

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

|                                                   |   |                       |
|---------------------------------------------------|---|-----------------------|
| In the Matter of the Application of Evergy        | ) |                       |
| Metro, Inc. d/b/a Evergy Missouri Metro and       | ) | File No. EO-2025-0154 |
| Evergy Missouri West, Inc. d/b/a Evergy Missouri  | ) |                       |
| West for Approval of New and Modified Tariffs for | ) |                       |
| Service to Large Load Customers                   | ) |                       |

**REPLY BRIEF OF THE DATA CENTER COALITION**

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ATTORNEYS FOR THE DATA CENTER  
COALITION

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**REPLY BRIEF OF THE DATA CENTER COALITION**

COMES NOW, the Data Center Coalition (DCC) and pursuant to the October 16, 2025 *Order Granting Extension of Time to File Briefs*,<sup>1</sup> respectfully submits this Reply Brief regarding the *Application of Evergy Metro, Inc. d/b/a Evergy Missouri Metro and Evergy Missouri West, Inc. d/b/a Evergy Missouri West* (collectively, “Evergy”) *for Approval of New and Modified Tariffs for Service to Large Load Customers* (Application).

In its Initial Brief, the Missouri Office of the Public Counsel (OPC) argues that “[t]his case...requires a careful and considerate approach that balances the potential risks against potential rewards.”<sup>2</sup> DCC agrees.<sup>3</sup> However, the proposals advanced by OPC and Staff of the Missouri Public Service Commission (Staff) fall short of striking that balance and instead offer a disproportionately onerous and rigid set of terms with little offsetting benefit.

For example, OPC argues “[t]here is no reason or justification for the Commission to adopt protections that are less than what has already been put in place in our bordering states.”<sup>4</sup> Yet, the inverse is equally true: there is no compelling justification for the Missouri Public Service Commission (Commission) to impose substantially *more* restrictive or burdensome requirements than those used elsewhere, particularly when doing so would undermine the state’s

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<sup>1</sup> Missouri Public Service Commission (PSC) File No. EO-2025-0154, *Order Granting Extension of Time to File Briefs* (Oct. 16, 2025).

<sup>2</sup> Missouri PSC File No. EO-2025-0154, *Initial Brief of the Missouri Office of Public Counsel*, p. 16 (Oct. 29, 2025).

<sup>3</sup> *See, e.g.*, Missouri PSC File No. EO-2025-0154, *Initial Brief of the Data Center Coalition*, p. 2 (Oct. 29, 2025).

<sup>4</sup> OPC Initial Brief at 23.

competitiveness in attracting large load customers that bring along massive economic development opportunities.

The more logical and reasonable course of action is to adopt a Large Load Power Service (LLPS) rate plan that draws from emerging industry norms and meets the requirements of Senate Bill (SB) 4 while maintaining Missouri’s viability as a potential site for large load development. That is precisely what the Non-Unanimous Global Stipulation and Agreement<sup>5</sup> (Stipulation and Agreement) accomplishes. It reflects a moderate framework that ensures LLPS customers cover their cost of service, protects non-LLPS customers from the risk of stranded assets, and positions Evergy competitively among its peers. Importantly, it achieves these objectives without the unreasonable and overly burdensome conditions proposed by Staff and OPC. DCC therefore respectfully requests that the Commission reject the proposals put forward by Staff and OPC and adopt the Stipulation and Agreement in full.

## **I. RESPONSE TO OPC**

### **A. Under the Settlement Agreement, Large Load Customers Have Agreed to Pay Premium Rates, and OPC Ignores This Fact**

OPC’s lengthy brief can be distilled into a single, overriding admonition to the Commission: non-LLPS customers should not subsidize LLPS customers.<sup>6</sup> The Stipulation and Agreement ensures this outcome in two ways. First, the Stipulation and Agreement proposes a set of terms and conditions—including long-term contracts, minimum demand charges, termination fees and financial security requirements—that collectively provide Evergy substantial revenue guarantees. Taken together, these terms significantly mitigate the risk of cost shifting that might occur if LLPS load does not materialize as Evergy anticipates. Second, under the Stipulation and

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<sup>5</sup> Missouri PSC File No. EO-2025-0154, *Non-Unanimous Global Stipulation and Agreement* (Sept. 25, 2025).

<sup>6</sup> OPC Initial Brief at 5 (stating the central question of this case is: “[I]s enough being done to ensure LLPS customers are not being subsidized?”).

Agreement, LLPS customers will be subject to rates that are at a significant premium over base demand rates. As Evergy witness Gunn clearly articulates, the negotiated pricing in the Settlement Agreement “results in LLPS customers paying for system costs above the current embedded cost to serve them, **meaning that non-participants will directly benefit from a ratemaking perspective by adding LLPS load.**”<sup>7</sup> Therefore, the Stipulation and Agreement addresses OPC’s central concern. LLPS customers will pay premium rates, not subsidized rates.

