

**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	)	<u>File No. EO-2025-0154</u>
Evergy Missouri West for Approval of New	)	
and Modified Tariffs for Service to Large	)	
Load Customers	)	

REPLY BRIEF OF STAFF

The purpose of a reply brief is to respond to the arguments made by other parties. Rather than replying to every argument other parties make in their initial briefs, and having presented and argued its positions in its *Initial Brief*, Staff is limiting its replies to where it views further explanation will most aid the Commission in its deliberations.

Staff's *Reply Brief* is organized to address the following sections: (1) Tracking of Revenues and Expenses to a Regulatory Deferral Account, (2) Fuel Adjustment Clause, (3) Evergy's Proposed Riders, (4) Diversity of Prospective Large Load Customers, (5) Confidential Disclosure of Prospective LLPS Customer Information, (6) Evergy's Unsubstantiated Statement Regarding Staff's Proposed Tariff, and (7) the Workshop for Further Development. Therefore, Staff will not address each and every sub-issue or argument made by the parties to this matter. Staff stands on the arguments as presented in its *Initial Brief*, and silence on any argument or position should not be taken as acceptance.

- I. The Commission should order the inclusion of conditions that require the tracking of revenues and expenses to a regulatory deferral account to be addressed in future general rate cases

Evergy claims that “[n]o treatment is needed to specifically address revenues from [Large Load Power Service] LLPS customers between rate cases.”¹ While Evergy’s stance is misguided in this instance with respect to tracking, the Office of the Public Counsel (“OPC”) fortunately identifies that this is a way in which subsidization can occur and understands that this is an issue of timing:²

If a utility builds generation to serve LLPS customers but places that generation into service and seeks recovery before the LLPS customer joins the system, then non-LLPS customers will be paying for that generation. In the same scenario, because the new LLPS customer joins Evergy’s system after rates are set in a rate case, none of the revenue from that customer will be reflected in rates and so none of that revenue will pay down any of the plant costs associated with that generation built to service them. Thus, non-LLPS customers are forced to subsidize LLPS customers by paying for generation needed because of the load requirements of the LLPS customers.³

The solution to this problem is to track the revenues from LLPS customers that join Evergy’s system in between rate cases. This will allow that revenue to offset what Evergy’s non-LLPS customers have already paid for the plant, thus reducing the degree to which they are subsidizing the LLPS customers.⁴

The Commission should be further persuaded by OPC’s understanding and review of the tracker issue as applied construction work in progress (“CWIP”), where CWIP enables Evergy to “recover costs for generation before it is even brought online”⁵ thereby further guaranteeing “that non-LLPS customers end up paying for generation to serve LLPS customers”.⁶ OPC made the connection – noting it as ironic – that “the very basis for awarding CWIP in the first place is to allow the utility to mitigate the delay in recovery of costs, what is also known as ‘negative regulatory lag’” and that “[t]his creates a

¹ *Evergy Initial Post-Hearing Brief*, page 25.

² *OPC Initial Brief*, page 52.

³ *Id.*

⁴ *OPC Initial Brief*, page 53.

⁵ *Id.* at page 53.

⁶ *Id.* at page 54.

hypocritical juxtaposition against the Stipulation's insistence that the delay in recognizing revenues ('positive regulatory lag') should not be accounted for."⁷ OPC astutely states that if "the Commission wishes to allow utilities to use CWIP to accelerate rate recovery of their rate base, then it should also order tracking of added revenues to offset that accelerated rate base recovery, just as Staff witness Sarah Lange explained on the stand".⁸

II. The Commission should adopt Staff's approach with respect to the Fuel Adjustment Clause

Evergy's claims that "the FAC [Fuel Adjustment Clause] tariff sheet should not be changed"⁹ and that "FAC-related costs should not be tracked"¹⁰ must be carefully considered by the Commission "[b]ecause adding a new LLPS customer onto Evergy's system will require the utility to sell more energy (to the LLPS customer specifically), adding the LLPS customer 'will immediately increase the load costs therefore increasing FAC costs'"¹¹ and because "non-LLPS customers will end up paying increased costs through the FAC '[a]fter the first accumulation period that includes a new LLPS customer.'"¹²

