

**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 Modified)
Tariffs for Service to Large Load)
Customers)

Case No. EO-2025-0154

REPLY BRIEF OF THE MISSOURI OFFICE OF THE PUBLIC COUNSEL

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November 5, 2025

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General Statement Regarding the Brief

The OPC and the Commission's Staff are the only two parties to file briefs that directly identified and addressed every issue in the filed list of issues. Several of the other parties decided to identify and responded to *some* of the issues, but others choose instead to spend most of their brief making generalized arguments outside of any of the defined issues. The OPC does not seek to argue that abandoning the issue list should necessarily disqualify the respective parties' arguments, but it does present something of a hurdle to drafting a reply. Given that the Commission has now been presented with a hodgepodge of different arguments, not all of which are directly relevant to the issues the Commission is being asked to decide, the OPC must choose to be economic in how it responds lest this brief expand to a truly unwieldy size.

To address the foregoing, the OPC has broken its reply down into three parts. First, the OPC will address the central concern with the case (the risk of subsidizing LLPS customers) and reply to the Stipulation signatories' discussion (or lack thereof) on this point. Second, the OPC will respond to other parties' positions on a selection of the more specific issues included in the list of issues. Finally, the OPC will address the broader policy arguments being advanced regarding economic development and how it relates to the issues in this case.

The OPC wishes to stress that the choice for this brief not to respond to any specific statement made in the brief of another party does not constitute an agreement with that statement or otherwise signal its accuracy. Much of what is

written in the briefs filed by the signatories to the Stipulation can be dismissed as imprecise, incomplete, hyperbolic, disingenuous, misleading, or just outright false. Yet, as already stated, to dissect and demonstrate the many faults in every one of these briefs would be an exercise requiring greater effort than can be justified under the circumstances. The OPC asks the Commission to keep this point in mind while considering the remainder of this reply brief.

The Stipulation Will Guarantee Subsidization

Many of the signatories to the Stipulation focus their brief, in part, on arguing that said Stipulation contains certain consumer protections (such as contract term lengths, collateral requirements, terminations fees, *etc.*) and that these will prevent cross-subsidization from occurring. [*see, e.g.,* Renew’s Brief, pg. 5; Data Center Coalition’s Brief, pgs. 5 – 6; Ameren’s Brief, pg. 3]. While there is a certain degree of truth to these arguments (in as far as that many of these items are indeed means by which non-LLPS customers receive some measure of protection against subsidization), the signatories have grossly overstated the total level of protection being afforded by the Stipulation. For example, the OPC’s initial brief already discussed how some of these mechanisms (such as the contract term length and minimum bill) already fall below what is required in other states like Kentucky and Ohio. [*compare Non-Unanimous Global Stipulation*, pgs. 4, 9 (showing a “a minimum term that includes up to five (5) years of an optional transitional load ramp period plus twelve (12) years” and a “minimum monthly demand set at 80 percent of the Contract Capacity”) and Ex. 301, *Rebuttal Testimony of Geoff Marke*, pg. 18 lns. 8 – 10, 17 – 20 (showing a 20-year minimum term is consistent with Kentucky Power’s large load tariff and a minimum monthly demand charge set at 85% of contract capacity and 90% for contract capacity for the Ohio Public Utilities Commission settlement and Kentucky Public Service Commission orders, respectively)]. But what is far more damning is the fact that the Stipulation and its signatories’ briefs have

largely ignored two of the main means by which Evergy’s legacy customers (*i.e.* non-LLPS customers) will subsidize the new LLPS customers. This necessitates redress.

Before jumping straight into that issue, though, it appears necessary to first remind the Commission of a point that the signatories to the Stipulation would be eager for this the Commission to overlook. That would be that fact that this entire filing does not constitute “business-as-normal” for utilities and that the LLPS customers contemplated in this case are not “run-of-the-mill” industrial customers. To remind the Commission, Evergy Missouri Metro and Evergy Missouri West currently serve exactly one customer each with demand in excess of 25 MW.¹ [Ex. 201, *Staff Report and Recommendation*, pg. 32 lns. 2 - 10]. The Stipulation’s proposed minimum demand threshold, meanwhile, is 75 MW. [*Non-Unanimous Global Stipulation*, pg. 2]. This means that the LLPS customers being contemplated in this case (with minimum demand thresholds that could range from 500 MW to 1,000 MW) will totally overshadow even the largest industrial customers currently on each utility’s system. This undeniable fact cannot be overlooked.

¹ Staff’s *Report and Recommendation* identifies that there is one customer on each Evergy system larger than 25 kW. The OPC believes this to be an inadvertent error, and that the Staff intended to mean 25 MW. To the extent that the OPC is incorrect, that would only strengthen the OPC’s point that the proposed LLPS customers are significantly larger than even the largest current legacy customers.

The one customer for Evergy Missouri Metro would be ** _____

** [Ex. 201, *Staff Report and Recommendation*, pg. 32 lns. 2 - 5].

The One Customer for Evergy Missouri West would be ** _____

** [*Id.* at lns. 5 – 10].

On that note, several of the Signatories have tried to claim that treating LLPS customers different from all other Evergy customers is “unduly discriminatory” [see Evergy’s Brief, pgs. 10, 14, 15, 16, 23, and 25; Google’s Brief, pg. 21; Data Center Coalition’s Brief, pg. 4; Velvet Tech’s Brief, pg. 4]. None of these parties have addressed the actual legal standard the Commission is to apply when considering discriminatory rates though, and for good reason. Our State’s Supreme Court has indeed recognized that utilities are required to charge the same “for doing a like and contemporaneous service (e.g., supplying water) under the same or substantially similar circumstances or conditions.” [*Mo. Pub. Serv. Comm’n. v. Office of Pub. Counsel (In re Mo.-American Water Company’s Request)*, 526 S.W.3d 253, 262 (Mo. App. W.D. 2017)(citing *State ex rel. Laundry, Inc. v. Public Service Commission*, 327 Mo. 93, 34 S.W.2d 37 (Mo. 1931))]. However, the critical part of that statement is the phrase “under the same or substantially similar circumstances or conditions.” [*Id.*]. That simply does not exist in this case. The LLPS customers’ massive sizes means they do not present the same or even substantially similar circumstances to any of Evergy other electric retail customer. They are not even “the same or substantially similar” to the very largest of Evergy’s currently existing customers. [Ex. 201, *Staff Report and Recommendation*, pg. 32 lns. 2 - 10]. Therein lies the problem to this case.

Everything in this case exists on a scale that this Commission has never seen before, and, as such, everything in the case is being magnified far beyond the normal standards. This can certainly be beneficial for at least some parties. Evergy, for example, can expect an incredible windfall of profits driven by the addition of LLPS

customers. [see Ex. 201, *Staff Report and Recommendation*, pg. 4 lns. 13 – 19 (showing that the addition of “the hypothetical 384 MW customer referenced by Evergy in its workpapers” will result in Evergy retaining annual “revenues in excess of new cost of service in the range of \$99.75 million to \$144.66 million”)]. But this also means the risks associated with these customers are being magnified to the same degree, if not more. For the signatories to the Stipulation to just point to a handful of basic protections, many of which fall below what has been already approved in other states even, and then just declare them “good enough” for Missouri is thus completely unreasonable. [compare *Non-Unanimous Global Stipulation*, pgs. 4, 9 and Ex. 301, *Rebuttal Testimony of Geoff Marke*, pg. 18 lns. 8 – 10, 17 – 20].

