

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

|   |   |                                     |
|---|---|-------------------------------------|
| In the Matter of Evergy Metro, Inc. d/b/a | ) |                                     |
| Evergy Missouri Metro's and Evergy        | ) | <b><u>File No. ET-2024-0182</u></b> |
| Missouri West, Inc. d/b/a Evergy Missouri | ) | Tracking No. JE-2024-0081 &         |
| West's Solar Subscription Rider Tariff    | ) | JE-2024-0082                        |
| Filings                                   | ) |                                     |

**STAFF'S BRIEF**

**COMES NOW** the Staff of the Missouri Public Service Commission and tenders the following post-hearing brief.

**Case Digest**

*Issues*

The issues presented to the Commission for decision are as follow:

1. What are appropriate billing provisions at this time for SSP<sup>1</sup> participants served on schedule RPKA<sup>2</sup>, and when should those provisions take effect?
2. Should SSP participants be allowed to take service on schedule RTOU2?<sup>3</sup> If so, what are appropriate billing provisions and when should those provisions take effect?
3. Should SSP participants be allowed to take service on schedule RTOU3?<sup>4</sup> If so, what are appropriate billing provisions and when should those provisions take effect?

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<sup>1</sup> Subscriber Solar rider

<sup>2</sup> Residential Peak Adjustment

<sup>3</sup> Residential Time of Use Two Period

<sup>4</sup> Residential High Differential Time of Use

4. Should SSP participants be allowed to take service on schedule RTOU? If so, what are appropriate billing provisions and when should those provisions take effect?
5. Should SSP participants be allowed to take service on schedule RTOU-EV?<sup>5</sup> If so, what are appropriate billing provisions and when should those provisions take effect?
6. Should provisions to clarify the non-bypassability of any SUTC<sup>6</sup> in the application of SSP billing provisions be incorporated into the SSP tariff?
7. Should the SSP Solar Block Cost pricing be changed and if so when should that change take effect?
8. Should the SSP Non-Residential subscription level terms be changed?
9. Should the SSP program expansion terms regarding the addition of resources and the removal of the three-month waiting period for Non-Residential customers be changed?
10. Should Evergy pay subscribers for any excess generation of the solar resource at the parallel generation rate?

*Staff's Position on the Issues*

1. It is Staff's position that Evergy's current SSP billing practice does not accord with Section 393.130, RSMo's "just and reasonable" rate mandate. Staff's position for the SSP billing provisions is that either the following billing procedure, or one which effects its same purposes, should be implemented as soon as possible: First, reduce the kWh that are billed out under the energy charges. Second, the participant's share of

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<sup>5</sup> Separately Metered Electric Vehicle Time of Use

<sup>6</sup> Securitized Utility Tariff Charge

energy from the solar facility that was generated during the “peak hours” (this percentage will vary based on whether the applicable month is in the summer or non-summer season) is multiplied by the Peak Adjustment Charge. This dollar value is applied as a credit to the customer’s bill, which cannot reflect a negative net energy charge amount.<sup>7</sup> Staff’s proposed billing provision for SSP participants served on the schedule RPKA contrasts with Evergy’s current billing practices for these customers. Evergy’s current billing practice fails to refund the customers’ payment of the on-peak charge (one cent (\$0.01) per kWh during summer months, and one quarter of a cent ((\$0.0025) per kWh during non-summer months) for some portion of the customers’ share of the solar resource energy production. The Commission may properly determine that it is appropriate that customers not be able to participate in the SSP while taking service on more-differentiated Time of Use (“TOU”) rate schedules.<sup>8</sup>

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<sup>7</sup> Staff’s proposed tariff language is set out below:

Step 1: The Participant’s share of the solar resource energy production will be subtracted from the metered energy consumed by the Participant for the billing month. Should the solar resource energy production amount for a given month be larger than the Participant’s metered energy consumption, the net energy will be zero for that month.

Step 2: The Participant’s bill will be adjusted to credit the product of the “Peak Adjustment Charge” for the applicable billing month and (a) 19% of the Participant’s share of the solar resource energy production in summer billing months, or (b) 22% of the Participant’s share of the solar resource energy production in non-summer billing months, except that the net of energy charges and credits may not be less than zero.

<sup>8</sup> Exhibit 101, Sarah L.K. Lange Rebuttal, page 8. Staff’s proposed tariff language for RTOU-2 is set out below:

- a. During summer months, 19% of the Participant’s share of the solar resource energy production will be subtracted from the metered energy consumed by the Participant during the “On-Peak” period for the billing month; and 81% of the Participant’s share of the solar resource energy production will be subtracted from the metered energy consumed by the Participant during the “Off-Peak” period for the billing month. Should 19% of the Participant’s share of the solar resource energy production exceed the metered energy consumed by the Participant during the “On-Peak” period for the billing month, the excess energy will be subtracted from the metered energy consumed by the Participant during the “Off-Peak” period for the billing month, except that the net energy for which a customer is billed in that month may not be less than zero.

For current participants, there are significant policy implications to the resolution of this issue, especially because there are already participants in the SSP program who may desire to take service on a rate schedule which did not exist at the time the participant enrolled. Those early subscribers may now wish to leave the program unless advantageous price arbitrage provisions are incorporated into the SSP billing procedures. However, advantageous price arbitrage provisions for SSP participants will necessarily erode revenues to some degree, which could be more detrimental to non-participants than current SSP participants unsubscribing. It may also be reasonable for the Commission to determine that it is appropriate to bill future SSP participants in a manner that does not allow price arbitrage, as those billing provisions would only be applicable to SSP participants going forward.<sup>9</sup>

2. With respect to whether SSP participants should be allowed to take service on schedule RTOU3: Staff's position is that whichever way the Commission wishes to go, the matter be resolved immediately with the resolution implemented as soon as possible. The Commission may properly determine that it is appropriate that customers

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- b. During Non-Summer months, the 22% of the Participant's share of the solar resource energy production will be subtracted from the metered energy consumed by the Participant during the "On-Peak" period for the billing month; and 78% of the Participant's share of the solar resource energy production will be subtracted from the metered energy consumed by the Participant during the "Off-Peak" period for the billing month. Should 22% of the Participant's share of the solar resource energy production exceed the metered energy consumed by the Participant during the "On-Peak" period for the billing month, the excess energy will be subtracted from the metered energy consumed by the Participant during the "Off-Peak" period for the billing month, except that the net energy for which a customer is billed in that month may not be less than zero.

<sup>9</sup> Exhibit 100, Direct Testimony of Sarah L. K. Lange, pages 8 – 10.

not be able to participate in the SSP while taking service on more-differentiated TOU rate schedules.<sup>10</sup>

As stated above with the preceding issue, Staff suggests that the Commission may wish to consider the following significant policy implications here for the now-existing participants, especially within the context of an established tariff. Staff recommends that the Commission consider that there are customers that had already subscribed to

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<sup>10</sup> Exhibit 101, Rebuttal Testimony of Sarah L.K. Lange, page 8. The billing provisions for RTOU-3 as drafted in the Staff Specimen tariff are set out below:

- a. During summer months, 19% of the Participant's share of the solar resource energy production will be subtracted from the metered energy consumed by the Participant during the "On-Peak" period for the billing month; and 81% of the Participant's share of the solar resource energy production will be subtracted from the metered energy consumed by the Participant during the "Off-Peak" period for the billing month. Should 19% of the Participant's share of the solar resource energy production exceed the metered energy consumed by the Participant during the "On-Peak" period for the billing month, the excess energy will be subtracted from the metered energy consumed by the Participant during the "Off-Peak" period for the billing month. Should the Participant's share of the solar resource energy production exceed the total energy consumed during the "On-Peak," and "Off-Peak" periods for that billing month, the remaining portion of the Participant's share of the solar resource energy production will be subtracted from the metered energy consumed by the Participant during the "Super Off-Peak" period, except that the net energy for which a customer is billed in that month in any time-differentiated period may not be less than zero.
- b. During Non-Summer months, the 22% of the Participant's share of the solar resource energy production will be subtracted from the metered energy consumed by the Participant during the "On-Peak" period for the billing month; and 78% of the Participant's share of the solar resource energy production will be subtracted from the metered energy consumed by the Participant during the "Off-Peak" period for the billing month. Should 22% of the Participant's share of the solar resource energy production exceed the metered energy consumed by the Participant during the "On-Peak" period for the billing month, the excess energy will be subtracted from the metered energy consumed by the Participant during the "Off-Peak" period for the billing month, except that the net energy for which a customer is billed in that month may not be less than zero. Should the Participant's share of the solar resource energy production exceed the total energy consumed during the "On-Peak," and "Off-Peak" periods for that billing month, the remaining portion of the Participant's share of the solar resource energy production will be subtracted from the metered energy consumed by the Participant during the "Super Off-Peak" period, except that the net energy for which a customer is billed in that month in any time-differentiated period may not be less than zero.

