solar carve out required under Section 393.1030.1, RSMo., and 20 CSR 4240-20.100(1)(R)5 that Ms. Mantle addressed at the hearing. Therefore, Staff seeks clarification as to whether the Commission intended that an MKT customer needs to demonstrate retirement of S-RECs per 20 CSR 4240-20.100(1)(R)5 and 20 CSR 4240-20.100(2). Staff would presume so because the solar carve out would be part of the then-existing RES requirement (barring changes in the statute and rule), but Staff wants to be certain of the Commission's intent.

WHEREFORE, Staff respectfully requests the Commission issue an order clarifying the above issues.

Respectfully submitted,

/s/ Jeffrey A. Keevil

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² Tr. Vol. 3, page 567 line 14 – page 568 line 5.

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 31st day of March 2022.

/s/ Jeffrey A. Keevil