OPC ignores this fact and alleges “four major ways that subsidization of LLPS customers could easily occur if not properly addressed.”<sup>8</sup> None of these alleged subsidization risks support rejection of the Stipulation and Agreement. First, OPC points to a timing difference between when generation is being built to serve LLPS customers and when the LLPS customers join the utility’s system. But OPC’s argument on this point appears to be about preventing utility over-recovery;<sup>9</sup> OPC does not explain or demonstrate how the timing of a future rate increase creates the risk of a subsidy flowing from non-LLPS customers to LLPS customers, particularly in light of the premium rates LLPS customers have agreed to pay under the Stipulation and Agreement. Second, OPC alleges the risk of a subsidy resulting from application of the Fuel Adjustment Clause (FAC).<sup>10</sup> Yet again, OPC ignores the fact that LLPS customers will pay premium rates under the Stipulation and Agreement, ensuring non-LLPS customers benefit from the addition of LLPS load. Third, OPC argues that subsidization could occur as a result of Evergy’s economic development discount riders.<sup>11</sup> However, as OPC itself acknowledges later in its brief,<sup>12</sup> the Stipulation and Agreement eliminates this risk of “subsidy” by including a Cost Stabilization Rider, the very

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<sup>7</sup> Missouri PSC File No. EO-2025-0154, Exh. 106: *Testimony of Kevin D. Gunn in Support of Stipulation and Agreement*, p. 14 (Sept. 29, 2025).

<sup>8</sup> OPC Initial Brief at 6-10.

<sup>9</sup> *Id.* at 7.

<sup>10</sup> *Id.* at 7-8.

<sup>11</sup> *Id.* at 8-9.

<sup>12</sup> *Id.* at 61-62.

purpose of which is to undo the benefit of the company's economic development discounts for large load customers. Fourth, OPC argues the risk of stranded assets could result in non-LLPS customers subsidizing LLPS customers.<sup>13</sup> DCC acknowledges this theoretical risk, but posits that the central purpose of the several protections embodied in the Stipulation and Agreement is to mitigate this risk. In short, the Stipulation and Agreement anticipates and addresses OPC's concerns. The Commission should not be swayed by OPC's specter of subsidization.

### **B. OPC Cherry-picks an Unreasonably Onerous Set of Large Load Terms**

Many parties in this proceeding have criticized Staff's large load tariff proposal as complex, onerous, and an outlier as compared to tariffs adopted or proposed in other jurisdictions and utility service territories nationwide.<sup>14</sup> While endorsing much of Staff's proposal, OPC simultaneously attempts to distinguish its position from Staff's by asserting the individual components of its proposal have all been adopted elsewhere.<sup>15</sup> But OPC's argument misses the broader issue: the cumulative effect of borrowing the most conservative terms from multiple jurisdictions and combining them into one large load tariff would yield a result far more restrictive than necessary or reasonable. OPC never grapples with the impact of its proposals as a package, and certainly cannot point to any jurisdiction that has adopted a similar package.

Several of OPC's specific recommendations illustrate this issue. For instance, OPC recommends a 20-year contract term, with a five-year notice period for termination.<sup>16</sup> In contrast, the Stipulation and Agreement provides for a 12-year contract term, with a load ramp of up to five years.<sup>17</sup> OPC justifies its proposal by claiming it aligns with the useful life of the generation assets

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<sup>13</sup> *Id.* at 10.

<sup>14</sup> *See, e.g.*, Missouri PSC File No. EO-2025-0154, Initial Briefs of Evergy, Ameren Missouri, DCC, Google, and Velvet Tech Services.

<sup>15</sup> OPC Initial Brief at 19.

<sup>16</sup> *Id.* at 22.

<sup>17</sup> Stipulation and Agreement at 4.

and/or power purchase agreements that will be required to serve LLPS customers, and claims it mirrors the Kentucky Public Service Commission's approach.<sup>18</sup> However, OPC fails to recognize that the key customer protection terms in a large load tariff work in tandem, meaning that a shorter contract term will provide a strong assurance of cost recovery when paired with the reasonable minimum billing demand and reasonable collateral requirement set forth in the Stipulation and Agreement.<sup>19</sup> OPC likewise fails to acknowledge that its proposed 20-year contract term is substantially longer than the contract terms proposed by Staff and at least five of Evergy's peer utilities that have recently proposed or implemented large load tariffs.<sup>20</sup> In fact, each of these comparable proposals indicate that the contract term set forth in the Stipulation and Agreement is reasonable, particularly in light of the broader suite of customer protections set forth therein.<sup>21</sup>

