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

MOTION FOR RECONSIDERATION OR, IN THE ALTERNATIVE, APPLICATION FOR REHEARING

COMES NOW the Office of the Public Counsel ("OPC") and for its *Motion for Reconsideration or, in the Alternative, Application for Rehearing*, states as follows:

The Commission issued its *Report and Order* in the above styled case on November 13, 2025. The Commission's decision in that *Report and Order* is unlawful, unjust, and unreasonable, in that, the Commission's decision: (1) violates section 386.420.2 by failing to address issues presented for Commission determination in its *Report and Order* and is otherwise unsupported by competent and substantial evidence, and (2) results in a tariff that fails to meet the standard imposed by section 393.130.7. The OPC therefore requests the Commission reconsider its *Report and Order*, or, in the alternative, order a rehearing pursuant to Commission rule 20 CSR 4240-2.160.

The Commission's Failure to Address all Issues in the Case

On page 8 of the *Report and Order*, the Commission states: "[t]he parties may propose issues for the Commission's determination, but the Commission ultimately decides the issues that are appropriate to address in its order." This is not a legally accurate statement. On the contrary, failure to address the facts and legal conclusions upon which the Commission relied for each issued decided in a case as part of the *Report and Order* is a clear legal error under long-standing Missouri precedent.

It has been long established that Missouri Supreme Court's interpretation of Missouri Revised Statute section 386.420 "requires the [Public Service Commission] to make a written report stating the conclusions of the Commission along with its decisions, orders, and requirements." [*State ex rel. Monsanto Co. v. Pub. Serv. Com.*, 716 S.W.2d 791, 795 (Mo. 1986)]. Moreover, "[t]he Commission must include findings of fact in its written report." [*Id.* (citing *State ex rel. Rice v. Pub. Serv. Comm'n.*, 220 S.W.2d 61, 65 (Mo. 1949); *State ex rel. Fischer v. Pub. Serv. Comm'n.*, 645 S.W.2d 39, 42 (Mo. App. W.D. 1982))]. "Findings of fact that are completely conclusory, providing no insights into how controlling issues were resolved are inadequate." [*Id.* (citing *Fischer*, 645 S.W.2d at 42]. This standard has been subsequently upheld and applied in numerous cases. [s*ee*, *e.g.*, *Kan. City Power & Light Co.'s Request v. Mo. Pub. Serv. Comm'n*, 509 S.W.3d 757, 784 (Mo. App. W.D. 2016); *State ex rel. KCP&L Greater Mo. Operations Co. v. Mo. PSC*, 408 S.W.3d 153, 161 (Mo. App. W.D. 2013); *State. ex rel. Aquila, Inc. v. Pub. Serv. Comm'n. of the State*, 326 S.W.3d 20, 28 (Mo. App. W.D. 2010); *State ex rel. Nixon v. PSC (State ex rel. Pub. Counsel)*, 274 S.W.3d 569, 576 (Mo. App. W.D. 2009)].

The case of *State ex rel. Fischer v. Pub. Serv. Comm'n* (hereinafter *Fischer*) proves illustrative of this point. In *Fischer*, the Commission took up a case concerning the rate design of Laclede Gas Company. [*Fischer*, 645 S.W.2d at 40]. All parties to the case other than the OPC reached an agreement in that case and ultimately filed a Stipulation setting forth that agreement. [*Id.* at 41]. The Commission ruled in favor of that agreement and issued an order that included a section labeled "Findings of Fact." [*Id.* at 41]. However, the *Fischer* Court determined that "[t]he order entered by the Commission in this case does not meet the statutory findings of facts requirement" because "[t]he findings in this case . . . are completely conclusory, <u>and provide no insights into if and how controlling issues were resolved</u>." [*Id.* at 42 (emphasis added)]. The Court provided several examples to illustrate the problem:

> There are many factual issues which the Commission would necessarily have considered before entering an order adopting a rate design for Laclede, but which are absent from the findings of fact. For example, the Commission increased the revenue from the rates in the general service class by $417,400, although Chairman Slavin stated in her concurring opinion to the order that there was no evidentiary support for this decision, except for the stipulation agreement itself. The adoption of declining block rates for general space heating and seasonal service classes also seems to have been made without evidentiary support, and was not mentioned in the findings of fact. The Commission's decision to decrease the class revenue requirement of the general space heating class by $1,144,600 was made without any findings of fact concerning the cost of services relative to this class, in comparison with the cost of services for other classes.

