

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

**REPLY BRIEF OF UNION ELECTRIC COMPANY
D/B/A AMEREN MISSOURI**

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**ATTORNEYS FOR UNION
ELECTRIC COMPANY
D/B/A AMEREN MISSOURI**

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REPLY BRIEF OF UNION ELECTRIC COMPANY
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COMES NOW Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri” or “Company”), and for its Reply Brief, states as follows:

I. INTRODUCTION

Ameren Missouri will not respond to every allegation made in the Missouri Public Service Commission Staff's ("Staff") and the Office of the Public Counsel's ("OPC") Initial Briefs, recognizing that most of the arguments are not new and were fully addressed in Ameren Missouri's Initial Brief. Additionally, with one exception, Ameren Missouri generally agrees with the positions in the briefs of the remaining parties, so there is no need to respond to those briefs at all.

The Initial Briefs of both Staff and OPC play-up a version of the Staff tariff proposal and make claims about its regulatory implications which are not found in or otherwise supported by the actual record in this case. There are at least four overarching claims contained within Staff's and OPC's Initial Briefs that make it clear that their arguments are not backed by the actual facts - the record -- in this case, as follows:

1. OPC opines that the Staff has "no horse in the race," because Staff is not a utility and Staff is not a consumer interest group, thus implying that Staff can be trusted to advise the Commission appropriately and to do the right thing.¹

¹ Initial Brief of OPC, pp. 78-79.

2. OPC minimizes the importance of Section 393.130.7 by labeling it as nothing more than a restatement of the regulatory principle of "cost causation."²
3. Staff describes the multiple charges and rates contained within its proposed tariff as easy to understand because they are simply "transparent and discrete" and "easier to understand and administer" than the rates proposed by Evergy.³
4. Staff makes the astonishing claim that there is no check in current Missouri regulation to determine what is in the best economic, environmental, public benefit or any other interest (state or local) of the state, other than the Commission.⁴

Notably, neither Staff nor OPC cite to any record support for any of these claims; indeed, they can't because there is none. Consider for a moment these actual facts of record in this case as they apply to each of the foregoing Staff/OPC claims.

Claim No. 1. Staff admitted its bias, both in prefiled testimony (attracting these customers is simply not worth the risk)⁵ and on the stand (admitting that Section 393.130.7 was not the legislature saying that data centers should be kept out of Missouri but that it was exactly what Staff was saying).⁶ These are not the words of a party without a "horse in the race." They are the statements of a party inappropriately substituting its judgment for that of the legislature, a power not vested in Staff.

Claim No. 2. By dismissing the statutory requirements found in Section 393.130.7 as nothing more than the "cost causation" concept that is already used when setting rates in rate cases, OPC ignores the importance of large load customers to the state, as reflected in prior legislative

² Initial Brief of OPC, p. 5.

³ Initial Brief of Staff, p. 7.

⁴ Initial Brief of Staff, p. 12.

⁵ Exhibit 200, Rebuttal Testimony of James A. Busch, p. 5, ll. 15-17.

⁶ Tr. (Vol. 2 Amended) p. 268, ll. 14-18.

enactments, the creation of the Department of Economic Development in the first place, and state policy initiatives that seek to attract these loads. Large load customers are the only customer class with a statute requiring a specific tariff be filed for use of that class,⁷ adopted in a bill that the Governor declared would “attract new industry, support job growth, and maintain affordable, reliable energy for our citizens”.⁸ Claiming the statute is nothing more than codifying “cost causation” ignores the important message being sent by the legislature about the importance of attracting these customers to the state of Missouri. And if there was any validity to the “cost causation” argument, it would undermine both OPC and Staff’s attempts to craft a tariff that perfectly protects non-large load customers at all times at the expense of including commercially unreasonable terms for actual large load customers, as rate cases almost always results in rates that are guided by a class cost of service study but rarely is there an exact adoption of these study results. Moreover, the record in this case is replete with evidence that the Staff tariff fails to reflect Evergy’s costs.⁹

The statute says what it says. It means what it means. There is no reason to look for an analogous regulatory theory to be able to interpret it, and if it merely reflected existing cost causation principles, then the legislature engaged in a useless act in adopting it in the first place.¹⁰ The statute requires the Commission to reasonably ensure rates reflect customers' representative share of the costs incurred to serve them and prevent other classes' rates from reflecting unjust or unreasonable costs. What Staff and OPC ignore is that Section 393.130.7 was not adopted in a vacuum. Rather, it was adopted against established state economic development policies and

⁷ Section 393.130.7.