the SSP program prior to the transition of Evergy's residential rate schedule to a time-based rate structure. Customers had subscribed to the SSP program prior to Evergy's expansion of time-based rate schedule offerings. Unless advantageous price arbitrage provisions are incorporated into the SSP billing procedures, those early subscribers may now wish to leave the program. Conversely, the Commission should consider that advantageous price arbitrage provisions for SSP participants will necessarily erode revenues to some degree, which could be more detrimental to non-participants than current SSP participants unsubscribing. However, it may be reasonable to bill future SSP participants in a manner that does not allow price arbitrage, as those billing provisions would only be applicable to SSP participants going forward.<sup>11</sup>

To reiterate: Staff's position is that regardless of the Commission's decision on the policy questions, a decision should be implemented as soon as possible. Any applicable changes to enable SSP participation for customers served on RTOU-3 should be done as soon as possible, but not later than the end of May of 2024. The prompt resolution of this issue is required to avoid unnecessary drops in SSP participation.<sup>12</sup>

3. With respect to whether SSP participants should be allowed to take service on schedule RTOU: It is not necessary to modify the SSP tariff to allow RTOU customers to take service on the RTOU rate plans. Because RTOU customers were previously excluded from participation in the SSP, Staff is not concerned that maintaining SSP participation supports expanding access of SSP participants to the RTOU rate plans.<sup>13</sup>

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<sup>11</sup> Exhibit 100, Sarah L.K. Lange Direct, pages 8 – 10.

<sup>12</sup> Exhibit 100, Sarah L.K. Lange Direct, page 11.

<sup>13</sup> Exhibit 101, Sarah L.K. Lange Rebuttal, page 7, Lange Surrebuttal, page 3.

4. With respect to whether SSP participants should be allowed to take service on schedule RTOU-EV, Staff is in opposition. The RTOU-EV rate plan is essentially an add-on plan for customers who install a second meter connected only to EV charger load.<sup>14</sup> Expanding access of SSP participants to the RTOU-EV rate plans is not necessary to maintain SSP participation.

Staff's concerns since January of 2023 have been that customers who are already SSP participants (1) be billed appropriately on the default residential rate, and (2) have the level of optionality the Commission determines appropriate so that they do not flee the SSP program and shift costs and risks to non-participants. The RTOU-EV rate plan is a new service type, and service on the RTOU-EV rate plan cannot be established for an existing customer with existing usage.

If the Commission determines that it is appropriate for SSP customers to participate in an RTOU-EV rate plan for service added through an additional meter, it will be necessary to address how any SSP participation would be demarcated between a participant's RTOU-EV usage and a participant's regular electric service. Staff does not have a workable solution for how to split a tranche of SSP participation between RTOU-EV usage and usage on some other rate schedule without unreasonable customer confusion, and significant risk of misaligning usage and SSP participation between months of the year and the participant's multiple rate plans.<sup>15</sup>

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<sup>14</sup> Becoming an RTOU-EV customer requires setting a new meter and establishing a new service; therefore, there is no concern that an existing SSP participant would be negatively impacted by SPP participation serving as a barrier to becoming a customer on RTOU-EV, because it is not possible for a new meter to be an existing SSP participant.

<sup>15</sup> Exhibit 101, Sarah L.K. Lange Surrebuttal pages 2-3.

5. With respect to whether the provisions should be added into the SSP tariff to clarify the non-bypassability of any SUTC in the application of SSP billing provisions: Staff advocates such clarification.<sup>16</sup>

6. With respect to whether the SSP Solar Block Cost pricing should be changed: It is Staff's position that it should not be changed outside of a general rate case.

7. It is Staff's position that the SSP Non-Residential subscription level terms should not be changed.

8. It is Staff's position that the SSP program expansion terms regarding the addition of resources and the removal of the three-month waiting period for Non-Residential customers should not be changed. Through the currently approved tariff, residential subscribers are offered a chance to participate, while non-residential subscribers are minimally harmed. No change is warranted at this time.<sup>17</sup>

9. Staff supports Evergy's adding language to allow customers to be credited for excess generation at the rate in the Parallel Generation tariff.

### **Argument**

Staff's argument focuses on three global points. Staff's position on the billing provisions for SSP participants is that neither Evergy's present practice nor its proposed tariff gives a credit to customers that fairly recognizes their participation in the solar

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<sup>16</sup> The tariff should be modified to include the following language with the bold-faced type as indicated:

Any remaining metered energy consumption will be billed under the rates associated with the Participant's standard rate schedule, including all applicable riders and charges, **except that any Securitized Utility Tariff Charge or other charge promulgated pursuant to Section 393.1700 shall be applicable to all metered kWh, without any reductions for the Participant's share of the solar resource energy production.**

<sup>17</sup> Exhibit 104, Cedric E. Cunigan Rebuttal pages 3-6.



subscription program. Staff witness Sarah Lange has attached proposed tariffs to her testimony. Staff proposes these tariffs as a one reasonable way, among several possibilities, in which the bills of SSP participants could be calculated so as to give them a fair credit for their participation. Staff's position on whether the SSP Solar Block Cost pricing should be changed is that it should not be changed outside of a general rate case. Further, Staff contends that customers actually should not even be being charged the SSP Block Cost at all at this time: The Commission has never made findings or entered an order stating that the Hawthorn plan has met the "in-service" criteria requisite per 393.135, RSMo. This brief will focus on those three points. That Staff has not briefed all issues in this brief is not a waiver of its positions stated above in the Case Digest on those issues.

### *Legal Background*

The following legal principles must guide the resolution of the issues in this case:

First, a customer is entitled to just and reasonable rates, and a public utility may not charge unjust or unreasonable rates. Section 393.120, RSMo, states:

393.130. Safe and adequate service — charges — certain home rule cities, interest accrual, when. — 1. Every gas corporation, every electrical corporation, every water corporation, and every sewer corporation shall furnish and provide such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable. All charges made or demanded by any such gas corporation, electrical corporation, water corporation or sewer corporation for gas, electricity, water, sewer or any service rendered or to be rendered shall be just and reasonable and not more than allowed by law or by order or decision of the commission. Every unjust or unreasonable charge made or demanded for gas, electricity, water, sewer or any such service, or in connection therewith, or in excess of that allowed by law or by order or decision of the commission is prohibited.

Second, the above statutory subsection together with Section 393.130 (11), RSMo prohibits a regulated utility from charging more, less or different compensation than the applicable rates and charges as specified in its schedules filed and in effect at the time. Section 393.140(11), RSMo. provides that

[n]o corporation shall charge, demand, collect or receive a greater or less or different compensation for any service rendered or to be rendered than the rates and charges applicable to such services as specified in its schedules filed and in effect at the time.

This prohibition is called “the filed rate doctrine,” and “[i]t is a ‘thoroughly settled rule that the legal rate is the *filed* rate, and it is the duty of the carrier to charge and collect the rate precisely as same is contained in the tariff on file with the [regulatory agency.]” (emphasis in original).<sup>18</sup> A corollary of the filed rate doctrine is the prohibition against retroactive rate making. “Retroactive rate making” is defined as the setting of rates which permit a utility to recover past losses or which require it to refund past excess profits.<sup>19</sup> Under this doctrine, the Commission has no authority to retroactively correct rates or order refunds and cannot take into account overpayments when fashioning prospective rates.<sup>20</sup> A second corollary of the filed rate doctrine is the prohibition against single-issue rate making, which requires that a proper rate be based on all relevant factors rather than on consideration of just a single factor.<sup>21</sup>

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<sup>18</sup> *Brooks v. Empire Dist. Elec. Co.*, 420 S.W.3d 586, 591 (Mo. App. S.D. 2013).

<sup>19</sup> *In re Request for an Increase in Sewer Operating Revenues of Emerald Pointe Utility Co.*, 438 S.W.3d 482 (Mo. App. W.D. 2014).

<sup>20</sup> *In re Request for an Increase in Sewer Operating Revenues of Emerald Pointe Utility Co.*, 438 S.W.3d 482 (Mo. App. W.D. 2014).

<sup>21</sup> See *State ex rel. Midwest Gas Users' Ass'n v. Public Service Commission*, 976 S.W.2d 470, 479 (Mo. App. W.D. 1998). See 73B C.J.S. Public Utilities § 21: "Single-issue ratemaking" occurs when a utility's rates are altered on the basis of only one of the numerous factors that are considered when determining the revenue requirements of a regulated utility. [See *State ex rel. Public Counsel v. Public Service Com' of State*, 397 S.W.3d 441 (Mo. App. W.D. 2013)] This type of ratemaking is prohibited because considering any one item in a revenue formula in isolation risks understating or overstating the revenue requirement.