[*Id.* at 42 – 43]. The Court further noted that "[r]ather than performing its statutory duty to fix a rate design for Laclede based on findings of fact supported by competent and substantial evidence, <u>the Commission appears to have simply adopted the stipulation agreement</u>." [*Id.* at 43 (emphasis added)]. This, the Court concluded "is completely contrary to law, and cannot form the basis for a valid order by the Commission." [*Id.*].

The present case is strikingly similar to the *Fischer* case. Here, as is in *Fischer*, the Commission's decision is premised almost entirely on the filed stipulation. This is evidenced by that fact that the *Report and Order* chose not to address numerous issues that were in dispute between the parties and instead just recites the provisions of the filed stipulation. As such, there is nothing to provide insight into how these issues were actually resolved by the Commission, which was the fatal flaw identified by the *Fischer* Court. [*Id.* at 42 ("[t]he findings in this case . . . are completely conclusory, and provide no insights into if and how controlling issues were resolved."). To prove that point, the OPC will identify those issues for which there is presently no evidentiary support cited in the Commission's *Report and Order*.

Issue B: Economic Development Rider Discounts

There was significant legal analysis placed into the question of whether the Commission may establish terms and conditions to exclude otherwise eligible customers from receiving Economic Development Rider ("EDR") discounts. This was backed by factual analysis presented by the Commission's Staff regarding the impact of the EDR discounts on all other ratepayers. [*See* Ex. 201, *Staff Report and Recommendation*, pg. 34 lns. 6 – 9]. There is no reference to any of this in the Commission's *Report and Order* which instead includes only a single finding of fact (paragraph 28, page 15) that is just a conclusory statement that explains what the Cost Stabilization Rider included in the Stipulation is and mentions that it would apply to "any customer receiving service under Evergy's Economic Development Rider." Because there is no factual or legal analysis presented at all regarding the issue of whether LLPS customers shold be subject to the EDR discount, there is nothing in the *Report and Order* to provide the necessary “insights into if and how [this] controlling issue[was] resolved.”

Issue C: Minimum Load Requirements[1]

The OPC adopted the recommendation first presented by the Commission’s Staff that the minimum load for taking service under the LLPS tariff should be 25 MW. This was supported by factual analysis in the form of Evergy DRs that identified this 25 MW threshold was developed after discussions with the Arizona Public Service Commission. [Ex. 201, *Staff Report and Recommendation*, pg. 32 lns. 17 – 26 (emphasis added)]. The Commission’s *Report and Order* includes no findings of fact related to this issue other than a conclusory statement (paragraph 21, page 12) that recites that the stipulation imposes a 75 MW threshold. This 75 MW is based on nothing in the record and is completely arbitrary. There is no legal or factual analysis as to why the 75 MW threshold is superior to the proposed 25 MW threshold, which is supported by an actual factual basis. Consequently, there is nothing in the *Report and Order* to provide the necessary “insights into if and how [this] controlling issue [was] resolved.”

[1] The *Report and Order* identifies Issue C as one of the issues not addressed in the agreement, thus requiring separate resolution, on page 28. This is an error. The issue the Commission is addressing on page 28 is actually issue I (“Should a limit be placed on Evergy concerning the amount of LLPS load that it may serve?”). The real Issue C remains unaddressed by the *Report and Order*.