The Commission should very carefully consider the implications posed by the size of the LLPS customers. It needs to understand and acknowledge that the impact of any subsidization that will occur because of the LLPS customers is certain to be felt by legacy customers due to that size. It needs to recognize that even a single LLPS customer entering or exiting one of Evergy’s service territories (whether voluntarily or otherwise) could easily produce rate impacts on legacy customers in the double-digit range. And finally, this Commission needs to be aware of just how much generation will need to be brought online to serve these new customers. With that, we address the issue of subsidization head-on by reviewing a point that appears to have gone understated up till now.

Evergy Must Build or Buy to Meet LLPS Load

Evergy single one of the briefs submitted by the Stipulation's signatories utterly disregards one of the basic truths of this case, which is that Evergy cannot meet the load requirements necessary to serve prospective LLPS customers with its current generation portfolio. Ameren even presents an argument that is completely based on ignoring this fact, as will be discussed below. But simply choosing to hide from the truth does not cause it to cease existing. It thus becomes necessary to re-adjust and correct the narrative on this matter.

Neither Evergy West nor Evergy Metro can currently meet the expected load growth for the respective utility according to their most recent filed Integrated Resource Plan ("IRP"). [Ex. 201, *Staff Report and Recommendation*, pg. 10 ln. 17 – pg. 13 ln. 8]. This can be seen easily in the graphical representations produced in the Commission's Staff's recommendation:

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[*Id.*]. These graphs show that Evergy Metro and Evergy Missouri West are each predicting to have less capacity than demand for both the summer and winter periods in the near future and that the situation will get progressively worse from there. [*Id.*]. And that is before additional load from LLPS customers is considered.

As already stated, the size of the prospective LLPS customers is enormous. “A single 384 MW customer operating at an 85% load factor, as studied by EMM, would comprise over 25% of [Evergy Missouri Metro]’s annual energy sales” and ** _____

_____ ** Combine these figures with the preceding graphs and it becomes self-evident that Evergy (either Metro or West) would be completely incapable of serving a new LLPS customers with its existing generation portfolio. [*Id.* at pg. 2 ln. 4 – pg. 3 ln. 5]. One must therefore necessarily conclude that Evergy “will have to build or otherwise acquire capacity to serve LLPS customers.” [*Id.* at pg. 38 lns. 3 – 4; see also, *Id.* at pg. 63 lns. 1 – 3 (“It is Staff’s understanding that, presently, [Evergy Missouri Metro] and [Evergy Missouri West] lack sufficient capacity to serve new LLPS customers within the parameters of SPP resource adequacy requirements. This means additional capacity must be obtained.”)(emphasis added)].

Non-LLPS Customers Will Pay for What Evergy Must Build or Buy to Meet LLPS Load

Acquiring additional capacity costs money. One must either build new generation or else purchase the capacity from another source. If, due to anticipated additions of LLPS load, Evergy incurs costs to acquire additional capacity and then

seeks cost recovery before the LLPS load materializes, then all of Evergy's existing legacy customers will be allocated a portion of those costs. [Tr. Vol. III pg. 57 lns. 6 – 21]. This results in the legacy customers paying for the acquisition of capacity that was not necessary except to serve the LLPS customers. [*Id.*]. In other words, it results in legacy customers subsidizing LLPS customers.

If the foregoing appears too dependent on the timing of events, please keep in mind that there is every reason to believe that new capacity will almost certainly be added to Evergy's system (and recovered from ratepayers) before the new LLPS customer who drove the need for that capacity joins Evergy's system. As Staff explained:

If the capacity is built, it is unlikely that there would be a timing scenario where a rate case would capture the increased revenues from a new LLPS customer prior to capturing the increased revenue requirement associated with the new generation asset. This is, first, because that timing would be unlikely to be chosen by Evergy, that can control the pace of construction activities and have discretion in the timing of customer additions; and second, for the practical reason that if [Evergy Missouri Metro] or [Evergy Missouri West] need to build additional capacity to serve the full load of an LLPS customer, then [Evergy Missouri Metro] and [Evergy Missouri West] will not be serving that LLPS customer at full load until that capacity addition is up and running unless some other arrangement is in place or unless SPP penalties are incurred.

[Ex. 201, *Staff Report and Recommendation*, pg. 63 lns. 4 – 12]. Moreover, Evergy has the power to pick and choose when it brings its rate cases and the prerogative to bring rate cases in a manner that will maximize its profits. [*Id.* at pg. 62 lns. 3 – 4 (“It is

the prerogative of Evergy management to time rate cases to maximize shareholder benefit.”)]. Further, Evergy now has access to construction work in progress (“CWIP”) that will allow Evergy to recover costs for generation before it is fully built or deployed. [Tr. Vol. III pg. 58 ln. 20 – pg. 59 ln. 2]. This means the Company can increase the speed at which it recovers its capital expenditures even faster and effectively ensures that generation is placed into rates before the LLPS customer joins Evergy’s system. If CWIP is applied in that fashion, then, again, Evergy’s legacy customers will be paying for generation only needed to serve LLPS customers. [*Id.*, see also Ex. 302, *Surrebuttal Testimony of Geoff Marke*, pg. 26 lns. 12 – 16 (“CWIP effectively converts consumers into involuntary investors, placing the burden of up-front financing costs onto them.”)]. Yet the problem does not end there.

Evergy Will Double-Recover Its Costs to Build or Buy to Meet LLPS Load

Legacy customers will be subsidizing LLPS customers if the LLPS customers require Evergy to build or procure additional generating capacity and that capacity is placed into rates before the LLPS customer joins Evergy’s system. [Tr. Vol. III pg. 57 lns. 6 – 21]. One would expect that subsidization to end once the LLPS customer is then brought onto Evergy’s system, but that is not what will happen. This is because “existing [base] rates in Missouri would not be adjusted to reflect additional revenues that have come in after the rate case[]” [Tr. Vol. III pg. 58 lns. 3 – 7]. So instead of being used to shift the cost for the new generation from the legacy customer (who did not require that generation) to the LLPS customer (who does require that generation) the additional revenues will flow right into Evergy’s pocket, and they will

recover the costs for the same generation twice. [*Id.* at lns. 10 – 14 (“So, to say that one is paying for it and the other is not paying for it, you can't really do that. · You can just say that they're paying for the same thing twice.”)(emphasis added)].

It is absolutely essential that this point is made perfectly clear. If new generation is built to serve LLPS customers who join Evergy's system after a rate case, but that new generation is placed into rates before the rate case, then Evergy collects the cost for that generation twice. [*Id.*]. While it was stated in the initial brief, the OPC will once again turn the Commission's attention to Staff's superb analogy that shows this problem in action:

It is important to note that [Evergy Missouri Metro] and [Evergy Missouri West] are each recovering the full cost of owning and operating their generation fleets from existing customers, as of the conclusion of each of their last rate cases. If a new LLPS customer begins paying for the generation fleet – as they should – then [Evergy Missouri Metro] and [Evergy Missouri West] will over-recover that amount. As a very simple example, consider four friends who decide to buy a \$20.00 pizza. Each of the four hands \$5 to the cashier. Just then a fifth friend walks in and joins them. Should this newcomer also give the cashier \$5? Or should the newcomer give \$1 to each of those who already paid? Evergy is in the position of the restaurant manager, who would be pleased to accept a \$5.00 gratuity on that \$20.00 pizza.