In addition, OPC proposes that the Commission implement a minimum billing demand of 90% of contract capacity, as compared to the Stipulation and Agreement's minimum billing demand of 80% of contract capacity.<sup>22</sup> In support of this recommendation, OPC highlights the 85% minimum billing demand adopted by AEP Ohio and the 90% minimum billing demand adopted by the Kentucky Public Service Commission.<sup>23</sup> But OPC again fails to consider these terms as part of a larger package. Indeed, the minimum contract term for new large loads under AEP Ohio's large load tariff is only 8 years plus load ramp, which is far shorter than the contract term proposed by any party in this proceeding and therefore arguably implicates the need for a higher minimum billing demand.<sup>24</sup> In the instant proceeding, the longer proposed contract terms, coupled with

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<sup>18</sup> OPC Initial Brief at 23.

<sup>19</sup> Missouri PSC File No. EO-2025-0154, Exh. 402: *Surrebuttal Testimony of Kevin Higgins on Behalf of the Data Center Coalition*, p. 17 (Sept. 12, 2025).

<sup>20</sup> DCC Initial Brief at 8, Table 1; *see also* Exh. 402 at 17.

<sup>21</sup> *See* DCC Initial Brief at 8, Table 1.

<sup>22</sup> OPC Initial Brief at 28; Stipulation and Agreement at 9.

<sup>23</sup> OPC Initial Brief at 28.

<sup>24</sup> Exh. 402 at 17.

Evergy's access to the larger Southwest Power Pool market to redeploy and sell excess generation, support a lower minimum billing demand than those adopted in Ohio or Kentucky.<sup>25</sup> Notably, the 80% minimum billing demand figure is consistent with that proposed or adopted in Evergy's Kansas service territories, Indiana Michigan Power, and Consumers Energy Michigan.<sup>26</sup>

OPC further asserts that the Commission should not approve the reductions or exemptions to the full collateral requirement set forth in the Stipulation and Agreement.<sup>27</sup> This recommendation is based on its generalized and speculative claim that large load customers – particularly data centers – are volatile and overly risky at an industry level.<sup>28</sup> But this subjective assessment does not constitute a sound basis for assessing the actual risk associated with large load customers. Assessing risk based on the *individual credit profile of a customer* is a well-established and reasonable practice, as credit rating is a widely accepted measure of risk and provides an evidence-backed basis for assigning the appropriate level of collateral required.<sup>29</sup> Indeed, across the industry, utilities have adopted financial security requirements that are risk-adjusted, reflecting each customer's creditworthiness and financial stability.<sup>30</sup> The large load tariffs adopted or proposed by Indiana Michigan Power, ComEd, Consumers Energy Michigan, and Dominion Energy Virginia all offer collateral exemptions or opportunities for reduction based on credit ratings or financial assurance metrics.<sup>31</sup> The Stipulation and Agreement follows this principle,

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<sup>25</sup> Missouri PSC File No. EO-2025-0154, Exh. 400: *Rebuttal Testimony of Kevin Higgins on Behalf of the Data Center Coalition*, pp. 11-12 (Jul. 25, 2025).

<sup>26</sup> See DCC Initial Brief at 8, Table 1.

<sup>27</sup> OPC Initial Brief at 29; Stipulation and Agreement at 12-15.

<sup>28</sup> OPC Initial Brief at 10-14, 29.

<sup>29</sup> Missouri PSC File No. EO-2025-0154, Exh. 403: *Surrebuttal Testimony of Shana Ramirez on Behalf of the Data Center Coalition*, p. 3 (Sept. 12, 2025).

<sup>30</sup> Missouri PSC File No. EO-2025-0154, Exh. 401E: *Corrected Rebuttal Testimony of Shana Ramirez on Behalf of the Data Center Coalition*, p. 28, Table 2 (Jul. 25, 2025).

<sup>31</sup> *Id.*

requiring meaningful security to protect non-LLPS customers while eliminating unnecessary barriers for customers demonstrating high levels of creditworthiness.

