

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

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The role of the Commission

Velvet Tech agrees with the Office of Public Counsel (“OPC”): “this case is really a policy issue.”¹ Given that agreement, it’s important to understand the role of the Commission when it comes to public policy. The Commission is “an administrative body created by statute and has only such powers as are expressly conferred by statute and reasonably incidental thereto.”² “[T]he Commission merely carries out the public policy declared by the Missouri Legislature.”³ “[T]he very highest evidence of the public policy of any state is its statutory law.”⁴ “It is exclusively within the legislative power to determine what the policy of the commonwealth shall be.”⁵

The Missouri legislature, bearing the exclusive authority, has established the clear public policy of attracting new large loads to Missouri, and specifically, attracting data centers to the state. In 2015, the legislature created tax exemptions specifically for “new data storage center project[s].”⁶ In 2017, the legislature previously authorized the Commission to establish special rates for new large loads.⁷ In 2018, the legislature required utilities to offer discounted rates for “growth projects.” In 2022, the legislature expanded the 2018 legislation (the discounted rates for growth projects). In 2025, the

¹ Tr. 120:7-8.

² *State ex rel. AG Processing Inc. v. Thompson*, 100 S.W.3d 915, 919 (Mo .App.2003).

³ *Pub. Serv. Comm'n of State v. Mo. Gas Energy*, 388 S.W.3d 221, 230 (Mo. App. 2012) (citing *State ex rel. Springfield Warehouse & Transfer Co. v. Pub. Serv. Comm'n*, 225 S.W.2d 792, 794 (Mo. App. 1949)).

⁴ See *Moorshead v. United Rys. Co.*, 96 S.W. 261, 271 (1906); see also *State ex rel. St. Louis v. Pub. Serv. Comm'n of Mo.*, 73 S.W.2d 393, 400 (Mo. banc 1934) (“public policy of the state must be derived by legislation”).

⁵ *State ex rel. & to Use of Cirese v. Ridge*, 138 S.W.2d 1012, 1014 (Mo. 1940)

⁶ Section 144.810, RSMo

⁷ See Section 393.355, RSMo.

legislature enacted 393.130.7, RSMo, in anticipation of large loads being added in Missouri, mandating investor-owned utilities to establish schedules for large loads. The public policy of the State of Missouri, as declared by the legislature – in 2015, in 2017, in 2018 and again in 2022, is to incentivize the attraction and location of data centers in Missouri: “[The Commission] has no power to adopt a rule, or follow a practice, which results in nullifying the expressed will of the Legislature.”⁸

The Stipulation delivers on the policy directives of the Missouri legislature, while Staff’s and OPC’s positions, for the reasons detailed below, would thwart the established policy regarding large load growth. For this reason, the Commission should approve the Stipulation.

OPC’s position is unreasonable

Cherry picking individual terms from various large load tariffs is an unreasonable approach to formulating a just and reasonable framework in Missouri. OPC cites numerous provisions in other states to support various individual terms of their proposal.⁹

OPC looks to Arizona for minimum load threshold, Kentucky for term length, and collateral, Ohio for minimum demand, and Texas for curtailment. OPC ignores that in many states, large load tariffs have been implemented as a result of negotiated settlements. Much like the Stipulation in this case, those individual terms “resulted from extensive negotiations among the Signatories, and the terms [t]hereof are interdependent.”¹⁰

Extracting isolated provisions from the most extreme terms from various

⁸ *State ex rel. Springfield Warehouse & Transfer Co. v. Pub. Serv. Comm’n*, 225 S.W.2d 792, 794 (Mo. 1949).

⁹ See Opening Statement (“We just pulled from other states and said, look, these are what other states have already agreed to.”) Tr. Vol 2, 107:21-23.

¹⁰ See Stipulation, p. 22, ¶2.

states without an examination of the rest of the provisions within those states and how they operate together does not result in a reasonable or fair comprehensive approach in Missouri. Rather, it results in a “Frankenstein” like tariff that is more restrictive and anti-competitive than any single state.

It is easy to imagine how parties could agree to a longer-term contract length with more flexible exit fee provisions. OPC’s own Brief recognizes that the various terms within the structure are interdependent. Related to Termination Fees, OPC suggests, it could live with either Staff or the Stipulation “depending on how the Commission rules on other rate design issues.”¹¹ Notably, OPC does not address that their approach would leave Missouri out of step with the recent large load tariff proposal approved in Kansas.