Issue F: Minimum Contract Terms

The OPC offered its own proposal regarding the minimum contract term under the LLPS tariff, which was "20 years with a five-year notice period for termination." [Ex. 301, *Rebuttal Testimony of Geoff Marke*, pg. 16 lns. 7 – 10]. This was supported by factual analysis and reference to other jurisdictions. [*see* Ex. 301, *Rebuttal Testimony of Geoff Marke*, pg. 15 ln. 25, pg. 16 lns. 1 – 10]. The Commission's *Report and Order* includes no findings of fact related to this issue other than a conclusory statement (paragraph 20, page 12) that recites what the minimum term would be under the Stipulation. There is no legal or factual analysis as to why the Stipulation's minimum term is superior to the OPC's recommendation, which is supported by an actual factual basis. Consequently, there is nothing in the *Report and Order* to provide the necessary "insights into if and how [this] controlling issue[was] resolved."

Issue F: Collateral and Other Security Requirements

The OPC again presented its own recommendations and supporting evidence in relation to this issue that the Commission did not address. First, the OPC recommended that the minimum monthly demand charge for the monthly minimum bill be set at 90% as opposed to the Stipulation's 80%. [Ex. 301, *Rebuttal Testimony of Geoff Marke*, pg. 16 lns. 16 – 20]. This recommendation was supported by factual reference to the minimum demand charge imposed in other jurisdictions. [*Id.*]. The Commission's *Report and Order* contains no reference to Dr. Marke's recommendation, or the evidence to support the recommendation, and instead just includes a completely conclusory finding that the Stipulation imposes an 80% demand charge (paragraph 25, page 13). Once again, this means there is no legal or factual analysis as to why the Stipulation's 80% minimum demand charge is superior to the OPC's recommended 90% minimum demand charge, which is supported by an actual factual basis. Consequently, there is nothing in the *Report and Order* to provide the necessary "insights into if and how [this] controlling issue [was] resolved."

The OPC further provided a recommendation that the Commission not allow the waiver of the collateral requirements. This was supported by the testimony evidence of the OPC's witness Dr. Geoff Marke who explained how allowing LLPS customers to exempt themselves from the collateral requirement would dramatically increase the probability of future stranded assets given the volatile nature of their business. [Ex. 301, *Rebuttal Testimony of Geoff Marke*, pg.17 lns. 5 – 9]. The Commission's *Report and Order* contains no reference to Dr. Marke's recommendation, or the evidence to support the recommendation, and instead just includes a completely conclusory finding that the Stipulation includes collateral waiver provisions (paragraph 26, page 14). The *Report and Order* even contradicts itself later by making a separate finding that the Stipulation "includes mechanisms to provide protection for other ratepayers if a large load customer terminates its service agreement before the end of the minimum service term" because it includes "requirements that the LLPS customer <u>post and maintain collateral</u>" without reference to the fact that the Stipulation also waives these very requirements (see paragraph 36, page 17 (emphasis added)). There is no legal or factual analysis as to why the Stipulation's collateral waiver provisions should be permitted over the objection and recommendation of the OPC and its supporting testimonial evidence. Consequently, there is nothing in the *Report and Order* to provide the necessary "insights into if and how [this] controlling issue[was] resolved."

Issue H: Termination Fee

The OPC's initial brief presented an argument as to why the Commission needed to order termination fees to be tracked. This was supported by citation to the factual record. The Commission provides no such order, nor even addresses the OPC's request for such an order. In addition, the OPC pointed out ambiguities in the Stipulation's language and requested the Commission clarify the ambiguity should it order the adoption of the Stipulation. Once again, the *Report and Order* provides no such clarification, nor even addresses the OPC's request for the same. All the *Report and Order* does is mechanically recite the termination fee provisions in the filed Stipulation. As with all the other issues, this means there is nothing in the *Report and Order* to provide the necessary "insights into if and how [this] controlling issue[was] resolved."