⁸ Exhibit 108, Governor’s Press Release on SB 4 passage.

⁹ Exhibit 704, Surrebuttal Testimony of Steven M. Wills, p. 3, l. 12 to p. 4, l. 11.

¹⁰ Under basic principles of statutory interpretation, the legislature is presumed *not* to engage in useless acts when it adopts a new statute. See, e.g., *American Civil Liberties Union of Missouri v. Ashcroft*, 577 S.W.3d 881, 891-92 (Mo. App. W.D. 2019).

priorities – and there is no indication adoption of the new statute was intended to discard them – and as part of an overall economic development bill. The statute, read in view of the totality of state policies and priorities, plainly requires the Commission to adopt a tariff that both is able to attract large load customers and to do so with rates that reflect those customers' representative share of the costs incurred to serve them (but not more) and which reasonably prevents other customers from unjust or unreasonable costs.

Claim No. 3. Staff's claim that its tariff is easy to understand is easily disproven by a mere reading of the tariff itself, with its 14 different charges and complex, mis-named charge types (such as a "variable-fixed" charge).¹¹ Adding to the confusion, Staff changed its proposed rate structure for large load customers with each round of testimony it filed. Staff's original tariff rate was replaced in Surrebuttal because the Rebuttal rate was based upon calculations with multiple errors, both "summation and substantive"¹² and some of which were the result of ignoring certain revenue requirements.¹³ Reading Staff's testimony describing the tariff does not offer any clarity. Instead, as Staff witness Lange described when talking about her prefiled testimony, the Staff tariff is confusing: "I really apologize to anyone who has to read my testimony in these cases, because it's like a find-your-own-adventure book."¹⁴ If Staff can't cogently describe its own tariff across 129 pages of its Rebuttal Report (plus appendices) plus the many pages in Ms. Lange's surrebuttal, then apparently, Staff's tariff isn't so easy to understand. And if one were to turn to the workpapers behind the proposed rates in an attempt to gain clarification, it would find them, in Staff's own

¹¹ Exhibit 207, Surrebuttal Testimony of Sarah L.K. Lange, Schedule 1, p. 3 (rate table).

¹² Tr. (Vol. 3) p. 80, ll. 23-25.

¹³ Tr. (Vol. 3) p. 81, ll. 14-16.

¹⁴ Tr. (Vol. 3) p. 119, ll. 8-10.

words, "sloppy"¹⁵ and "not particularly helpful to the Commission."¹⁶ Those workpapers were not particularly helpful to parties in this case either.

None of this – testimony or workpapers - would allow a party to fully understand how Staff's proposed tariff was designed to work. And that is the entire point of testimony and workpapers in Commission proceedings. And if the parties in this case have trouble understanding the specifics of Staff's proposal, what about potential customers who did not sit through this entire case? Ameren Missouri witness Robert Dixon, someone with years of experience in economic development, told the Commission that his "bigger concern" with the Staff proposal was that it is so complicated and complex that he worried about the ability for a utility to sit down with a potential customer and explain the tariff.¹⁷ Mr. Dixon explained "...what any customer is looking for is the ability to clearly understand what is in their bill, what they're paying for, and we heard it even this afternoon, how complicated and complex the staff proposal is."¹⁸ Evergy witness Bradley Lutz testified that Staff's proposed tariff is not clearly understandable, even for the large customers. "I cannot foresee how a large load customer or the Company on behalf of the large load customer could confidentially model the expected rate to inform their site selection efforts."¹⁹

Claim No. 4. The last of the four Staff/OPC statements listed above reflects Staff's astonishing claim that the Commission is the only regulatory check to determine what is in the best economic, environmental, public benefit or any other state or local interest.²⁰ This statement ignores that the legislature has already determined that attracting large load customers is the policy of the state and that three Governors have supported that policy determination by proposing,

¹⁵ Tr. (Vol. 3) p. 117, l. 15.

¹⁶ Tr. (Vol. 3) p. 87, ll. 18-22.

¹⁷ Tr. (Vol. 3) p. 127, ll. 10-22.