[Ex. 201, *Staff Report and Recommendation*, pg. 63 ln. 21 – pg. 64 ln. 1]. The currently presented stipulation not only allows this kind of double recovery, but it practically encourages it.

The Signatories are Ignoring These Points

All the briefs by the non-utility signatories simply ignore the problem presented above. They focus on the customer protection in the Stipulation that will help to mitigate the risk of stranded investments. [see, e.g., Renew’s Brief, pg. 5; Data Center Coalition’s Brief, pgs. 5 – 6; Ameren’s Brief, pg. 3]. To be fair, these protections (which we may refer to as “back-end” protections) are important, though, they are still less than what is required by other states. [compare *Non-Unanimous Global Stipulation*, pgs. 4, 9 and Ex. 301, *Rebuttal Testimony of Geoff Marke*, pg. 18 lns. 8 – 10, 17 – 20]. However, the subsidization that will occur when bringing an LLPS customer online (what we may call “front-end” protection) is not even on their radar.

The two utilities that filed briefs in this case are a slightly different matter. Each addressed the double recovery issue (which is referred to in their briefs as “positive regulatory lag”), but their argument basically boils down to “we should just be allowed to have positive regulatory lag.” [Evergy’s Brief, pg. 25; Ameren’s Brief, pgs. 36 – 41]. On that note, it is also worth noting the slight difference between positive regulatory lag and double recovery. The former already occurs quite frequently for utilities and is, in fact, built into the regulatory construct. For example, rates in a rate case are set based on the net plant values at the time rates are set, however plant values are constantly decreasing due to the continual accumulation of depreciation. This accrual of depreciation is never recognized as a reduction in a utility’s rates in between rate cases, however, which is a form of “regulatory lag” benefiting the utility (hence “positive regulatory lag”).

The type of positive regulatory lag just described is, again, built into the regulatory framework and is fully recognized and respected by all parties. The issue in this case, however, is more than mere regulatory lag. It is double recovery, which means that ratepayers are paying for the same thing twice. [Tr. Vol. III pg. 58 lns. 10 – 14 (“You can just say that they're paying for the same thing twice.”)]. And, as with the non-utility briefs, neither Evergy nor Ameren attempt to address or defend this double recovery in their brief. Nor do either address at any length the subsidization that will occur as Evergy’s legacy customers pay for the cost of providing capacity necessary due to the additional new LLPS customers. And this is not even the only form of subsidization.

The FAC Presents a Second Form of Subsidization

To recap, the basic problem is this: Evergy has to buy all the energy it supplies to its retail electric customers through the Southwest Power Pool (“SPP”) energy market.² The cost of this purchased power is recovered, in part, through the FAC. [20 CSR 4240-20.090(1)(I)]. As a result, the mere “act of selling more energy to retail customers results in [Evergy] transacting more energy purchases through the FAC.” [Ex. 201, *Staff Report and Recommendation*, pg. 64 lns. 19 – 20]. Because adding a new LLPS customer will cause Evergy to sell more energy to retail customers (specifically to the new LLPS customer), adding the LLPS customer will also “immediately increase the load costs therefore increasing FAC costs[]” [Ex. 300,

² It also sells all the energy it generates into the SPP energy market, and this is treated as an offset to the cost of the energy being purchased.

Surrebuttal Testimony of Lena M. Mantle, pg.2 lns. 11 – pg. 3 ln. 10]. And because the FAC is recovered from all customers, “the non-LLPS customers will pay for some of these increased costs through the FAC.” [*Id.*]. Further, when the purchase power costs are later incorporated into the base fuel and purchase power costs during a general rate case, the result will be “all customers being charged more for fuel and purchased power costs in their base rates and in the FAC.” [*Id.* (emphasis added)]. “The non-LLPS customers will be charged this higher average cost when the average cost for the non-LLPS customers would be lower without the LLPS customer loads.” [*Id.* (emphasis added)].

None of the non-utility signatories to the Stipulation appear to have addressed the FAC in their brief except for Google. However, Google’s brief only addresses the issue as it relates to the Staff’s request that the Commission order separate SPP pricing nodes for all LLPS customers. [Google’s Brief, pg. 26]. Google made no reference or otherwise attempted to address the subsidization issue at all. The two utility briefs, meanwhile, did try to address the issue., but only Ameren’s brief addressed it at any length. The OPC will therefore take a moment to directly address and refute Ameren’s arguments.

Responding to Ameren on the FAC

Ameren’s discussion of the FAC begins with a false premise. Specifically, Ameren’s brief claims that the OPC has itself claimed “that higher net energy costs caused by adding a large load customer will *entirely* flow through the FAC and be paid for by other customers, while on the revenue side, Evergy will keep all the

revenues.” [Ameren’s Brief, pg. 28 (emphasis in original)]. Of course, Ameren provides no citation for this, and for good reasons. This is simply not true.

The issue Ameren takes with this statement is the word “entirely” (which it emphasizes in its brief). Basically, Ameren is trying to show how a new LLPS customer would pay for some of the additional purchased power costs that it caused Evergy to incur when it joins the utility’s system and that it is therefore inappropriate to say that Evergy’s legacy customers will pay for “everything.” On this singular point, Ameren is correct. This is why the OPC never made the claim that Ameren accuses the OPC of making. Ameren’s own brief even acknowledges that the OPC’s witness Ms. Mantle correctly determined the amount of purchase power costs a new LLPS customer would cover in her schedules. [Ameren’s Brief, pg. 31 (“Ms. Mantle supplied what that sum was in the upper left-hand table in her Schedule LMM-S-3 in the first row in that table labelled “NBEC” and the second column corresponding to that row.”)].

What has effectively happened is that Ameren has decided to create a strawman argument by falsely claiming the OPC said something it never did and which the OPC’s witness acknowledged was not true in testimony. Ameren then spends a good four pages of its brief attacking that strawman for little apparent reason. Yet, in all its efforts to besmirch the OPC’s position through a dishonest attack on an untaken position, Ameren has ironically admitted the critical point raised by the OPC.

In its rush to prove that a new LLPS customer would pay some part of the purchase power costs it causes a utility like Evergy to incur, Ameren has also admitted that the LLPS does not pay all those costs. Instead, Ameren openly admits that Evergy's legacy customers will pay a considerable sum just for the addition of the new LLPS customer. Using the hypothetical 384 MW customer (that Staff borrowed from Evergy's workpapers),³ for example, shows that the addition of a single LLPS customer raises the FAC charges on Evergy's legacy customers by \$13.5 million. [Ameren's Brief, pg. 31 ("other customers pay \$13.5 million ("Recovery Period Payment" row, 3rd column)"]]. Again, to stress that point, this is \$13.5 million that non-LLPS customers are paying to cover just that one LLPS customer's additional FAC costs. To put it another way, this is \$13.5 million of pure, unqualified subsidization for the LLPS customer.