The filed rate doctrine and its prohibition against retroactive ratemaking serve an “underlying policy of predictability, meaning that if a utility is bound by the rates which it properly filed with the appropriate regulatory agency, then its customers will know *prior to purchase* what rates are being charged, and can therefore make economic or business plans or adjustments in response” (emphasis in original).<sup>22</sup> In other words, the public policy that the filed rate doctrine serves is to “provide advance notice to customers of prospective charges, allowing the customers to plan accordingly.”<sup>23</sup>

The third legal rubric that should govern the Commission’s decision in this case concerns charges made by an electrical corporation for service before a facility is “fully operational and used for service.” Section 393.135, RSMo, states:

393.135. Charges based on nonoperational property of electrical corporation prohibited. — Any charge made or demanded by an electrical corporation for service, or in connection therewith, which is based on the costs of construction in progress upon any existing or new facility of the electrical corporation, or any other cost associated with owning, operating, maintaining, or financing any property before it is fully operational and used for service, is unjust and unreasonable, and is prohibited.

#### *Giving Customer’s a Fair Credit for their SSP Participation*

In her direct testimony, Staff witness Sarah L.K. Lange lays out, step by step, a way to bill SSP customers so as to give them a fair credit for their SSP participation.<sup>24</sup>

Currently, because customers do not actually own the solar facilities involved and all

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Further, single-issue ratemaking is generally prohibited because it might cause the regulating authority to allow a company to raise rates to cover increased costs in one area without realizing that there were counterbalancing savings in another area. [*State ex rel. Public Counsel v. Public Service Com’n of State*, 397 S.W.3d 441 (Mo. App. W.D. 2013)].

<sup>22</sup> *State ex rel. AG Processing, Inc. v. Public Service Com’n ex rel. State*, 311 S.W.3d 361, 365 (Mo. App. W.D. 2010); quoting *State ex rel. Associated Natural Gas Co.*, 954 S.W.2d 520, 531 (Mo. App. W.D. 1997).

<sup>23</sup> *State ex rel. AG Processing, Inc. v. Public Service Com’n ex rel. State*, 311 S.W.3d 361, 365 (Mo. App. W.D. 2010); quoting *State ex rel. Associated Natural Gas Co.*, 954 S.W.2d 520, 531 (Mo. App. W.D. 1997).

<sup>24</sup> Attached to Exhibit 100, Sarah L.K. Lange Direct Testimony as Schedule SLKL-d2.

energy which the customers actually use is delivered through the transmission and distribution systems to their customer meter, there is no netting of the energy generated and consumed through the meter within that meter itself.<sup>25</sup> The tariff which Evergy has actually filed for consideration and which is up for decision does not alter this fact. Under the RPKA default rate schedule which Evergy submitted with its tariff of December 1, 2023, Evergy's customers do not receive a "refund of customers' payment of the on-peak charge of 1 cent per kWh for some portion of the customers' share of the solar resource energy production."<sup>26</sup> It is Staff's position that this does not accord with the Section 393.130, RSMo, "just and reasonable" mandate. Evergy has been engaged in this conduct now for months, and given that Evergy has no tariff actually now on file before the Commission proposing a change, it appears that Evergy intends to continue on this path until this Commission puts a stop to it.<sup>27</sup>

For the Commission's convenience, Staff here sets out Ms. Lange's explanation of its proposed tariff:

Q. Based on Staff's proposed tariff language, how would SSP participants be billed who are served on the default residential rate plan, RPKA?

A. Under schedule RPKA, in addition to a customer charge and applicable riders such as the FAC and MEEIA, customers are billed for (1) the total amount of energy used in a month, (2) the amount of energy used in peak hours as an extra charge per kWh, which is tariffed as the "Peak Adjustment Charge," and (3) a credit is applied to offset the cost per kWh of the kWh consumed in off-peak hours. For the SSP billing provisions for customers on this rate plan, Staff's proposal is to first reduce the kWh that are billed out under the energy charges. Then, under Staff's proposal, the participant's share of energy from the solar facility that was generated during the "peak hours" is multiplied by the Peak Adjustment Charge. This dollar value is applied as a credit to the customer's bill, which cannot reflect a negative net energy charge amount. The tariff language is set out below:

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<sup>25</sup> Exhibit 100, Sarah L.K. Lange Direct Testimony, p. 3.

<sup>26</sup> Exhibit 101, Sarah L.K. Lange Rebuttal Testimony, p. 4.

<sup>27</sup> Exhibit 101, Sarah L.K. Lange Rebuttal Testimony, p. 5.

Step 1: The Participant’s share of the solar resource energy production will be subtracted from the metered energy consumed by the Participant for the billing month. Should the solar resource energy production amount for a given month be larger than the Participant’s metered energy consumption, the net energy will be zero for that month.

Step 2: The Participant’s bill will be adjusted to credit the product of the “Peak Adjustment Charge” for the applicable billing month and (a) 19% of the Participant’s share of the solar resource energy production in summer billing months, or (b) 22% of the Participant’s share of the solar resource energy production in non-summer billing months, except that the net of energy charges and credits may not be less than zero.<sup>28</sup>

Ms. Lange’s direct testimony then sets out an exemplar bill. Here is a customer usage and share scenario:<sup>29</sup>

|   | Total | On Peak | Off Peak |
|---|-------|---------|----------|
| July Customer Usage                       | 1,000 | 300     | 150      |
| Participant's Share of Generation in June | 800   | 152     |          |
| Total Usage minus Generation Share        | 200   | 148     |          |

Here is the bill calculation (excluding riders and taxes) for the above usage and share scenario:<sup>30</sup>

| July Bill Calculation Step 1                                      | Rate        | Determinant | Charge          |
|---|-------------|-------------|-----------------|
| Energy Charge Block 1   | \$ 0.1409   | 200         | \$ 28.19        |
| Energy Charge Block 2   | \$ 0.1409   | -           | \$ -            |
| Energy Charge Block 3   | \$ 0.1509   | -           | \$ -            |
| Peak Adjustment Charge per on Peak kWh                            | \$ 0.0100   | 300         | \$ 3.00         |
| Peak Adjustment Credit per Super-Off Peak kWh                     | \$ (0.0100) | 150         | \$ (1.50)       |
| <i>Energy Charge Subtotal:</i>                                    |             |             | <b>\$ 29.69</b> |
| July Bill Calculation Step 2                                      | Rate        | Determinant | Credit          |
| Peak Adjustment Charge per on Peak kWh                            | \$ 0.0100   | 152         | \$ 1.52         |
| <i>Greater of \$0.00 or Energy Charge Subtotal net of Credit:</i> |             |             | \$ 28.17        |
| Customer Charge   | \$ 12.00    | 1           | \$ 12.00        |
| Solar Block Subscription Charge                                   | \$ 0.1284   | 200         | \$ 25.68        |
|   |             |             | <b>\$ 97.06</b> |

<sup>28</sup> Exhibit 100, Sarah L.K. Lange Direct Testimony, pp. 3-4.

<sup>29</sup> Exhibit 100, Sarah L.K. Lange Direct Testimony, p. 4.

<sup>30</sup> Exhibit 100, Sarah L.K. Lange Direct Testimony, p. 5.

Staff's proposal is one way to give customers who are served on the default RPKA residential rate plan a fair credit for their SSP participation. Staff's proposed tariffs do the same for SSP participants who are taking service on the RTOU2 and RTOU3 rate plans. Again: Although set out fully in other filings now before the Commission, Staff's suggested tariff language is set out here for the Commission's convenience:

1. For Customers receiving service under Schedules RTOU-2

a. During summer months, 19% of the Participant's share of the solar resource energy production will be subtracted from the metered energy consumed by the Participant during the "On-Peak" period for the billing month; and 81% of the Participant's share of the solar resource energy production will be subtracted from the metered energy consumed by the Participant during the "Off-Peak" period for the billing month. Should 19% of the Participant's share of the solar resource energy production exceed the metered energy consumed by the Participant during the "On-Peak" period for the billing month, the excess energy will be subtracted from the metered energy consumed by the Participant during the "Off-Peak" period for the billing month, except that the net energy for which a customer is billed in that month may not be less than zero.

b. During Non-Summer months, the 22% of the Participant's share of the solar resource energy production will be subtracted from the metered energy consumed by the Participant during the "On-Peak" period for the billing month; and 78% of the Participant's share of the solar resource energy production will be subtracted from the metered energy consumed by the Participant during the "Off-Peak" period for the billing month. Should 22% of the Participant's share of the solar resource energy production exceed the metered energy consumed by the Participant during the "On-Peak" period for the billing month, the excess energy will be subtracted from the metered energy consumed by the Participant during the "Off-Peak" period for the billing month, except that the net energy for which a customer is billed in that month may not be less than zero.