¹⁸ Tr. (Vol. 3) p. 127, ll. 11-15.

¹⁹ Exhibit 105, Surrebuttal Testimony of Bradley D. Lutz, p. 30, ll. 1-17.

²⁰ Initial Brief of Staff, p. 12.

signing, and pursuing the attraction of such customers. The legislature set that policy both when it enacted the Data Center Sales Tax Exemption Program to be administered by the Missouri Department of Economic Development and by adopting SB 4.²¹ These efforts are part of a concerted effort to attract large load customers to the state of Missouri.²² The Commission does not have to opine on whether these customers are the right customers to bring to Evergy's service territory and indeed that is not the Commission's role. Similarly, the Commission does not have to determine whether these customers will follow relevant environmental requirements. That task will be handled through the agencies that have the knowledge and responsibility for regulating those impacts. The Department of Natural Resources will enforce appropriate environmental laws and regulations and ultimately, siting decisions will be and are being handled by local governments via applicable health and planning and zoning requirements (which may allow some locales to decide not to allow data center development at a given site at all).²³ The Commission's responsibility is to apply Section 393.130.7, together with its ongoing ratemaking authority and oversight, in setting just and reasonable rates for all customers, including large load customers. It is neither responsible for nor does it have the authority to decide what firms or industries are best economically for the state or its local jurisdictions, or how federal and state environmental laws and regulations should apply to a given firm or industry.

II. ARGUMENT

A. Staff's tariff recommendation

Staff begins its brief by urging the Commission to accept its proposed tariff or, as an alternative, to adopt the Non-Unanimous Global Stipulation and Agreement ("Stipulation"), but

²¹ Exhibit 700, Surrebuttal Testimony of Robert B. Dixon, p. 9, l. 15 to p. 10, l. 1.

²² Exhibit 700, Surrebuttal Testimony of Robert B. Dixon, p. 9, ll. 10-12.

²³ Exhibit 302, Surrebuttal Testimony of Geoffe Marke, p. 7, ll. 11-15.

only with three modifications which would track revenues and expenses, impose Staff's Fuel Adjustment Clause ("FAC") changes, and not approve any of the riders in this case.²⁴

Staff's proposed "novel"²⁵ tariff should be summarily rejected by the Commission for the multitude of reasons set forth in over 17 pages of argument in the Company's Initial Brief.²⁶ To list a few of these reasons, consider:

- Staff's proposed tariff overcharges large load customers by creating a hodge podge of billing determinates and rates,²⁷
- The tariff consists of over 14 different charges, including a nonsensical "variable fixed" charge and other charges which remain "TBD" and haven't yet been calculated;²⁸
- The proposed Staff rate is not reflective of Evergy's costs;²⁹ and
- The Staff's tariff contains a punitive method of triggering exit fees.³⁰

In addition to the above-listed problems with the Staff's proposal is the fact that the Staff continues to claim that using the *wholesale cost of energy* as the cost basis for the energy component of a large load customer's rate would appropriately reflect what it costs Evergy to supply energy to large load customers.³¹ That contention is simply false, as outlined in detail in Ameren Missouri's Initial Brief at pages 24-25.

²⁴ Initial Brief of Staff, p. 5.

²⁵ Tr. (Vol 2 Amended) p. 264, ll. 9-12.

²⁶ Post-Hearing Brief of Union Electric Company d/b/a Ameren Missouri, pp. 10 - 27.

²⁷ Exhibit 704, Surrebuttal Testimony of Steven M. Wills, p. 7, ll. 12-23.

²⁸ Exhibit 207, Surrebuttal Testimony of Sarah L.K. Lange, Schedule 1, p. 3 (rate table).

²⁹ Exhibit 704, Surrebuttal Testimony of Steven M. Wills, p. 3, ll. 12-23; p. 28, ll. 6-12; p. 31, ll. 5-11.

³⁰ Exhibit 704, Surrebuttal Testimony of Steven M. Wills, p. 35, l.17 to p. 36, l. 16.

³¹ Initial Brief of Staff f, pp. 6-7.

It is obvious that Staff's proposed tariff is unclear, unworkable, and overcharges large load customers and thus fails to comply with the statutory requirements of Section 393.130.7. Staff's approach must be rejected by the Commission.