Staff's approach to determine in which circumstances LLPS customers should be included in the Fuel Adjustment Clause ("FAC") is thoughtful and should be adopted by the Commission. Under Staff's proposal regarding LLPS customers' inclusion in the FAC,

⁷ *Id.*

⁸ *Id.* at page 54-55 (citing Tr. Vol III page 60, lines 6-12, "So we're mitigating the positive regulatory lag, and we're using that mitigated positive regulatory lag to offset the additional rate base that is caused by the additional plant, as well as any CWIP treatment or other treatment that may have entered before the rate was set.").

⁹ *Evergy Initial Post-Hearing Brief*, page 21.

¹⁰ *Id.*

¹¹ *OPC Initial Brief*, page 55.

¹² *Id.* at pages 55-56.

if an LLPS customer opts into an Optional Agreement for Payment of Actual Regional Transmission Organization (“RTO”) Charges, then this LLPS customer’s wholesale energy market transactions for the energy, transmission, and ancillary services would be excluded from the FAC.¹³

It seems that in making its argument against Staff’s position on this issue, Ameren Missouri confused Staff’s actual position on this issue.¹⁴ Staff respectfully recommends that the Commission turn to Staff’s exhibits and its Initial Brief in order to ascertain Staff’s position on this issue. However, to clarify its position in response to Ameren Missouri’s brief, if LLPS load is either excluded from the FAC or the reverse N factor is implemented, an amount equal to the FAC base multiplied by the kWh of energy consumed by the LLPS load should be excluded from the revenue deferral.¹⁵

III. The Commission should not approve the proposed riders at this time

Staff’s rationale and positions regarding the individual riders proposed by Evergy are contained in the Staff Recommendation / Rebuttal Report¹⁶ and in Staff’s Surrebuttal testimonies.¹⁷ Staff adds to this *Reply Brief* that it concurs with OPC’s statements that many of the issues or reasons for delay with the riders “are not insurmountable”, the problem is instead, “that the Company is trying to do too much too quickly,” and “[r]ushing to accept the riders just because of their inclusion in the Stipulation will instead result in a collection of broken or undefined systems or others that will soon be subject to potential

¹³ *Staff Initial Brief*, page 32.

¹⁴ *Ameren Missouri Initial Brief*, pages 36-41.

¹⁵ Ex. 207, Surrebuttal Testimony of Sarah Lange, page 24, lines 8-12.

¹⁶ See Ex. 201, Staff Recommendation / Rebuttal Report, pages 78–110.

¹⁷ See Ex. 202, Surrebuttal Testimony of Brad J. Fortson, Ex. 203, Surrebuttal Testimony of Amanda Arandia, Ex. 204, Surrebuttal Testimony of Brodrick Niemeier, and Ex. 207, Surrebuttal Testimony of Sarah Lange.

radical change.”¹⁸ Instead, the Commission should deny the riders and “order Evergy to actually engage in a collaborative discussion with the Staff and the OPC to resolve these lingering issues and produce riders that will work.”¹⁹

IV. Staff’s consideration that potential large load customers are diverse

Evergy asserts that “Staff creates a barrier to economic development in Missouri because the proposal that Staff has put together is far outside the norm in the industry right now. And those competitive factors that [large load customers] are looking at.”²⁰ This is not the case. Staff recognized that large load customers regulated under Section 393.130.7, RSMo are diverse.²¹ Staff took this into consideration and tailored demand charges that would not act as a barrier to entry for large load customers that do not happen to be data centers:

A lot of these other states are looking at things targeting either data centers or advanced manufacturing or things more specific. I know the oddball example that I tried to keep in mind through this process is thinking about biofuels, refineries, agricultural processing, metallurgy; you know, things where they might be at 500 megawatts a lot of months. They might dip down to 400 megawatts in some months, you know, when that's temperature reasons that they can't do their processes. We didn't want a minimum demand charge to be a barrier to entry, so we talked about, you know, okay, well, how can we right-size demand charges for these customers, recognizing that they're not all going to be data centers or at least to not foreclose it that they only could be data centers that work under the rate structure. And those are just differences that we, as a staff, work together to take into account for Missouri's unique requirements versus the things we're observing in other states.²²

¹⁸ *OPC Initial Brief*, page 44.