Finally, OPC recommends that the Commission set the LLPS minimum load threshold at 25 megawatts (MW), arguing that the 75 MW threshold set forth in the Stipulation and Agreement is arbitrary.<sup>32</sup> This argument lacks merit. Evergy's initially proposed 100 MW threshold aligned with the requirements of SB 4 and was comfortably above the load size of any current customer.<sup>33</sup> The 75 MW threshold set forth in the Stipulation and Agreement provides consistency with the Unanimous Settlement Agreement reached in Evergy's Kansas service territories, ensuring large load customers considering locating in the area have comparable terms across the state line.<sup>34</sup> Importantly, the Stipulation and Agreement provides needed clarity on the applicability of Schedule LLPS to existing customers, whereas OPC's recommendation would implicate the need for further development of a grandfathering provision to ensure that existing customers are not subject to unreasonable retroactive changes to their fundamental terms of service.<sup>35</sup>

In sum, the Commission should evaluate the key customer protection terms proposed in this proceeding as interrelated components that must work together to balance risk mitigation with a reasonable degree of flexibility. The record demonstrates that the Stipulation and Agreement is the *only* proposal that strikes this balance, is well within the reasonable range of similar customer protections adopted across the country, and provides an attractive option for new and existing large load customers. OPC's cherry-picking approach, on the other hand, is a thinly-veiled attempt to

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<sup>32</sup> OPC Initial Brief at 20-21.

<sup>33</sup> Exh. 402 at 14.

<sup>34</sup> Missouri PSC File No. EO-2025-0154, Exh. 104: *Surrebuttal Testimony of Kevin D. Gunn on Behalf of Evergy Missouri Metro and Evergy Missouri West*, Schedule KDG-1 (Sept. 12, 2025).

<sup>35</sup> Exh. 402 at 14-15.

make large load development in Missouri effectively uneconomic. The Commission should reject OPC's proposals.

## II. RESPONSE TO STAFF

In enacting SB 4, the Missouri legislature sought to foster the economic development opportunities associated with large load development while simultaneously ensuring that all ratepayers are treated fairly.<sup>36</sup> SB 4 builds upon a series of deliberate legislative efforts to attract and retain large load customers, including the Data Center Sales Tax Exemption Program.<sup>37</sup> Collectively, these actions reflect a clear legislative intent to balance meaningful customer protections with the state's objective of encouraging large load investments in Missouri.

The Commission's primary role is not to make new policy, but to effectuate the legislature's intent.<sup>38</sup> In light of SB 4 and broader statewide economic development policies,<sup>39</sup> the Commission would frustrate that intent if it were to approve a tariff so restrictive that no large load customer would reasonably use it. Putting aside legislative intent, such an outcome would render this proceeding an entirely meaningless exercise. The record demonstrates that Staff has not considered whether its proposed tariff would reasonably permit large load development.<sup>40</sup> Moreover, Missouri utilities and large load customers have explained that Staff's approach is overly burdensome and entirely unworkable.<sup>41</sup>

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<sup>36</sup> See Missouri PSC File No. EO-2025-0154, Exh. 108: Governor's Press Release on SB 4 Passage (Oct. 15, 2025).

<sup>37</sup> Section 144.810, RSMo.

<sup>38</sup> See *State ex rel. Harline v. Public Service Com.*, 343 S.W.2d 177, 181 (W.D. App. 1960) (explaining that the Commission is an administrative body of limited jurisdiction, created by statute, and that its powers are **purely regulatory** [emphasis added]); see also Section 386.040, RSMo. (providing that the Commission has all powers necessary to carry out the authority of that Act, indicating its purpose is to carry out legislation rather than formulating independent policy).

<sup>39</sup> See Missouri PSC File No. EO-2025-0154, Post-Hearing Brief of Union Electric Company d/b/a Ameren Missouri, pp. 7-10 (Oct. 29, 2025).

<sup>40</sup> Missouri PSC File No. EO-2025-0154, Transcript Vol. 2, pp. 20:7-11, 213:5-25 – 214:1-17 (Sept. 30, 2025); Missouri PSC File No. EO-2025-0154, Exh. 551: *Surrebuttal Testimony of Dr. Carloyn A. Berry on Behalf of Google, LLC*, p. 7:9-15 (Sept. 12, 2025).

<sup>41</sup> See, e.g., Initial Briefs of DCC, Google, Velvet Tech Services, Ameren Missouri, and Evergy.

By contrast, the Stipulation and Agreement provides the Commission with a set of terms and conditions that strikes the balance between promoting growth and protecting customers. The Stipulation and Agreement achieves this balance without requiring Missouri to take a novel approach that no other jurisdiction has done before. Finally, if over time it becomes apparent that certain Staff proposals may enhance customer protections and/or Missouri's ability to attract large load customers, the Commission maintains the flexibility to add those protections in future rate cases. Accordingly, the Commission should find that only the Stipulation and Agreement results in just and reasonable rates that properly protect non-LLPS customers – fully consistent with legislative intent and Missouri's broader economic development policies.

### **III. CONCLUSION**

For the reasons described herein, DCC respectfully requests that the Commission approve the Stipulation and Agreement.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was served upon all counsel of record by email, this November 5<sup>th</sup>, 2025.

/s/ Nikhil Vijaykar

Nikhil Vijaykar