2. For Customers receiving service under Schedules RTOU-3

a. During summer months, 19% of the Participant's share of the solar resource energy production will be subtracted from the metered energy consumed by the Participant during the "On-Peak" period for the billing month; and 81% of the Participant's share of the solar resource energy production will be subtracted from the metered energy consumed by the Participant during the "Off-Peak" period for the billing month. Should 19%

of the Participant's share of the solar resource energy production exceed the metered energy consumed by the Participant during the "On-Peak" period for the billing month, the excess energy will be subtracted from the metered energy consumed by the Participant during the "Off-Peak" period for the billing month. Should the Participant's share of the solar resource energy production exceed the total energy consumed during the "On-Peak," and "Off-Peak" periods for that billing month, the remaining portion of the Participant's share of the solar resource energy production will be subtracted from the metered energy consumed by the Participant during the "Super Off-Peak" period, except that the net energy for which a customer is billed in that month in any time-differentiated period may not be less than zero.

b. During Non-Summer months, the 22% of the Participant's share of the solar resource energy production will be subtracted from the metered energy consumed by the Participant during the "On-Peak" period for the billing month; and 78% of the Participant's share of the solar resource energy production will be subtracted from the metered energy consumed by the Participant during the "Off-Peak" period for the billing month. Should 22% of the Participant's share of the solar resource energy production exceed the metered energy consumed by the Participant during the "On-Peak" period for the billing month, the excess energy will be subtracted from the metered energy consumed by the Participant during the "Off-Peak" period for the billing month, except that the net energy for which a customer is billed in that month may not be less than zero. Should the Participant's share of the solar resource energy production exceed the total energy consumed during the "On-Peak," and "Off-Peak" periods for that billing month, the remaining portion of the Participant's share of the solar resource energy production will be subtracted from the metered energy consumed by the Participant during the "Super Off-Peak" period, except that the net energy for which a customer is billed in that month in any time-differentiated period may not be less than zero.<sup>31</sup>

To reiterate: It is Staff's position that Evergy's billing practice and, apparently, its intended future billing practice, do not accord with the Section 393.130, RSMo, "just and reasonable" legal mandate. But there are significant policy implications to the resolution of this issue. As Staff's expert witness, Sarah L.K. Lange, opines:

There are significant policy implications to resolution of this issue, especially within the context of an established tariff, with existing participants. Customers subscribed to the SSP program prior to the transition of Evergy's residential rate schedule to a time-based rate structure. Customers subscribed to the SSP program prior to Evergy's expansion of time-based rate schedule offerings.

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<sup>31</sup> Exhibit 100, Sarah L.K. Lange Direct Testimony, pp. 8-9.

Those early subscribers may now wish to leave the program unless advantageous price arbitrage provisions are incorporated to the SSP billing procedures. Conversely, advantageous price arbitrage provisions for SSP participants will necessarily erode revenues to some degree, which could be more detrimental to non-participants than current SSP participants unsubscribing.<sup>32</sup>

Evergy has filed no “live” tariff with the Commission which implements a solution to the problem which Staff has called out in Evergy’s billing. But Evergy states:

Q: Staff states that including billing provisions in the SSP tariff is appropriate. Do you agree?

A: Yes. The billing provisions in the tariff are necessary to define the application of the solar resource output to the customer and the associated billing. From its inception, the SSP tariff has included such provisions to guide the Company’s actions. Revising these procedures to allow residential customers to have expanded access to Time of Use (“TOU”) rate designs is a key element of the proposed SSP tariff in this docket.

Q: Has the Company examined the billing procedures proposed by Staff?

A: Yes. The testimony and specimen tariff have been reviewed by Company personnel knowledgeable with the SSP program, with the Company’s billing system, and with the current SSP program billing procedures. These personnel examined Staff’s proposed procedures to determine compatibility and suitability with the Company’s billing processes and systems.

Q: What did this examination determine?

A: Based on this initial examination, the billing procedures proposed by Staff are not inherently supported by the Company’s current billing system or processes, but they are logical and feasible. To execute Staff’s proposed procedures would require configuration of the Company’s systems and definition of new supporting processes. . .

Evergy substantively admits that it is not currently treating its SSP subscribers fairly. But then Evergy pivots:

Q: Do these incompatibilities and efforts to achieve Staff’s proposed billing procedures raise other concerns?

A: Yes. First, these configuration complexities draw into question the timing of compliance following an Order in this case. As discussed in my Direct Testimony,

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<sup>32</sup> Exhibit 100, Sarah L.K. Lange Direct Testimony, pp. 9-10.



under the expected May 2024 order date in this docket, the Company expects the required billing system and process work to be completed by December 31, 2024. Evaluating billing procedure processes proposed during the timing of the case does not afford the Company an opportunity to prepare in advance, pushing out the expected timing to achieve execution. Since configuration specifications have not been established, it is difficult to determine exactly how much time would be needed to execute the billing procedures proposed by Staff, but I would estimate, based on the time required for the Company proposal, an additional four to six months would be needed. A second concern is with disproportionate cost. The expected configurations will require considerable effort from the Company's Billing and System Support teams to complete. Given that these configurations will support the billing of approximately 750 SSP program participants draws into question the value of making these more complex system changes.<sup>33</sup>

Unfortunately, the delays forecast in the above testimony are, in actuality, a description of the delays which have already occurred in this case and which have forced Staff to pursue its case here. Staff would ask the Commission to compare this testimony with the tariffs which Staff has proposed. Parsed down to essentials, Evergy is stating that it is simply too costly to add a line item to a bill that factors in a credit for SSP participation. Never actually denying anywhere that current SSP participants are being charged unjust and unreasonable rates right now, the company suggests the following:

Q: How do the Company proposed procedures work instead?

A: Each month, the output of the Hawthorn solar resource is manually apportioned to the approximately 750 participants of the SSP program. This "per share" amount is input into the billing system and incorporated into their monthly billing. As all SSP participants are currently on the RPKA rate, and the SSP subscription usage is applied on a monthly basis, the SSP usage is removed from their monthly usage after the RPKA billing step is complete. In contrast, the billing procedures proposed by Staff will require the Company to rebuild the processing of the individual rate codes to incorporate the monthly specific elements of the two-step procedure.

Q: How do the Company's proposed procedures work for RPKA?

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<sup>33</sup> Exhibit 3, Rebuttal Testimony of Bradley D. Lutz, pp. 9 – 10.

A: The SSP tariff billing provisions for enrolled participants will utilize the existing fixed allocation method that will subtract from the metered energy consumed by the participant for the billing month after billing under the RPKA tariff is completed.

Q: How does the Company's proposed procedures work for RTOU2 and RTOU3?

A: The SSP tariff billing provisions for enrolled participants will utilize a fixed allocation method that will subtract from the metered energy consumed 19% during summer months and 22% of non-summer months, of the participant's share of the solar resource energy production will be subtracted from the metered energy consumed by the participant during the on peak period for the billing month; and 81% during summer months and 78% during non-summer months of the solar resource energy production will be subtracted from the metered energy consumed by the participant during the off-peak period for the billing month.

Q: Would these procedures also apply to the Company's other TOU rates?

A: Yes. These would also apply to the Company's Nights & Weekends Plan – Residential Time of Use – Three Period, Schedule RTOU and EV Only Plan – Separately Metered Electric Vehicle Time of Use, Schedule RTOU-EV.

Q: Could these methods be refined over time to achieve many of the features of the more detailed billing approaches proposed by Staff?

A: Yes. As discussed previously, this would require additional specification and configuration to achieve. However, if these steps could be incorporated over time, the enhancement is expected to be achieved at a lower cost and could be brought to bear as the SSP program participation continues to grow.<sup>34</sup>

Staff is open to any reasonable solution. But Staff must state, with due respect, that it has some problems with this proposal. First, it fails to acknowledge a fundamental verity: This is not *The Wizard of Oz*, where the only thing a subscriber is entitled to is some kind of *diploma* for good citizenship. Everyone now subscribed in the SSP is entitled to just and reasonable *charges* right now and has been from day one of their subscription. As a matter of law, there is no “grace period” for a utility--a time “of dispensation” when a customer is not entitled to just and reasonable rates. The unmistakable premise of Evergy's position in this case, however, seems to be that although Evergy is reaping the

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<sup>34</sup> Exhibit No. 3, Rebuttal Testimony of Bradley D. Lutz, pp. 10-11.

benefits of the program on its side, the customer is entitled to just and reasonable billing only if—and then only when in the future—it becomes convenient for the company. The subscriber’s involvement in the program is benefiting the company right now, and the subscriber is entitled to his quid pro quo right now. The second problem Staff has with the proposal is organically related to the first: Although the company readily acknowledges that “the billing procedures proposed by Staff. . .are logical and feasible,” and that SSP customers should be receiving refunds in some manner or another in recognition of their SSP participation, the Company still has filed no appropriate tariff for the Commission to act upon. Instead:

The Company expects the required billing system and process work to be completed by December 31, 2024. Evaluating billing procedure processes proposed during the timing of the case does not afford the Company an opportunity to prepare in advance, pushing out the expected timing to achieve execution. Since configuration specifications have not been established, it is difficult to determine exactly how much time would be needed to execute the billing procedures proposed by Staff, but I would estimate, based on the time required for the Company proposal, an additional four to six months would be needed.