Issue T: Riders

There were six separate and distinct riders at issue in this case, each with their own separate problems and concerns and each being addressed by multiple rounds of testimony by multiple parties. The Commission's entire discussion of these riders comes in paragraph 27 (on page 15), where the Commission provides a cursory statement that "<u>four</u> new optional clean and renewable energy riders that would be available to LLPS customers[;]" the fact that there are "a suite" of riders referenced in passing in paragraph 33 (on page 16); and a conclusory statement in paragraph 39 (on page 17) that "the riders, especially the renewable riders, set out in the Agreement allow the large data centers to achieve their sustainability targets." There is no differentiation between any of the six riders referenced in Issue T, nor any explanation as to how any of the riders work, nor even a description of the riders and what each of them does. This is legally deficient because, as stated, each of these riders have their own issues that the Commission has chosen not to address with findings and conclusions. The OPC will provide a quick review of the problems with each rider that the Commission has chosen not to address.

Customer Capacity Rider

This rider gives total discretion to Evergy in a manner that is completely unworkable. As explained by the Commission's Staff:

> Essentially, the proposed tariff provides [Evergy Missouri Metro] and [Evergy Missouri West] authority to enter into agreements of their choice, with customers of their choice, on terms of their choice, and for the results of those agreements to modify the otherwise applicable bills of their largest customers. It is unclear what oversight the Commission may possibly exercise over these transactions and over the revenue requirement impact of these transactions.

[Ex. 201, *Staff Report and Recommendation*, pg. 100 lns. 1 – 5]. This is not addressed with any findings, conclusions, or analysis whatsoever in the Commission's *Report and Order*.

Demand Response & Local Generation Rider

This rider poses three separate problems. First, Evergy is proposing a demand response earning opportunity fee. [Ex. 201, *Staff Report and Recommendation*, pg. 94 ln. 24]. This is illegal as an earnings opportunity for a demand response program is only authorized through programs subject to the Missouri Energy Efficiently Investment Act ("MEEIA") and this is not a MEEIA program. [Mo. Rev. Stat. § 393.1075; Ex. 201, *Staff Report and Recommendation*, pg. 94 ln. 27 – pg. 95 ln. 2]. Second, there is no penalty for non-performance by a customer when an event is called. [Ex. 201, *Staff Report and Recommendation*, pg. 95 lns. 4 – 6]. This means that an LLPS customer can "participate" in the program by designating curtailable load, receive the credit, and then just never curtail the load when called on by the utility. In such a circumstance this would just be a free deduction to the LLPS customer's bill that would be paid for by other customers. Third, there may be severe implications from this program interacting with future demand response aggregators of retail choice ("ARC's"). These ARCs may be able to "provide curtailment to these large load customers with incentives to curtail, and can ask for shorter curtailment events, with no extra earnings opportunity fees or administration fees[.]" [Ex. 201, *Staff Report and Recommendation*, pg. 96 lns. 12 – 14]. All three of these issues are in no way addressed in the Commission's *Report and Order*.

Renewable Energy Program Rider

This rider may contradict standards set by the North American Renewables registry ("NAR") which has imposed "limits on the amount of RECs that can be retired on behalf of others." [Ex. 201, *Staff Report and Recommendation*, pg. 105 ln. 6]. Staff also identified several terms in the proposed tariff language that would need to be clarified and tracking that would need to be undertaken. [*Id*. at pg. 106, lns. 4 – 30]. These issues are not addressed in the Commission's *Report and Order*.

Green Solution Connections Rider

This rider supersedes another case currently open before the Commission (EA-2024-0292). [Ex. 201, *Staff Report and Recommendation*, pg. 107 lns. 10 - 17]. This is not addressed in the Commission's *Report and Order*.

Alternative Energy Credits Rider

This rider proposes to sell Alternative Energy Credits ("AECs"), an analog of exiting Renewable Energy Credits, which is a problem only in that "there is currently no existing market for AECs and there is also no standard set by statute or rule." [Ex. 201, *Staff Report and Recommendation*, pg. 109 lns 3 – 4]. There are also no registries that "track AECs like they do RECs, so Evergy would need to find and hire a third party in order to track and retire AECs." [*Id*. at lns. 13 – 15]. This is why Staff requested that "the Commission require that Evergy first obtain the third party tracking system in order to track and retire the AECs and file on an annual basis an update of the program showing how the AECs are being tracked and proving that the AECs are not being utilized more than once" in the event the Commission approved this rider. [*Id*. at lns. 20 – 23]. As stated above, the Commission's *Report and Order* ostensibly approved the rider by ordering the adoption of the filed Stipulation, but did not address the requested ruling, nor explain why it wouldn't issue such a ruling, nor even provide any factual analysis related to the issue at any length.