Ameren's brief, having now openly admitted that the LLPS customer is being subsidized to the tune of \$13.5 million, then tries to desperately salvage its position with a new argument focused on what happens "after a rate case." [Ameren's Brief pg. 32]. Yet in doing so, Ameren makes another fatal flaw that takes its argument completely off the rails. This is because Ameren is faced with the fact that the OPC is objectively correct, in that, adding a large load customer will result in an increase to net energy costs that will ultimately be reflected in the revenue requirement (something that Ameren's brief even refers to as "Ratemaking 101"). [*Id.*]. So, Ameren

³ [see Ex. 201, *Staff Report and Recommendation*, pg. 8 ln. 22 ("Using the hypothetical 384 MW customer reflected in Evergy's workpapers")].

attempts to rectify this by pointing to revenues from outside the FAC to “counteract” the increase to the energy costs occurring inside the FAC. [*Id.* (“A review of Ms. Mantle’s Surrebuttal Testimony reveals that she gave no consideration to large load customer impacts that will occur *outside* the FAC itself when [she] claimed that the FAC will cause other customers to subsidize large load customers.”)(emphasis in original)].

Ameren’s argument basically boils down to the idea that while there is a subsidy occurring inside the FAC, the LLPS customer is paying additional revenues outside of the FAC that would make up for this fact:

However, this myopic view of the impacts of large load customers (even if one accepted that there may be a “subsidy” at times inside the FAC) misses a huge part of the overall picture, that is, the base rate revenues the large load customer will also pay.

[Ameren Brief, pg. 33 (emphasis in original)]. However, in responding to what Ameren calls the OPC’s “myopic” argument, Ameren has presented its own myopic argument. This is because, as Ameren openly admits, its argument is based on “[h]olding infrastructure needs constant[]” [Ameren’s brief, pg. 32]. This is not at all in dispute, as Ameren, to its credit, owns up to the fact that everything it has to say against the OPC is wholly dependent on this one fact:

To paint the full picture, it should be noted that the above-discussion is premised on the situation where infrastructure costs are held constant.

[Ameren’s Brief, pg. 34 (emphasis added)]. And this is a massive problem for Ameren because the idea that infrastructure costs are going to be held constant is already known to be false.

This brief has already shown above that Evergy simply cannot meet the load requirements of adding an LLPS customer. [supra, pg. 10]. It is an indisputable fact: Evergy has to build or otherwise increase costs to serve LLPS customers. [Ex. 201, *Staff Report and Recommendation*, pg. 38 lns. 3 – 4; *Id.* at pg. 63 lns. 1 – 3 (“It is Staff’s understanding that, presently, [Evergy Missouri Metro] and [Evergy Missouri West] lack sufficient capacity to serve new LLPS customers within the parameters of SPP resource adequacy requirements. This means additional capacity must be obtained.”)(emphasis added)]. Ms. Mantle further re-affirmed this point on the stand:

Q. . . . The way I understood it, what Ameren's hypothetical fixated on was the idea that a customer of this size that you had used in your examples could come on, and the only increase to costs for Evergy would be the fuel costs that you were examining [in] the FAC. There would be no other costs. Is that a realistic scenario?

A. No . . . They don't have energy to meet their current load, let alone a load of a customer this big. So, the fact -- a large load customer cannot come onto Evergy West's system and not increase costs, in many ways, much more than just load costs. . . . [T]hey cannot serve these large customers without adding additional costs. Just in capital costs and plant, but then also in labor and administrative. Costs are going to increase when you take on a customer that big.

[Tr. Vol. III pg. 232 ln. 23 – pg. 233 ln. 22 (emphasis added)]. Ameren’s whole argument that the Commission does not need to worry about the FAC because there will be additional revenues outside the FAC is fatally flawed because there will also be increased costs outside of the FAC. And Ameren, again to its credit, acknowledges this as well:

It is certainly theoretically possible, depending on the amount and cost of new generation that is built relative to the amount of new revenue to be derived from the new load, that infrastructure costs reflected in base rates could be high enough such that the added load does not mean lower base rates.

[Ameren’s Brief, pgs. 34 – 35]. The only problem with that statement is that its not “theoretically possible” but rather “effectively guaranteed” that infrastructure costs reflected in base rates will be so high that the added load does not mean lower base rates. [Tr. Vol. III pg. 232 ln. 23 – pg. 233 ln. 22; *see also* Ex. 201, *Staff Report and Recommendation*, pg. 7 lns. 17 – 18 (“Evergy’s estimates for the cost to build new generation facilities in recent years has ballooned compared to just five years ago.”)].

So far, Ameren’s response to the issue of the FAC subsidy that will be created when LLPS customers join Evergy’s system has :

- (1) Admitted that adding LLPS customers does result in an increase in FAC costs for all other customers (to the tune of \$13.5 million for the addition of just one LLPC customer in Ameren’s own hypothetical analysis) [Ameren’s Brief, pg. 31];
- (2) Accused the OPC of not seeing “the bigger picture” by failing to take into consideration revenues from outside the FAC while also openly admitting that Ameren itself is not looking at “the bigger picture” because it has refused to consider additional costs outside the FAC. [*Id.* at pg. 34 (“To paint the full picture . . .”)]; and
- (3) Admitted that its entire argument is dependent on factors that the evidence already shows to be false [*Id.* at pgs. 34 – 35 (“It is certainly theoretically possible . . .”)].

What comes next is a rather odd effort to say that the existence of a subsidy cannot be obtained through an “FAC analysis” (despite the fact that it already has), and that

“if it were to occur,” (unclear whether the brief meant the subsidy or the FAC analysis) “it would still not result in a conclusion that *the FAC* was a source of ongoing subsidy that needs to be corrected by tinkering with the FAC itself.” [Ameren’s brief, pg. 35]. Ameren’s strange argument appears to be this:

Higher purchased power costs flowing through the FAC are somehow “fixed costs of plant” having nothing to do with the FAC. [Ameren’s brief, pg. 35].

This position is self-contradicted by Ameren’s Brief. Ameren has already admitted that adding LLPS customers results in increased purchase power costs flowing through the FAC and raising the costs for non-LLPS customers. [Ameren’s Brief, pg. 31]. That is the subsidy Evergy’s legacy customers are being asked to pay toward the LLPS customers.

Having covered Ameren’s brief in detail, the OPC will speak briefly on the argument advanced by Evergy. It is effectively the same as what Ameren has argued. [Evergy Brief, pg. 22 (“Moreover, Ms. Mantle testified that her analysis did not account for the benefits LLPS customers provide, including lowering Evergy’s fixed costs when integrating their load between the Company’s rate cases.”)]. Again, if Evergy wants to argue about “lowering Evergy’s fixed costs” it also needs to acknowledge how LLPS customers are going to increase Evergy’s fixed costs due to the need to acquire additional capacity. [see, e.g. Tr. Vol. III pg. 232 ln. 23 – pg. 233 ln. 22]. Because Evergy just ignores this entirely, its argument, like Ameren’s argument, is faulty. The only other point Evergy makes is a legal one and it is simply

wrong. Changes can be made to the LLPS tariff sheet that would exclude the LLPS customers from the FAC without changing the FAC itself. [Ex. 300, *Surrebuttal Testimony of Lena M. Mantle*, pg. 3 lns. 21 – 22]. This has literally already been done before. Evergy West’s Special High-Load Factor Market Rate tariff sheets include the following provision:

Service under this tariff shall be excluded from projected energy calculations used to establish charges under Riders FAC and Customer will not be subject to any such charges, unless otherwise ordered by the Commission when approving a contract for service under this tariff. The Company will remove all identifiable costs of service under this tariff from the FAC charge recovered from all customers, and the Company will track those costs and identify those costs separately from other costs specifically identified in the FAC monthly reports submitted to the Commission.