Staff asks: What does that mean? Will customers be being billed at just and reasonable rates by December 31? Four to six months after that? What was meant by this statement: “Evaluating billing procedure processes proposed during the timing of the case does not afford the Company an opportunity to prepare in advance, pushing out the expected timing to achieve execution.” It appears to Staff that Evergy is stating that it is this case now before this Commission, wherein Staff has called out a billing problem which Evergy acknowledges exists and which Evergy acknowledges should be solved, which is itself at fault with respect to the timing of a solution. How could that possibly be true? It can only be true if the Company is somehow waiting on the Commission to tell the Company that it must do something which the Company admits should be done. Staff

urges the Commission to reject this view and impose a billing formula with a hard and expeditious implementation deadline.

Staff asks the Commission to order the preparation of tariffs which incorporate the language Staff has suggested or, in the alternative, to instruct the parties substantively on what the tariffs should state, with a “hard deadline” on when they must be fully implemented. Moreover, because of Evergy’s delays and because its own position in this case expressly forecasts still further delays, Staff recommends that the Commission issue appropriate orders requiring Evergy to hold harmless and make whole any non-participating customers who may suffer an adverse rate impact that may result from Evergy’s delays in addressing the billing procedures.

#### *Program Pricing*

The tariff actually on file with the Commission for approval proposes to increase the solar block cost from \$0.0884 per kWh to \$0.09131 per kWh. The “solar block cost” is one of two components of the “solar block subscription charge.” The other component is the “services and access charge.” Per the tariff on file for approval, the services and access charge will remain unchanged at \$0.40 per kWh. Thus, the solar block subscription charge, which is a combination of the solar block cost and the services and access charge, will increase from \$0.1284 per kWh to \$0.13131 per kWh hour.<sup>35</sup>

Staff opposes the increase for several reasons. The first is that it violates a promise which Evergy published on the internet. Evergy posted the following on the internet, there and current as explained below, in May of 2023—between the January 9, 2023, tariff and the currently proposed tariff:

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<sup>35</sup> Exhibit No. 103, Cedric Cunigan Direct Testimony, pp. 2-3.

Will my Solar Subscription charge be subjected to additional increases in the future? *The Solar Block Subscription Charge for the cost of the resource will not increase, and may go down, if we install additional, cheaper assets.* [Emphasis in original]

In a question-answer format wherein Evergy formulated and posed to itself questions on behalf of the public (which the company actually characterized as “frequently asked”) and then answered those questions, Evergy made that promise. While the website does not have the legal force and effect of a binding tariff, ratepayers acted in reliance on the information contained on the website prior to enrollment. And Evergy so intended. It intended to induce customers to enroll in the SSP program; and to induce current customers to remain enrolled in the SSP program. No other intent is plausible. The second reason, organically related to the first, that Staff opposes the change is that it violates the “filed rate doctrine” and its corollary prohibition against single-issue ratemaking. Staff describes the relationship between its reasons as “organic” because Evergy’s proposed charge increase violates a central public policy underpinning the filed rate doctrine: rate predictability. The third reason that Staff opposes the change is that, in fact, Evergy should not be imposing the charges at all at this time for the Hawthorn facility. The Commission has never determined and issued an order that the Hawthorn facility is fully operational and used for service per Section 393.135, RSMo.

This case involves a “tale of three tariffs.” On December 6, 2018, Evergy’s Sheet No. 109.1, issued in a general rate case, became effective. This tariff set the solar block cost at \$0.11567 per kWh and promised that “[t]he Solar Block cost will not exceed \$0.13880 per kWh.” Although effective between December 6, 2018, and January 9, 2023, Evergy never actually implemented its SSP charges. Following the first tariff, Evergy built the Hawthorn plant. On January 9, 2023, the second tariff, issued in

Evergy's general rate case ER-2022-0129, became effective. At this time, in January 2023, the Commission had not yet found the Hawthorn solar plant to be fully operational and useful for service per Section 393.135, RSMo. Indeed, the Commission still has not so found. Those sheets set the Solar Block Subscription Charge for energy sold through the SSP program at \$0.1284 per kWh. They set the solar block cost at \$0.0884 per kWh. They omitted the promise to cap the Solar Block cost at \$0.13880 per kWh. Several months after January 9, 2023, although the Commission had not (and still has not) found that the facility has met the in-service criteria applicable per Section 393.135, RSMo, Evergy began issuing bills to customers which, for the first time, implemented SSP rates, doing so retroactively to January 9, 2023. For the Commission's convenience, the January 9, 2023, tariff—the second and currently effective tariff—is attached to this brief in the Appendix.<sup>36</sup>

Evergy never implemented the charges of the 2018 tariff. Indeed, as will become apparent here, it never intended to. It was issued in a general rate case. The second tariff—the one intended for implementation--was also issued in a general rate case, and although Evergy waited several months to do so, it implemented the second tariff—retroactively billing customers back to the effective date of the second tariff. The third tariff—filed outside of a general rate case—is now before the Commission. Between the second and third tariffs, the following occurred, as set out in the testimony of Staff witness Cedric Cunigan:

Q. Did customers have any issues with bill increase?

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<sup>36</sup> The Appendix contains the following tariff documents: the December 6, 2019 Tariff; the January 9, 2023 tariff (presently effective); the January 1, 2024, tariff, suspended, and before this Commission for approval or rejection; and the tariff exemplar attached to Evergy Witness's Bradley D. Lutz' Surrebuttal testimony.

A. Evergy provided a Frequently Asked Questions (“FAQ”) on its website for the solar subscription program which states, “Will my Solar Subscription charge be subjected to additional increases in the future? The Solar Block Subscription Charge for the cost of the resource will not increase, and may go down, if we install additional, cheaper assets.” A public comment in Case No. EO-2023-0424 referenced the following information also on Evergy’s website, “With the completion of construction for the Hawthorn Solar resource, Evergy estimates the Solar Block Subscription Charge may be updated in the future to \$0.14436 per kWh, which is comprised of the Solar Block cost of \$0.09311 and the Service and Access charge of \$0.05125, pending approval by the Missouri Public Service. This potential change would account for the final construction costs of the completed solar resource.” These two messages may have caused confusion in customers, though Staff is only aware of the 1 comment at this point.<sup>37</sup>

Staff contends that the Commission has before it clear and cogent reasons for rejecting the increase in the solar block subscription charge. First, the increase should be rejected because of the company’s promise. Second, the increase should be rejected because it indisputably amounts to “single issue” rate making.<sup>38</sup> Third, Evergy should not be charging Hawthorn facility rates even now per the January 9, 2023, tariff because the Commission has never applied and found that the facility meets the in-service criteria utilized to evaluate different types of generating units per Section 393.135, RSMo.

Evergy states in its defense that Staff and the Commission long knew and agreed that the “estimates” contained in the SSP tariff’s initial rates would be updated. But Evergy knew that the Hawthorn solar facility would not be completed during the pendency of the ER-2022-0129 and ER-2022-0130 cases. For the convenience of the Commission, Staff sets out Evergy witness Kevin Brannan’s testimony:

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<sup>37</sup> Exhibit No. 103, Cedric E. Cunigan Direct Testimony, pp. 3-4. See Exhibit 107, Evergy Solar Subscription FAQ 5-30-2023.

<sup>38</sup> To the extent that Evergy might try to argue that follow-up “single rate-making” proceedings were somehow implied all along in the term “estimated,” Evergy actually points to the pitfalls of “single issue” rate making outside of a general rate case, i.e., that it inherently fails to take into consideration all relevant data and becomes a self-fulfilling prophecy that perhaps an endless series of “single issue” proceedings may follow.