Clean Energy Choice Rider

This entire rider will be superseded by the complete overhaul of the Commission's IRP rules that must be undertaken due to the passage of Senate Bill 4 in 2025. [Ex. 201, *Staff Report and Recommendation*, pg. 80 lns. 7 – 10].

Summation

As shown, there are a large number of issues raised by the OPC or Staff that have not been addressed at any length in the Commission's *Report and Order* and for which there is consequently no factual findings to support the Commission's decision. Instead, this case bares far too much resemblance to the *Fischer* case, in that, outside of rejecting the proposed rate design mechanisms of its own Staff, this Commission has provided insufficient factual and legal analysis for the issues and appears to have simply adopted the filed Stipulation and recited its terms. The Commission's decision not to perform the necessary duty of outlining the factual and legal conclusions on which it was relying to resolve the issues cited above (or even addressing the OPC's recommendations at all for most of the issues) in favor of just adopting the Stipulation is exactly what the *Fischer* Court noted in its opinion. [*State ex rel. Fischer v. Pub. Serv. Comm'n.*, 645 S.W.2d 39, 43 (Mo. App. W.D. 1982) ("[r]ather than performing its statutory duty to fix a rate design for Laclede based on findings of fact supported by competent and substantial evidence, the Commission appears to have simply adopted the stipulation agreement.")]. This "is completely contrary to law, and cannot form the basis for a valid order by the Commission." [*Id.*].

To redress the foregoing legal error, this Commission should reconsider and rescind its issued *Report and Order* so that it may file a new *Report and Order* that outlines the factual and legal bases on which the Commission is relying for each and every issue presented in this case. In the course of doing so, the Commission should further reconsider the degree to which the above referenced tariff terms and riders meet the statutory mandate imposed by section 393.130.7. This is necessary because the current *Report and Order* further fails to properly ensure that LLPS "customers' rates will reflect the [LLPS] customers' representative share of the costs incurred to serve the [LLPS] customers and prevent other customer classes' rates from reflecting any unjust or unreasonable costs arising from service to [LLPS] customers." [Mo. Rev. Stat. § 393.130.7]. This error is addressed in the OPC's second point.

<u>The Commission's Failure to Adequatley Protect Legacy Customers from Paying for LLPS Customers</u>

As just stated, Missouri Revised Stated section 393.130.7 requires the promulgation of tariffs that are designed to "reasonably ensure [LLPS] customers' rates will reflect the [LLPS] customers' representative share of the costs incurred to serve the [LLPS] customers and prevent other customer classes' rates from reflecting any unjust or unreasonable costs arising from service to [LLPS] customers." [Mo. Rev. Stat. § 393.130.7]. The clear intention of this statute is to ensure that legacy customers (*i.e.* non-large-load customers) of a utility like Evergy are not going to see their rates increased as the result of having to pay part of the cost to serve the large-load (in this case LLPS) customer class. The terms of the

Stipulation that this Commission has adopted as its own in this case do not meet this standard.

The Commission's Staff put forward an immense amount of effort and provided voluminous testimony to illustrate the full range of concerns related to serving LLPS customers as well as presenting comprehensive solutions to those concerns. The OPC provided additional testimony that offered sometimes similar, sometimes completely different solutions to many of the same problems as well as raising new ones (while also providing solutions to those new problems). Moreover, the OPC's solutions were directly drawn from, and supported by, what the OPC observed in other states. As explained by OPC witness Dr. Geoff Marke:

> Beyond just testimony and discovery, I talk to a lot of different groups. I make an active effort -- every one of my issues, I reached out to third-parties. I did sanity checks to make sure, am I aligned here? Am I off-base? The recommendations that OPC put out here, <u>we don't have any recommendations that hasn't been approved [by] some commission in the United States already today. There's nothing out here that we're the outlier on</u>.