¹⁹ *OPC Initial Brief*, page 51.

²⁰ *Evergy Initial Post-Hearing Brief*, page 8 (internal quotations omitted).

²¹ See also, Ex. 210, Memorandum in Response to Non-Unanimous Stipulation and Agreement, page 1, lines 17-25.

²² Transcript - Volume III (Evidentiary Hearing – Jefferson City, MO – October 1, 2025), page 106, lines 19-25 and page 107, lines 1-15.

The Data Center Coalition noted in its Initial Brief that the Non-Unanimous Stipulation and Agreement “is broadly aligned with the Unanimous Settlement Agreement reached between Evergy and the parties in its parallel KCC [Kansas Corporation Commission] proceeding” and that “[t]he Unanimous Settlement Agreement in that [Kansas] proceeding was supported by an even broader group of seventeen parties, including a coalition of industrial customers, the consumer advocate, and Staff of the KCC.”²³ This is in stark contrast with the signatories to the Non-Unanimous Stipulation in the instant case, or the participants of the instant case, which do not include certain potential large load customers, including the automotive and aerospace industries.²⁴ As such, “[t]he testimony filed in support of the Stipulation claims incorrectly that the Stipulation ‘represent a broad range of diverse stakeholder interests’” and “[i]n reality, the Stipulation only really represents two main interests: the utilities and the LLPS customers.”²⁵

V. Evergy should be required to confidentially disclose information about prospective LLPS customers

In its brief, Evergy effectively argues that it is unnecessary for Evergy to disclose prospective customer information because it has proposed filing annual compliance reports as part of the proposed Non-Unanimous Stipulation.²⁶ As part of the annual filings agreed to in the proposed Non-Unanimous Stipulation, Evergy will provide anonymous information on “new or expanded LLPS customers along with the total estimated load

²³ *Data Center Coalition Initial Brief*, page 11.

²⁴ Transcript - Volume II (Evidentiary Hearing – Jefferson City, MO – September 30, 2025), page 138, lines 10-22.

²⁵ *OPC Initial Brief*, page 76.

²⁶ *Evergy Initial Post-Hearing Brief*, pages 18-19.

under the Schedule LLPS.”²⁷ Evergy seems to be concerned that sensitive information regarding the “identity of prospective customers, their anticipated load ramps, facility size, or specific site locations” could be shared with the public.²⁸ This concern is easily assuaged by Section 386.480, RSMo and Commission Rule 20 CSR 4240-2.135. Staff has stated multiple times that this information “should be filed confidentially to make sure that the information is not released to the public.”²⁹ The Commission regulates multiple electric utilities in an array of different areas within the state that are potentially attractive to large load customers. It is of utmost importance that the Commission is provided with the information proposed by Staff – in the manner proposed by Staff – in order for this Commission to effectively regulate.³⁰

VI. Evergy’s Unsubstantiated Statement Regarding Staff’s Proposed Tariff

In making its argument that approval of Staff’s proposed tariff would violate Missouri statute, Evergy points to the newly-effective Section 393.130.7, RSMo.³¹ To Evergy’s point, the language of the statute does state “each electrical corporation...shall develop and submit to the commission schedules...”³² However, the statute does not prohibit Staff from proposing a schedule in response the schedules proposed by the electric corporation. Nor does the statute prohibit the Commission from considering the schedule, or portions of the schedule that were proposed by Staff in response to Evergy’s proposed schedules. Notably, Evergy provides no case law that would shed any light on

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Staff Initial Brief*, page 32.

³⁰ *Id.* at page 30-32.