Q. Were changes to the initial rates in the SSP tariff ever contemplated that the estimates would need to be updated?

A. Yes. It has always been contemplated by the Company that the initial rates would be updated upon completion of the Hawthorn solar facility. The current filed tariff includes the language, "The Solar Block Subscription Charge for energy sold through the program is **estimated**<sup>39</sup> to be \$0.1284 15 per kWh..." Furthermore, in the testimony of Company witness Kimberly Winslow which states:

Based on current total projected costs associated with engineering, design, construction, build, interconnection and site prep, the Company estimates and LCOE of \$0.1308 per kWh. This consists of a fixed charge of \$0.0908 per kWh and a services and access charge of \$0.040 per kWh. The Company anticipates firm final pricing next Spring once Procurement and Construction planning activities are complete for the 10 MWac array<sup>40</sup>

Q. In its June 1, 2023, Motion to Open a New Docket, do you agree with Staff's claim related to the following issue:

The proposed increase to the Solar Block cost is not consistent with the Stipulation and Agreement in EA-2022-0043 at Paragraph 11 that states the Solar Block charge should not exceed the maximum rate of \$0.13880 per kWh.<sup>41</sup>

A. Evergy strongly disagrees with this characterization. There is a significant distinction between the total Solar Block Subscription Charge and the Solar Block cost component of the overall charge. Staff Proposed Condition 15 as modified in Paragraph 11 of the Stipulation and Agreement in EA-2022-0043 states in part:

Staff recommends the Commission require that the final solar block cost should not exceed the maximum rate of \$0.13880 per kWh **as stated in the SSP tariff ...**<sup>42</sup>

The SSP tariffs have been updated several times since these initial tariffs were approved by the Commission and became effective. Previous versions of the SSP tariffs (see EMM 21 example below) in effect clearly state that the \$0.13880 per kWh maximum rate is addressing the **Solar Block** cost

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<sup>39</sup>The testimony contains the following footnote: "Emphasis added. Evergy Missouri Metro Solar Subscription Rider No. 7 3rd Revised Sheet No. 39A and Evergy Missouri West Solar Subscription Rider No. 1 1st Revised Sheet No. 109.1. Effective January 9, 2023."

<sup>40</sup>The testimony contains the following footnote: See, Kimberly Winslow Direct Testimony; January 7, 2022; Docket No ER-2022-0129 and ER-2022-0130; p. 39

<sup>41</sup> The testimony contains the following footnote: "See, Staff Recommendation to Reject Evergy Metro and Evergy Missouri West's Proposed Tariff Sheets to Update the Solar Subscription Rider (Official Case File Memorandum) dated June 1, 2023, pp. 2-3."

<sup>42</sup> The testimony contains the following footnote: "Emphasis added."



component of the overall charge to customers, **not inclusive of the Service and Access Charge component.**<sup>43</sup>

**Pricing:**

The Solar Block Subscription Charge for energy sold through this Program is estimated to be \$0.15367 per kWh, made up of two costs:

1. The Solar Block cost of \$0.11567 per kWh (based on an engineering estimate. Rate will be updated once a project is selected.)(The Solar Block cost will not exceed \$0.13880 per kWh); and
2. The Services and Access charge of \$0.038 per kWh.<sup>44</sup>

The testimony actually puts the nail in Evergy's coffin in two ways: First, as an excuse for filing tariffs after the January 9, 2023 tariff went into effect, Evergy seems to tell the Commission that it is okay to tell Staff and the Commission one thing—that the solar block costs are estimates and will change; but almost simultaneously promise customers another thing—that those costs will not increase and might even decrease. Unfortunately, that's just about what Evergy's argument adds up to and constitutes a direct assault upon the main public policy concern underpinning the "filed rate doctrine": predictability.

The question of the May 2023 internet FAQ that promised not to increase the solar block costs cannot be casually dismissed as some kind of oversight. The Order Approving Stipulation and Agreement dated October 31, 2018, in ER-2018-0145 and ER-2018-0146, expressly required the following, per the incorporated non-Unanimous Stipulation and Agreement Concerning Rate Design Issues dated September 25, 2018:

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<sup>43</sup> Emphasis in testimony.

<sup>44</sup> The testimony contains the following footnote: Kansas City Power and Light Company P.S.C. MO. No. 7 Second Revised Sheet No. 39A. Effective December 6, 2018.

## 11. SOLAR SUBSCRIPTION RIDER

j. The Company will include on its website a list of Frequently Asked Questions (“FAQs”) and the answers, including at a minimum but not limited to the questions listed below. *These FAQs shall be updated in a timely manner for all and any material changes to the answers, which may be necessary for the answers to remain accurate. Updates to the website FAQ shall be provided to the Signatories for review and comment prior to being made. . . .*

- Will my bill be subject to additional increases in the future? (Emphasis added).

In response to Staff’s pleadings and filings in this case noting that Evergy had a FAQ out there on the internet in May of 2023, promising that although Solar block charges could go down, they would not go up, Evergy has filed no testimony nor presented any evidence that it has complied with the ER-2018-0145 and ER-2018-0146 order by updating this FAQ for any “material changes to the answers, which may be necessary for the answers to remain accurate.” Likewise, it has provided no evidence showing that any update to the website FAQ was provided to the Signatories for review and comment prior to being made. In a nutshell: The Company has not withdrawn the FAQ. Staff contends that on the basis of the Commission’s orders in ER-2018-0145 and ER-2018-0146, right now as we sit here today, the statement that the company would not increase the solar block cost remains the Company’s current statement on the subject to the public. That is the remorseless consequence of not complying with a Commission order.

Second, no matter how one cuts it, this testimony supports no inference that Staff or this Commission ever understood or agreed that following the January 9, 2023, tariff (set in a general rate case) that customers were going to be billed based on a still estimated charge for a plant that was not fully operational and useful for service. That

back in 2022 Kimberly Winslow may have forecast some firm final pricing “next spring” 2023—in a time frame that certainly “contemplates” the company’s next general rate case—in no wise hints that after setting the charge in a general rate case, the company will then proceed with “single rate making.” Nothing in the record, including Kimberly Winslow’s testimony in the ER-2022-0129 and ER-2022-0130 docket, supports any inference that at any time the parties or this Commission “contemplated” that a few months following the January 9, 2023, Evergy would propose an increase in the solar block cost outside of a general rate case after it had inappropriately started charging customers based on a still estimated charge.

In fact, the Company’s entire line of argument is clearly hoisted on the petard of Mr. Lutz’ own testimony at the hearing *in this case*. His testimony firmly accords with an understanding that the cost set with the January 9, 2023, tariff would be the “locked in. . . full, true price.”

JUDGE DIPPELL: And maybe just walk me through that again. So the January 2023 date represents what?

THE WITNESS: Right. In January is when the system became operational and started delivering energy to the grid. The Company had a Commission-approved tariff in place to allow us to charge those subscribers a rate in January. We started executing the program under the terms of that tariff in January, but it wasn't until the in-service date in May that we had the final pricing, the final amount for that resource. So the decision was made to back-bill that so that those customers were paying *the full price, the true price*, of that resource for all of that participation. [emphasis added]<sup>45</sup>

In the “contemplation” of the Company the “full price, the true price” was the one set out in the January 9, 2023, tariff—“the tariff itself”—not the tariff now proposed. This is evident in the witness’s response to questions from Chair Hahn:

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<sup>45</sup> Hearing Transcript, p. 44.

CHAIR HAHN: Tell me how it was contemplated in conversation, or what memorializes that contemplation.

THE WITNESS: Certainly. *I would offer that the tariff itself is the best representation of that contemplation. In the way the program was set up, the Company had to go out and achieve subscribers, build a list of 90 percent of the resource to be deployed to be fully subscribed before we could execute the build. So it created this process where we had to do a lot of preliminary work before we could build the resource. And without the build of the resource, we wouldn't know what the final price would be. So we set up this kind of order of things, if you will, in the 2018 case and in that tariff to memorialize those processes. So we would go out, we'd recruit, market, gain subscribers, build the resource, and then finalize the pricing in that tariff to lock it in and to go forward [emphasis added].*<sup>46</sup>

The witness can be pointing only to the January 9, 2023, tariff as evidence of the intent of the 2018 tariff—that following that 2018 tariff, whose prices were never actually charged, the company would recruit, market, gain subscribers, build the resource, and then finalize the pricing in that tariff—the January 9, 2023, tariff—“to lock it in and to go forward.” Following that tariff, which Mr. Lutz tells us “locked in” the “full, true price,” Evergy then published a FAQ to the public expressly confirming that the price was locked in. It was the Company that came up with this question and answer. What else could the Company have plausibly intended for the customer to think? The Company's subsequent behavior here in trying to increase the exact same cost it had just promised rate payers it would not increase is simply astounding as an affront to the public policy underlying the filed rate doctrine: That customers be able to rely upon the filed rate as a company's word.