[Ex. 208, MKT Tariff for Evergy, Original Sheet No. 158.4]. All the OPC is requesting is for the same legal principle to be applied in this case as Evergy applied when requesting the approval of the MKT tariff using the exact language cited above.

Summation

Adding an LLPS customer will increase the fuel and purchase power costs for all of Evergy’s legacy customers first in the FAC and then later in the fuel and purchase power costs included in base rates. Ameren has admitted this is true and no other brief attempts to dispel it. [Ameren’s Brief, pg. 31]. This is a subsidy, plain and simple. The idea that the Commission does not need to care, as advanced by Evergy and Ameren, is dependent on ignoring the additional costs that will be

incurred to serve the new LLPS customers. These costs are very real, though, and cannot simply be ignored. [Tr. Vol. III pg. 232 ln. 23 – pg. 233 ln. 22; *see also* Ex. 201, *Staff Report and Recommendation*, pg. 7 lns. 17 – 18 (“Evergy’s estimates for the cost to build new generation facilities in recent years has ballooned compared to just five years ago.”)]. Further, once the additional costs are brought into the equation, the additional revenues are canceled out and one is returned to the subsidy flowing through the FAC. Fortunately this is easily addressed.

The OPC and Staff Have Offered a Solution to These Problems

Despite all the foregoing, the OPC is not advocating that LLPS customers be denied service. The OPC has never advanced that position. Instead, the OPC is simply asking for the Commission to address these two problems. And while adoption of the Staff’s proposed tariff would solve them, even that is not necessary to correcting for these two forms of subsidization. Instead, the Commission need only order two, simple remedies:

- (1) Order the tracking of revenues from LLPS customers occurring between rate cases in the manner proposed by the Commission’s Staff. [Ex. 207, *Surrebuttal Testimony of Sarah L.K. Lange*, pg. 27 lns. 13 – 16]; and
- (2) Divide the FAC into two: one for LLPS customers and the other for non-LLPS customers. [Ex. 300, *Surrebuttal Testimony of Lena M. Mantle*, pg. 3 lns. 11 – 15].

The first of these remedies will allow the Commission to offset the additional rate base caused by adding new LLPS customers with the tracked revenue, thus eliminating the subsidy and the double recovery. [Tr. Vol III pg. 60 lns. 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”(emphasis added)]. The second, will ensure there is no subsidization between the LLPS and non-LLPS rate classes through the FAC. [Tr. Vol III pg. 241 lns. 11 – 12 (“The only way you can make sure that there is no subsidization is to split the two”)].

No other party but the utilities directly opposed these two recommendations. That is not entirely unexpected. The first of these recommendations, for example, has no negative impact on LLPS customers whatsoever. This is because tracking what the Company recovers to use as an offset against what legacy customers have already paid does not mean the LLPS customers have to pay any more. So, this first recommendation is completely revenue neutral to the LLPS customers. The separation of the FAC, meanwhile, should not be seen as negatively impacting the LLPS customers because it is a two-way street. It prevents Evergy’s legacy customers from subsidizing the LLPS customers, but it also prevents them from possibly *being subsidized*. [Tr. Vol. III pg. 241 lns. 8 – 11 (“[splitting the FAC] should just make sure the costs are recovered correctly from both sets of customers.”)]. Given the practically un-refuted existence of the subsidies, the simplicity of the solutions, the lack of impact on the non-LLPS customers, and the risks imposed if no action is taken, the adoption of these two remedies should be an easy choice for this Commission to make.

Conclusion

The OPC wishes to close out this section of the brief with a frank discussion. It has already been pointed out that Evergy will almost certainly have to build additional generation to meet the increased capacity demand of the LLPS customers. [Ex. 201, *Staff Report and Recommendation*, pg. 38 lns. 3 – 4; *Id.* at pg. 63 lns. 1 – 3]. However, “Evergy’s estimates for the cost to build new generation facilities in recent years has ballooned compared to just five years ago.” [Ex. 201, *Staff Report and Recommendation*, pg. 7 lns. 17 – 18]. This could be attributed to any number of different factors: increased inflation, tariffs, or the current run on the market for generation and distribution systems caused, ironically enough, by the AI data center boom. The one thing that is now practically certain, though, is that the cost to provide service to these LLPS customers could easily reach eye watering heights.

Evergy has access to CWIP. [Tr. Vol. III pg. 58 ln. 20 – pg. 59 ln. 2]. Evergy has an incentive to build generation before bringing the LLPS customer on to its system. [Ex. 201, *Staff Report and Recommendation*, pg. 63 lns. 1 - 12]. If the Commission allows CWIP or even if the Company just seeks rate recovery before a new LLPS customer enters the system, legacy customer’s bills will rise as a result. At the same time, the data center craze is in the news. [see Ex. 301, Rebuttal Testimony of Geoff Marke, pg. 20 ln. 11 – pg. 22 ln. 9]. It has already caused major backlash in multiple Missouri towns from Peculiar to St. Charles. [*Id.* at pg. 7 lns. 5 – 15]. When Evergy’s legacy customers start to see their bills going up following the announcement of new data centers, they will begin to connect dots and point fingers.

The proposed Stipulation contains less strenuous protections than what can be found in other states. [*compare Non-Unanimous Global Stipulation*, pgs. 4, 9 and Ex. 301, *Rebuttal Testimony of Geoff Marke*, pg. 18 lns. 8 – 10, 17 – 20]. The proposed Stipulation was opposed by the Commission’s Staff and the State’s consumer advocate. These facts will not be lost on customers. More importantly, if the avenues to subsidization addressed in this brief are not rectified, then what answers will Evergy’s legacy customers receive when asked if they are subsidizing LLPS customers? The system is set up to all but ensure legacy customers will pay for generation to serve data centers while Evergy pockets the revenues from those same data centers. The impact on the FAC is now admitted and the inflationary effect it will have on legacy customers’ bills will quickly become known. [Ameren’s Brief, pg. 31]. There is more than enough evidence for legacy customers to correctly determine they are, or will be, subsidizing the new LLPS customer class if the Stipulation is approved as is.

The solutions to prevent subsidization presented above are not merely necessary to comply with the Commission’s statutory mandate (which they are). [Mo. Rev. Stat. § 393.130.7]. They are also an opportunity to douse the concerns that might otherwise flare up around these LLPS customers. They are a way for the Commission to protect legacy customers in a manner that brings no harm to LLPS customers and does not impede economic development in any way. And they are elements that can stand independently from the rest of the Staff and OPC recommendations, if absolutely necessary.

As was stated at the beginning of the section, the briefs of the signatories to the stipulation make much of the consumer protections contained therein. But those briefs largely do not address, and the Stipulation does not rectify, the subsidization issues presented here. For these reasons, the OPC again recommends the Commission reject the Stipulation and instead order a tariff substantially consistent with the recommendation of the Commission Staff as modified by the OPC's position laid out in its initial brief.