B. Staff's Fall-Back Position

After setting aside its own tariff proposal, Staff's Initial Brief puts forth an alternative position that the Commission could adopt the Stipulation position after making three modifications.³² Staff's slide to a secondary position is not surprising given the record evidence demonstrating the myriad problems with Staff's tariff proposal. However, the Commission should not be tempted to "split the baby" in this manner. There are multiple reasons why the Commission should not want to adopt the modifications proposed by Staff, many of which are addressed in the Company's Initial Brief.

Staff Proposed Modification 1 - Track revenues to a regulatory deferral account to be addressed in a future general rate case.³³ This issue is addressed in-depth in Ameren Missouri's Initial Brief and the Company will not repeat that information here.³⁴ Not once in Staff's Initial Brief does Staff even acknowledge that negative regulatory lag is a constant for utilities in Missouri nor does Staff acknowledge that this negative regulatory lag constitutes millions of dollars for utilities. On the other hand, in other cases, Staff *has* acknowledged this reality and *has* argued the regulatory lag is a good thing, *whether it is positive or negative*. Such as when long-time Staff auditor Keith Majors testified in another Commission proceeding:

Regulatory lag refers to the time between when a utility experiences a change in expense or revenue levels and when that change is recognized in rates that the Commission allows a utility to charge its customers. Regulatory lag can either increase or decrease a utility's actual earnings performance compared to its authorized rate of return in between rate cases. It can be beneficial to customers, as

³² Initial Brief of Staff, p. 5.

³³ Initial Brief of Staff, p. 5.

³⁴ Post-Hearing Brief of Union Electric Company d/b/a Ameren Missouri.

well as to utilities. When a utility's costs increase or its revenues decreases over a period of time, regulatory lag will tend to reduce the utility's profits, adverse to the utility, unless other circumstances either completely offset or mitigate the expense increases or revenue declines. When expenses are decreasing or revenues are increasing, regulatory lag will reward the utility with increased profits during the interval before the rates are changed by the Commission to address the decreased costs or increased revenues, which is a benefit to the utility. Regulatory lag provides the utility with either a penalty or a reward under traditional cost of service ratemaking where all costs are considered. This inherent penalty or reward system incentivizes a regulated utility to produce lower costs levels in between rate cases and to maximize efficiency.³⁵

And, in the same case, Mr. Majors' testimony continued:

Utility managers working with regulatory lag, much like managers of competitive businesses working with fixed prices of goods and services, seek to find ways to operate the business more efficiently to counteract expense or rate base increases or potential revenue decreases during the period of time of when prices are fixed, or regulatory lag. Conversely, utilities benefit from regulatory lag when expenses or rate base decrease or when revenues increase while rates remain unchanged. This is exactly why regulatory lag is a critical ingredient in cost of service rate regulation.³⁶

Even OPC has submitted comments in a Commission workshop articulating the same point:

Regulatory lag is not, in and of itself, inherently bad for the utility. The Commission recognizes that there are shared benefits, as well as risks, that run to both shareholders and ratepayers. Regulatory lag can serve to make the utility more efficient and more prudent, as well as provide the utility with retained benefits from synergies. Regulatory lag is a phenomenon which naturally occurs in ratemaking because the regulatory ratemaking process lags behind the actual costs and revenues incurred by the utility. See James C. Bonbright et al., "Principles of Public Utility Rates", 96 (2nd ed. 1988). When a utility is under-recovering revenues, regulatory lag can be seen as deleterious to the utility. *Noranda Alum., Inc., et al., v. Union Elec. Co. d/b/a Ameren Mo.*, 2014 Mo. P.S.C. Lexis 882, *29-30 (2014). When a utility is over-recovering revenues, regulatory lag can be seen as deleterious to the customer. *Id.* Traditional regulatory ratemaking is predicated on the idea that over a sufficient period of time the benefits and detriments of regulatory lag balance for both the utility and the consumer; sometimes a utility will over-recover, sometimes it will under-recover. See Alfred E. Kahn, *The "Economics of Regulation: Principles and Institutions"*, 48 (1989). In effect, regulatory lag creates the "quasi-

³⁵ Exhibit 704, Surrebuttal Testimony of Steven M. Wills, p. 40, l. 24 to p. 41, l. 20. Quoting File No. ER-2024-0319, Keith Majors Rebuttal Testimony, p. 3 l. 16 to p. 4 l. 7.