To summarize: First, Kimberly Winslow tendered testimony in 2022 that in the “next spring” (2023), costs might be adjusted; but second, when the spring of 2023

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<sup>46</sup> Hearing Transcript, pp. 40-41

actually rolled around, Evergy had a published FAQ up on the internet promising that while costs might go down, they would not be increased; third, nowhere, in Ms. Winslow's testimony in 2022, or anywhere else, has Evergy ever suggested that after setting the costs in two successive general rate cases, it would try to increase those costs outside of a general rate case; and fourth, at the hearing in the case now before the Commission, Mr. Lutz characterized the January 9, 2023, as having set and "locked in" the full, true final price. The January 9, 2023, tariff was the second tariff. The Commission should reject the third tariff in this "tale of three tariffs" because it violates a promise, completely contradicts the position which Bradley Lutz took in response to questions from the judge and Commission Chair, and violates the "single issue" rating making prohibition.

The proposed tariff should be rejected, however, for yet another reason: *The Company should, in fact, not yet be charging for the SSP program at all.* The Commission has never found and ordered that the Hawthorn facility is fully operational and used for service. Staff witness Cedric Cunigan testified as follows in his Surrebuttal Testimony:

Q. When is a utility allowed to charge customers for plant?

A. Costs associated with a facility aren't allowed to be put into rates until they are used and useful. For a facility like this, in-service criteria need to be met and submitted to the Commission prior to making this determination. The Commission opened a docket on June 1, 2023 to allow Staff time to audit the costs and evaluate the in-service criteria of the Hawthorn solar facility. Evergy began billing almost half a year before Staff confirmed the facility met in-service criteria and 2 months before they even finished the testing required by the in-service criteria.<sup>47</sup>

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<sup>47</sup> Cedric Cunigan Surrebuttal Testimony, page 4.

This Commission has previously stated in ER-79-60,<sup>48</sup> a rate case in which the date of Jeffery Energy Center Unit 1 became fully operational and used for service was at issue. In that case the Commission found that even though the Jeffery Energy Center Unit 1 was used for service it must also be fully operational prior to inclusion in rates:

The question before the Commission in this issue is one of first impression. Neither this Commission nor the courts have been called upon to apply the terms of Proposition 1 so specifically. Only the vagaries of coincidence have presented the question with such clarity. The transcript in this matter is replete with examples of the loose and unspecific manner in which the terms “in service”, “commercial service”, “used and useful”, “fully operational”, and other similar terms are used in the industry. The question would, of course, never arise unless one is faced with a statute similar to ours.

The Commission recognizes the difficulty of applying a hard and fast rule as to when the statute is satisfied in every instance, and indeed believe that such is not possible in view of the different circumstances which can surround a specific piece of construction in a specific setting. We do believe, however, that the criteria proposed by Staff are valid and may properly be used by the Commission in making individual judgement that it must make in each specific case. We are particularly persuaded by the ability of the unit to operate at its expected load factor and its further ability to achieve its maximum operational capability. As has previously been noted, both of those occurrences took place on July 30. The invalidity of the Company’s asserted “in service” date is well illustrated by the fact that the unit was not shown to be able to function at even its minimum daily load until well after that date.

The Commission believes that Section 393.135 RSMo, 1978, requires an electric generating facility to be not only used for service but also be shown to be fully operational prior to its inclusion into rate base. Throughout the months of June and July there is no question that the machine was used for service to some minimal degree, but we cannot agree that it became fully operational until July 30.”

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<sup>48</sup> CASE NOS. ER-79-60 and GR-79-61, *In the Matter of Missouri Public Service Company of Kansas City, Missouri for authority to file tariffs reflecting increased rates for electric service to its customers in the Missouri service area of the company.* (July 19, 1979)

The simple fact is that following the effective date of the January 9, 2023, tariff, Evergy did not implement the charges. Then, suddenly, with no order from this Commission declaring that the Hawthorn facility had met the Section 393.135, RSMo, in-service criteria, the Company began billing the customers and did so retroactively to January 9, 2023.

It is the Commission that must determine whether the project is fully operational and useful for service using in-service criteria. In-service criteria has been utilized to evaluate different types of generating units and retrofits since at least 1978 after Section 393.135 when into effect in 1976. Certain criteria apply to every type of project, to ensure that all major construction work is complete. Other criteria are developed for the specific characteristics of the generating facility or retrofit. Staff recommends several criteria, which in combination, are needed to determine that a unit is “fully operational” and “used for service.” Certain fundamental tests are included to prove whether the unit can start properly, shut down properly, operate at its full design capacity, or operate for a period of time without tripping off line. Other items Staff would consider are whether the full output of the unit can be delivered into the electrical distribution/transmission system. An additional factor the Staff will consider is whether testing was performed pursuant to any contract and whether testing was performed prior to the company accepting the unit from the contractor. In a subscription-based program, a tariff must be promulgated for the applicable rate or rates to be billed to customers. However, the facility must also be found to have satisfied applicable in-service criteria before it may be lawfully reflected in rates for service. The timelines for these two necessary Commission actions do not align. The promulgation of the January 9, 2023, tariff certainly was not a Commission finding

that the Hawthorn facility had met in-service criteria, no more than the first tariff in 2018 was such a finding, some several years before the facility was even constructed. Hence, Evergy was not and has not been authorized as of yet to charge rates for the Hawthorn facility.

### **CONCLUSION**

Staff respectfully asks the Commission to issue orders consistent with Staff's stated positions; specifically, to order tariffs consistent with those tendered by Staff on the solar pricing issues with a hard and expeditious deadline on their implementation; and, specifically, to reject Evergy's tariffs which increase the solar block cost component of the SSP tariff.

**Respectfully Submitted,**

/s/ *Paul T. Graham* #30416

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### **CERTIFICATE OF SERVICE**

The undersigned by his signature below certifies that the foregoing pleading was served upon all counsel of record on this April 19, 2024, by electronic filing in EFIS, electronic mail, hand-delivery, or U.S. postage prepaid.

/s/ *Paul T. Graham*



## Appendix

### December 6, 2018 Tariff

Effective December 6, 2018

KCP&L GREATER MISSOURI OPERATIONS COMPANY

P.S.C. MO. No. 1 Original Sheet No. 109.1 Canceling P.S.C. MO. No. 1 Sheet No.  
For Missouri Retail Service Area

SOLAR SUBSCRIPTION PILOT RIDER Schedule SSP

AVAILABILITY: (Continued) Customers receiving Unmetered, Lighting, Net Metering, or Time-of-Use Service are ineligible for this Program while participating in those service agreements. This schedule is not available for resale, standby, breakdown, auxiliary, parallel generation, or supplemental service.

PRICING: T

The Solar Block Subscription Charge for energy sold through this Program is estimated to be \$0.15467 per kWh, made up of two costs:

1. The Solar Block cost of \$0.11567 per kWh (based on an engineering estimate. Rate will be updated once a project is selected.) (The Solar Block cost will not exceed \$0.13880 per kWh.);

and 2. The Services and Access charge of \$0.038 per kWh.

The Solar Block cost is defined by the total cost of the solar resources built to serve the program. The Services and Access charge will be adjusted when rates are reset in future rate cases by the average percentage change to volumetric rates in those future rate cases, unless a party provides a cost study demonstrating that it would be unreasonable to adjust the Services and Access. When an additional solar resource is added to the Program, the levelized cost of the new solar resource will be averaged with the remaining levelized cost of existing solar resource(s) to determine the new price for the cost of the Solar Block. Additional solar resources will be added only if the price is less than or equal to the previous price or otherwise deemed beneficial relative to the standard rates.

# January 9, 2023 Tariff

## EVERGY METRO, INC. d/b/a EVERGY MISSOURI METRO

P.S.C. MO. No. 7 3rd Revised Sheet No. 39A  
 Canceling P.S.C. MO. No. 7 2nd Revised Sheet No. 39A

For Missouri Retail Service Area

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| Solar Subscription Rider<br>Schedule SSP |
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### AVAILABILITY (Continued)

Customers receiving Unmetered, Lighting, or Net Metering Service are ineligible for this Program while participating in those service agreements. This schedule is not available for resale, standby, breakdown, auxiliary, parallel generation, or supplemental service.

### PRICING

The Solar Block Subscription Charge for energy sold through this Program is estimated to be \$0.1284 per kWh, made up of two costs:

1. The Solar Block cost of \$0.0884; and
2. The Services and Access charge of \$0.040 per kWh.

The Solar Block cost is defined by the total cost of the solar resources built to serve the program. The Services and Access charge will be adjusted when rates are reset in future rate cases by the average percentage change to volumetric rates in those future rate cases, unless a party provides a cost study demonstrating that it would be unreasonable to adjust the Services and Access. When an additional solar resource is added to the Program, the levelized cost of the new solar resource will be averaged with the remaining levelized cost of existing solar resource(s) to determine the new price for the cost of the Solar Block. Additional solar resources will be added only if the price is less than or equal to the previous price or otherwise deemed beneficial relative to the standard rates.