Responding to Specific Issues

As stated in the beginning of the brief, no other party except Staff filed a response to all the listed issues. Because the OPC is largely aligned with Staff on many of the issues, the OPC will not belabor this brief by responding to Staff's. Instead, the OPC will selectively respond to the handful of issues directly addressed by other parties. To the extent that the OPC does not respond to any one issue addressed in another's brief, the OPC stands on the arguments presented in its own initial brief.

Issue B: the EDR

The only other party with a meaningful discussion of this issue (apart from Staff) was Evergy. Evergy's brief presents a short legal argument as to why it believes that "the Commission cannot establish terms and conditions to exclude eligible customers from receiving Economic Development Rider ("EDR") discounts[]" [Evergy Brief, pg. 12]. Instead of debating the legal interpretation of statutes, the OPC will just continue to point out that Evergy is itself currently proposing to exclude customers from receiving EDR discounts and the OPC is confused as to why Evergy even thinks it wise to make this argument.

The Stipulation contains a mechanism called the Cost Stabilization Rider ("CSR"). [*Non-Unanimous Global Stipulation*, pg. 10 ¶¶ 17 – 18]. It only applies to customers receiving service under the EDR [*Id.*]. It is designed to charge customers "an amount" based on the difference between what they would have been charged

before applying the EDR and what they will be charged after applying the EDR. [*Id.*]. The basic math there, in case one missed it, is that the CSR charges “an amount” based on the discount applied by the EDR itself. Stated in simpler terms: the CSR charges back the amount of the EDR discount. [*Id.*]. The Stipulation further touts the fact that this CSR “shall not be subject to any related Economic Development Rider discount” thus making it “non-bypassable.” [*Id.* (emphasis added)]. So, to summarize:

- (1) The CSR only applies to customers who take an EDR discount;
- (2) The CSR charges those customers the amount of the EDR discount;
- and
- (3) The CSR its itself not subject to the EDR discount.

[*Id.*]. And this last part should go without saying, but if you give a discount and then charge a customer the same amount of the discount and that charge only applies because the customer got the discount, then you have *de facto* excluded that customer from the discount.

As far as the OPC can tell, Evergy’s thought process here is that it can get away with meeting the letter of the law while clearing violating what Evergy itself claims is the spirt of the law by first charging and then immediately revoking the EDR discount. If that idea is ever presented to a court for review, it is highly likely to be struck down as a clear and obvious effort to violate the EDR. And if its not, then be prepared for other parties to present this same argument for any other entity that seeks or is currently receiving an EDR discount.

What is more peculiar than Evergy's apparent rationale is the way their chosen solution itself undermines their legal argument, in that, the Stipulation explicitly makes the CSR itself not subject to the EDR. [*Non-Unanimous Global Stipulation*, pg. 10 ¶ 18 ("The CSR shall not be subject to any related Economic Development Rider discount.")]. So Evergy has already conceded that at least part of a customer's bill can be made "not subject to the EDR." This raises the question of why the Company does not just resolve the issue by making the largest parts of the LLPS customer's bills "not subject to the EDR" in the same manner as it is proposing for the CSR? Why not, for example, make the Minimum Monthly Bill Component (which immediately precedes the CSR in the Stipulation) also "not [] subject to any related Economic Development Rider discount." [*Id.*]. Evergy cannot argue that this cannot be done – as Evergy is already proposing the same thing for the CSR – and it would achieve the same result as the CSR but faster, cleaner, and simpler.

In addition to the above, Evergy also responds to the OPC's legal argument that the EDR should just not be offered because the EDR statute allows for the inclusion of "additional or alternative terms and conditions to a customer's utilization of the discount[]" [Mo. Rev. Stat. § 393.1640.1(2)]. Cursorily, the Company does not reject the legal basis underlying that argument, but rather, argues that only "the electrical corporation" may impose such alternative terms and conditions and, as Evergy puts it, "the Commission is not an 'electrical corporation,' and 'may' is permissive, not obligatory." [Evergy Brief, pg. 13]. First, this is a pointless distinction. The Commission can simply deny the tariff/Stipulation as proposed and inform the

Company as to what it finds acceptable, and this will have the natural result of “the electrical corporation” proposing a new tariff that includes the necessary “alternative terms and conditions” language. But far more interesting than that is the question of *why* Evergy has decided to take this position.

Again, Evergy’s clear intention with the CSR is to violate what the Company itself claims is the spirit of the EDR statute but still adhere to the letter of the law by providing the EDR discount and then rescinding it through a second, “non-bypassable” charge. The OPC offered the legal solution of just not applying the EDR based on the language of the statute, and Evergy responded with an adamant no. But crucially, Evergy is not taking this position because it disagrees with the legal soundness of the proposal, but because *Evergy* was not the one to propose that *particular* solution. The OPC cannot fathom the need for such an obstinate position.⁴

The CSR is an unnecessary and convoluted solution to what should have been a simple problem and Evergy’s legal position regarding it is self-contradictory. Moreover, the Commission should be wary of the ramification of accepting the Company’s legal theory as it will open the door for the nullification of effectively all EDR discounts under the same scheme. This is a bad idea based on a bad legal theory and it will yield bad results if implemented.

⁴ Unless, of course, the entire basis of the Company’s position is that the CSR is not intended to fully recover the discount being offered through the EDR and this obfuscation is necessary to hide the resulting subsidization.

Issues L, M, and N: Customer Information

Issues L, M, and N all share a nebulous relationship to the idea of the amount of information that this Commission can or will receive regarding prospective LLPS customers, so the OPC has decided to simplify the discussion by grouping them together. Only Evergy, Google and Velvet Tech chose to respond directly to these issues, and the three shared a general consensus that: (1) there should be no additional studies for LLPS customers, (2) there should be no form agreement or Commission approval of individual service agreements, and (3) there should be no disclosure regarding individual prospective LLPS customers to the Commission or other stakeholders. [Evergy's Brief, pgs. 15 – 21; Google's Brief, pgs. 24 – 26; Velvet Tech's Brief, pgs. 12 – 15]. Instead of an exhaustive review of what each of these parties had to say, the OPC will make its point through a simple demonstration.

To illustrate the problems with the positions taken by Evergy, Google, and Velvet Tech, the OPC offers the hypothetical conversation between Evergy and the Missouri Regulators regarding a proposed future capital investment:

Evergy: We intend to build new generation with a nameplate capacity of 800 MW.

Regulators: Why?

Evergy: To meet capacity requirements due to increased load we expect to enter our system in the near future.

Regulators: What load?

Evergy: New LLPS customers.

Regulators: Who?

Evergy: We won't tell you.⁵

Regulators: Well, is it one customer or several?

Evergy: Several.⁶

Regulators: Well, who has what load?

Evergy: We won't say.⁷

Regulators: Where is the load going?

Evergy: If we told you that, it wouldn't be aggregated would it?⁸

Regulators: Have you checked at all to see how certain that load will be maintained, *i.e.* whether there is a risk that the load might decrease with improved efficiencies?⁹

Evergy: No, we don't need to.¹⁰

Regulators: Well, have you checked to make sure that the new LLPS customer has sufficient water to remain in operation at that site long-term?¹¹

Evergy: No, we don't need to do that either.¹²

Regulators: Have you at least done any studies to ensure that the addition of that new LLPS customer won't negatively impact other customer's electricity. For example, due to the creation of bad harmonics?¹³

⁵ [Non-Unanimous Global Stipulation, pg. 18 ("Energy usage information will be provided on a confidential and anonymized basis.")]