Staff and OPC’s positions are unsupported by competent and substantial evidence and/or unlawful

While “some amount of speculation is inherent in any ratemaking decision” the Commission’s order, to be reasonable, must still base its decision on competent and substantial evidence.¹²

An order based on “merely speculative considerations” is not reasonable.¹³ Staff witness Busch warns that the data center industry is “new” and “no one knows” what the data center industry will look like “in the next five years.”¹⁴ This is despite him admitting the fact that Staff never consulted with any data center customers to inquire. And, despite the fact the first

¹¹ OPC Brief, p. 18.

¹² *State ex rel. Missouri Gas Energy v. Pub. Serv. Comm’n*, 186 S.W.3d 376, 383 (Mo. Ct. App. 2005); *Deaconess Manor Ass’n v. Pub. Serv. Comm’n of State of Mo.*, 994 S.W.2d 602, 611 (Mo. App. 1999).

¹³ *State ex rel. Am. Tel. & Tel. Co. v. Pub. Serv. Comm’n*, 701 S.W.2d 745, 753 (Mo. App. 1985).

¹⁴ Exhibit 200, 5:4-6.

hyperscale data center customer first began discussions in Missouri more than seven years ago,¹⁵ and the hyperscale data center industry is twenty years old.¹⁶ OPC warns the “AI Bubble” might bust or the large load tariffs “could experience a significant slowdown, or even outright disappear.”¹⁷ Yet, the record is devoid of evidence that its parade of worst-case scenarios are probable.

This Commission has previously rejected OPC’s speculation before:

OPC's argument to the contrary is merely speculative. There is no evidence in the record to support OPC's argument that MAWC will engage in unnecessary investment or that the five-year capital expenditure plan adopted by the Commission's Report and Order will be ineffective.¹⁸

Likewise, here, OPC’s overreliance on worst-case scenarios does not constitute competent and substantial evidence that the customer protections in the Stipulation will be ineffective.

The Commission previously considered competing tariff proposals from Southwestern Bell Company and AT&T Information Systems concerning the use of certain embedded complex inside wiring. On appeal, the Court agreed with the reasoning by the Kansas Court of Appeals in a similar case involving the same parties¹⁹ -- that AT&T’s “allegations the tariff will create waste,

¹⁵ EO-2022-0061, #4, <https://efis.psc.mo.gov/Document/Display/166790>, 9:34

¹⁶ See <https://datacenters.google/locations/oregon/>.

¹⁷ OPC Brief at 13.

¹⁸ *Missouri-Am. Water Co.'s Request for Auth. to Implement a Gen. Rate Increase for Water & Sewer Serv. Provided in Mo. Serv. Areas v. Off. of Pub. Couns.*, 526 S.W.3d 253, 272 (Mo. App. 2017).

¹⁹ This was the result of the approval of a consent decree in 1982 in which AT&T was ordered to divest itself of its Bell Operating Company subsidiaries such as SWB. See *United States v. American Tel. and Tel. Co.*, 552 F.Supp. 131, 135–140 (D.D.C.1982), *aff'd. sub nom., Maryland v. United States*, 460

inefficiency and degradation of the telephone service” were “merely speculative considerations.” About those allegations, the Kansas Court of Appeals explained:

ATT’s “contentions that the wire tariff will create waste, inefficiency, and degradation of telecommunications service and that the wire tariff will create increased administrative charges to the CPE customer which would be avoided by a more rational plan. These contentions are no more than arguments for a plan different than the one adopted by the KCC. ATT-IS presents a worst case scenario of abandonment of SWB wire, resulting in a smaller pool of users to meet the revenue recovery requirement. These are speculative considerations which do not make adoption of the plan in the current year unreasonable.”²⁰

Similarly here, OPC presents worst case scenarios in support of its argument for a plan different than proposed by Evergy.