### SUBSCRIPTION LEVEL

Participants may subscribe to Solar Blocks that, when combined, are expected to generate up to 50 percent of their annual energy. During initial sign-up, the Customer will designate their desired subscription percentage in increments of 10 percent. The Company will provide to the Customer the number of Solar Blocks necessary to supply their subscription percentage based on the Customer's annual energy usage (Subscription Level). The Customer's annual energy usage will be determined in one of two ways. If during initial signup the Customer has 12 consecutive months of usage history at the address where the subscription is being requested, then the annual energy will be the energy consumed during that 12-month usage history. If the Customer does not have 12 consecutive months of usage history at the address where the subscription is being requested, then the annual energy will be estimated by the Company. The calculation for the number of Solar Blocks is equal to the annual energy (in kWh) divided by the expected annual production of one block rounded down to the lowest whole number. A Customer must have sufficient annual usage to support subscription of at least one Solar Block.

Subscription levels will be recalculated monthly if one of the following actions takes place in the previous month: (1) a new subscriber is added; (2) a subscription is cancelled; or (3) a subscription is transferred. All changes in Subscription status will occur at the end of the respective billing month in which the status change is requested.

A Participant may change their subscription level only once in any 12-month period after the initial 12-month subscription. In the event there is a significant and regular reduction in Participant metered energy consumption, the Company, at its sole discretion, may adjust the Participant's subscription level after customer notice.

Participants may not combine loads across the companies for achieving participation limits, determination of subscription levels, or aggregated billing. Loads will not be combined across companies for the purpose of applying minimum term limits.

January 9, 2023

Issued: December 2, 2022  
Issued by: Darrin R. Ives, Vice President

Effective: ~~January 1, 2023~~  
1200 Main, Kansas City, MO 64105

FILED - MISSOURI STATE COMMISSION - ST. LOUIS, MO - 1-11-2023 10:17

**January 1, 2024 Tariff**

**EVERGY MISSOURI WEST, INC. d/b/a EVERGY MISSOURI WEST**

P.S.C. MO. No. 1 2nd Revised Sheet No. 109.1

Canceling P.S.C. MO. No. 1 1st Revised Sheet No. 109.1

For Missouri Retail Service Area

**SOLAR SUBSCRIPTION RIDER  
Schedule SSP**

**PRICING:**

The Solar Block Subscription Charge for energy sold through this Program is estimated to be \$0.13131 per kWh, made up of two costs:

1. The Solar Block cost of \$0.09131 and
2. The Services and Access charge of \$0.040 per kWh.

The Solar Block cost is defined by the total cost of the solar resources built to serve the program. The Services and Access charge will be adjusted when rates are reset in future rate cases by the average percentage change to volumetric rates in those future rate cases, unless a party provides a cost study demonstrating that it would be unreasonable to adjust the Services and Access. When an additional solar resource is added to the Program, if the Solar Block cost associated with new additional resource costs less than the previous solar resource, then the levelized cost of the new solar resource will be averaged with the remaining levelized cost of existing solar resource(s) to determine the new price for the cost of the Solar Block. If the Solar Block cost of the new additional resource costs more than the previous solar resource, then the levelized cost of the new solar resource will not be averaged with the remaining levelized cost of the existing solar resource(s). Enrolled subscribers on the waiting list for the new solar resource will pay the Solar Block cost for the new resource while previous participants will continue to pay the lower Solar Block cost of the previous resource(s) already in operation.

**SUBSCRIPTION LEVEL:**

Residential participants may subscribe to Solar Blocks that, when combined, are expected to generate up to 50 percent of their annual energy. Non-Residential participants may subscribe to Solar Blocks that, when combined, are expected to generate up to 100 percent of their annual energy. During initial sign-up, the Customer will designate their desired subscription percentage in increments of 10 percent. The Company will provide to the Customer the number of Solar Blocks necessary to supply their subscription percentage based on the Customer's annual energy usage (Subscription Level). The Customer's annual energy usage will be determined in one of two ways. If during initial signup the Customer has 12 consecutive months of usage history at the address where the subscription is being requested, then the annual energy will be the energy consumed during that 12-month usage history. If the Customer does not have 12 consecutive months of usage history at the address where the subscription is being requested, then the annual energy will be estimated by the Company. The calculation for the number of Solar Blocks is equal to the annual energy (in kWh) divided by the expected annual energy production of one block rounded down to the lowest whole number. A Customer must have sufficient annual usage to support subscription of at least one Solar Block.

Subscription levels will be recalculated monthly if one of the following actions takes place in the previous month: (1) a new subscriber is added; (2) a subscription is cancelled; or (3) a subscription is transferred. All changes in Subscription status will occur at the end of the respective billing month in which the status change is requested.

A Participant may change their subscription level only once in any 12-month period after the initial 12-month subscription. In the event there is a significant and regular reduction in Participant metered energy consumption, the Company, at its sole discretion, may adjust the Participant's subscription level after customer notice.

Participants may not combine loads across the companies for achieving participation limits, determination of subscription levels, or aggregated billing. Loads will not be combined across companies for the purpose of applying minimum term limits.

Issued: December 1, 2023  
Issued by: Darrin R. Ives, Vice President

Effective: January 1, 2024  
1200 Main, Kansas City, MO 64105

## Witness Bradley D. Lutz' Surrebuttal Tariff Exemplar<sup>49</sup>

Issued: December ~~21, 2022~~ 2023

Effective: January 1, ~~2023~~2024

Issued by: Darrin R. Ives, Vice President

1200 Main, Kansas City, MO 64105

### EVERGY METRO, INC. d/b/a EVERGY MISSOURI METRO

P.S.C. MO. No. 7 4th~~3rd~~ Revised Sheet No. 39A

Canceling P.S.C. MO. No. 7 3rd~~2nd~~ Revised Sheet No. 39A

For Missouri Retail Service Area

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| Solar Subscription Rider<br>Schedule SSP |
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**AVAILABILITY: (Continued)**

~~Customers receiving Unmetered, Lighting, or Net Metering Service are ineligible for this Program while participating in those service agreements. This schedule is not available for resale, standby, breakdown, auxiliary, parallel generation, or supplemental service.~~

**PRICING:**

The Solar Block Subscription Charge for energy sold through this Program is comprised of the Solar Block Cost and the Services and Access Charge; ~~estimated to be \$0.1284 144360.13131 per kWh, made up of two costs:~~

- ~~1. The Solar Block cost of \$0.088411; and~~
- ~~2. The Services and Access charge of \$0.040512540 per kWh.~~

| Resource | Solar Block<br>Subscription Charge | Solar Block Cost | Services and Access<br>Charge |
|----------|------------------------------------|------------------|-------------------------------|
| Hawthorn | \$0.13131                          | \$0.09131        | \$0.040                       |
|          |                                    |                  |                               |

The Solar Block cost is defined by the total cost of the solar resources built to serve the program. The Services and Access charge will be adjusted when rates are reset in future rate cases by the average percentage change to volumetric rates in those future rate cases, unless a party provides a cost study demonstrating that it would be unreasonable to adjust the Services and Access. When an additional solar resource is added to the Program, if the Solar Block cost associated with new additional resource costs less than the previous solar resource, then the levelized cost of the new solar resource will be averaged with the remaining levelized cost of existing solar resource(s) to determine the new price for the cost of the Solar Block. If the Solar Block cost of the new additional resource costs more than the previous solar resource, then the levelized cost of the new solar resource will not be averaged with the remaining levelized cost of the existing solar resource(s). Enrolled subscribers on the waiting list for the new solar resource will pay the Solar Block cost for the new resource while previous participants will continue to pay the lower Solar Block cost of the previous resource(s) already in operation. Additional solar resources will be added only if the price is less than or equal to the previous price or otherwise deemed beneficial relative to the standard rates.

**SUBSCRIPTION LEVEL:**

Residential pParticipants may subscribe to Solar Blocks that, when combined, are expected to generate up to 50 percent of their annual energy. Non-Residential participants may subscribe to Solar Blocks that, when combined, are expected to generate up to 100 percent of their annual energy. During initial sign-up, the Customer will designate their desired subscription percentage in increments of 10 percent. The Company will provide to the Customer the number of Solar Blocks necessary to supply their subscription percentage based on the Customer's annual energy usage (Subscription Level). The Customer's annual energy usage will be determined in one of two ways. If during initial sign-up the Customer has 12 consecutive months of usage history at the address where the subscription is being requested, then the annual energy will be the energy consumed during that 12-month usage history. If the Customer does not have 12 consecutive months of usage history at the address where the subscription is being requested, then the annual energy will be estimated by the Company. The calculation for the number of Solar Blocks is equal to the

**Schedule BDL-1  
Page 2 of 4**

<sup>49</sup> See Exhibit No. 4.