³⁶ *Id.*

competitive environment” that mimics how competitive firms operate and ensures that natural monopolies are not abusing their power. (Footnotes omitted.)³⁷

...traditional regulatory ratemaking is predicated on the idea that over a sufficient period of time the benefits and detriments of regulatory lag balance for both the utility and the consumer; sometimes a utility will over-recover, sometimes it will under-recover.³⁸

Staff's and OPC's testimonies in this case are inconsistent with positions they have taken in the past on the topic of regulatory lag, and their revised positions should not be adopted by the Commission in this case. At least not without substantial justification, which has not been provided. And no party disputes that, in a rate case, all revenues will be used to set rates and will provide all customers with the expected benefits of having these large load customers on the system. All this can and will be done by the Commission while acting in a manner consistent with standard Missouri regulatory practice.

Staff (and OPC) Proposed Modification 2 is to make certain changes to Evergy's FAC.³⁹ Ameren Missouri has already thoroughly debunked OPC's and Staff's contentions about claimed “subsidization” through the FAC and about a purported need to change it. See Ameren Missouri Initial Brief, pages 27-36. As can be seen from a review of those pages, Staff and OPC's-FAC related claims are either outright inaccurate or misleading, and it is through that lens that the Commission should evaluate what amounts to a regurgitation of those same inaccurate or misleading claims in their Initial Briefs. To summarize some of the key points made there:

- It is false that all higher net energy costs resulting from adding large load customers to the system will entirely flow through the FAC and be paid by other customers.⁴⁰

Indeed, while using the hypothetical large load customer they rely upon it is true

³⁷ File No. EW-2016-0313, Initial Comments of the Office of the Public Counsel, pp. 4-5.

³⁸ Id., p.5.

³⁹ Initial Brief of Staff, p. 51, Initial Brief of OPC pp. 55-58.

⁴⁰ Post-Hearing Brief of Union Electric Company d/b/a Ameren Missouri, pp. 27-36.

about \$13.5 million of those higher net energy costs will flow through the FAC in charges to non-large load customers, it is also true that the large load customers will pay about \$4.7 million of the higher costs *and* – and this is the part Staff and OPC completely ignore – the large load customer will *also pay* an additional approximately \$52.295 million of net energy costs through paying base rates on all 2.859 MWhs it will consume.⁴¹ About \$13.5 million out of an increase of approximately \$71.5 million is hardly “all.” But the more important point is that this same hypothetical large load customer that forms the basis for Staff’s and OPC’s contentions will also be providing additional base rate revenues because it will pay, e.g., 6.92 cents/kWh for EMM for all of the kWh it consumes, a base rate that will produce an *additional* approximately \$145.5 million to cover *non-net* energy costs in Evergy’s revenue requirement.⁴² Staff and OPC completely ignore the total picture, which in fact shows an overall *benefit* from the large load customer – payment of approximately \$4.7 million via the FAC and an additional total of approximately \$197 million via base rates.⁴³ This is benefit to other customers, not a detriment. And there are other outside-the-FAC impacts Staff and OPC completely ignore that also create a benefit from bringing on the large load customer, such as the customer’s responsibility for \$115 million of the remaining \$384 million to be paid under EMW’s securitization rider for costs incurred years before the large load customer was on the system.⁴⁴

⁴¹ *Id.*, pp. 30-32.

⁴² *Id.*, pp. 31-32.

⁴³ *Id.* See also *Id.*, pp. 33-34.

⁴⁴ *Id.*, pp. 35-36.

- Staff and OPC also ignore the fact that since retail rates are generally (and they are here) higher than market energy prices, selling kWhs that used to be sold off-system at the lower market price (\$0.02003/kWh) to a new large load customer at the higher retail prices (\$0.0692/kWh) is *beneficial* to the non-large load customers.⁴⁵ The *only* possible way then, that *overall* there would be “subsidy,” is in the theoretical case where the amount and cost of new generation accelerated because of the large load customer is so high that the overall rate revenues provided by the large load customer do not cover the cost, but there is no analysis from Staff or OPC that shows that would be the case. And the minimum bill, term, termination and exit fee provisions, and financial security provisions Evergy has proposed are designed to prevent that result.⁴⁶ The Commission’s ongoing rate, rate design, and allocation authority also exists to reasonably ensure the large loads do pay their representative share. The question is not is there an “FAC subsidy.” The question is, what is the overall rate impact which is a question Staff and OPC don’t answer, and indeed ignore.
- Finally, Staff and OPC attempt to paint a picture of “simplicity” around their proposed solutions, and they otherwise suggest that in effect creating two FACs will do nothing more than “make sure the costs are recovered correctly from both sets of customers.”⁴⁷ The problem is that Staff and OPC, as described above, either ignore or do not understand the complexities of the FAC, its interaction with base rates, and the workings of energy markets. Neither Staff nor OPC provide any