[Tr. Vol III, pg. 291 lns. 6 – 14 (emphasis added)]. Yet all of this has been seemingly dismissed without issuing any findings, conclusions, or explanation.

The *Report and Order* talks at length about the customer protections built into the Stipulation but does not address the fact that many of the protections it cites (like term length and minimum demand charge) fall <u>below</u> what has been approved in other states. [*see* Ex. 301, *Rebuttal Testimony of Geoff Marke*, pg. 16 lns. 16 – 20]. The Commission has also not addressed the facts that show the claimed protections do not provide the security the Commission inherently assumes. For example, the twelve-year term length in the stipulation is well below either the depreciable life of new generation, (which will likely be " thirty years or greater") or the expected term of a purchase power agreement (which are often between

15 and 25 years), either of which would be required to serve the new LLPS customers. [*Id.* at pg. 15 ln. 25, pg. 16 lns. 1 – 2]. The Stipulation further directly allows for the creation of partially stranded assets through its permissible capacity reduction mechanism. Finally, as discussed above, the collateral requirements that the Commission relies on as a consumer protection are subject to waivers which will leave legacy customers "holding the bag" if an LLPS customer is suddenly shuttered due to an economic downturn. These are not the only ways that the Stipulation fails to adequately protect customers.

The Commission has also overlooked the amount of additional generation that will need to be brought online to serve the expected LLPS customers, which sees no mention in the 49 pages of its *Report and Order*. [*see* Ex. 201, *Staff Report and Recommendation*, pg. 10 ln. 17 – pg. 13 ln. 8, pg. 38 lns. 3 – 4; pg. 63 lns. 1 – 3]. The assignment of the cost of this generation under traditional rate-making principles will result in legacy customers bearing some if not most of the cost of this new build. [Tr. Vol III pg. 57 lns. 6 – pg. 58 ln. 7, Ex. 201, *Staff Report and Recommendation*, pg. 63 ln. 21 – pg. 64 ln. 1]. This is again something the Commission's *Report and Order* does not address.

The Commission's *Report and Order* has also disregarded the difficulties that its Staff pointed out when it comes to assigning RTO related costs to LLPS customers absent some form of data separation. [*see* Ex. 201, *Staff Report and Recommendation*, pg. 22 lns. 12 – 16]. These difficulties would result in legacy customers bearing some of the cost to serve LLPS customers absent a solution. [*Id.*]. The Commission's Staff offered two <u>distinct</u> solutions to this problem, the first being the assignment of separate pricing nodes for LLPS customers and the second being a set of conditions set forth in testimony. [*Id.* at pg. 22 ln. 25 – pg. 23 ln. 2]. The Commission's *Report and Order* denies the first of these solutions but then disregarded the other for no apparent reason. The *Report and Order* does not even discuss the second proposal, despite being offered in both the Staff and OPC's briefs.

For all the reasons addressed above, the tariff mechanism the Commission has now adopted and approved creates the opportunity to shift large load customer costs onto Evergy's legacy customers or at least presents enough ambiguity that it will pose significant challenges in future rate cases. As more of these large load customers join Evergy's system, the cost impacts will begin to be felt. This case represents an opportunity to preemptively mitigate the worst of these impacts through the myriad recommendations made by both the OPC and the Commission's Staff. The Commission should therefore rescind and reconsider its prior *Report and Order* in an effort to deliberate and address the many points that have hereto now been overlooked, as discussed above.

WHEREFORE, the Office of the Public Counsel respectfully requests the Commission reconsider the *Report and Order* issued November 13, 2025, or, in the alternative, order a new hearing to address the issues raised herein, as well as any other relief that is just and reasonable under the circumstances

Respectfully submitted,

By: /s/ John Clizer

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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 twelfth day of December, 2025.

/s/ John Clizer