³¹ *Evergy Initial Post-Hearing Brief*, page 5-6, and MO. REV. STAT. § 393.130.7 (2025).

³² *Id.*

how courts have interpreted this new statutory language or how courts have determined a resolution to this issue.

The Workshop for Further Development

In its initial brief, Everyg argues that Staff's assertions in favor of a workshop should be rejected "because opening statements are not evidence" and because Staff's *arguments* in favor of workshops in Staff's opening statements and as vocalized by Staff witnesses on the stand are in "violation of due process and the Commission's Rule requiring pre-filed testimony."³³ Staff's statements regarding a workshop in the hearing were *arguments*. It is common knowledge that at this Commission, it is proper for parties to make arguments in furtherance of their case in opening statements. Moreover, Everyg's due process rights were not violated by Staff's argument in favor of a workshop. Everyg had the opportunity, in that very hearing, to provide a counter argument. If, as is suggested by Everyg in its initial brief, parties are not able to make *arguments* in evidentiary hearings, then the very purpose of a hearing is called into question.

Further, the concept of a workshop process or working docket has merit by at least helping to bring parties together to make sense of the issue,³⁴ as supported by the live testimony of involved stakeholders - "I am kicking myself that I didn't beg and plead for a workshop last January or February. Trying to work through all of the competing goals,

³³ *Everyg Initial Post-Hearing Brief*, page 6. In support of its due process argument, Everyg cites to Commission Rule, 20 CSR 4240-2.130(7) and (10). Note: in making its contention on page six of its initial brief that rejection of Staff's argument in favor of a workshop is proper, Everyg states: "Staff and OPC improperly *asserted*..." (Emphasis Added). Heading number two under the word "assert" in the online version of the Merriam-Webster Thesaurus states, "as in *to argue*". (Emphasis in Original). The official definition goes on: "to state (something) as a reason in support of or against something under consideration." Lastly, according to the Merriam-Webster Thesaurus, common synonyms of the word "assert" are: "argue", "plead", and "contend". See <https://www.merriam-webster.com/thesaurus/assert>.

³⁴ Transcript - Volume III (Evidentiary Hearing – Jefferson City, MO – October 1, 2025), page 269, lines 1–3.

the balance of attracting different types of customers and the sorts of considerations that I think different customers are after, really made this case so hard for anybody to read the testimony.”³⁵ The Commission should not be rushed to make its decisions, especially on such an important topic, and the Commission should order a Workshop or Working Docket.

Conclusion

In summary, Staff recommends that the Commission order a tariff filing consistent with the tariff set out in Schedule 1 to Sarah Lange’s surrebuttal testimony. In the alternative, if the Commission orders a tariff to be filed on the basic terms of the Non-Unanimous Stipulation, the Commission should include conditions that: (1) require the tracking of revenues and expenses to a regulatory deferral account to be addressed in future general rate cases, (2) adopt Staff’s approach with respect to the FAC, (3) do not approve the proposed riders at this time, as they can be developed and approved in separate dockets if needed. Staff further recommends that the Commission order Evergy to disclose prospective LLPS customer information in a confidential manner and also order a workshop or working docket.

WHEREFORE, Staff respectfully submits this *Reply Brief* for the Commission’s information and consideration.

³⁵ Transcript - Volume III (Evidentiary Hearing – Jefferson City, MO – October 1, 2025), page 119, lines 1–8.

Respectfully submitted,

/s/ Alexandra Klaus

Alexandra Klaus

Senior Counsel

Missouri Bar. No. 67196

Andrea Hansen

Associate Counsel

Missouri Bar No. 73737

Travis J. Pringle

Chief Deputy Counsel

Missouri Bar No. 71128

200 Madison Street

P.O. Box 360

Jefferson City, Missouri 65102

Phone: (573) 751-5700

Fax: (573) 526-1500

E-mail: lexi.klaus@psc.mo.gov

**Attorneys for the Staff of the
Missouri Public Service Commission**

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been transmitted by electronic mail to all parties and/or counsel of record this 5th day of November, 2025.

/s/ Alexandra Klaus