⁴⁵ *Id.*, pp. 32-34.

⁴⁶ *Id.*, pp. 33-34.

⁴⁷ *See, e.g.*, Initial Brief of OPC, p. 57.

detail about how to “make sure the costs are recovered correctly from both sets of customers.” They ignore or fail to recognize that under any rate structure, large load customers will pay (like all customers) rates reflecting the fixed costs of Evergy’s owned generation – both Staff’s tariff proposal via its Charge for Generation Capacity Cost of Service⁴⁸ and Evergy’s proposed rates built on allocating a portion of those generation costs to large load customers⁴⁹ – ensure that this is so. We also know that the FAC is recovering fuel and purchased power, net of off-system sales (i.e., net energy costs). Given that large load customers will pay rates reflecting the fixed costs of generation, it would not be possible to “correctly” recover what OPC refers to as “FAC costs” unless the large load customers are given credit for the fact that MWhs they consume are (at least in part, like all customers) generated by Evergy-owned generation, the cost of which is based in significant measure on the fuel that generation burns and not on the wholesale cost of energy, as Ameren Missouri discusses in its Initial Brief.⁵⁰ Yet under their proposal, we would act like (falsely) that the large load customer is not being served by Evergy-owned generation (yet the customer is paying for it) and that all of the MWhs it consumes come solely from the market. That is not true and if it were, then the Commission got it wrong when it decided that there was “purchased power” and “true purchased power,” as discussed in Ameren Missouri’s Initial Brief.⁵¹ The “simple” solutions to Staff and OPC’s FAC-related concerns 1) are solutions to problems that do not exist (i.e., Staff and OPC’s

⁴⁸ Exhibit 201, Staff Recommendation, pp. 44-47.

⁴⁹ Exhibit 101, Direct Testimony of Bradley D. Lutz, p. 17, ll. 5-6.

⁵⁰ Post-Hearing Brief of Union Electric Company d/b/a Ameren Missouri, pp. 24-25.

⁵¹ *Id.*

inaccurate claims about subsidization through the FAC) and therefore are unnecessary, and 2) are anything but simple (and Staff and OPC have failed to articulate the details that would be required to implement them).

Staff Proposed Modification 3 is a recommendation that the Commission not approve any of Evergy's proposed riders at this time.⁵² But this recommendation completely misses the fact that these riders are part of Evergy's overall approach to attract large load customers and are designed to add to the protections of other customers.⁵³ Ameren Missouri will allow Evergy to speak to the specifics supporting each proposed rider, but Staff's recommendation ignores the benefit of additional revenues and the extra protection they provide for non-large load customers. It is Ameren Missouri's position that the Commission should avail itself of these added revenues and the resulting increase in customer protections being offered in this case.

C. OPC's Specific Recommendations for Changes to Tariff

OPC proposes specific changes to various terms, including tariff applicability,⁵⁴ term of agreement,⁵⁵ termination fee,⁵⁶ collateral requirements,⁵⁷ and minimum demand.⁵⁸ OPC argues that all of these terms can be found in some other utility's large load tariff.⁵⁹ Of course, OPC cannot say that any single tariff contains all of these terms – with good reason, because there is no tariff with all of these terms. And, of course, the tariff must be judged in its entirety.

All of these issues are raised by OPC to bolster its allegations of the potential for stranded assets, but its allegations overlook two key realities. First, the Stipulation contains similar,

⁵² Initial Brief of Staff, p. 5.

⁵³ Exhibit 101, Direct Testimony of Bradley D. Lutz, p.29, ll. 15-17.

⁵⁴ Initial Brief of OPC, p. 20.