OPC previously challenged the Commission’s decision to consolidate a district as not based on competent and substantial evidence when the Staff’s analysis was not based on actual available data. The Commission agreed with OPC, opining that “[e]ven if one hundred percent of the necessary information is not available, and it may be difficult to conduct [the analysis], when Staff has “at least some of the information necessary to conduct” such analysis, not doing so renders its conclusions unreasonable.”²¹

Mr. Busch was responsible for Staff’s Rebuttal Report.²² Yet, he testified that Staff’s Proposal is “novel” and created with no input from any large load customers, Missouri’s electrical utilities, Data Center Coalition, the

U.S.1001, 103 S. Ct. 1240, 75 L.Ed.2d 472 (1983). Thereafter, Southwestern Bell filed tariff applications in both Kansas and Missouri.

²⁰ *Application of Sw. Bell Tel. Co.*, 685 P.2d 304, 312 (Ks. 1984) (emphasis added).

²¹ *State ex rel. Pub. Couns. v. Mo. Pub. Serv. Comm’n*, 289 S.W.3d 240, 254 (Mo. App. 2009).

²² Tr. (Vol. 2), 245: 20-22.

Department of Economic Development, the Department of Natural Resources (“DNR”), the Division of Energy in DNR, or any outside consultants specializing in economic development, data centers, or large load customers.²³ OPC points to sensationalized, national headlines but is glaringly lacking Missouri-specific information or data. Similarly, OPC failed to submit a single data request to Velvet (Meta) regarding Velvet’s hyper-scale data center in Kansas City and the information it reports.²⁴ No requests about real, available data in Missouri or from Missouri interested consumers operating similar facilities in other states regarding actual costs, risks, water usage, or harmonic distortion. Instead, OPC and Staff both rely on non-Missouri specific and non-customer specific generalizations. This “mere speculation” does not provide the competent and substantial evidence necessary for the Commission to seriously consider OPC and Staff’s positions.

Where OPC’s position does differ from the stipulation, Velvet has concerns whether what OPC’s proposes is within the Commission’s statutory authority. As this Court has long recognized, “The PSC is a creature of statute and can function only in accordance with its enabling statutes.”²⁵ There remains a legal question whether the Commission has the authority to adopt an electric tariff which includes provisions that affirmatively apply to customers rather than the utility and to items not concerning the provision of electric service, like requiring the studies OPC advocates for with respect to issue L. Such requirement is also unduly discriminatory.²⁶ Nor does OPC cite

²³ See Tr. (Vol 2). 215:7-22, 263:19-264:12.

²⁴ Tr. (Vol. 3) 248:17-249:1.

²⁵ *Matter of Amend. of Commission's Rule Regarding Applications for Certificates of Convenience & Necessity*, 618 S.W.3d 520, 524 (Mo. banc 2021) (citing *State ex rel. MoGas Pipeline, LLC v. Mo. Pub. Serv. Comm'n*, 366 S.W.3d 493, 496 (Mo. banc 2012)).

²⁶ See Everygy Brief, pp. 15-16.

any statutory authority for the adoption of “two FACs.”²⁷

Conclusion

Staff has previously instructed the Commission:

The public policy considerations that inform the rate design process include economic development, fairness, affordability, simplicity, stability, avoidance of undue discrimination or preferences, efficiency, and conservation.²⁸

The Stipulation balances these considerations in a framework that is just and reasonable. More importantly, the Stipulation offers the Commission a path forward that carries out the public policy declared by the Missouri Legislature.

Velvet Tech urges the Commission to approve the Stipulation as filed, finding that it establishes just and reasonable rates for LLPS service, is supported by substantial competent evidence on the record, and serves the public interest. Approval will enable Everygy to offer competitive large load service that attracts substantial economic development to Missouri while protecting existing customers.

²⁷ See OPC Brief pp. 57-58.

²⁸ EO-2019-0244, Staff Brief, p. 9 (available at <https://efis.psc.mo.gov/Document/Display/71058>) (citing L.E. Alt, Jr., Energy Utility Rate Setting: A Practical Guide to the Retail Rate-Setting Process for Regulated Electric and Natural Gas Utilities, 58-60 (LULU: 2006); J.C. Bonbright *et al.*, Principles of Public Utility Rates, 85-179 (PUR: Arlington, VA, 2nd ed. 1988).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served upon all of the parties of record or their counsel, pursuant to the Service List maintained by the Data Center of the Missouri Public Service Commission on November 5, 2025.

/s/ Stephanie S. Bell