⁶ [*Id.* ("This report will contain information regarding (i) the number of new or expanded customers that have enrolled in Schedule LLPS" . . .)]

⁷ [*Id.* (" . . . and (ii) the total estimated load enrolled under Schedule LLPS.")]

⁸ [*Id.*]

⁹ [Ex. 301, *Rebuttal Testimony of Geoff Marke*, pg. 8 lns. 16 – 20 ("Placing an emphasis on [PUE] at the front-end of the construction process and adopting best practices in the design phase should enable prospective LLPS customers to significantly influence and improve the long-term PUE and overall sustainability of their facilities and provide greater assurance of future continuity of operations.")].

¹⁰ [see Evergy's Brief, pgs. 15 – 21; Google's Brief, pgs. 24 – 26; Velvet Tech's Brief, pgs. 12 – 15].

¹¹ [Ex. 301, *Rebuttal Testimony of Geoff Marke*, pg. 9 lns. 20 – 23 ("By tracking and benchmarking [WUE] over time, Evergy and various stakeholders will be better able to make informed planning decisions across the service territory in regards to valuing finite natural resources and assuring the surrounding areas are sustainable.")].

¹² [see Evergy's Brief, pgs. 15 – 21; Google's Brief, pgs. 24 – 26; Velvet Tech's Brief, pgs. 12 – 15].

¹³ [Ex. 301, *Rebuttal Testimony of Geoff Marke*, pg. 14 lns. 4 – 7 ("The hope here is that by proactively measuring and controlling for [total harmonic distortion] we can maximize the reliability and

Evergy: We don't need to do that either.¹⁴

Regulators: Have you drafted a service agreement with the new LLPS customer?

Evergy: Yes.

Regulators: Are you going to file it with the Commission?

Evergy: No. You *may* be able to see it the next time we are in for a rate case. That is when all the prudence reviews for all the LLPS customers will be considered at the same time, in addition to everything else that occurs in a rate case.¹⁵

This is how the OPC understands the utilities and LLPS customers wish to move forward based on the initial briefs of those who filed on these issues. The OPC would further hope that it is obvious on its face how this kind of obfuscation will hinder good regulation in the State.

That the LLPS customers and the utilities disagree with the Commission's Staff and the State's consumer advocates office over how rates should be structured is understandable. After all, the rate structure will have a material impact on the cost charged to both legacy and LLPS customers moving forward. But the degree to which the utilities and LLPS customers vehemently oppose transparency before this Commission is far more concerning and telling. The dedication to hiding information from the Commission and regulators in this docket will not engender a positive regulatory environment or healthy collaboration between stakeholders and should be avoided.

efficiency not only of the large load customers but ensure that customers within the surrounding areas are not materially harmed.”)].

¹⁴ [see Evergy's Brief, pgs. 15 – 21; Google's Brief, pgs. 24 – 26; Velvet Tech's Brief, pgs. 12 – 15].

¹⁵ [see Evergy's Brief, pgs. 15 – 21; Google's Brief, pgs. 24 – 26; Velvet Tech's Brief, pgs. 12 – 15].

Issue P: SPP Nodes

It would appear that only Evergy, Ameren and Google directly addressed this issue, though Google labeled its discussion under Issue O and Ameren did not identify the issue at all. Google's brief appears to focus on the claim that requiring separate SPP pricing nodes for LLPS customers is "discriminatory." [Google's Brief, pg. 26 ("Staff's proposal . . . is the culmination of its proposal to treat [LLPS] customers differently. . . . [S]uch a structure is discriminatory")]. The OPC has already addressed this above. [supra, pg. 8]. Different treatment for different rate classes (or specific customers) is only "discriminatory" when service is being provided "under the same or substantially similar circumstances or conditions." [*Mo. Pub. Serv. Comm'n. v. Office of Pub. Counsel (In re Mo.-American Water Company's Request)*, 526 S.W.3d 253, 262 (Mo. App. W.D. 2017)(citing *State ex rel. Laundry, Inc. v. Public Service Commission*, 327 Mo. 93, 34 S.W.2d 37 (Mo. 1931))]. That is not occurring in this case because the LLPS customers are several times larger than even the very largest of Evergy's currently existing customers. [Ex. 201, *Staff Report and Recommendation*, pg. 32 lns. 2 - 10]. In addition, there is a statute in place that explicitly instructs different treatment of the LLPS customers to ensure that they are covering their own costs and that non LLPS customers are not subsidizing them. [Mo. Rev. Stat. § 393.130.7]. For all these reasons, Google's legal argument that treating the LLPS customers differently would be "unduly discriminatory" is simply wrong.

Evergy's brief focuses more on the practical implications of Staff's request. [Evergy's brief pgs. 22 – 24]. The OPC will leave to Staff the duty of directly rebutting

the nature of these arguments. However, the OPC will point out that Staff also provided a secondary recommendation should the Commission find separate SPP pricing nodes to be impossible or infeasible. [Ex. 201, *Staff Report and Recommendation*, pg. 22 ln. 25 – pg. 23 ln. 2]. Evergy’s initial brief does not even mention this secondary proposal. Therefore, to the extent that the Commission does find ordering separate SPP pricing nodes would be impossible or infeasible, the OPC urges the Commission to order its Staff’s secondary recommendation. [*Id.*].

Ameren’s discussion of the SPP pricing nodes issue is based exclusively on what its own witness claims is Staff’s intent; that being: “targeting energy market imbalance (or load forecast deviation) costs[]” [Ameren’s Brief, pg. 15]. While Ameren’s brief goes on for some time decrying this purported purpose, it fails to consider that there are other concerns at play that warrant the separation of the SPP pricing nodes. Staff, for example, spoke broadly in terms of its request:

Staff recommends that the Commission require that each LLPS customer be registered with SPP as a separate commercial pricing node. Absent this treatment, it is difficult to isolate the expenses caused by LLPS customers that would otherwise be flowed through the FAC and which may cause unreasonable impacts on captive ratepayers.

[Ex. 201, *Staff Report and Recommendation*, pg. 22 lns. 12 – 16]. These costs “that would otherwise be flowed through the FAC” include the increased purchase power costs identified in the extensive discussion of the FAC above. [*supra*, pg. 18]. Once again, Ameren has already admitted that these costs could easily rise above \$13 million for just one customer. [Ameren’s Brief, pg. 31 (“other customers pay \$13.5

million”)]. Ameren’s reluctance to consider the impacts it knows will exist beyond just the one issue that its own witness identified should be sufficient to demonstrate the inadequacy of its response.

To close, the OPC would point out a crucial, though easy to miss point. The request for separate SPP pricing nodes is borne out of a single, simple desire: to track costs being incurred. It does not itself raise costs on LLPS customers, but rather, makes it harder for them to shift costs onto legacy customers. And therein lies the problem from the utilities/LLPS customer’s point of view.