⁵⁵ Initial Brief of OPC, p. 22.

⁵⁶ Initial Brief of OPC, p. 24.

⁵⁷ Initial Brief of OPC, p. 27.

⁵⁸ Initial Brief of OPC, p. 28.

⁵⁹ This claim is repeated multiple times, Initial Brief of OPC, pp. 19, 20, 22, 28 as examples.

although not as onerous on large load customers, requirements. Second, OPC completely ignores the reality that the generation assets being added are being accelerated, they are not unplanned assets which are added *only* because of this large load needs. The generation is being added *earlier* because of this new load. Which means the scenario for stranded costs is a much smaller risk than what OPC alleges.⁶⁰

D. The Stipulation is the Only Legitimate Option for the Commission to Evaluate.

For all of the reasons listed above and as discussed in detail in the Company's Initial Brief, the Staff's tariff is so complex and out-of-the norm that it can't be the basis for either seeking to attract the economic development opportunities state policy and priorities clearly desire that Missouri utilities pursue. Additionally, the Commission cannot fulfill its statutory duties under those policies and as reflected in Section 393.130.7 by adopting the Staff's proposal. Thus, the Commission is left with the Stipulation approach and needs to consider whether it appropriately fulfills state policy while satisfying the requirements of state law.

The policy of the state of Missouri is to attract large load customers to Missouri. As Ameren Missouri witness Robert Dixon testified, the Missouri Department of Economic Development efforts, statements made by the Governor of the state of Missouri, as well as the General Assembly's actions in passing into law Section 393.130.7 reflect that capturing these economic development opportunities are essential to the state.⁶¹ Staff's brief never once mentions or ever makes an attempt to address this policy of the state.⁶² This fact is completely ignored by Staff. Staff's tariff proposal reflects this, which itself is a fundamental and fatal flaw.

⁶⁰ Exhibit 704, Surrebuttal Testimony of Steven M. Wills, p. 8, l. 8 through p. 9, l. 18.

⁶¹ Exhibit 700, Surrebuttal Testimony of Robert B. Dixon, p. 9, l. 10 to p. 10, l. 9; Section 144.810 RSMo, Exhibit 108, Governor's Press Release on SB4 Passage.

⁶² Staff Initial Brief never mentions "policy of the state" and only mentions "policy" three times, all in references to regulatory policy.

In contrast, the Stipulation supports state policy *and* fulfills the requirements of Section 393.130.7 because it includes terms that are consistent with terms found in other states, making it reasonably in line with, and thus competitive with, other utility offerings found across the industry in other jurisdictions. Importantly, this collection of terms from other states results in a tariff that meets the needs of potential large load customers and provides reasonable assurances that the tariff can attract large load customers. How do we know? Because both the Kansas settlement⁶³ (which contains a resolution similar to that found in the Missouri Evergy Stipulation) and the Stipulation⁶⁴ in this case have been signed off on and supported by actual large load customers, both data centers and manufacturers. And because the signatories to both agreements include multiple potential large load and manufacturing customers, the Commission can be confident that the terms of the Stipulation are considered attractive by those potential customers and that the terms have the ability to attract new Large Load customers to the state of Missouri.

All of this should reassure the Commission that the Stipulation provides the best (and only) option to fulfill state policy and to meet the requirements of Section 393.130.7. This is a "historic opportunity" to "attract massive investment to the state and avoid losing those investment opportunities and the benefits they will bring to other states with whom Missouri is competing."⁶⁵

Respectfully submitted,

/s/ James B. Lowery

⁶³ See Schedule KDG-1 to Exhibit 104 (Surrebuttal Testimony of Kevin D. Gunn), which is signed by Google, Inc. and the Data Center Coalition.

⁶⁴ Non-Unanimous Global Stipulation and Agreement, September 25, 2025. Note – on pages 25 and 26, the Stipulation signatures of Google, LLC, Velvet Tech Services, and the Data Center Coalition.

⁶⁵ Exhibit 704, Surrebuttal Testimony of Steven Wills, p. 2, ll. 9-12.

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CERTIFICATE OF SERVICE

The undersigned certifies that true and correct copies of the foregoing have been e-mailed to the attorneys of record for all parties to this case as specified on the certified service list for this case in EFIS, on this 5th day of November, 2025.

/s/ James B. Lowery

James B. Lowery