A person of ordinary intelligence should be given pause at the passion with which these two groups contest a recommendation that is designed to do no more than isolate expenses caused by LLPS customers that would otherwise flow through the FAC and meet the law that requires minimization of increases in costs to legacy customers due to the LLPS customers. There should be cause for concern when the utilities and LLPS customers are desperately telling the Commission not to “pull back the curtain” and expose which party is paying for what purchase power costs. To reiterate what was said above, Evergy’s legacy customers are going to feel the impact of any subsidization of LLPS customers one way or another. If those customers are told that all the FAC costs are being lumped together, against the recommendation of Staff and the OPC, they will draw the obvious and correct conclusion, which is that they are paying for LLPS customers’ purchase power costs.

General Response Regarding Economic Development

Several of the briefs filed by the signatories to the Stipulation stressed the importance of promoting economic development in the state of Missouri as the basis for approving the offered Stipulation, with Ameren in particular devoting several pages its brief to that end. [Ameren's brief pgs. 7 – 10]. And while that issue is not directly included in the list of issues, the OPC still feels that it is important to touch on that subject in response. So to begin, the Office would make sure that the record on this point is crystal clear: the OPC supports economic development in the State of Missouri. The growth of business not only benefits utility customers through the obvious generation of increased wealth that can help cover the cost of utility bills¹⁶ but also can serve to increase a utility's customer base in a manner that, if done correctly, can lower utility bills for all customers. Moreover, even with the concerns included in its initial brief and those outlined in this brief, the OPC remains engaged in finding ways to bring LLPS customers into this state that will ideally serve to benefit all customers. Yet it is with that very concept of wanting to ensure that all Missourians benefit that the OPC finds itself in disagreement with the Stipulation.

Where the OPC and parties like Ameren differ, is that the OPC seeks to support economic development across all facets of Missouri, including commercial and traditional industrial customers, instead of engaging in competition for the business of just LLPS customers. And the frank truth of the matter is that ensuring

¹⁶ Apart from merely allowing for easier payment of utility bills, the OPC further recognizes that wealth generation through increased economic activity is good in and of itself.

greater protections for Evergy’s legacy customers may well render an LLPS tariff slightly less preferable than what might be offered by another state that ignores such concerns. But that is not reasonable grounds for denying those protections, as the OPC’s Dr. Marke explained:

Q. If Missouri adopts your recommendations, won’t these data centers go to states that are willing to socialize risk to captive ratepayers?

A. I am sure that will be the argument. I would also note that such an argument is a sign of a classic bubble. During periods of high demand and surging asset prices, investors may focus less on fundamental value and due diligence fearing they will miss out. The Commission should not fall into that trap and should reject attempts to socialize risk by taking a more responsible and sustainable approach. Economic development should not be weaponized as a “race to the bottom” where jurisdictions compete with each other by lowering standards and accountability. In fact, the Commission has the ability to reverse course on that narrative and put forward a sustainable and cost-reflective tariff that can give other state regulatory commissions comfort moving forward. As it stands, regulatory circles in every state are watching each other develop more and more favorable terms to protect existing ratepayers. I see little downside in approving a more cost-causative centric tariff to begin with and adjusting accordingly in the future if defensible. Such a measured approach is especially warranted in this time of uncertainty, where affordability is at the forefront of all customers' minds.

[Ex. 302, *Surrebuttal Testimony of Geoff Marke*, pg. 28 lns. 12 – 26]. The Commission should heed Dr. Marke’s advice and forego engaging in the “race to the bottom” by approving of a stipulation that contains less protections than our neighboring states and which ignores the issues of subsidization addressed above. [*compare Non-*

Unanimous Global Stipulation, pgs. 4, 9 and Ex. 301, *Rebuttal Testimony of Geoff Marke*, pg. 18 lns. 8 – 10, 17 – 20].

The OPC's initial brief laid out the facts surrounding the largest end use of this proposed new LLPS customer class. [OPC's Brief, pgs. 10 – 14]. These issues have also been addressed repeatedly in the testimony of Dr. Goeff Marke, to which no other party chose to meaningfully respond. And the OPC speculates that the reason is that anyone who takes the time to look into the matter will find that these LLPS customers pose a significant degree of risk to Evergy's existing legacy customers. [*Id.*]. Again, as Dr. Marke explained:

The parameters I am recommending may lean on the side of protecting existing captive customers, but this is because most of the obligation I feel towards the future is, first and foremost, an obligation to prevent “poisoning the well” for all other customers. Make no mistake about it, this tariff, if not properly designed, could do that.

[Ex. 302, *Surrebuttal Testimony of Geoff Marke*, pg. 27 ln. 24 – pg. 28 ln. 2 (emphasis added)]. The OPC therefore simply asks that this Commission does consider economic development, but in terms of all Missourians. This Commission should approve an LLPS tariff, but it should not be the offered Stipulation, which is prepared to sacrifice the well-being of Evergy's legacy customers as an offering to a new LLPS customer class.

Conclusion

While it was stated before in the OPC's initial brief, it bears repeating one more time: no party to this case is arguing that LLPS customers should not be served, whether by Evergy or any other investor-owned utility in this State. [*see, e.g.* Tr. Vol. III pg. 290 lns. 1 – 6]. But that does not provide an excuse to overlook the need for necessary customer protections to ensure Evergy's legacy customers are not subsidizing the new LLPS customer class. While the Stipulation offered by the signatories does provide some protections (as emphasized in their briefs), it does not provide the same level as other states. [*compare Non-Unanimous Global Stipulation*, pgs. 4, 9 (showing a “a minimum term that includes up to five (5) years of an optional transitional load ramp period plus twelve (12) years” and a “minimum monthly demand set at 80 percent of the Contract Capacity”) and Ex. 301, *Rebuttal Testimony of Geoff Marke*, pg. 18 lns. 8 – 10, 17 – 20 (showing a 20-year minimum term is consistent with Kentucky Power's large load tariff and a minimum monthly demand charge set at 85% of contract capacity and 90% for contract capacity for the Ohio Public Utilities Commission settlement and Kentucky Public Service Commission orders, respectively)]. In addition, the Stipulation does not address or otherwise resolve the very real subsidization of LLPS customers by legacy customers through both double recovery due to rate case timing and the FAC. [*supra*, pg. 6]. The briefs filed by the signatories have all either ignored these issues, disregarded them, or admitted them; but none have refuted them.

In order to fulfil its statutory mandate, this Commission needs to tackle the issue of subsidization addressed both in the OPC's initial and reply briefs. In addition, the Commission needs to carefully consider the availability of information surrounding these LLPS customers. The continual demand by the utilities and the LLPS customers to hide basic information about their identity and expected load will make it difficult for the Commission to make properly informed decisions, harm collaboration between stakeholders, and increase the likelihood of future litigation. The good news though is that the OPC has chosen to be solution oriented and provided remedies to all these issues; remedies that can be adopted regardless of the Commission's decision on any one of the remaining issues. [supra, pg. 27]. The OPC asks the Commission to take these remedies to heart as it considers this case.

WHEREFORE, the Office of the Public Counsel respectfully requests the Commission rule in the OPC's favor on the issues presented herein and grant any such other relief as is just and reasonable under the circumstances.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing have been mailed, emailed, or hand-delivered to all counsel of record this fifth day of November, 2025.

_____/s/ John Clizer